

## Asset Protection by Land Trust and LLC

[| Print |](#)

Written by Bill J. Gatten



Having been in the land trust transfer and facilitation business for nearly fifteen years, we get frequent questions regarding the superiority of the (Illinois-type) land trust versus the limited liability company (the LLC) as asset protection devices. My response is always the same: an LLC will protect YOU; the land trust will protect your property, and when used together your real estate holdings can be virtually “armor-plated.”

But never forget that in today’s litigious society holding real estate in your own name is tantamount to walking down Lawyer Boulevard with a sign on your back saying: “I dare you. Sue me. I’m rich.”

### The LLC

The LLC is a company (not a corporation) that combines many of the features of a corporation, but which is more akin to a sole proprietorship or partnership, depending upon the number of its members. In comparison the LLC, as a pass-through tax entity affords its members simplicity in tax accounting and reporting. Beyond that, however, the LLC’s primary purpose is that of shielding its member-owners from litigation that would befall the company and its assets. In other words, were an LLC to be established for the purpose of operating a packing plant and someone were to slip and fall into a meat grinder and lose a leg or two, the claimant’s legal recourse would be limited to the assets of the company. Any assets owned by the members of the LLC that were outside the company would be beyond the reach of creditors. Even if the business were to be taken over, or closed down and liquidated by the claimant or the court, the member’s homes, golf club memberships, automobiles, furniture and private bank accounts would remain beyond the law suit.

Bear in mind that any person or any company could choose to hold a single house, condominium, townhouse or apartment building in an LLC, LP (limited partnership) or FLP (family limited partnership) as the holding entity’s only asset. Any of these holding forms will protect the participants themselves personally from legal claims; however, in the event of a legal action the asset of the holding entity is not protected (i.e., against lawsuits, marital dissolution, creditor judgments, or tax liens). Although, ideal for holding small businesses, these devices when used by themselves are not always the ideal method for holding and protecting one’s real estate.

### The Land Trust

Much has been written in the last twenty or thirty years about the feasibility, functionality and versatility (and safety) of the “Illinois-type” Title-Holding Land Trust. But there continues to exist a major lack of knowledge as to what a land trust is, its uniqueness, and all that it can do for its beneficiaries.

For example, few attorneys are aware of these benefits and features, and will argue in ignorance against the use of land trusts for asset protection. Most attorneys are simply not aware that when a property is placed into such an entity, its real property ownership converts to ownership of personalty (i.e., both legal and equitable title are vested with the trustee, leaving the grantor/beneficiary with only a personal property interest in the trust, and no further ownership at all of the property itself. However, when the Trustor becomes the beneficiary of an (Illinois-type) Land trust, he or she remains 100% in directive control over the actions of the trustee (the owner) and, therefore, the property and its title).

By way of an “equitable conversion,” the land trust affords its beneficiaries with more protection than would otherwise be available to any owner of personal property: 1) limited partition rights by outside parties (outside judgment creditors, including the IRS cannot reach the corpus of a co-beneficiary title-holding (land) trust); 2) ownership anonymity; ) seller-carry financing without a due-on-sale violation (i.e., when only fractional beneficiary interests are transferred; and assuming the borrower/transferor beneficiary is a “natural person”, i.e., not a commercial enterprise to whom the loan was made.

Also unrecognized by most is the fact that land trusts are “legal” in all states, even though two states, Louisiana and Tennessee, see them only as “Uses in Land” versus “Uses in Trust”.

With a land trust, one can transfer a property’s full ownership and re-sale benefits with one brief document—without escrow, new title insurance, or lender involvement. When a property’s title is held by the trust’s third-party trustee, the property is essentially being held “in Escrow” for the trust’s term. This means that during the trust term no single beneficiary can act unilaterally in any manner with regard to the property or its title.

A would-be buyer who becomes a co-beneficiary in a bona fide land trust can then lease the property (triple-net) from the trust and thereby be treated by the IRS as a bona fide homeowner, with full income tax benefits for mortgage interest and property tax deductions and need never go on title.

**Bill J. Gatten**, of Granada Hills, California, author, seminar leader and sales trainer, is the founder of Cal-Equity Real Estate Consultants and the creator of the nationally known “Cal-Equity PACTrust™ Conveyance System. Mr. Gatten’s books and audio home study courses on land trust conveyance (for buyers, sellers and Realtors) have empowered untold thousands to realize their dreams.

Questions and Comments

[Add New Comment](#)

Subject: <input type="text"/>	
<input type="text"/>	
<input type="button" value="Send"/>	<input type="text"/> 
Please input the anti-spam code that you can read in the image.	

[Close Window](#)