

LAND TRUSTS

By: James W. Mallonee

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Land trusts are traditionally used when dealing with real property that is owned by multiple owners who hold such property as tenants in common. The root problem of holding property as tenants in common comes from the fact that a co-tenant can sue the other co-tenant for partition causing the land to be forcibly sold. A Florida land trust prevents that since partitioning of real property is not allowed.

Partitioning of property usually occurs where one of the property owners gets annoyed with the other joint land owner and elects to sell the property in an effort to terminate business relations; or, simply needs money and the only source of such can be derived from the sale of the jointly owned property. I often see this among the children of a deceased parent who cannot get along with one another and wants nothing to do with the Florida vacation home or his or her siblings.

Property held as tenants in common occurs where two or more beneficiaries or owners have property either devised to them or go into partnership by purchasing a parcel of property together. If one of the property owners dies, their interest in the property passes to their named beneficiaries either by Will or via a State's intestate statutes. Inevitably these relationships sour when one of the owners fails to pay their share of the expenses and wants out of the relationship but the other owner wants to keep the property.

The trouble with a partition action is that the property is essentially sold on the court house steps and the true value of the property is not realized. The end result is a sale but for pennies on the dollar where nobody wins but the buyer.

Historically speaking, land trusts in the United States had their beginnings in the State of Illinois and is often referred to as an Illinois Land Trust. In Florida, it is generally known as Fla. Stat. Section 689.071. Although a land trust is a trust, the difference is in the duties given to the trustee who holds the property for the benefit of a named beneficiary. In essence, the trustee holds both legal and equitable title to the real estate, but complete management of the property along with full power to direct the trustee with respect to the title is with the beneficiaries.

Land trusts are also used to prevent the public from learning who owns certain lands. Land trusts were used exclusively in the mid-1960's when the Disney Corporation was purchasing tracts of property outside of Orlando. Disney did not want anyone to know who was purchasing the land for fear that it would drive prices up. As a result, land trusts were employed and no one was aware that it was being contemplated by Disney to open an east coast theme park.

A land trust is set-up through the use of two instruments – a deed where-by real estate is conveyed to the trustee under the direction of a trust agreement. The other instrument is the trust agreement specifying the authority, powers and naming a trustee.

Some of the benefits of land trust are:

1. No partitioning;
2. Transferring beneficial interests is easy;
3. Judgments against a beneficiary will not affect legal title to the real estate sold in a land trust, however this does not prevent a judgment creditor from enforcing a judgment against a beneficiary's interest in land;
4. The beneficial interest in a land trust may be considered personal property;
5. The death of one of the beneficiaries will not terminate the trust; and,
6. Testamentary dispositions can be made in the trust agreement.

When preparing the land trust deed, the grantee does not have to look beyond the deed to determine his or her powers. In essence, the need to record the actual trust instrument is unnecessary since the power to sell and convey is provided in the authority of the deed. More importantly, the beneficiary of the land trust need not be identified in the deed but he or she continues to manage the property. The language that derives this power within the deed itself is the authority to protect, conserve, sell or lease, encumber or otherwise to manage and dispose of the real property identified in the deed.

The administration of a land trust by the trustee is at the direction of the beneficiary. In essence, a beneficiary cannot convey the property, only the trustee can do that. However, the beneficiary can direct the trustee to sell and convey, which the trustee will do except when any legal rights are asserted by the trustee or by third parties against a beneficiary. This does not prevent the beneficiary from negotiating the terms of the sale of such property; and, in fact the trustee should not be negotiating the sale of any property held in a land trust. The reason for this is that any agreement by the trustee may not be enforceable should the beneficiary elect not to sell such property.

When leasing property held in a land trust, the trustee can sign the lease. Beneficiaries of a land trust can also execute a lease; however, they have to identify themselves as a beneficiary and recite their individual name. By doing so, they potentially expose their ownership which eliminates one of the reasons for selecting a land trust solution – preventing the public from knowing who is the owner of such property.

In normal situations, a land trust is usually used when two individuals with families elect to purchase property, but do not want the property to be subject to partition when one of the joint owners dies. In many situations, the decedent's family wants to sell their share of the property which was not contemplated when the land was first purchased. A land trust can solve that problem by keeping the property open to possession by the surviving owner and out of the courts for a partition action.

If you think a land trust might be a good solution for you, contact the attorney of your choice and talk about it. It might be the solution that long term will save you money and prevent a family melt-down following your eventual death.