

Much Maligned, Much Hated and Much Loved

What can be all these things at the same time? Is it land trusts or Dave Dinkel? More clues - attorneys hate them, banks despise them, realtors don't understand them and don't care to, and knowledgeable investors love them. Still could be land trusts or Dave Dinkel. Let's assume for this discussion their emotions are about land trusts and not Dave Dinkel. Why so much variance with the feelings about land trusts?

Before I say what's on my mind, I have to preface it with – none of what I am going to write is legal advice. Always seek help of a competent attorney to discuss your options, preferably one who understands and likes the benefits of a land trust. These guys are somewhat rare because the land trust can be transferred without using an attorney to do the closing.

In addition, it wouldn't hurt to ask your accountant or CPA what the tax ramifications are, or are not. If either of these professionals doesn't know the answers to your questions immediately, find another professional who does. You don't want to be on the learning curve and have to pay for it besides.

Land trusts are pass-through entities, meaning they are not issued a tax ID number by the IRS, and for that reason no checking account can be opened for them. Therefore, if a closing agent issues the Trustee of a land trust a check for the proceeds of a sale, the Trustee will not be able to cash it unless he has a checking account with his name as Trustee on it which references his tax ID number and he supplied a trust agreement.

The Trustee is not the owner of the property that is in the trust – the Beneficiaries are the actual owners. Some closing agents and attorneys will dispute this and say the Trustee owns the property, but if the trust document is drawn properly, this is not the case. It just makes it easier for the closing agent to “tag” someone with the sale for IRS purposes and to use his tax ID number instead of using the tax ID numbers of the Beneficiaries, which is a little more effort, but the correct way to do it. The correct IRS form even has a place for the tax ID number(s) of the recipients of the proceeds if it was not the seller (Trustee), but this is seldom used unless the closing agent is made aware of it before the closing.

Land trust documents are designed to not be recorded in the public record; some trusts even have a disclaimer to anyone trying to record the trust that it cannot be recorded. This worked well in the old days, but now recording agents will literally record anything because of the revenue generated to the county. I have seen on two occasions where a photo copy of a deed was recorded instead of the original-signature deed.

Some attorneys would say that the sole purpose of a land trust is to avoid paying the transfer fees associated with the purchase and sale of a property. This may be the case in a few instances, but the more basic reasons include privacy of ownership, limiting liability, avoiding probate and ease of transfer of the property to mention a few attributes.

There is a growing trend to use land trusts to shelter LLCs with another layer of asset protection. Single-member LLCs took a blow recently from a Supreme Court ruling and a growing number of States are legislating against single-member LLCs. LLCs have been working their way through the court system for the last 25 years while land trusts have been through the court system for 100+ years. The most notable historic use of land trusts dates back to Julius Caesar who put his assets into a trust in case he didn't come back from war. Where were the LLCs back then when you needed them?

In bygone days (3+ years ago), land trusts were used to avoid seasoning issues with lenders. The homeowner (A) would transfer the title to his property into a land trust and the trust would sell the property to an end-buyer (C). So it would appear to a lender to be an "A" to "C" transaction, however the investor (B) would be the new owner of the land trust either just before the closing or at the original signing over the title to the trust. In the final analysis, the transaction was an A to B and then a B to C. Lenders either didn't really care or just didn't understand it and this went on for possibly 15 years that I know of personally.

Recently, lenders are hyper about land trusts being used to hide profits that the lenders probably feel they are entitled to. This is especially true in short sale transactions where land trusts have all but been banned. Some lenders have said they will not look at offers on REOs if the buyer is a land trust. We haven't found this to be true in thousands of transactions, and it is more likely an urban legend perpetrated by realtors who don't like investors.

Why wouldn't realtors like investors? One recent incident proves the point – a realtor explained to me that on one of his REO sales, he made a net commission to himself of \$1,400 after his splits with all the entities involved. He watched to see what we did with the property and noticed we flipped it within a few days (10 days to be exact because of the deed being recorded slowly), for a \$15,000 profit.

He was angry because he had to do so much work to get on the lender's list to sell the REO, show the property, advertise it (MLS), show it to investors, sort through multiple contracts most of which were no good, and then having to drag the various buyers to closing. We made 10 times what he did and he was angry. After listening to his rant, I explained it would be a lot easier if he came to the "light side" and become an investor – which he did and is very happy we "turned" him and we didn't even suck his blood to turn him.

The vast majority of realtors got licensed because they believed they would get closer to finding deals. Actually, nothing is further from the truth as they quickly learn. One realtor who came into our program said that we don't get good deals, we steal deals. Frankly, I would like that to be the truth all the time, but we get great deals or we let another investor pay too much and we move on.

We use land trusts in about 95% of all our transactions. We had a Saturday event with a national speaker who was asked what entity he used for all his deals. Without hesitation, he said 100% land trusts. At least someone else must be making the same mistakes we are and, unbelievably, he is also doing deals. So the rumors of you can't do a deal in a land trust are just that, "rumors".

To clarify the issue of whether Documentary Stamp Taxes are due on the transfer of a land trust, the following site tells what qualifies for doc stamps on various transfers and one of the examples is "Assignments of Beneficial Interest in a trust" –

<http://dor.myflorida.com/dor/tips/pdf/tip08b04-01.pdf>

For those who are trustees and may be concerned about your getting charged for an entire transaction because the closing agent used your tax ID number, this IRS website may help. Get help from your accountant or CPA if you have any questions or they want you to do something differently.

<http://www.irs.gov/pub/irs-pdf/f56.pdf>

Hope this helps in better understanding that land trusts are viable instruments and should be for a long time to come. Always get competent legal or accounting advice before you make any financial decision.

To your limitless success,

Dave Dinkel

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PS – If you know anyone who is facing foreclosure, or contemplating a strategic foreclosure, please tell them about Attorney X's seminar, Saturday, September 25th.

Registration starts at 8:30 and the seminar starts promptly at 9:00am. Cost for the entire event is \$97 and it will last until 1:00pm+ depending on questions and answers. Each paid attendee will receive a ½ consultation with the attorney doing the seminar so they can discuss their personal problem in the seclusion of his office.

Previous two seminars have been completely sold out so make your reservations early.

Call for your reservation at 954-318-6042.