

LAND TRUST

**KNOW MORE THAN
YOUR ATTORNEY**

IN 15 MINUTES



by Scott Royal Smith

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INTRODUCTION

Why It Matters

Lawsuits are a danger to every real estate investor. And the best defense against them is a trust, or specifically, a Land Trust.

Land Trusts are trusts used to hold real estate titles or related assets. On their own, they don't protect you from lawsuits, but they can be a critical component of an asset protection plan.

A Land Trust gives you anonymity. This prevents lawsuits in one simple way: If the "other side" doesn't know you own the property, how can they sue you?

If your attorney tells you that Land Trusts are not as effective as they once were, they are not educated enough on Land Trusts! Most attorneys don't know enough about Land Trusts to give you advice about using them. They most likely didn't get this education in law school. Land Trusts are just as effective as they once were, if not more effective these days.

Benefits

Land Trusts are the unsung heroes of the real estate investing world. Investors use Land Trusts to:

- **Hold title to a property and share an interest in property with multiple beneficiaries of their choosing**
- **Hide their identity as the legal owner of a property**
- **Change the beneficiary of the trust without recording this publically**
- **Avoid probate when their estate is settled**
- **Establish a clear legal division between multiple owners**
- **Reap tax advantages**

The list of benefits above is far from exhaustive. Land Trusts can be used like savings accounts backed by appreciating assets, as estate planning tools, for executing transfers around the due-on-sale clause, and many more cool legal tricks.

Let's focus on where the Land Trust really gets to strut its stuff: You can use Land Trusts to control assets rather than own them yourself. The Land Trust is also called a "**title holding trust**" because that's its main job: holding title to the property in your place. You retain control of any property associated with your trust, and of course, any earnings the real estate investment generates.

Remember: It's almost always better off controlling an asset than owning it outright.

Let's take a closer look at the Land Trust's most-loved feature: asset protection through anonymity and compartmentalization.

Anonymity

Land Trusts take the critical first step in asset protection: stripping the title out of your name.

When you establish a Land Trust, you're using its trustee-beneficiary structure. Your trustee may then manage the property for you (as a beneficiary of the trust).

This is how you maintain control and enjoy the benefits of property ownership while sidestepping its liabilities. It's a pretty cool thing, in our opinion.

If most intelligent people are given the choice between anonymity and oversharing, they tend to like the former. Anonymity makes lawsuits a serious pain, and can actually prevent them if the other party isn't particularly motivated.

Compartmentalization

A Land Trust is limited if used alone. It's not intended to be your entire asset protection strategy, but rather a piece of it.

We've found that asset protection works best in layers. A Land Trust is a great first layer of anonymity. If your land-trust-owned property is also owned by an LLC or a series within a Series LLC, that's another layer. From there, attorneys and CPAs can pile on even more layers such as enhanced anonymity, the addition of a shell corporation, and plenty of other legal and tax tricks.

When paired with entities (such as [Traditional LLCs](#) or [Series LLCs](#)), Land Trusts can defend a portfolio of 10 or 10,000 properties of any value. This combination gives investors total compartmentalization of assets and true anonymity—two highly useful features of the best asset protection strategies. We'll be looking at this in depth later on.

Terms To Know

Let's go over some common terms used in this book, including the parts of a land trust and the types of trusts you should know about.

Parts of a Land Trust

A Land Trust has three parts: a **grantor**, a **trustee**, and a **beneficiary**.

You will be the grantor of the trust. The beneficiary is the person who receives all the benefits of the Land Trust (i.e., the income). Typically, that's you as well.

You will designate a trustee. A trustee has control of the property and manages the trust itself. In some circumstances, you'll have to disclose who they are. If you don't want to do that, you can use a **nominee trustee** (an attorney, for example). This is a person whose name appears on the trust document who has specific powers to file tax returns on behalf of the trust.

Note: Your attorney can be your trustee, and since your [communications with your lawyer are confidential](#) (because of attorney-client privilege), this will give you further protection. Lawyers make great trustees, but you get to choose whom you designate.

Trust Types

The Revocable Trust

With a revocable trust, the grantor can appoint himself or herself as the trustee. This allows them to take control of the assets contained in the trust. By doing this, the assets within the trust remain a part of the grantor's estate.

In a revocable trust, the grantor, acting as the trustee, can amend the trust and the rules at any time. They can freely change beneficiaries at any time. They can also undo the trust at any point.

Land Trusts are typically considered to be revocable trusts. As such, they can be amended or terminated at any time.

The Irrevocable Trust

By comparison, in an irrevocable trust, the grantor is not the trustee. Because of this, they end up relinquishing some control. When a trustee is designated for an irrevocable trust, the trustee becomes the legal owner of the assets or property within the trust. With an irrevocable trust, the named beneficiaries are hard to change.

Once the grantor or the trust owner signs his assets and property over to the beneficiary, he or she has no say in the trust without the beneficiary's permission. This means that the grantor cannot modify or terminate the trust without the permission of the beneficiary once he or she signs the paperwork into the beneficiary's name.

The main reason for setting up an irrevocable Land Trust is to remove all ownership of the assets and property from the original owner. It is mainly for estate and tax purposes. This means that the grantor will no longer be liable for tax payments on his or her assets and property.

There are a few [benefits to having an irrevocable Land Trust](#) signed over to the beneficiary of your choice. They include:

- **Protection from Creditors.** This is especially true if you work in a type of business

that puts you at risk of certain lawsuits. However, this also means that you will no longer own the assets and property once you sign it over to your Land Trust and beneficiary. If you are fine with this, then you will be protected for the rest of your life.

- **Protection from the IRS.** This is the same as how it can protect you from creditors.
- **Estate Planning.** When a trustee is designated for an irrevocable trust, they become the legal owner of the assets or property within the trust. This reduces the taxable estate for the grantor upon his or her death. With a revocable trust, on the other hand, if the value of the estate taxes exceeds that of the estate tax exemption at the time of death, taxes may be owed.
- **Access to Benefits.** This is because certain assets and property you own can keep you from receiving benefits from the government (SNAP, Medicaid, etc.). Designating a trustee can preserve access to these benefits.

The downside of the irrevocable Land Trust is that the grantor will not receive tax benefits from the assets and property once the ownership of them are signed over to the beneficiary.

One final thing: Irrevocable trusts come in two different types: **Living trusts** and **testamentary trusts**.

Living Trusts—Living trusts help ensure your loved ones get the assets or properties you want them to have, while bypassing the complex, often expensive, legal process known as **probate**. A Land Trust is a type of living trust that can only hold real estate, notes, mortgages, air rights, and other real estate-related assets. Living trusts are created by the person while he or she is still alive. They are also called **intervivo trusts**. There are a few different kinds of these trusts and they include **irrevocable life insurance trusts, lifetime gifting trusts, spousal lifetime access trusts, and charitable trusts**.

Testamentary Trusts—This type of trust is always irrevocable since it will not be funded until after the person is passed away. The terms of this type of trust is set in the deceased person's will and will be disclosed after he or she is gone. Although once the person who made the testamentary trust is gone this type will turn irrevocable and cannot be modified except by the trustee or beneficiary, the grantor can modify or even end the trust before he or she passes away.

SECTION I: SOLUTIONS

Prevent Lawsuits

Remember back to when you were in grade school—what was the first thing the teacher always asked you to do for any assignment? Put your name on your paper, of course.

Attorneys, just like teachers, don't like to deal with anonymous papers. While your teacher may have been able to decipher your handwriting, most attorneys will not go to these lengths.

Land Trusts make it difficult to connect your name to the property, meaning that a lawyer would have a hard time determining whether you are even worth pursuing in court. Trust me: as an attorney, I have much better and more profitable uses of my time than chasing down someone who might not have anything for me to get.

Make Yourself Judgement-Proof

Now suppose some vindictive person drags you into court out of pure spite. This is incredibly unlikely, but it could happen. They're going to have to decide whether to sue you personally, or fight the losing battle of attacking the trust directly. Suing you personally would be a fool's errand, as the value is in the property—you know, the property that doesn't have your name on it.

The plaintiff's unfortunate attorney won't have many good strategies for winning a judgment. In most cases, they'll bow out unless their client is willing to pay a ludicrous amount of money just to get "justice."

Even if they win a judgment against you personally, they're going to have a hard time collecting anything. Your property is safely in the trust. Of course, you'll want to ensure you have a good attorney helping you so the sharks don't win on a technicality. Land Trusts are not a Pinterest craft, so don't DIY.

Pair With Entities

Trusts are more difficult to sue than individuals because of the anonymity they give you. You can reduce your chances of a lawsuit against you to almost "none" by pairing the Land Trust with a liability-limiting entity. This is a highly intelligent, easy-to-manage, cost-effective way to approach a basic asset protection strategy.

First, imagine your dream property—maybe in a place you'd like to vacation. Now, we don't want anyone coming after that badass asset in court. So, you might stick it in a Traditional LLC. After all, compartmentalization is your LLC's main job. A single Traditional LLC can protect one asset completely as a holding company, or you may choose to use the instrument as a shell company to assume operations for a Series LLC.

Series LLCs are ideal for the investor or multi-property owner because you can have as many “compartments” (i.e., series or miniature liability-protected companies) as you like. The Series LLC achieves perfect compartmentalization, with each of your assets snugly secured inside its own series.

Compartmentalization compliments anonymity brilliantly, and is indeed what we call one of the [pillars of asset protection](#). If your assets aren’t connected to you, and nobody can figure out who the hell you are, you become a pain to sue.

Hold Real Estate Notes

Most people think of Land Trusts as a place to stash a property and title. You may not know that you can use these trusts to hold all sorts of things, including real estate notes.

While notes can be lucrative, there is always a risk that the recipient will default, or otherwise fail to pay up. Traditional lenders will find this costly and annoying, but note holders have an additional problem on their hands when things go south: [foreclosure](#). That’s right: if you are holding a note and your arrangement goes sideways, you’re left holding the bag. And even the wealthiest and most successful investors don’t want a foreclosure dirtying up their record.

Just like you don’t want to hold property in your legal name, you don’t want real estate notes tied to your identity. This is a rule of thumb for any asset. There are several reasons for this, and most of them have to do with asset and liability protection or staying out of civil court.

Here’s the good news: You can completely sidestep this problem by holding your notes in a Land Trust. This strategy works because your trustee’s name will appear on the documents instead of your own. If you do a lot of this type of business, a default is nearly inevitable at some point. But the use of a Land Trust will protect you and your good name from the consequences. It’s only fair, considering you’re not the one who failed to keep your end of the deal.

The mechanics of moving your notes into the Land Trust are the same as they would be for any other asset.

Almost anything connected to your property can be secured in a Land Trust. Some other things your Land Trust can hold include deeds, financial agreements and accounts for regular upkeep services related to the property. The practical applications here are broad.

Let’s say you learn your new investment home is sitting on top of a natural gas deposit. Cha-ching: that’s great news! The even better news is, once you hammer out a contract to capitalize on your new-found resource, the rights to the natural gas (or oil, etc.) can also be protected by your Land Trust.

Get Financing

Smart investors stick their property in entities like LLCs for asset protection. Smart creditors, on the other hand, don't lend to LLCs. The Land Trust solves this issue, allowing you to get personal financing and protect your property simultaneously.

The first step is to buy your property in your name. Let's say you're eligible for a personal or business loan. Many of my clients have good home equity and use funds from their HELOC to purchase rental properties or second homes. If you're absolutely clueless in this department, talk to your banker. You may be eligible for a variety of loans and simply not know it.

The second step is to transfer the property to the Land Trust. This is a crucial step, both for protecting the land itself and avoiding the **due-on-sale clauses** that come standard with most loans (more on that later). In short, most loans must be paid back in full if and when the property is transferred. However, transferring property to a Land Trust does not violate the due-on-sale clause. You get to keep your loan and avoid the whole (typically fruitless) hassle of attempting to get a major creditor to give a loan to the LLC itself. This handy dandy loophole allows you to move and manage your property without having to cough up a bunch of cash.

Once you've transferred your property into the trust, simply deed the property to your LLC. Last but not least, you will need a solid operating and property management agreement for your LLC to effectively manage the property in the trust.

Hold Property Titles

While holding title to real estate investment property in an LLC is an option, based on our own experiences as real estate investors, we know of a few reasons why a Land Trust is a better title holding vehicle, offering privacy that you can't find in an LLC. Let's go over three reasons why you should title your property in a Land Trust rather than an LLC.

Reason #1: What's In A Name?

A vague Land Trust name can be the secret to preventing lawsuits before they even start. When you [set up a Land Trust](#), you should name your trust so that no personal connections can be drawn from the Land Trust title and those parties involved in the trust. If someone wants to attack one of your assets, they will have trouble connecting those assets to you.

For record-keeping purposes, a Land Trust is documented under its official Land Trust name. Uncovering ownership details behind a mysterious sounding trust like *321 CWL Land Trust* may be more trouble than it's worth.

Reason #2: Separate Liability

I already talked about compartmentalization, but it bears repeating. When you put the title to each property you own in its own individual Land Trust, it separates the liability associated with each. In contrast, if you hold all your property in a single LLC, all the property is held under the same shared entity.

This not only doesn't provide anonymity, it also creates a scenario where an attack on one property can lead to an attack on the other properties. With a Land Trust, your potential losses are capped at each individual asset. Thus, potential lawsuits are managed, rather than with an LLC (where all your hard-earned assets are up for grabs).

Reason #3: Efficient Management

Lastly, a Land Trust provides efficiency when it comes to financing and selling your property. When each property is held in its own separate Land Trust, the financing or sale of one property doesn't impact the other properties, as it may in an LLC holding multiple properties.

Pay For College

Real estate investors should be aware of the options they have when it comes to using their property to help pay for college tuition. To use specific investment properties to fund future college expenses, make sure that the title to each of those properties is held in separate Land Trusts.

This is especially important if you have more than one child, because each child will serve as the beneficiary of his or her trust. Also, we've seen several cases where separating assets into their own individual entities, such as multiple "child LLCs" within a Series LLC, has helped investors manage the impact of lawsuits.

After ensuring that each child has their own Land Trust and is named beneficiary to that trust, have each property appraised at its current market value. Afterwards, sell an option on each investment property. Each child's Land Trust will hold these options and accumulate the appreciation value of their respective properties.

Whenever your kids are ready to head to college, you'll have two options. First, the kids can exercise their contractual right to sell the property in their Land Trust, using the money earned for tuition. Alternatively, you can buy the options back and use the profits for college expenses.

The key to this method is putting each property in its own trust. This insulates each property from each other, so that a negative hit on one doesn't impact the others. The Land Trust combined with a Series LLC provides maximum asset protection.

Avoid Title Churning

We've touched on the main reasons for setting up Land Trusts for each of your investment properties. Another reason is to avoid "churning" of the title.

Churning means that the title goes through many different hands in a short time period. The problem with the title going from one hand to the next and the next and so on is that a lender will not think twice about denying lending money for the property. This is because they may think that the title is going through many different hands to make the investment property look like it is worth more than it really is.

Protect Yourself From Liens

The benefits of using a Land Trust when investing in real estate include protection from liens and title claims. Any [judgments or liens](#) against the beneficiary of the Land Trust (you) cannot attach to the property. Unlike with an LLC, the owners of the Land Trust are not publicly available.

To keep your assets away from the prying eyes of predators, you need to set up a separate Land Trust for each of your properties. This keeps your properties insulated from each other such that any liens or judgments against any of the properties don't affect all your investments.

If someone wants to sue the trustee, they would first need to find them. I can assure you this is not a job that any attorney with a good head on their shoulders would be looking to take on. This is because all of our trustees are located out of state and their last names are different from those of the beneficiaries. Furthermore, the addresses listed on the deed to trustee are P.O. boxes. This scenario makes you an undesirable target to any would-be litigant. No one wants to fight a ghost.

If the litigant is hell-bent on getting one over you, they would have no option but to sue the trust through a publication in the newspaper in the county in which the property is domiciled. I can assure you that this will only add to the expense and trouble of the plaintiff. It's a dead end.

Prevent Identity Theft

Unless you've been living under a rock, you know that identity theft is an all-too-common criminal act that has steadily been on the rise during the digital age.

The sad reality is that anyone with clean credit, wealth, or valuable assets can become a target. As a real estate investor, you're vulnerable, particularly if you have property in your own name. But did you know that a Land Trust can help prevent you from becoming a victim?

Identity thieves go for low-hanging fruit, meaning targets that require the least effort on their part. Think about it; nobody gets into identity theft because of their impeccable work ethic.

This is one reason elderly people are frequent targets. Some thieves will dig through garbage for identifying information, usually to take out a credit card in the victim's name. Minimizing your paper trail will help you protect yourself in everyday life.

Your investments also leave a digital trail. Property deeds are conveniently catalogued for anyone to find on ".gov" websites. From this and other public records, a criminal can determine a disturbing amount of information about you, including your banking information.

The crucial first step to avoiding a "digital paper trail" is keeping everything out of your name. The Land Trust helps you do exactly that. Your name isn't the one on the mortgage or your payments—that honor goes to your trustee.

SECTION II: OWNERS MANUAL

As we've seen, the Land Trust keeps ownership of your property private. The land title office can no longer let the whole world know that you own the property.

Why do investors seek privacy of ownership? Reasons include:

- **They can easily transfer ownership of one or more properties to someone else**
- **Their estate can avoid probate**
- **They can have many owners of one or more properties**
- **They get tax advantages**

We've discussed the benefits of holding title to real estate investment property in a Land Trust. As we explained, real estate notes, deeds and other agreements can be held in the trust. A Land Trust can be recorded as either a revocable or irrevocable Land Trust, but most are structured as revocable trusts.

HOW TO SET UP

Establishing a Land Trust involves identifying properties, taking financing into consideration, selecting trustees and other managers, and of course, creating and executing the appropriate legal documents.

If a Land Trust isn't set up correctly, there is little point in setting it up at all. This is why it's crucial to enlist a knowledgeable and competent attorney. Improperly established trusts won't give you the protection you need, but the investment you make in a professional will ensure that your Land Trust is going to work best for your circumstances.

When To Set Up

The best time to set up a Land Trust is as soon as you purchase your property. The reason for doing this is to keep your name off the property records. Not only will this protect your property from creditors, but it will also keep them from using the [Voidable Transactions Act](#) (formerly the Fraudulent Transfer Act) to gain your assets.

When you are buying a property, form a Land Trust with either a private trustee or an institutional trustee immediately before you close on the property. This is the best way to set the Land Trust up to keep your ownership private.

You will need to let the trustee's attorney know about your plan to set up the Land Trust before doing so. Although the property will be in your name for a little while, there won't be a record of it for long because you will transfer the property's title over to a trustee. You, as the beneficiary, have ultimate control over the relationship and can revoke the trust at any time.

Documents Required

Once you choose who will be your trustee, you will need to have your attorney draw up the [documents](#) for you. Essentially, there are two documents required to create a Land Trust. Those are:

- **A Deed to Trustee**
- **A Trust Agreement**

Use a Land Trust attorney to draw up a contract that states what is happening and the rights of all parties. Once you both sign this agreement between you and your trustee, you then need to record the trustee deed.

Multiple Properties, Multiple Trusts

Setting up Land Trusts for each investment property you own is essential. The takeaway message from this book is that if you are not holding all of your [investment property](#) in separate Land Trusts, you risk them all. You can [make an LLC the beneficiary of the trusts](#). If the LLC (beneficiary) is sued, then a judgment against it would not affect the title to each property since the LLC doesn't hold title to the property.

HOW TO NAME

The naming of a Land Trust shouldn't take much time, but it should be done with some care. In this section, I'll shed some light on an aspect of Land Trust that may seem so simple, it's often overlooked.

The main thing to consider when naming your trust should be maintaining privacy. Sadly, some advisors will recommend that you name your Land Trust as your full legal name or address. **Don't do this.**

To keep the anonymity of your Land Trust intact, you have to think like the opposition. It's no fun thinking about potential fraudsters or angry ex-business partners or ex-spouses. After all, if you go about your business and personal life with integrity, nobody should ever be out to get you right?

Unfortunately, simply looking like you have wealth or something of value to go after might be reason enough for someone to target you. This is why you don't want your name or any other personal information revealed in the naming of your Land Trust.

As previously stated, one of the main attractions of a Land Trust is that it's a vehicle for anonymous property ownership and purchases. Listing your name (or even worse, your property address) as your Land Trust name can jeopardize that privacy. You risk having

your name show up online or in records connected to your property. You make yourself an easier target since you're now linked to something of value.

Creative trust names are best. Give it a vague, fictional name unrelated to anything in your personal or professional life.

Brainstorm a handful of names. Then, look through your list and ask yourself if any of those names reveal anything that could jeopardize your privacy or make you stand out as an attractive target. Your Land Trust name should pass this test before it's listed on your trust documents.

Remember, a vague Land Trust name can be the secret to preventing lawsuits before they even start. Uncovering ownership details behind a mysterious trust name will be more trouble than it's worth for a would-be litigant.

HOW TO CHOOSE A TRUSTEE

You're lucky if you can find even a few truly honorable and loyal friends and business acquaintances in life. But when it comes to your Land Trust, you can't take the risk of a trustee doing you dirty. After all, this is the person who is essentially holding your property's title, and anything else in the trust.

When you form a Land Trust, you have to deal with both types of trust: the legal structure, as well as the concept of mutual honesty, respect, and confidence.

Whom To Select

Most people immediately think they are the most trustworthy person for their business interests. While this is often true, it's a bad idea to be your own trustee. Designating yourself as a trustee will destroy the anonymity, and therefore the asset protection—often the greatest benefit of a Land Trust. This is why immediate family members are also not ideal, particularly if you share a surname.

Of course, you could use an extended family member, business partner or contact, long-time friend, or even a professional trustee (whom you will have to pay for their services). Your trustee's name is unimportant provided they possess the following qualities:

- **Integrity**
- **Honesty**
- **Humility to ask for help when uncertain**
- **Ability to understand their role**

Trustee Fraud

Dishonest trustees can wreak havoc on your Land Trust and everything in it. In real estate investment law, we call this [trustee fraud](#). Because trustees have the ability to control the asset, this gives them power that can be abused. They may attempt to sell, embezzle, or commit any number of acts that could land you in legal or financial hot water.

Here are two ways to prevent trustee fraud:

Use A Board Of Trustees—This allows you to distribute the responsibilities, so that even if one person wants to abuse their position, they will be kept in check by the other trustees.

Use A Sales Contract—Your attorney can help you draft a sales contract that includes legally-binding terms that protect you. This contract sets out clear terms that limit the trustee's ability to misuse their position. The strategy usually involves minimal down payment and a lengthy financing period—a decade or more is ideal. The Taxman won't regard the property as sold and it remains secured in the Land Trust. Your trust is protected from both trustees and potential lawsuits. This tactic insulates you from creditors as well.

Preventing the betrayal trauma of trustee fraud is simple with the right legal team. No two Land Trust owners are exactly alike. Your attorney will advise you on best practices based on you and your trustee's circumstances.

HOW TO KEEP BOOKS

Keeping your trust legally safe and sound depends on keeping your paperwork in order. The trust agreement (TA) is incredibly important. It is recommended that you keep additional copies of it handy. You will need the trust agreement in the event that you want to either change the trust or sell a property from the trust. Make sure that you have both hard copies and digital copies that you can easily access.

For those that have misplaced their TA, a new copy can be drafted by the trustee. This is yet another reason why Land Trusts are superior to wills. If a will cannot be produced when it is required, it is presumed to have been destroyed or revoked by the individual who drafted it. For those who have lost their trust agreement, there is no such presumption.

The trustee, however, will need to indicate that the new TA is an amended and restated copy. They do this by indicating such at the top of page one on the restated TA. At the top of the document simply write: "Amended and Restated Trust Agreement."

Somewhere in the body of the TA, it's good practice to indicate that the original trust agreement was lost or could not be found and needed to be redrafted by the trustee.

For obvious reasons, it's better to have not lost the original trust agreement in the first

place. Nonetheless, it's not exactly the end of the world when that happens. Trusts are meant to be versatile and save folks some of the inconveniences of dealing with wills. So there are methods in place for managing such issues if they occur.

HOW TO FEND OFF LAWSUITS

Forming a Land Trust is a no-brainer for the savvy real estate investor. It helps keep the ownership of the property private and consequently insulates you from litigation. With a Land Trust asset protection strategy in place, the land title office can't disclose who owns the property. This comes in handy when you're threatened with a lawsuit. As you may know, a litigant can sue you for all sorts of reasons, frivolous or legitimate. If they are willing to pay filing fees and serve a complaint, there's no way to stop them.

However, getting a favorable judgment and getting paid are two different things.

When you're armed with a Land Trust used [in conjunction with an LLC](#), would-be-litigants can spend a fortune on attorney fees only to hit a brick wall in recovering the damage award—if they get one at all.

Here's why: A lawsuit, like a stool, stands on three legs:

1. **Injury**
2. **Legal liability**
3. **Recovery**

If one of these legs is broken, it becomes increasingly hard to sue. The personal anonymity the Land Trust gives makes recovery a nightmare for would-be litigants.

Again, on its own, a Land Trust is not a foolproof asset protection strategy, but it does help erect one more hurdle on the litigant's path. The more hurdles you have, the harder it is for them to access your hard-earned property.

No attorney worth his salt is going to go into the wild goose chase involved in suing someone they do not know. After all, they need to determine whether you are indeed worth pursuing in court.

Sure, a trust, like any other legal entity, may be sued. But your property is safe until they win and get a judgment in their favor. Rarely will the assets held in the trust be exposed to [prejudgment attachments](#). You'll probably have a few years to maneuver your assets. However, there are cases where the assets held by the trust can be attached before the litigant gets a judgment against you.

This is why we recommend holding a single property in a trust. This will definitely not whet the appetite of any attorney looking to make a killing. After all, there's not much to recover.

HOW TO AVOID DUE-ON-SALE

It can be hard to keep up with all the complex legislation surrounding real estate. Here, we'll discuss a piece of legislation that can seem intimidating at first, but is actually straightforward in its application.

The **Garn-St. Germain Depository Institutions Act (Garn-St. Germain Act)** was an initiative of the Reagan administration meant "to revitalize the housing industry by strengthening the financial stability of home mortgage lending institutions and ensuring the availability of home mortgage loans."

In pursuit of this, the Act allows individuals to place their personal property in a Land Trust without triggering a due on sale clause. A key exception found in the Act states: "a lender may not exercise its option pursuant to a due-on-sale clause upon a transfer into an inter vivos trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property." ([The Garn St. Germain Depository Institutions Act of 1982, \(U.S.C.\) 1701j-3\(d\)](#)).

Thus, the Garn-St. Germain Act freed individuals to put their property in a Land Trust for estate planning and anonymous property ownership without fear of lenders calling their loan due.

Remember: Banks profit from mortgage payments. They rarely apply the due on sale clause if payments are being made regularly on a property. Thus, if an individual is making timely payments, enacting the due on sale clause and possibly foreclosing on a property doesn't make business sense.

I've seen a couple instances where a bank invoked the due on sale clause. But in all of those situations the mortgage wasn't getting paid. The property was going to be foreclosed on anyway.

These days interest rates are at an all-time low, making it unlikely for banks to invoke the due on sale clause. However, if interest rates were to go back up to the standard 6%, then they might change their minds. What exactly do I mean by that?

Let's say you're behind in payments on a 30 year mortgage with a 3.5% interest rate in a market where the [prime rate](#) is 6%. If the bank invokes the due on sale clause on your property and resells it, they'll be able to make more money. This is because the property will be re-sold with a 6% interest rate instead of a measly 3.5%.

It's important to remember that tens of thousands of real estate investors violate their loan covenants every day, yet the banks don't invoke the due on sale clause. That said, if the banks really wanted to, they could. A proactive approach would be to hold title to your property in a Land Trust, which provides anonymity, a savings on transfer taxes, and potential avoidance of the due on sale clause.

To utilize this method, you'll need both an LLC and a Land Trust. First, you'll create an anonymous Land Trust and place the property(s) into the trust. Then you'll make your LLC a beneficiary of the Land Trust.

Not only will a Land Trust help you avoid triggering the due on sale, but it also helps with transfer taxes and keeping your real estate holdings private.

HOW TO FILE TAXES

Tax treatment depends on the type of trust that's established. According to IRS definitions: "The Land Trust has no special distinction in the Internal Revenue Code and would be a simple, complex, or grantor trust depending on the terms of the trust instrument. Filing requirements would depend on the type of trust."

Again, there are the two types of trust to know about:

- **Revocable Trust**—Most Land Trusts are revocable. A revocable trust is one in which the provisions can be either canceled or adjusted.
- **Irrevocable Trust**—An irrevocable trust is where the grantor, or creator of the trust has forfeited his rights of ownership.

Because most Land Trusts are revocable, they don't have to file a separate return. This is because a revocable Land Trust is seen as a pass through entity by the IRS. Any income on the Land Trusts is treated as personal income and thus reported only on a personal tax return. As a pass through entity, a Land Trust doesn't lead to the grantor being taxed twice. It also saves time and money, since additional tax filing documents and fees aren't required.

For instance, say Jane is recorded as the individual who has the power to revoke the Land Trust named *Oak Tree 123*. Remember: A vague and uninteresting name can actually work to Jane's advantage. Names that are vague and uninteresting are bad for your Tinder profile, but [creative trust names](#) are great for your Land Trust. When tax time rolls around, Jane will simply report any income from her Oak Tree 123 trust on her own personal income form, just like any other type of income.

What Is a Disregarded Entity?

Jane's example brings us to **disregarded entities**. These are "[pass-through entities](#)" that do not pay tax at the entity level, and do not file a tax return. Instead, you report the entity's income and deductions are reported directly on your tax return (or whoever owns the trust).

This is good news is you don't need to file an additional tax return for the trust, which of course would cost more money.

For the most part, Land Trusts are structured as grantor trusts (revocable trusts), which

are disregarded. That is because you, the grantor of the trust, remain in control of the trust and its assets. You're considered the owner of the trust for tax purposes.

With an irrevocable Land Trust, you give up all ownership rights of the trust and its assets. In this case the trust would be considered its own entity, and need its own tax return.

Incorporating with a Series LLC

A Land Trust can be incorporated within a variety of entities such as an LLC or S Corp. Each will have its own tax implications to consider and cost, especially if you're managing multiple LLCs.

When you incorporate your Land Trust within a Series LLC, the tax filing process not only remains simple because it's a pass through entity, but you also enjoy maximum asset protection. Remember, a Land Trust is just like a regular trust in that it provides anonymity.

If your Land Trust is incorporated using a Series LLC, its tax treatment will be determined by the tax treatment of the LLC. Meanwhile, the Series LLC structure separates assets under individual "child" LLCs, so an attack on one LLC doesn't spread to others.

When a Land Trust Requires a Tax Return

There are a few exceptions to the tax filing procedure mentioned above with Jane's revocable Land Trust. In cases where the landowner dies, the beneficiary will be required to file both a tax return on the trust and estate. In addition, in the more uncommon case of a Land Trust being irrevocable, the usual tax filing procedure mentioned above won't apply. Instead, the trust creator may have to file a separate trust tax return. This would require filing out tax form 1041.

Steps to Filing Taxes

Whether you have a revocable or irrevocable Land Trust, the following steps are essential to staying out of trouble with Uncle Sam.

- 1. Keep accurate records of income. This will be reported along with information about gains and losses.**
- 2. Consult with a legal team.**
- 3. Ensure all tax documents are copied and shared with the main parties of the Land Trust. These include the beneficiary, grantor and trustee.**

Note: The FAQ section of this book answers several questions related to taxes and Land Trusts.

HOW TO GET A LOAN

To get a mortgage loan, you need to make sure that the trust has the power to borrow money. It may not always be the case and this is normally covered in the trust deed.

The first step is to have the trustee sign the mortgage or note. However, you will need to apply for the loan and sign the guarantee or the note since the trustee won't be signing personally.

Alternatively, if you already have your property in a Land Trust and want to borrow money against the **beneficial interest**, then the lender will need to serve a **Notice of Collateral Assignment** on the trustee. The trustee will then write an acknowledgment of the assignment.

When this happens, the trustee is no longer able to [transfer title of any property held in the trust](#) or encumber or mortgage the property without the lender's written consent.

Here are the five things the lender will do before granting the loan:

1. They'll review the trust instrument.
2. They'll confirm the grantor and trustee identities.
3. They'll establish whether the trust grants the trustees power to borrow money and pledge or encumber trust assets.
4. The trustees may be required to sign a trustee certificate reciting some key terms of the trust and confirming the authority of the trustees to take out a loan.
5. The bank will need evidence that the property is actually owned by the trust. For this, you will be required to provide the deed on record for review.

Remember: If you're seeking to obtain a loan against trust assets, you need to consult with an expert trust administration attorney. You do not want to take any action that might harm the assets of the trust.

HOW TO PRESERVE TITLE INSURANCE WHEN TRANSFERRING PROPERTY

Let's talk about how to preserve your title insurance when transferring property into a legal structure as part of an asset protection plan.

Usually, your hazard and title insurance expire when you transfer a property. Insurance companies are pretty good at looking out for their own best interests, and they have the legal personnel to make sure these stipulations are made in your insurance contract.

I know nobody enjoys reading contracts, but go ahead and check if you don't believe me. The vast majority of the time, property transfer means expiration for those types of insurance.

Never fear, smart investor friends: the Land Trust gives you a way around this!

Here's how it works: if you transfer your properties into a Land Trust you'll be able to preserve both your hazard and title insurance (in addition to any other insurance types you have for the property).

You will have to get your ducks in a row regarding both the property and the trust. First, you must be the settlor of the property you're transferring to preserve your insurance. You must also be the beneficiary of the trust you're transferring the property in question into.

Before transferring any property, review your insurance policy, paying special attention to your title insurance policy. It shouldn't be too hard to find the part of your insurance contract dealing with this issue. If you're having trouble, consult with an attorney. An insurance agent, CPA, or other such financial professional who deals with contracts regularly can also help in a pinch.

Usually, the Land Trust you want to transfer property to must meet your insurance policy's criteria for transfer eligibility. If you've looked over the policy and you're still uncertain whether this is the case for you, it's time to check with your agent.

The most reliable method to make this transfer work for you is fairly straightforward. All you need to do is add the Land Trust you plan to use as the beneficiary of your insurance policies. This method leaps and bounds better for you than getting a new insurance policy because, as I'm sure you know, a new insurance policy would use the current value of the property. And thanks to appreciation, which is usually a good thing for investors, the current value is almost certainly higher than it was when you bought it. And while that's good news if you plan to sell it, it's bad news if you're having to get a new insurance policy. It means you'd actually end up having to pay more—perhaps a lot more—than before. So you want to hold your policy to the last minute before being forced to renew.

Try to do everything you can to avoid renewal. There are a few reasons this is important. First you'll have to pay to re-issue the policy, and since your property has probably appreciated in value, your policy will be more expensive. Second, if your policy isn't already near its expiration date, you're unnecessarily costing yourself extra money—money that could be used for much more fun things than insurance. This is why it's worth the effort to use the Land Trust method to avoid triggering the expiration clause in that crafty insurance contract.

SECTION III: THE BIGGER PICTURE

Like any tool, the Land Trust is only good for its intended job. Try screwing anything in with a hammer if you don't believe us. To get the most out of the Land Trust, use it appropriately for your situation and get advice if you're unsure what role it should play in your asset protection plan.

Rules and Regulations

It's important to follow all the applicable rules when you set up your trust. You don't have to pass any eligibility requirements beyond being of legal age to get a Land Trust. That said, there are some issues to be aware of.

As far as legal vehicles go, the Land Trust is not particularly heavily regulated. Anyone can have one, and there aren't many restrictions at all. But not everyone will use the Land Trust in the same way, and there are some limits and rules of thumb to keep in mind.

The most obvious limitation of all Land Trusts is the fact that they aren't incredibly useful beyond the realm of real estate law. The Land Trust, often simply called the title holding trust, can't hold just any asset—it must be a real estate asset. For other assets, different strategies will work better. For example, if you have cash to stash, you might consider off-shore banking options.

The best you can do to “play by the rules” is ensure your Land Trust conforms to all local laws. Next, ensure your use is appropriate and lawful. If you need help determining your compliance, understanding how trust properties are taxed, or learning how your Land Trust works in the context of your asset protection plan, check with an attorney, CPA, or both. Other investors can help you get ideas for using your Land Trust, but ultimately, counting on pros hip to your personal situation when it comes to matters of legal compliance is the smartest move.

Fraudulent Conveyance

A **fraudulent conveyance** happens when someone illegally transfers assets or property into someone else's name, such as spouse, friend or family member, or even a business partner, in an attempt to avoid creditors. If they are selling your property or other assets to someone they know for an insignificant amount of money, they are either trying to evade creditors or trying to keep the property or assets out of the reach of a creditor.

If you are going to be taken to court soon, there are ways to protect yourself, your property, and your assets legally:

- **Have your car, house and property properly insured.**
- **Create a Land Trust to hold your property and assets.**

- Form an LLC or a regular corporation to keep your business assets safe.
- Open and contribute to a retirement account.
- Take advantage of the real estate protection laws that are in place for something like this.

There are certain things the courts will look at when deciding whether or not you are potentially committing the illegal act of a fraudulent conveyance:

- Did the person doing the transfer become unable to pay their debts because of the transfer?
- Did the transferor receive enough money in exchange during the transfer?
- Was the transfer made to a really close friend or family member?
- Does the transferor still have the rights to the property or the benefits from it?
- Were they under threat of a lawsuit?
- What was going on with their financial situation before, during, and after the transfer?
- Were a significant amount of transactions made after money problems started by the person who owes money to creditors?
- When did any of these events take place?
- Was the transfer private or secretive?
- Was the transfer different from the usual business actions?

The solution to the problem of fraudulent conveyance is to act before one of these “warning signs” happens. A Land Trust with an LLC as beneficiary can help you protect yourself before you are taken to court.

Power of Attorney

When it comes to having a Land Trust with someone you are close to, using a **power of attorney** with a Land Trust is a good idea.

A power of attorney, or a POA, is someone who acts on your behalf. This is a good thing to have in case you are out of town or you are unable to do anything for yourself at the moment. Some people who need a power of attorney may be your elderly family member who cannot act for themselves. However, a POA is also good for business owners who are out of town a lot.

When choosing the best person to use as your power of attorney, trust (pun intended!) is what matters. This could be your closest friend or family member. However, if you don't want to use an individual for your Land Trust, you also have the option to use an institution (which will usually charge you a fee for using them).

So, in short, it is a great idea to use a power of attorney for your Land Trust in case you need documents signed and you are either unable to do this because you are in the hospital or maybe even out of town on a business trip.

Transfers At The Beneficial Interest Level

As you understand by now, a Land Trust provides owners with anonymity. This anonymity extends to the transfer of **beneficial interest** in trust as well.

What Is Beneficial Interest?

Beneficial interest allows individuals or entities to receive benefits associated with assets held by another party. Under a Land Trust, the properties contained within it are considered personal property. Referred to as *interests*, the transfer of these assets can be done with relative ease. There is no need for a notary, witness, public record, or other such documentation.

With a Land Trust, this provides several important protective measures. For example:

- **If you do not want to announce to the world that you have transferred property ownership, a Land Trust can protect the transaction.**
- **The transfer of a property owned by a Land Trust can protect your buyer from having to pay increased real estate taxes. (If the property was sold, a reassessment would be required and, thus, your buyer may have to pay increased real estate taxes they would prefer to avoid.)**
- **A Land Trust can prevent the disclosure of your sale's value. (This means your net worth is obscured from the public.)**

The Role of a Trustee

When you establish a Land Trust, you must designate a Land Trust trustee. This individual or service can only act per directions you provide. When it comes to the beneficial interest of a trust, your trustee will need to accept the transfer.

If you have an entity that is named as the Land Trust beneficiary, the beneficial interests can be transferred without needing a change in the beneficiary designation. Entities can include, but are not restricted to, limited liability companies (LLCs), corporations, and personal property trusts.

When an entity acts as the beneficiary, the trustee is exempt from the process. This means they do not have to acknowledge the transfer in any way. If you are seeking full anonymity, this may prove to be your best course of action.

Selling Beneficial Interest

The beneficial interest in a Land Trust is considered personal property as opposed to real property, like the land itself. If the buyer were to default on their payments, the beneficiary would have more flexibility in terms of their options.

If you are interested in selling the beneficial interest (as opposed to selling or transferring the deed itself), it's best to set up a Land Trust and name your own company or your personal lawyer as the trustee. The documents can be kept in escrow until the contract is paid in full. This keeps both parties honest and makes the transfer of the property as smooth as possible.

The advantage of the Land Trust is that it allows the beneficial interest to become "assignable". This operates in a very similar way to how a stock in a corporation is assignable. A beneficiary of a trust can be changed without needing to change the title of a property. For those interested in selling a property, this can be a useful tool.

The reason why this is possible is because the beneficial interest is not considered in the same category as the property itself. The beneficial interest is considered personal property, while the property itself is considered private property. In addition, beneficial interests can be used as collateral in a loan.

This also adds a layer of privacy to the transaction. The buyer isn't purchasing a property from you, they're purchasing the property from a trust.

Multiple Beneficiaries

Should you form a Land Trust with multiple beneficiaries? The answer to this question is simply "no."

Why? The main reason for this is because the legal system sees this as forming partnerships. You shouldn't even form a Land Trust with your spouse or partner in life. According to the legal system, forming a Land Trust with more than one person is forming a partnership for the land, and the law says each partner assumes liability for the other partner.

Trustee Liability

As stated earlier, a Land Trust is a type of revocable living trust. Unlike a living trust, which can contain any types of assets, a Land Trust is for real estate or related items only.

With a Land Trust, you are able to obscure your overall net worth. This is because the property contained within a Land Trust is not listed under your name in public records. In fact, the property is listed in the name of the trust on all public records.

Below, we discuss what (if any) liability a Land Trust trustee has.

Role of the Trustee

For most Land Trusts, the trustee holds the legal title to a property. However, all rights remain with the beneficiary (you, in most cases). The beneficiary retains all rights to the ownership, possession and management of the property. In other words, the beneficiary retains the right to manage, rent or sell any property contained within a Land Trust.

Finding a trustee for a Land Trust can be hard. While some companies offer “nominee trustee” services, finding an individual interested in taking on this task is often difficult.

A Land Trust gives you full control over the management, rental or sale decisions of your property. You also do not have to go through a probate court before distributing or selling properties under a Land Trust. Because they are considered personal property, assets in a Land Trust are exempt from court proceedings that regulate their distribution. This level of control is greatly appreciated by many parties. (In an irrevocable living trust, for example, you can not freely amend the trust or change beneficiaries.)

The Trust Agreement

In a Land Trust, the trustee is only to act in accordance with directions given from the beneficiary. While the beneficiary has a keen interest in the trust agreement, a trustee should as well. Why?

To avoid liability, a trustee will want the trust agreement to specifically exempt them from personal liabilities related to the Land Trust’s debts and obligations.

Note: Some trust agreements divide incidents of ownership between the trustee and beneficiary. Make sure you read any trust agreement before signing it to ensure it includes the points each party finds relevant. In addition, the trustee may find themselves personally liable, regardless of the trust agreement exemptions, if they have acted negligently. They may also be liable if they acted without the direction of the beneficiary.

Certain states have additional statutes that apply to Land Trusts. Your trustee should research these laws to ensure their liability is well known prior to signing any agreements.

Land Trusts and LLCs

Let’s go into more detail about why the Land Trust /LLC combo is a powerful investing tool.

LLC Basics

As the name implies, a LLC limits your personal liability. Legally, your LLC is responsible for its own debt and obligations. As such, your personal finances and assets are not subjected to any court judgments or legal proceedings against your LLC.

If you fail to pay a mortgage on a home purchased through your LLC, only the LLC itself is responsible for repaying this debt. LLCs are also exempt from having to hold annual meetings or filing extensive records or reports.

The Internal Revenue Service (IRS) classifies LLCs as proprietorships or partnerships. As such, an LLC is able to take advantage of tax breaks associated with them. For example, an LLC does not pay taxes on any gains. Instead, it is used as a pass-through vehicle and taxes are paid through the owner's personal tax returns instead.

With an LLC, the owner is listed with the records of the Secretary of State. This means, if your LLC is listed as the owner of the property, anyone can find out who you are. Not only will they easily obtain your name, but if your LLC is listed under your home address, they also have that vital piece of information as well.

The LLC/Land Trust Combo

When you combine Land Trusts with LLCs, you get the best of both worlds.

When you establish a Land Trust through which your LLC purchases property, the name of the trust is listed as the owner on all public records. This maintains your anonymity.

So ... Why shouldn't you simply use a Land Trust to buy property?

As the beneficiary, you are liable for any debts, obligations or lawsuits that are related to the property within the lawsuit. If your renter, for example, falls and breaks a hip on your Land Trust-owned rental property, you could be personally liable for the damages, medical bills, and other legal judgments that result. However, by default, a LLC exempts you from that personal liability. If that same situation occurs through a Land Trust owned by your LLC, your personal finances can not be taken into consideration. Only the value of the Land Trust itself is subject to legal proceedings.

Land Trusts and Series LLCs

When you establish a LLC, you should consider [forming a Series LLC](#). Why? A Series LLC segregates assets. Each asset under the various "series" is protected from lawsuits or judgments that may be made against one and other. In other words, if you establish a series LLC, each with its own Land Trust, the properties under Series LLC A, B and C are exempt from judgments against Series LLC D. This protective barrier between LLCs and assets is a great way to further protect your investments, while maintaining your anonymity.

Land Trusts With LLCs as Beneficiary

If you've made it this far, you should know that having a Land Trust is a good idea for property owners and real estate investors. They are especially a good idea when you own more than one property and don't want everyone to know you own so many properties.

Although a Land Trust is for privacy and asset protection, a Land Trust does not come with the benefits that an LLC or a business does. If someone falls on your property and gets hurt, the beneficiary will be held responsible. This is the main reason to use an LLC or a regular business to stand in as the beneficiary of the property. The reason for this is because LLCs and other businesses are protected from something like this happening.

Another reason for obtaining an LLC or other businesses as a Land Trust is for tax benefits. The transfer of the property can be done tax-free.

A third reason to use an LLC is because in many states, many attorneys and accountants don't even know what a Land Trust is. Because of this, you won't have to worry about litigators looking at your property and thinking you have deep pockets. That means they'll be less likely to file a lawsuit against you.

Foreclosure

Foreclosure is a fear for any property owner, and during the housing crisis became something of a collective national nightmare. Holding property in a Land Trust can add an extra layer of complexity to the already confusing foreclosure process.

Land Trusts aren't immune from foreclosure, in spite of what you may have heard. This fiction has persisted because of wishful thinking on behalf of those in debt, and also because disreputable Land Trust companies have pushed the idea. Outright scammers have also exploited it.

Further, the legend of Land Trusts preventing foreclosure lives on because investors often confuse liability protection with foreclosure prevention. There is, however, a grain of truth beneath the misconception. Some states will extend liability protection to the beneficiary of the trust. But in reality, this is extremely rare. Most states hold all "[permissible parties](#)" accountable in the event of a foreclosure. This includes the beneficiary—and that's you.

A major misconception is that holding land in a Land Trust won't affect the foreclosure process. This is a dangerous misconception in that it limits one's openness to the potential benefits of a Land Trust when going through foreclosure.

One of these benefits is that a Land Trust can slow down the process in case of foreclosure. In the case of both personal property or real estate investment property, the Land Trust structure throws lenders out of their usual operating procedure.

There have been cases where lenders need extra time to serve all parties in the foreclosure case. Not being able to serve one party in the case, such as one of the trustees, can stall the foreclosure process. While stalling the foreclosure process is a potential benefit in that it can keep one from making payments, stalling is far from the ideal strategy and won't replace a total asset protection plan.

Another benefit? Land Trusts allow you to obtain personal financing while also safeguarding the property inside of an LLC structure.

So how do investors avoid foreclosure on Land Trust property?

First, be financially responsible in your investments. This means planning ahead and actively working with your CPA to ensure you can afford any financing you obtain for your investment property.

Work with your attorney to actively oversee your trust and its activities. Your proactivity will pay off by ensuring you're on top of any payments you may owe.

Finally, choose your trustee wisely! Trustee fraud is an unfortunately common occurrence. Essentially, your trustee is in the pilot's seat of your trust. That means that your trustee has the power to cause your property to crash and burn.

Trustee fraud occurs when the trustee misuses or abuses their power over the property. It isn't always deliberate, either. Sometimes, trustees are simply negligent and fail to fulfill their duties. If this happens with something like a mortgage payment, you could be faced with foreclosure. This is why it is critical that you choose a trustworthy trustee.

If the integrity of your trustee is at all in question, you can always appoint a board of trustees to guard against the possibility. Using a board prevents any single individual from tanking your investment without your knowledge. To stretch the airplane metaphor: would you rather have one pilot, or three commercial airline certified pilots operating your aircraft? Remember, you're the passenger and the owner here. With a board, if one pilot decides to knock down three martinis during the flight, you'll have other people who can take the wheel and regain control.

Be aware: The laws that govern Land Trusts vary from state to state. Thus, blanket statements about Land Trusts and foreclosures can be misleading.

Bankruptcy

Bankruptcy can make things thorny. The type of bankruptcy being filed can impact the protection of trust assets. Especially with multiple beneficiaries, we can't stress how important it is to seek professional legal consultation.

In the case of trusts with multiple beneficiaries, co-beneficiaries can suffer. Let's consider

one example: John is the settler beneficiary and also one of the loan signers on the property. A bankruptcy judge will try to satisfy creditors by selling trust interest from John. While this action is possible, it's not quite easy. There isn't a large market for partial interest in a Land Trust. It's not an attractive purchase. But if it does go through, co-beneficiaries lose freedoms. They are now tied to whoever bought the partial interest.

Even in less complex scenarios, Land Trust beneficiaries should consult with a legal professional to avoid the unpredictable actions of a bankruptcy judge. Whether a trust is revocable or irrevocable can make a difference in who has control over the trust. Most Land Trusts are revocable. This means they are still under the control of the grantor (not the beneficiary) until his/her death. This can help a beneficiary who is going through bankruptcy because any property in that trust can be protected from creditors.

Land Trust States

Regardless of where you live, you (as an investor or business owner) can enjoy the benefits of the Land Trust. But not all states offer them. Only these six states have statutory Land Trusts:

- Illinois
- Florida
- South Dakota
- Hawaii
- Virginia
- Indiana

A **statutory Land Trust** is a Land Trust that is governed by the laws, or statutes, of a given state. These are the only states that have statutes for Land Trusts right now.

Land Trusts in other states are part of the common law, or in other words, just cobbled together using the rules from the statutes of other states. The power of these “non-statutory” Land Trusts is subject to what the courts in the state decide. This may be why many attorneys don't know enough or, if anything, about them currently.

But any investor in the U.S. can have a Land Trust or its equivalent—the only possible exception being those living in Louisiana, who may wish to use other types of trust or asset protection options.

Fun fact for the legal eagles in the crowd: Louisiana is “special” from a legal standpoint because they rely on **Napoleonic law**, more based in older French legal systems, than the rest of U.S. states which are more closely related to **British common law**. As a result, Lou-

isiana REIs who wish to keep their business and entities in-state are likely to need attorneys familiar with state-specific tools and laws. The rest of us in the other 49 states (and D.C.) have things a little easier.

Even states lacking Land Trusts have similar options by different names, “Title-holding trust” is common, but each state will have its own lingo. The states of California, Colorado, Missouri, and Nevada have trust laws that allow trustees to hold title to property for a named trust (note that it’s just a trust, not a Land Trust).

Even if your state doesn’t offer a local option, it likely will default to the laws of the Illinois Land Trust, which have set the tone for Land Trust legislation and regulation nationwide.

As with entities, you aren’t required to form your Land Trust in-state. We always tell our clients: if you don’t like your jurisdiction’s rules, change jurisdictions. It really is that easy. Many of our, say, Alaska investors decide to form Texas Series LLCs because they like Texas’ costs and laws better. You can do the same thing with Land Trusts.

Illinois Land Trusts

Land Trusts were first started in the state of Illinois (where they are called title holding trusts). Land Trusts in Illinois work a lot different than those in California but much the same as in other states.

In Illinois, they work to protect the landowner, versus protecting the land itself (like in California). These trusts go in someone else’s name to protect the property owner to keep creditors off his or her back for good. Although the owner of the Land Trust signs his or her property and assets over to someone else, they still maintain all rights to their property and assets.

Most states without the legal structures in place defer to the Illinois Land Trust statutes to determine validity and case law. With the possible exception of Louisiana, anyone can hold land in trust in any of the other 49 states and the District of Columbia. This has to be done in accordance with the law of any of the foregoing states given that the beneficiary, trustee, or the property is based there.

California Land Trusts

Does California recognize Land Trusts? Yes, but California real estate investors face certain regulations and restrictions in their home state.

Land Trusts are not subject to the same burdensome tax obligations as, say, an in-state LLC. In fact, the fact that they are relatively new means that there isn’t much law about them at the state level at all.

The novelty of Land Trusts in California actually confers some benefits onto their owners. Other states with more established case law have more exceptions to the protections of Land Trusts. In general, law is built on precedent. This means that court decisions aren't made in a vacuum. They are heavily informed by the rulings of past courts, particularly courts in the same area.

Marital Property

This information may seem a touch cynical. Few people, when marrying, ever believe they will end up dealing with the fallout of divorce. But the unfortunate truth is this: over half of marriages do end in divorce.

When it comes to the law, it's perfectly fine to hope for the best. But the smart investor will always prepare for the worst. The wise investor plans ahead to avoid the worst possible outcomes, like lawsuits and losing property in a divorce.

California Land Trusts aren't subject to community property or dower rights. These deal with the division of property during a divorce.

- **Community Property**—In a state like California which acknowledges community property, all marital property falls under equal ownership of spouses. *Marital property* refers to all property (real estate and personal) accumulated during the marriage using income derived during the marriage.
- **Dower Rights**—Dower rights give a spouse $\frac{1}{3}$ life estate interest in his/her spouse's property. These rights are only specified in a handful of states such as Ohio. California residents won't have to worry about getting dower rights waived when transferring property. However, residents shouldn't make assumptions about how property will be divided during a divorce. Consult with a legal professional.

In community property states (like California) anything one party gains during a marriage can be legally treated as a joint asset. Community property laws come up frequently in the unfortunate event of a divorce.

Let's look at an example. John and Mary Smith are real estate investors in the San Francisco area who have been married for ten years. They both have their own investments, but Mary is the more prolific investor. They show up in family court after a mutual decision to end their marriage.

With no asset protection measures or Land Trusts in place, Mary could actually stand to lose some of the investment properties (or even the money she would receive from them if they are sold) in the divorce. However, if she uses a Land Trust to hold the properties, this is unlikely to happen.

The Land Trust itself is controlled by a trustee, and therefore will not be treated as community property. In short, Mary would be in a much better situation using a Land Trust

because John has a legal ability to make claims on property with her own name on it. He does not have this ability if the property is held in an anonymous Land Trust.

Of course, there are ways around state regulations that confer community property status onto assets gained during a valid marriage. **Tenancy by the Entireties**, also called TbyE, allows married couples to own a piece of real estate together, but not jointly. We'll talk more about Tenancy by the Entireties in a bit.

Some couples elect to use both methods of protection by securing shared properties in Land Trusts and owning them TbyE.

Conservation Trusts

California Land Trusts are a little different. They are used to conserve land that no one else is using and are rooted in local communities in California and work with the public (residents of the state, land owners, and different agencies) to conserve these properties for the benefit of everyone in the state.

The state of California has more than 150 Land Trusts that protect and enhance more than 2.5 million acres of land. These properties, under Land Trusts, are used to educate the public, entertain them, and help improve the health of the public.

Tenancy by the Entireties

There are many nuances and benefits to Land Trusts, some of which may apply only in certain situations. For instance, some married couples love them because they allow for a legal ownership method known as [Tenancy by the Entireties](#) (TbyE). Let's take a closer look.

TbyE Basics

The basic premise of TbyE is they prevent a lawsuit against one spouse from impacting the other spouse. While ordinarily TbyE is a method of owning real estate, it can actually be used for any type of asset with a title. A car, for instance, could be owned in this manner.

TbyE as Asset Protection

TbyE is distinct from joint ownership insofar as it can only be used by married couples, and the agreement must be broken by both spouses as opposed to only one. In addition, a creditor going after one spouse could not lien or force the sale of the residence because of a debt owed by only one spouse.

The only caveat is that a TbyE can only be used for their primary residence. For those that are looking to establish a TbyE, it's best to do this when the home is purchased.

In addition, if two creditors have judgments against one spouse, or two creditors have judgments against each spouse, the home would be safe from the creditors. It is only when one creditor has a judgment against both spouses that the house itself would be vulnerable.

Property titled under TbyE is considered legally separate from individually-owned property. The TbyE agreement is itself considered a person, in the same way that corporations can be considered persons.

Not every state allows TbyE for married couples. In addition, using a TbyE as the primary way to protect an asset from creditors can backfire. Anything can happen before a judge, and if a creditor's lawyer can convince the judge that the TbyE was only created for the purpose of defrauding creditors, a judge might throw out the TbyE.

A TbyE Case Study

Jack and Sheila Johnson are a married couple. Both are real estate investors with their own portfolios, but have decided to own some of their properties with TbyE.

Jack owned a condo for his first investment ten years before he married Sheila. After marrying Sheila, the couple decided to invest in an additional three properties together, which they own with TbyE.

Seemingly out of nowhere, Jack's tenant Mark sues him. The lawsuit claims the condo has become infested with mold that originated in the bathroom. Of course, Mark's attorneys go for the jugular and seek damages that exceed the value of the condo itself. They want Jack to pay for Mark's medical expenses, lost job hours, and pain and suffering.

It might not seem very fair, but if Jack and Sheila didn't own their properties with TbyE, those could be seized easily if Mark wins a judgment. Keep in mind that Sheila did not buy the condo, nor does she directly profit from it. However, she could face the consequences for a property that is owned by Jack alone. TbyE effectively prevents Sheila from paying for Jack's mistakes, if the court ultimately sides with Mark and finds Jack liable.

Of course, if Jack had placed his condo in a Land Trust, the [lawsuit may not have even been filed in the first place](#). Fortunately, his properties that he owns TbyE with Sheila are secured in Land Trusts. Together, they are much more difficult to sue.

TbyE and Bankruptcy

Bankruptcy is a whole different ball game. If a couple is taken to bankruptcy court, a creditor can indeed use the courts to "force" the sale of an asset, even if it is held in TbyE.

The legal reason for this isn't terribly complex. Essentially, bankruptcy is an issue that is defined by federal courts. TbyE, and indeed most issues relating to how trusts function, is governed by state laws. Usually, if there's a conflict between state and federal law, federal law will win. This is why TbyE, despite being effective in other civil court contexts, won't protect both spouses in bankruptcy court.

TbyE and Land Trusts

TbyE agreements and Land Trusts each come with their own set of benefits. These benefits can be used in conjunction with one another when the beneficiary is established as the TbyE (the legal third person created by the agreement) as opposed to one or the other spouse.

One other consideration: if one or the other spouse files for a divorce, the TbyE is immediately nullified. While a TbyE can be a good way to protect your residence from creditors, it's important to realize that under some circumstances it cannot be relied upon.

Best Practices

Here are a few best practices to keep in mind when using Land Trusts to protect real estate assets:

- **Ensure you get an anonymous Land Trust if using it for asset protection.**
- **Use one Land Trust for each property you own.**
- **When naming your trust, get creative and defy expectations to secure anonymity.**
- **Get legal advice when setting up a new trust or using it for a new purpose (e.g. to transfer a property or change the beneficiary).**
- **Pair your Land Trusts with strong entities for maximum asset protection.**

This last point, you'll notice, is one we have stressed throughout this book: Land Trusts offer anonymity, while entities offer compartmentalization, and the ideal plan has both. Select the best liability-limiting entities for you, whether that's a Traditional LLC, Series LLC, or both.

FAQS

If you've made it through to the end of this book, you may still have a few questions. In this section, we're going to answer your most Frequently Asked Questions about the Land Trust.

The inboxes here at Royal Legal HQ are regularly flooded with the same questions—so we plan to start with those. We'll start with these basic questions and dive into more specific topics later. If you have more, just let us know, because we're always happy to answer your questions—in email or blog format. Let's dive in.

Can Land Trusts “get around” the Due-on-Sale clause for easy LLC transfers?

Yes. We have clients use Land Trusts for this purpose regularly: to obtain better financing for an investment property. We've outlined the basic method before, but here are the broad strokes:

1. **Let your lawyer know what you're up to.**
2. **Buy in your own name for optimal loan terms.**
3. **Transfer your property into a Land Trust.**
4. **If desired, move the property from your anonymous Land Trust to the LLC of your choosing**
5. **Enjoy the sweet relief of never worrying about the DoS again.**

It really is that simple. We've never known someone who got in “trouble”, and the worst thing that can happen with this method is receiving a love note from the bank. If this happens, your property can revert back to your name. You know, where it was in the first place.

Due-on-sale violations aren't punishable by hard labor. It's not a crime to get better deals, and each piece of this plan is perfectly legal.

Do I need separate Land Trusts for each property?

Ideally, yes. While one Land Trust is better than none, the optimal strategy is to use one per property. That way, you can really enjoy each Land Trust benefit for each and every property.

Are Land Trusts the same thing as asset protection?

Our lead attorney Scott Smith understands how Land Trusts are a valuable component of an asset protection plan. Bottom line: Land Trusts alone won't always protect assets, but an asset is better protected in a Land Trust than in your own name. Land Trusts aren't a complete asset protection plan, but rather part of one.

Are Land Trusts used for dishonest purposes?

I'd like to look at some ethical concerns around the use of Land Trusts, and thoroughly bust the myth that Land Trusts are dishonest by nature.

Land Trusts are tools. There is nothing inherently dishonest about a Land Trust. As with any tool, its power lies in the person who is using it and his/her motivations.

Think about a computer for a moment.

There are lots of things you can do with a computer. You can use it for good things, like writing the next great American novel, donating to charity, or reading educational articles to become a kick-ass real estate investor.

And of course, if you wanted to, you could use your computer for bad things.

The Land Trust is similar, because it's just a tool. Most investors will use one for the right reasons, such as protecting their anonymity, preventing frivolous lawsuits, or as a way to effectively manage certain pieces of real estate. Somebody could, theoretically, use a Land Trust towards fraudulent or dishonest ends, but that speaks more about the integrity of that individual than it does about the Land Trust.

As a legal tool, the Land Trust has been subjected to a lot of time in court. Courts exist to enforce justice for everyone. You can rest assured that a fraudulent tool wouldn't last in our court system for as long as the Land Trust has. The Land Trust has held up under more than its fair share of legal scrutiny.

Sometimes, people who don't understand asset protection leap to the conclusion that asset protection as a whole isn't entirely honest or ethical. We believe Land Trusts have fallen victim to the same misinformation, and that the inaccurate characterization is based on ignorance.

The false notions about the integrity of Land Trusts may have some root in their anonymous nature. Anonymity can also be used for good or for ill, just like the other tools we mentioned above. Some people want anonymity to commit shady dealings. We don't encourage anonymity for real estate investors because we want our clients to be shady. We

encourage it because anonymity has proven to be extremely effective in preventing lawsuits. Lawsuits which, of course, are often initiated by ethically questionable individuals in the first place.

Using a Land Trust doesn't make you dishonest. It makes you smart and resourceful. It's one of the tools available for investors who want to avoid pointless, expensive hours in court and victimization by identity thieves.

How do I sell property in a Land Trust?

Selling an asset from a Land Trust is more of a process than an ordinary transaction. For starters, the trustee can't make the decision alone. Normally, the beneficiary must direct the trustee to sell the underlying asset.

The actual sale of trust property kicks in some legal matters most people aren't familiar with. When you sell a Land Trust asset, the funds remain in the trust. However, the money itself is automatically converted into a **personal property trust**.

Personal property has a different legal function than real estate. The purpose of the personal property trust is to hold any money from the real estate transaction for the beneficiary. The trust system and all of its parties remain in place, and any cash earned from the sale is still secured within the trust.

The critical part of ensuring smooth sales from your Land Trust is a well-crafted trust agreement. You might be an awesome real estate investor, but contracts are the domain of attorneys. We never recommend that any investor go DIY on contracts. Leave this matter to the professionals, and do what you're good at: running your real estate empire.

Can a trustee sell trust property without you knowing? The trust agreement will designate the person who will have the power to sell assets of a trust. If someone is looking to actually [alienate a property](#), sell it, or dispose of the trust asset, they will see that the agreement states that the nominee trustee doesn't have those powers. Which means you don't have to worry about somebody "running away" with your property.

Occasionally, the trustee is able to recover funds from real estate sales if (for example) the trustee is owed compensation for services rendered prior to the sale. Your trust agreement will spell out how this could happen, but ordinarily the trustee would be able to recover however much is owed to them directly from the sale. Some states also permit trustees to get "first dibs" on any foreclosed properties. Note that these situations are completely avoidable if you ensure your trustee is being compensated properly.

Does a trustee have personal liability under the EPA or other federal regulations?

The answer is no—with some caveats. When the trustee acts at the behest of a beneficiary, or whoever holds the power of direction, then the trustee would be themselves insulated from personal liability. The trustee, however, is still personally responsible for what they themselves do. [If the trustee were to commit fraud](#) or violate some other federal regulation, then they themselves could, of course, be held liable.

The law can be vague when it comes to certain kinds of EPA violations. This includes chemical dumping on land held by a trust. The [Comprehensive Environmental Response, Compensation, and Liability Act](#) (CERCLA) names “owners” of a parcel of land or “operators” of a facility but does not go on to define these terms in detail.

Through a very expansive interpretation of these terms, individuals who had nothing to do with the disposal of chemical waste nor even knew about the disposal could be potentially named in a lawsuit.

A US district court in Illinois, however, determined that a trustee did not qualify under the definition of “owner” and therefore could not be held liable for unlawful acts committed on the property. Other states might, however, decide that the trustee is an “operator” of the property, depending on their role in managing it.

The fact is, when CERCLA was drafted, Congress did not consider the status of the trustee. It became apparent that there was an issue only after CERCLA was passed into law. For Land Trustees, this represents a legal gray area.

There are two things to consider here. Firstly, trustees provide a valuable service to Americans and the government does not want to interfere with that. However, the government also has a tendency to lean on an easy target when they want testimony or evidence in a trial. Since the law is ambiguous, that option is available to them. Whether or not they can act on the threat is a different story.

What differentiates the “owner” from the “title holder”?

Illinois decided that a trustee does not qualify as an owner, and other states may have similar decisions. It will differ from state to the next. No one can be held liable, however, merely for being a “title holder”. Under CERCLA liability regulations or any other law, the trustee would only incur liability under the theory that the trustee is an owner.

While agents of the government are liable to charge an individual with whatever crime

they please, in order to prove that the trustee is liable for items held in the trust, they would have to make the case that the trustee is the “owner”. The courts seem opposed to defining a trustee as such.

What are the reasons NOT to use a Land Trust?

We believe in providing a balanced view of different asset protection and estate planning strategies. To that end, here are three reasons not to use a Land Trust.

Loss of redemption rights is one reason not to use a Land Trust. Redemption rights allow homeowners to reclaim their property before and sometimes even after foreclosure. Homeowners would have to pay off an agreed upon amount, which usually consist of the total debt plus additional costs. This payment must be made within a limited amount of time; in some states homeowners are given 12 months. This valuable right is lost if the property is purchased under a Land Trust and you are the beneficiary.

Loss of [homestead exemptions](#) is another reason not to use a Land Trust. These exemptions go way back to colonial laws, so while they may differ from state to state, their ancient benefits of tax and creditor protection aren't going anywhere.

However, with a Land Trust, homestead exemptions are forfeited. When it comes to assessing property value for taxes, a hefty reduction is lost with disqualification of homestead exemptions. For instance in Florida, homestead exemptions can reduce home property assessment values by \$50,000.

Finally, loss of secondary market loans can be a reason not to use a Land Trust. Another detail you should consider when dealing with Land Trust are financing options. With a Land Trust, you are disqualified from secondary market loans. The secondary mortgage market is where loans are grouped together and resold to investors. This allows the primary lender to gain back the initial loan amount.

How do I file a tax return for a decedent's estate and a domestic trust?

The beneficiary will have to file a tax return if they have made any income that is taxable for the year, made a gross income of \$600 or more for the year even if it isn't taxable income, and, just as with the decedent's estate, if the beneficiary is not a legal resident of the United States.

Although the decedent's estate and the domestic trust do have to file a tax return if they meet the requirements stated, the only Land Trust that does not have to file a tax return is a revocable trust.

If the decedent's estate and the domestic trust have met the requirements stated, the following are the steps to file a tax return:

1. **Gather Information**—Get all of the financial records for the tax return year together.
2. **Determine if enough money was made**—Figure out whether or not the trust has earned more than \$600 within the tax year
3. **Download documents**—If they have made more than \$600 within the tax return year, go to the IRS website and download two forms; Form 1041 and Schedule K-1.
4. **Check documents**—Ensure you have downloaded the correct Schedule K-1 and that it is the one that can be filed with the 1041 form. This is important because there is more than one version of the Schedule K-1 form.
5. **Report the income**—Report income from any tenants that lived on the land. If the tenants still owe money, this is not required to report to the IRS. Only the money they have already paid the land owner should be included.
6. **Report gains and losses**—Report any gains or losses such as if the land owner sold any portions of the land.
7. **Report extra income**—You also need to report extra income the land owner received. This should be reported even if it is not related to the land that is held by the Land Trust
8. **Add deductions**—Add any of the eligible deductions for the landowner.
9. **Fill out Schedule K-1**—Schedule K-1 is for anything given to the beneficiary of the trust. Fill out one copy to go with the 1041 form for the IRS and keep a copy for your records. You will also need to give copies of this to any beneficiary or if there is more than one beneficiary, they will get a copy as well.
10. **Send**—Send both forms to the IRS.

Now that this is done, you can wait for the IRS to respond. Make sure you used the Schedule K-1 which goes with form 1041. Also, be sure everyone involved with the land has received a copy of everything you filled out and sent to the IRS.

Do I have to file taxes for my Land Trust?

In short: definitely. Failure to file taxes on anything that produces income is considered tax evasion, which you may know as the felony that finally landed Al Capone behind bars. While you're probably not running an illegal bootlegging operation, tax evasion on its own is a very serious matter. The last thing a real estate investor, or any business owner, needs is to get into a fight with Uncle Sam.

Do Land Trusts offer any tax benefits?

Land Trusts absolutely come with certain tax perks. These include:

Pass-through tax treatment—This means your profits flow right back into the beneficiary's income for tax purposes. With few exceptions, this makes taxes cheaper and also simplifies the filing process.

Ability to incorporate into other entities and agreements—If your Land Trust or its members are part of an entity like an LLC, S-Corp, or Series LLC, some states will allow it. All of these entities also receive passthrough tax treatment. You'll want to ensure your operating agreement distributes profits and tax benefits equitably. An improperly structured operating agreement can effectively cancel out your passthrough benefits.

Technically, your Land Trust isn't treated like a trust by our buddies at the IRS. There are ways your attorney can help you ensure that you get the best treatment.

What will my Land Trust taxes cost?

How much your Land Trust taxes will actually cost you is going to depend on the state the trust is formed in. If the trust is for an investment property outside of your home state, your state of residence may also have additional tax requirements. To be sure you're filing appropriately, make sure you have a good CPA.

Regardless of your level of experience, it's a good idea to have a real estate dream team that includes a CPA and qualified, detail-oriented attorney. That said, you can get an idea of your state's requirements with a cursory internet search.

How do I report my land trust on my tax return?

Because you'll receive pass-through treatment, you simply will report your taxes on your personal return. For detailed instructions, consult with one of the dream team members mentioned above.

Should a minor be the beneficiary of a Land Trust?

When it comes to your minor children, the answer to this question is up to you and your specific situation. However, it is not recommended to have children under the age of 18 be a Land Trust beneficiary because they are not usually financially responsible.

That said, if you would like to leave your property to your minor children if something happens to you before they turn 18, there is something called a “**Minor’s Trust.**” A minor’s trust is a trust that can be left to your children.

When a parent chooses to leave property to their child or children in the event that something happens to one or both of them before the child or children are of age to take on the responsibility of a Land Trust, the parent or guardian can leave their property to them in their will and choose a close friend or family member to be the Land Trust until the child turns of age. “Of age” is normally 18, but the parents can choose for their child to be older than that if they don’t think they will be able to handle the responsibility at that age.

A trusted and close friend or family member can be designated to keep the deed of the property until the child reaches the designated age and are allowed to have the property themselves.

Before you decide on naming a child the beneficiary of your Land Trust, consider all other options. A close friend or a trusted family member should be considered before leaving this huge responsibility in a child’s hands.

Finally, before using a Land Trust, you need to find an attorney that can handle this type of thing. This is because the attorney is licensed to draw up the required documents for the purpose of a Land Trust.

What are beneficial shares?

While you don’t officially own or hold the title to real estate as the beneficiary of a Land Trust, you do possess a **beneficial interest**. Beneficial shares can also be assigned to other parties who have a stake in the property.

This is one of many unique benefits to using a Land Trust: multiple owners or investors can easily divide a property for the purposes of administration, management, or even tax concerns.

Beneficial shares can be issued in a variety of contexts. One common context you might see them used in is estate planning.

Beneficial shares offer some legal protections. Real estate investors aren’t the only ones who care about location, location, location. The courts do, too. If a beneficial share becomes the subject of a lawsuit or must otherwise be handled in court, the law requires that this happen in the owner’s specific location. In legalese, we call that your “jurisdiction.”

Land Trusts complicate the ordinarily simple process of determining jurisdiction. They make for an effective asset protection tool because they further the goal of making you extremely inconvenient or even pointless to sue. You can further stack the odds in your favor by forming an entity, such as a Series LLC, in a state that tends to favor businesses

and investors. We've discussed which states provide the best Series LLC options on this blog before.

That said, owning a beneficial share alone isn't a "get-out-of-jail-free" card for irresponsible behavior. These shares can still be collected on by creditors, or raised in bankruptcy proceedings. The best way to avoid this fate is to manage your debt intelligently, and stay away from money pits and other unnecessarily risky investments.

Who should be the beneficiary?

With most Land Trusts, the property owner is the beneficiary. This allows them to maintain full control over the property.

However, limited liability companies (LLCs), corporations, the trustee, and other trusts can also be listed as the beneficiary. In listing one of these other types of parties as the beneficiary, you increase your anonymity.

To determine whom you should have listed as the beneficiary, you might want to consider the tax implications. The Internal Revenue Service (IRS) establishes regulations regarding taxes in the [Internal Revenue Code \(IRC\)](#). These regulations apply to almost every financial situation in America.

IRC Section 121 is related to the exclusion of gains from the sale of a principal residence. For individuals, this is a \$250,000 capital gains tax exclusion. (This jumps to \$500,000 for married filers.)

To qualify for the capital gains exclusion, ownership must be held in your name, in the name of a qualifying trust, or through specific single-owner entities. A review of IRC Section 121 makes it ideal for the property owner to list himself or herself as the beneficiary of a Land Trust.

A grantor trust (revocable trust), as defined by IRC 671-679, is considered a qualifying trust that can act as a beneficiary of a Land Trust. A revocable living trust is a qualifying trust as well. If you make an entity your beneficiary, you may have an issue qualifying under the IRC Section 121. (However, recent court rulings have begun to show promise relating to LLCs and asset protections.)

What if my trust has foreign beneficiaries?

The federal [Racketeer Influenced and Corrupt Organizations \(RICO\) Act](#) requires that a Land Trust which is ten percent or more owned by a foreign person or entity be registered as an [Alien Business Organization](#). As an Alien Business Organization, the trust must also have a registered agent. Failure to comply with these steps could result in a fine of up to \$1,000 a day.

Assigning foreign beneficiaries will require these extra steps, but beneficiary names will remain private and you will enjoy the same benefits as a trust with domestic beneficiaries.

Can a lien be placed on a trust property?

A lien filed against the beneficiary of the trust (you) cannot be attached to the property. After all, the title is not held in your name.

HOWEVER, the property itself can be liened. Some of the reasons your property could be liened directly include:

- **Mechanic's lien**
- **Lawsuits filed against the property, e.g., when a tenant slips and falls**
- **Unpaid taxes**
- **Mortgage lien**
- **HOA fees**

How do you protect your property from liens?

I've been saying the same throughout this book—put each property into a separate Land Trust and set up an LLC to be the sole beneficiary of the trust. This way, the properties are insulated against each other and you reduce your exposure to only one property should it be liened.

You only need two legal documents to create Land Trusts for multiple properties. However, you will first need to come up with a name for your properties. Find someone you can trust, either family member or friend, and then contact a Land Trust attorney. The attorney will help you draw up the contract by capturing the rights of both parties and how the relationship will work going forward.

Both you and the trustee should go over the document and sign it once you're satisfied with the contents. Follow this up by recording the trustee deed. After you're done, the ownership details of your property will not be available to the public in a perfectly legal manner. Your name won't appear anywhere even when you must use a mortgage.

The name that appears when a search is conducted is that of your trustee. If you choose to have your attorney as the trustee, then you'll have an extra layer of protection since all communication between a lawyer and their client is considered confidential.

CLOSING

Royal Legal Solutions is one of the only firms in the nation to regularly manage Land Trusts. As a result, we've developed a wealth of expertise. Royal Legal Solutions also offers the Land Trust at a lower cost than competitors.

Don't wait until a lawsuit is filed against you. Be proactive: [contact Royal Legal Solutions about forming your Land Trust today.](#)

The anonymous Land Trust designates Royal Legal Solutions as the "nominee trustee." You will become the designated beneficiary. This allows you to reap the rewards of property ownership (such as investment income), without being publicly identified as the owner. The trustee's role is to manage the trust itself.

After the filing process is complete, our firm will resign its role as trustee, designating you to be the sole trustee. Provisions for this action will be spelled out in the Trust Agreement.

This means Royal Legal Solutions will never actually control the property, but will simply act as the trustee of record. If and when you sell the property, you will need to produce the Trust Agreement. This document designates you as the trustee and you alone will have the power to approve the sale.

If you have an existing LLC or Series LLC structure, we can assist you with incorporating your new Land Trust into this structure for the most effective asset protection plan possible.