A History of the Illinois-Type Land Trust and a Modern Application

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Written by Bill J. Gatten

Real Estate and financial interest in it are the most publicly exposed evidence of personal wealth. It has been said that if you own real estate and are an “achiever” by nature, it’s a forgone conclusion that someone opposed to your success will eventually do their best to take it away from you. Historically, the ownership of real property has subjected its owners to the demands (both reasonable and unreasonable) of the government’s often pervasive authority, as well as to the demands of those to whom the accumulation of any kind of wealth is regarded as selfish, objectionable, sinful, unconscionable or enviable. Therefore, a means for the shielding of one’s real estate assets is something needed in today’s litigious society, and that’s where the Illinois Land Trust makes its entrance.

In the sixteenth century feudal England, there existed a plethora of restrictions on the ownership of real estate. With the advent of the common-law land trust model, use in land could be converted silently to use in trust and a feudal lord fearing governmental reprisal for his own political views, or seeking to avoid attachment for debt, or attempting to provide for the granting of his property, other than in accordance with the rigid rules of primogeniture, could just vest his property rights in a trusted third party. The trust agreement would then carry a clear under-standing that the trusted party (the trustee) would deal with the land only under certain circumstances, and only as directed by the named beneficiary (the original holder of the property rights). In this manner, the arrangement now known as the “beneficiary-directed” land trust model emerged and began to flourish under feudal law.

However, in 1536, not to be outdone by the intelligence of the repressed, Henry the Eighth devised a statute for specific “uses” in land. The intent of the law was to avoid the legal frustrations created by the land trust. The statute allowed for the trust, but decreed that the land use was to be fully vested in the beneficiary rather than in the trustee (in order to enable seizure of the property). Nine years later, however, the English courts mitigated the effect of this legislation by holding that the Statue of Uses would remain in effect, but would no longer be applicable to the land trust wherein the trustee would have some active duties within the agreement (dealing with complainants, power to sell, etc.). Therefore the land trust model was relieved of the restrictions imposed by the statute. However, the Statute of Uses remained a part of British Common Law, and was adopted by the founders of America whose early laws were primarily permutations of the laws of England.

At present, even though only a few states have enacted specific land trust legislation, the function and style (i.e., legal and equitable ownership by the trustee with management and direction being by the beneficiary) are fully accepted by nearly all states: the exceptions being Tennessee and Louisiana, who do not accept the separation of use in land from use in trust, and who currently characterize any use of realty as use in land. What this means is that in those states the use and ownership of real property are seen as vesting solely in the beneficiary. Those states with specific land trust legislation are: Florida, Georgia, Hawaii, Illinois, North Dakota, and Virginia. All the rest of the states either authorize (by precedent) or accept the land trust merely by virtue of the absence of a statute of uses or by there being no prohibitions concerning the land trust model.

Although still largely unfamiliar to most investors, Realtors® and attorneys, the land trust concept, has finally begun to move toward acceptance as a preferred arrangement by which one entity can hold property for the benefit and use of another, thereby creating for investors, sellers and buyers excellent

protections from the myriad dangers and downsides of seller-assisted real estate financing.

The combinations of a land trust with an assignment of beneficiary interest and separate possession and use arrangements (re. the Equity Holding Trust Transfer ™(pat pend) by North American Realty Services, Inc. – NARS), results in a variety of applications for the investor property owner. The land trust is now 469 years old, and one of the finest tools for management and transfer of the benefits of real estate ever devised.

In the creation of the Equity Holding Transfer System™ (EHT), NARS has integrated the common law land trust model with a triple-net lease agreement, an assignment of beneficiary interest, a beneficiary agreement and a limited power of attorney. This combination of forms, along with its ability to provide trusteeship and free collection services allows for a clear and safe transfer of real property ownership benefits from one party to another without a title transfer to the acquiring party and without public notice or any of the standard risks and drawbacks of seller-assisted financing arrangements.

The EHT conveniently allows for the transfer of all fee-simple real property ownership benefits while accomplishing virtually any "creative financing" objective, including the objectives of, say the: lease option, lease purchase, equity-share, wrap-around mortgage (AITD or AIM), contract-for-deed (i.e., the land sale contract) or any other subject-to seller-carry device. The EHT also accommodates safe, fast and simple condominium-ization of multi-unit buildings, fast and simple time-shares (fractionalization of ownership), fast and simple seller-carry bridge financing, the simplest partnering arrangements ever, full asset protection, and much more. And it does it all without the pitfalls and sand traps of other creative devices.

The EHT is not just another creative financing device: it is the means for accomplishing the objectives of all creative financing devices, but with maximum safety, simplicity and legality. In other words, the EHT™ is not another thing in creative real estate, but the best and safest way to do all things in creative real estate.

EHT™ BENEFITS FOR A "BUYER:

1. No Due-on-Sale violation
2. No down payment required (necessarily)
3. No bank approval required
4. No credit application required (necessarily)
5. No credit checks (Statement of Information suffices)
6. No real likelihood of liens or judgments attaching to the property itself
7. No chance of marital disputes affecting title
8. No chance of IRS liens affecting ownership of the property
9. No chance of any party's bankruptcy affecting the property
10. No chance of the property being tied-up in any party's probate
11. No chance of a participant's doing anything to the property that would negatively affect the other parties
12. No possibly of any party's further encumbrance of the property without knowledge and consent of the others (analogous to a long-term escrow)
13. No way for either party to change their minds about terms or costs or "buy-out" or other contract provisions later on
14. No or nominal conveyance tax in most of the U.S.
15. No missed tax benefits regarding interest and property tax for the tenant beneficiary
16. No missed tax benefits for the nonresident beneficiaries
17. No public disclosure of ownership (title is in the name of the trustee)

18. No more renting!
19. No more scrimping and saving for years for a down payment
20. No more waiting until one's FICO score heals-up (sufficient cash in advance, coupled with ease of eviction, can "buy" special consideration for marginal to even "bad" credit)
21. No more waiting around for the American Dream to magically appear "someday"

EHT™ BENEFITS FOR A "SELLER

1. No Due-on-Sale violation
2. No down payment or new loan required
3. No credit application or credit checks necessarily needed (Info Sheet only)
4. No real chance of a payer's personal liens or judgments (even IRS liens) attaching to the property
5. No difficulty in regaining possession in the face of a default by a tenant-buyer
6. No chance of either party's marital disputes legally affecting title
7. No chance of a beneficiary's bankruptcy hitting the property
8. No chance of the property being tied-up in Probate
9. No, or nominal, conveyance tax in most jurisdictions (Pennsylvania and Maryland are exceptions)
10. No capitals gains tax due upon transfer to co-beneficiaries
11. No difficulty in evicting an errant resident beneficiary
12. No chance for a defaulting tenant to successfully claim an equitable interest in the property in order to forestall eviction
13. No chance of a beneficiary's surreptitiously doing anything that would negatively affect other beneficiaries
14. No chance of one party's further encumbering the property without knowledge & consent of the other
15. No management or management costs
16 No vacancies
17. No direct monthly payments
18. No tenants, toilets, trash, torn screen doors, dead trees, shrubs and grass
19. No public disclosure of ownership interest
20. No reversionary penalties (i.e., capital gains due when the trust terminates)
21 No intestate ancillary administration requirement (i.e., die anywhere and administer your estate in the jurisdiction of your death rather than where the property is located.

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.

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