

Realty411

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LAND TRUSTS —
Holding Beneficial Interest
INVESTMENT STRATEGY

Making Money
and Understanding
Tax Lien Certificates

Top 5 Alternative
Financing Options
Available to
Entrepreneurs



ARNOLD

Cogo Capital
Still Dishing Out
DOLLAR\$ to Fund
Property Deals



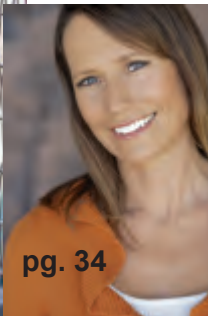
pg. 20

- 07 Another Reader Retires Five Years After Buying 1st Rental
- 08 California Niche Opportunity Expand Revenue with ADUs
- 15 MEET A LEGEND In The CALIFORNIA REAL ESTATE MARKETPLACE
- 20 Cogo Capital: Still Dishing Out the Dollars to Fund Property Deals
- 27 Kribbz: How Kent Clothier Is Reinventing Real Estate Now
- 34 Kathy's 2019 Housing Forecast
- 41 Here's The Lender You've Been Looking For To Fund Your Deals!
- 45 Is It Honest to Use A Land Trust?
- 50 Making Money and Understanding Tax Lien Certificates Level
- 55 Meet Mortgage Broker: Michael Ryan
Bay Area Finance Professional Discusses Latest Finance Trends
- 61 A Rehab Repair Estimator
- 67 The Secret Sauce to Managing Your Wealth...Do You Have One?
- 73 Land Trusts Holding Beneficial Interest
- 78 TOP 5 ALTERNATIVE FINANCING AVAILABLE TO ENTREPRENEURS
- 81 Exploring The Changing LA Market With Baseball's Brennan Boesch
- 88 Should I buy my own home first, or rent and buy investment homes?
- 93 TERICA KINDRED: This Girl is ON FIRE!

Startups



pg. 27



pg. 34



pg. 93

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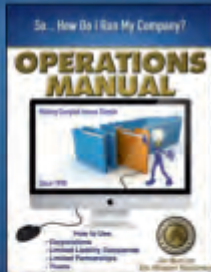
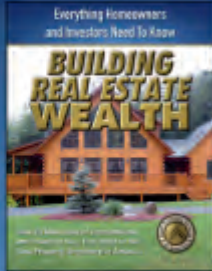
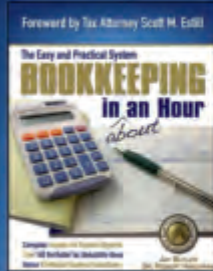
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Land Trusts Holding Beneficial Interest

By Jay Butler

Land Trusts, sometimes referred to as Florida or Illinois 'type' trusts because of their favorable state laws and years of case history, are designed to hold title to real property and real property assets including real estate options, contracts and mortgages. Land Trusts are most commonly used to transfer title of income-producing property without invoking a due-on-sale clause with their lender. Public Law 97, also known as the Garn - St. Garmain Act, prohibits financial institutions from invoking a due-on-sale clause upon transferring title so long as, among other things, the beneficial interest holder is the same the day after the transfer as it was the day before the transfer and there is no transfer in the rights of occupancy in the property.

Both residential and commercial real estate investors alike have made the mistake of listing themselves as the beneficial interest holder in their land trust agreement. Even though the beneficial interest holder of a land trust agreement is not filed anywhere in the public domain, should the property held in the land trust face an inside lawsuit, or should the individual listed as the beneficial interest holder of the land trust face an outside lawsuit,

all the assets of *both* the land trust and the individual are at risk to seizure by a judgement creditor.

Although land trusts provide an excellent veil of anonymity, it is still a form of an *intervivos trust* and thus not an asset protection vehicle. Intervivos means 'among or between the living' hence the term 'living trust'. Land Trust assets are considered personal property to the beneficiary, which is not subject to seizure by judgement creditors in some states. However, existing court precedence has held that, "*If a settlor has the right to revoke a trust, all of the assets are treated as owned by the settlor and is ignored for creditor purposes, just as it is ignored for tax purposes.*" Meaning, while land trusts can provide you with an excellent veil of anonymity in the public domain, they are not a shield of protection as is an entity.

Land Trusts can be revocable or irrevocable. While generally created as revocable, if a judge were to call you into a debtor's examination, requiring you to provide

ownership information under penalty of perjury (wherein you may not plead your 5th amendment rights), you must disclose all of your assets or risk being held in contempt of court. If the beneficial interest holder of the land trust is an entity, you stand measurably improved chances of protection as such structures provide outstanding asset protection under scrutiny.

It is therefore of paramount importance to assign the beneficial interest of the land trust (at least 24 hours *after* transferring title) to another 'person', such as a Limited Liability Company. With recent state supreme court rulings in Colorado, California and Florida rendering most single-member Limited Liability Companies (LLC) useless as tits on a bull, we recommend that when possible you form any such single-member limited liability companies in states like Nevada, Wyoming or Delaware whose respective state statutes offer the same charging order protection to single-member LLC's afforded to multi-member LLC's.

Placing the beneficial interest holdings of a land trust into an entity isolates individual liability from an inside law suit to the LLC and protects LLC assets from a judgement creditor in the event of an outside law suit to the individual. Factoring equity value, cash flow and overall risk of each property should aid in determining just how many entities require forming to hold the beneficial interest to your land trusts. We suggest holding beneficial interest to your land trusts in either a Nevada, Wyoming or Delaware Limited Liability Company or (Family) Limited Partnership.

In 2011, Nevada enacted legislation **NRS 78.746** which extends Nevada "C" Corporations the same charging order protection afforded to Limited Liability Companies and Limited Partnerships. In addition to a few other minor restrictions, such "C" Corporations must have at least 2 and no more than 99 shareholders. Wyoming is considering adding this favorable concept into its legislation but, at the time of this article, has not yet done so. Meaning, you can also have a Nevada "C" Corporation act as the beneficial interest holder to your land trust as it too affords 'charging order protection' just like a Limited Liability Company and Limited Partnership.

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In-so-far-as taxes are concerned, a Land Trust is a private agreement amongst the involved parties and requires no financial reporting. However the entity which acts as beneficial interest holder is required to file a tax return annually either in the form 1065 (Partnership), 1120 ("C" Corporation) or 1120-S ("S" Corporation).

For states which require beneficial interest holders of a Land Trust to be disclosed, Personal Property Trusts can be used as an effective vehicle "between" the property (held in the Land Trust) and the ultimate property owner (ie. Corp, LLC or LP). This use of 'layering trusts' can be a very effective tool in dissuading would-be creditors from attacking you, all without creating unreasonable costs or sacrifices in time and energy during your real estate transactions.

Whether owning, renting or holding for long-term growth, be sure to mitigate unnecessary liabilities for your business by assigning the beneficial interest holdings of your land trust to an entity. For more information on understanding how to hold the beneficial interest to your Land Trusts, please feel free to contact us today to schedule your free asset protection consultation.

Sincerely, **Jay Butler**
Managing Director