CAN A LAND TRUST HELP AVOID THE PERILS OF INNOVATIVE REAL ESTATE FINANCING

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Much has been said and written about the *NARS Equity Holding Trust*™ concept (the NEHTrust™) and it appears that a select few are finally beginning "to get it." However, probably because the NEHTrust™ so effectively replaces the need for other creative financing schemes and dreams, it often falls under attack by its detractors (especially by certain lawyers who make their livings by doing that which they more fully understand; and by those who tout and teach older, less protective, concepts such as wrap-arounds, contracts-for-deed, equity shares and lease options).

In actuality NEHTrust™ supports the objectives of each of those seller-carry vehicles, while offering a much sturdier platform for protecting the property, and therefore the principals, from the myriad risks and downsides of owner-carry financing. Few proponents of *subject-to* financing wouldn't agree that there are numerous risks inherent in one's agreeing to share a property's title or mortgage loan obligations with another.

> **The NEHTrust™:** A property is vested with a land trust trustee, and instead of conveying title interest; a PARTIAL beneficiary interest in the trust is assigned to a would-be buyer. That party, once named a *successor beneficiary* in the trust, and a lessee in the trust property becomes entitled to all the benefits of ownership, including tax deductions for mortgage interest and property tax.

STUFF TO AVOID WHEN YOU CAN

Let's look into a few potentially risky shortcomings pertinent to creative real estate financing, which downsides can be avoided by use of the multi faceted *title-holding land trust*. The objective for anyone acquiring real estate ownership should always be minimum risk and maximum protection, without sacrificing income or capital gain potential.

Violation of the Lender's Due-On-Sale Clause. Whether deemed a threat by certain "gurus" or not, a DOSC call can be disastrous for someone who cannot afford to refinance, if a lender were to call its loan due because of an unauthorized title transfer (NARS holds letters from major national lenders clearly stating that the NEHTrust™ model does not create a compromise of their alienation admonitions).

The Threat of Either Party's Legal Actions Creating an Attachment or Charging Order Upon The Property. In any so-called *Wrap*, Contract for Deed, Lease Purchase or Equity Share arrangement, multiple parties are involved, and each one has either a valuable financial interest in the property, or has a primary payment obligation relative to its mortgage. As a result, there is always a real danger that either party's liens, lawsuits, marital disputes, bankruptcy or Probate proceedings would seriously cloud title to the subject property, thereby creating a grave predicament for the other party. This threat is virtually eliminated by use of the co-beneficiary, third-party trustee, title-holding land trust, in that a beneficiary's ownership is purely of personalty (a personal property interest in the trust) rather than of realty and cannot be partitioned by judgment creditors (legal opinion letters on file)

Difficulty in Dispossessing an Errant Tenant/Buyer. When an *equitable interest* in real property is conveyed to someone with possessory interest in that same property, such party is no longer subject to eviction for damage or non-payment. Instead, dispossession of an "owner" must take the form of foreclosure, and may also require *ejectment action* and *quiet title action* in order to regain possession, entry and salability of the property. Therefore, one might be well advised to employ a land trust for conveyance to a prospective buyer. Such an arrangement might remain in effect until such time as the tenant/beneficiary sold the property, or refinanced and purchased it outright.

In the NARS PACTrust™, a corporate trustee holds legal and equitable title as the tenant/beneficiary remains under the threat of simple eviction, while concurrently enjoying all the *benefits* of ownership without ownership in the realty itself.

SUTFF YOU CAN DO WITH A CO-BENE. LAND TRUST

To effect the objectives of a Lease Option (unilateral agreement to sell), the land trust property can be leased with a contractual understanding that the tenant may purchase the property or a future interest in the trust itself at some later date. Such purchase could be set at full *Fair Market Value,* less any monies owned to the tenant by the trust. And instead of an option fee, the tenant could post the trust's required *contingency fund*. The monthly lease obligation becomes an aggregate payment that includes the mortgage principal and interest, the property tax, the insurance and an overage that becomes the settlor's (investor's) positive cash flow. *[Note that any contract verbiage connoting an option to purchase constitutes a due-on-sale violation (re. 12USC1701-j-3)]*

To effect the objectives of a Lease-Purchase (bilateral agreement to sell and acquire), the land trust's tenant beneficiary can be assigned as little as a 10% beneficiary interest in the trust with a promise to convey the remainder upon the tenant/buyer's outright acquisition of the property. All benefits of ownership including tax write-off are available to the tenant in this model.

To effect the objectives of a *Wrap-Around Mortgage* or Contract for Deed, the would-be buyer/vendee is made a successor beneficiary in the land trust and given, say, 10% or more beneficiary interest in the trust until a new loan would be obtained and the property be purchased outright.

To effect the objectives of an Equity Share, the tenant/beneficiary is given a 50% interest in the land trust, and a like share in net profit sharing when the property sells or is refinanced by the tenant (following a return of the investor's initial equity at start).

The NARS Tax Lease: The tenant/beneficiary is given a 10% interest in the land trust, along with the full burdens of ownership and agrees to relinquish that interest at termination of the trust. In order to be entitled to the tax write-off, the tenant need only qualify under IRC 163 and hold at least a 10% beneficiary interest in the land trust.