

TITLE ISSUES

USES OF LAND TRUSTS IN ILLINOIS

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A land trust is a means of holding legal and equitable title to Illinois real estate. The trustee holds title for the benefit of its beneficiary(ies) who retains all of the management rights and responsibilities. These responsibilities may include payment of real estate property taxes; management and upkeep of the real estate and payment of insurance premiums.

A land trust is created when the beneficiary(ies) enters into a land trust agreement with the trustee. The land trust agreement is not recorded. Title to the real estate is conveyed to the trustee by a deed in trust, which is recorded in the county in which the real estate is located.

The purposes of a land trust are many, but some of the most common reasons are discussed below. One purpose would be to protect the identity of the owner. Pursuant to the trust agreement, the identity of the beneficiary is not disclosed unless authorized in writing by the beneficiary(ies) or required by law or court order. This benefits an individual or organization who does not wish to be burdened with inquiries or does not want their identity readily disclosed.

Another purpose would be to allow for simple succession of ownership. Normally, if a non-Illinois resident dies owning any real estate in Illinois, ancillary probate proceedings would need to be established. But if a land trust holds title to that Illinois real estate, the trust agreement can state who will own the beneficial interest upon death, and there will be no necessity to open ancillary proceedings in Illinois. The legal title will remain in the trustee.

Another purpose for establishing a land trust would be to allow for simplicity in conveyance of title. If several individuals owned an undivided interest in the land, upon conveyance or mortgage of that real estate, all the individuals and perhaps their spouses, would have to execute deeds or mortgages. If the individuals are scattered throughout the country this can be time-consuming. However, if a land trust holds title to the real estate, the trustee would be the only entity which would execute these documents. These individuals could designate that one of them be given the authority to direct the trustee.

Also, a land trust *may* provide limited protection against development of faulty and unmerchantable title because of

death, disability, marriage dissolution proceedings, bankruptcy and many other types of litigation affecting a co-owner. A judgment against a beneficiary is not automatically a lien against the trust real estate.

Partition suits may be initiated when several co-owners of real estate are involved in a dispute with one another. One of several co-owners of real estate may have a right, through a partition proceeding, to compel a division of the real estate or force its sale at public auction. Illinois courts have held that real estate held in a land trust cannot be partitioned.

Many lenders, particularly those who provide mortgages on commercial or other non-owner occupied residences, require that title to the real estate be held by a land trust. When an assignment of the beneficial interest is taken as security, it provides the lender with additional security and allows for a sale under the Uniform Commercial Code, which may prove more advantageous to the lender than a mortgage foreclosure proceeding.

Finally, if a developer is attempting to purchase tracts of land, it can do so by having title to the parcels conveyed into several different land trusts. This allows the developer to maintain privacy and prevent other interest entities from purchasing the property.

Generally, the use of a land trust does not complicate most normal real estate transactions. Most real estate practitioners in Illinois have had experience with establishing a land trust or coordinating efforts with a land trustee. Under the proper circumstances, a land trust can be a valuable tool in both purchasing and financing most real estate transactions.

There are a number of other states that recognize land trusts though generally by statute. These include Florida, Virginia, North Dakota, Indiana, and Hawaii. Chicago Title and Trust Company has subsidiary corporations in Indiana and California that provide land trust services.

If you have any questions concerning Illinois land trusts, or Chicago Title and Trust Company's land trust services, please contact Melanie Hinds at 312-223-2179.

Other CTI Offices Providing Land Trust Services

In California

Security Trust Company 800-669-0250

In Indiana

Lake County Trust Company 219-663-2289

In Illinois

Cook County Chicago 312-223-2195

Oak Forest 708-560-0600

DeKalb County Sycamore 815-895-4555

DuPage County Wheaton 708-668-5097

Kane County Geneva 708-232-2750

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