

FUNNY STUFF ATTORNEYS SAY... FINDING ATTORNEYS WHO UNDERSTAND LAND TRUSTS

By Bill J. Gatten

A caution to always seek out the advice of a competent attorney before “trying this at home” is always good advice, but I find it difficult to proffer truly good (non-legal) advice on the subject of seeking the right attorney with regard to the PACTrust™ or land trusts in general. In fact, I find myself “...jest a tad ‘twixt a rock and a hard place” here (as it were), mostly because... they jest ain’t hardly none a’tall around these parts (as they say on Jerry Springer).

Although I certainly do not advocate proceeding in any real estate related transaction without the advice of a “good” and “knowledgeable” real estate attorney (a little like finding a handsome Chapultepek or a smart Italian I’m afraid): the quandary in which I find myself is that—first off, there are very few attorneys who know a lot about the use of trusts in general. Then there is the fact that there are even fewer who know kidney beans from koala bears about what a “land trust” is...much less how it differs from other living trusts, and what it’s capable of doing. Many attorneys have never even heard of such a thing; and there are even fewer yet who are competent to offer sound advice—pro or con—relative to the use or safety of an “Illinois-type, revocable, inter vivos, title-holding beneficiary-directed, third party trustee, land trust transfer (the PACTrust™).”

Ordinarily, when an uninitiated attorney is engaged for the purposes of reviewing a land trust transfer—much less a PACTrust™ with all of its attendant appendices, directions, Escrow documentation, creditor letters, etc.—he or she is faced with a true pointy-horned dilemma. The only two options available are: 1) Get into Nexus-Lexus or out to the law library and spend hours in getting educated on the advent and history of land trusts, or 2) render advice (pro or con) on something they know virtually nothing about (and it will always be ‘con,” I can assure you).

I’d presume no less than 10 or 20 hours would be needed to thoroughly research the pertinent local and federal codes and cites, and the myriad features and uses of the land trust (i.e., a bill of from \$1,700 to \$5,000); Think about it...if you were a busy attorney with your itinerary over-burdened with time constraints, what would you prefer to do?

Would you opt to: 1) Spend your “billable” hours doing hard research for free for a transaction you’ll probably never see the likes of again; 2) Risk your client’s walking away and your receiving nothing for your consulting time, or 3) might you attempt to convert the entire transaction to something else” something you better understand, and are more competent to advocate...and on which you could make some money?

Similarly, if you were the client seeking and hoping to pay only for a simple review and approval of a set of documents, would you be willing to finance your attorney's continuing legal education at the rate of \$175 to \$275 (or ?) per-hour? Probably not. My guess is that you'd relent, as many do, and be coerced into accepting the suggestion that the entire transaction should be transformed into something more "manageable (for the attorney)." Perhaps a nice "Contract for Deed" or maybe a little seemingly innocuous "Lease Option." After all, let's face it, there just isn't much billable potential in telling a client, "I'm not competent to review these documents...you should see someone else."

Taking the advice to "convert to something else" clearly means reverting back to the very downsides, short falls and serious risks that the NARS PACTrust™ conveyance concept was designed to avoid and protect you from in the first place: shortfalls such as the lenders' due-on-sale clause or alienation admonitions; the risk of a resident's claim of "Equity" to forestall eviction and force judicial foreclosure; the constant threat of the seller's or your buyer's creditor and/or tax lien judgments attaching to the property (or the Option on it); the insidious susceptibility to attachment of the property due to partition actions and/or charging orders against individual participants by judgment creditors; risk of involvement in the other party's Probate or forced ancillary administration; recordation and public notification of the transaction; absence of a third party holding device and trustee to ameliorate potential for disputes; etc...er...to name a few.

If you or I were to consult with our licensed, board certified general medical practitioner about treatment for a brain tumor, a good one would refer us to a neurologist. However, the mindset of the legal practitioner is all too often analogous to a physician's suggesting that we simply contract a more manageable condition. "I don't know much about the brain, so how 'bout I treat your for hemorrhoids instead? Here. Take this. Pay me. Call me in the morning, and if this pill doesn't work...great, just let me know and we'll switch to another disease."

So (you ask), "Well, should I seek the advice of an attorney or not?"

Yup you should! Indubitably as a matter-of-fact (so say I)! However, do be sure to choose a truly competent one who has experience with land trust transfers in creative real estate transactions. And if they start talking about Lease Options, Lease Purchases, Land Contracts (Contracts for Deed), Wrap-Around Mortgages, Equity Shares, Subject-To's or Silent Seconds...run! (Unless, of course the attorney is your brother-in-law...in which even it will be you who is facing the dilemma).

Are there any attorneys you could recommend?

Thanks for asking, but No. Although there are a few with whom I've become familiar who do understand the concept (albeit a limited few, to be sure): Gary Gitlen, Agoura Hills, California; Bill Bronchik, Denver Colorado; Mark Warda, Ft. Lauderdale.

Florida; Bryan Dunklin, Dallas, Texas; Jay Swob, Cincinnati Ohio; Henry W. Keno, Chicago Illinois (but he's dead), Paul De Witt, Los Angeles, California; Martin Slater, Los Angeles, California, Michael Kilmartin, Simi Valley, California.

Some attorney quotes:

In answerer to "Why aren't there more attorney who know about land trusts?"

"Because very few know how to use them and even fewer recognize all the benefits."

Mark Warda, Attorney, Florida

"If you can't find the expertise [when seeking a competent attorney re. land trusts], you have no choices but to keep on looking, or take upon yourself the task of trying to educate your advisors and counselors."

Jay Douglas Swob, Attorney, Cincinnati

"Another problem with using attorneys is that most have a negative attitude. They will probably advise against using a land trust because they [themselves] don't understand it."

Bill Bronchik, Attorney, Denver

"In that the 'land trust' is less frequently used outside of Illinois where it was first created [1891], it is unlikely that many will be immediately familiar with its benefits or structure."

Henry W. Kenoe, Attorney, Chicago (Dc'd)
(Keno on Land Trusts, IICLE, 1989)

"No! Don't do it! Oh m'god! These can only be done in Illinois. They violate the Doctrine of Stepped Transactions. Lease tenants can't take tax write-offs. You crazy? No court in the country would see such a thing as a conversion of real estate to personal property! Run Gertrude, run! Run like the wind!

But wait. Before you rush off, Gertrude, let me create an all-inclusive wrap-around mortgage for you instead. It'll do the all the same things and I'll only charge you \$2,000." The Due-on-Sale Clause? Oh, don't worry about that...lenders never pay any attention to those things. I'll build in a nice exculpatory paragraph anyway (so you can't sue me) and it'll be in bold print.

Could the buyer get the property embroiled in a lawsuit or tax lien while you're still on the mortgage loan and unable to make the payments or sell

the property? Well, I suppose so, but that hardly ever happens either...don't worry about it. Could you evict the buyer if he doesn't make his payment? Well, no. But, hey, there's always judicial foreclosure, Unlawful Detainer, Ejectment and quiet-title action: which I will be more than happy to handle for you (at \$225 per hour plus court costs...no guarantees of course).

Huh? "Would the property be tied up in the other party's Probate proceedings, if they die?" Well, um, yes, but most people don't ever die: but even if they were to, that would just be a matter of another paycheck for me, now wouldn't it? I don't see any problems here"

Anonymous
Riverside, Ca.

"There is no person on earth who is more apparently knowledgeable about the law than an attorney who doesn't know what the hell he's talking about."

Bill Gatten
Seminar Leader
Northridge, Ca.

NOTE: Bill Gatten, the author of this article, is not engaged in the practice of law, or in rendering other dependable professional advice. If legal or other expert assistance is required, the services of a competent professional should be obtained. Do not expect Bill Gatten know anything.

ANOTHER NOTE: Want to get your client's and their attorneys to do the right thing? Give them a copy of the article.

