

## Why Drive a Jalopy When You can Have a Mercedes Benz?

### *An Introduction The Uniqueness Of The NARS Equity Holding Transfer System™*

by Bill Gatten

A caution to always seek out the advice of a competent attorney before "trying this at home" is definitely 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 NEHTrust(tm) System, or even land trusts in general. In fact, I find myself "...a tad 'twixt a rock and a hard place" here (as it were), mostly because... they jest ain't hardly no sech'a lawyer a'tall around these parts (as one might be wont to say on 'Jerry Springer').

For the record, however, I certainly do not advocate proceeding in any real estate related transaction without the advice of a "good" and "knowledgeable" real estate professional. Buyt the quandary in which I find myself is that there are very few attorneys who are both (good and smart), much less who know anything about the use of trusts in general. There is also that nagging fact that there are even fewer who know kidney beans from kick boxing about what a "land trust" is...much less what it does, or how it differs from other living (inter vivos) trusts. Many attorneys have never even heard of such a thing; and there are even fewer yet who are competent to offer sound advice, yeah or nay, relative to the use or safety of an "Illinois-type, revocable, inter vivos, title-holding, beneficiary-directed, third-party trustee, land trust transfer (i.e., the NEHTrust System™)."

Ordinarily, when an uninitiated attorney is engaged for the purposes of reviewing a land trust transfer-much less a NEHTrust Transfer(tm) 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 billable hours 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...because 'con' is quicker, easier and cheaper than 'pro').

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, benefits 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 whose itinerary was over-burdened with money-making 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 something on which you could make some money, despite its relative negatives?

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 \$275 to \$375 (or ?) per-hour? Me neither.

My hope is that you'd refuse to relent, as many do, and not be coerced into accepting that the entire transaction should be transformed into something more "manageable (for the attorney)."

Perhaps a nice "Contract for Deed" or maybe a little (innocuous, due-on-sale violating) lease option. After all, let's face it, there just isn't much billing potential in telling a client, "I'm not competent to advise you in this matter...you should see someone else."

When a client does take the attorney's advice to "convert to something else," doing so clearly means reverting back to the very downsides, short falls and serious risks that the NARS NEHTrust Transfer™ is designed to avoid and protect us from in the first place. Shortfalls and risks such as the lenders' due-on-sale clause violation; the risk of a resident's claim of "equity" to forestall eviction and force judicial foreclosure (to buy time and free rent); the constant threat of your seller's or buyer's creditor and/or tax lien judgments attaching to the property (or to the option on it); the insidious susceptibility 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 issues; recordation and public notification of the transaction; absence of a third-party holding entity to ameliorate potential for disputes...to name just a few.

If you or I were to consult with a licensed, board certified 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 the physician's suggesting that we simply contract a more manageable disease. "I missed the class on brains, so how 'bout I treat you for hemorrhoids instead? HerePay me. . Insert this and call me in the morning. And if this doesn't work...great, just let me know, and we'll switch to another disease which I won't be able to cure either, but which will keep you coming back for treatment...and paying me. Unless of course you die, in which event we will at least have done our best...right?"

"So," you ask, "what are you saying Bill? Should I seek the advice of an attorney or not?"

Yup you sure 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' as an alternative...run for your life! Unless, of course the attorney is your brother-in-law...in which event it will be you who is facing the dilemma, and who likely should run for your life anyway, irrespective of what he says.

But, Bill, are there any attorneys anywhere that you could recommend?

Thanks for asking, but, No, there are none.

However, there are a few nice people with whom I've become familiar who do understand the concept (albeit a limited few, to be sure...and this list is by no means complete). I cannot vouch for them, but I can list their names:

Bill Bronchik, Denver Co.  
Blue Ransfeld, Fortworth, Tx.  
Bryan Dunklin, Dallas, Tx.  
David Eldridge, Oklahoma City, Ok.  
David Robinson, Los Angeles, Ca.  
Gary Gitlen, Agoura Hills, Ca.  
Henry W. Keno, Chicago Ill. (...but he's dead),  
Jan Caldwell, Woodland Hills, Ca.  
Jay Swob, Cincinnati Oh.  
Jerry Corbin, Midland Tx.  
Judy Wrentschler, Foster City Ca.  
Mark Warda, Ft. Lauderdale. Fl.  
Martin Slater, Los Angeles, Ca.  
Michael Kilmartin, Simi Valley, Ca.

Michael Moskos, Worcester, Ma.  
Nabisubi ("Nobi") Musoke, New York City, NY.  
Paul De Witt, Los Angeles, Ca.  
Peter Gibbons, Riverside, Ca.  
Susan Hunt, Greensboro, N.C.

The following are some attorney quotes, in answer to: "Why aren't there more attorneys to call on re. land trusts?"

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

*Mark Warda, Attorney, Florida*

"If you can't find the expertise [when seeking a competent attorney], 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 [1920 its precursor in 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 of anything serious: but even if they did, that would just be a matter of another paycheck for me, now wouldn't it? I don't see any problems here."

*Unnamed, famous, anonymous former attorney, Riverside, Ca.*

"There is no person on the planet who is more apparently knowledgeable about the law relative to anything new, than an one who doesn't know what the hell he's talking about."

*Bill Gatten, Author, Entrepreneur,  
Seminar Leader, West Hills, Ca.*

If your attorney tries to put one over on you by suggesting another transfer vehicle, just ask him/her if he will sign an agreement declaring that his suggested alternative will do everything the NEHTrust can do.

**Will the alternative serve to avoid –**

- a due-on-sale (DOSC) violation
- the need for option fees and/or rent-credits (that create “equity” violating the DOSC)
- the ability of any party to it to act unilaterally (alone, without the other party/ies)
- any untoward, illegal or deceitful actions of another party to the transaction
- the potential for any party creating legitimate clouds on title
- the ability of any party to over-encumber the property
- the need for foreclosure and ejectment action re. eviction
- the tenant’s worries about the actions of the landlord/optionor
- the misdirection or embezzlement of funds (pmts, taxes, ins., etc.) by any party
- partition or charging orders by outside creditors (even the IRS)
- the need for deceit and subterfuge (re. the underlying lender’s wishes)

**Can the suggested alternative provide –**

- “due-on-sale” avoidance (as opposed to options, wraps, land contracts & equity shares)
- free, centralized 3<sup>rd</sup>-party professional collections and disbursement
- automatic default notification to all parties
- legitimate recordation (without due-on-sale threat)
- full income tax benefit to tenant/buyer throughout lease term
- quick and easy eviction without risking “equity” claims
- higher rents for the landlord (re. transfer of tax benefits)
- lower after-tax housing cost for the tenant (re. tax benefits)
- the safest and most quiet contingency sale vehicle ever
- easiest purchase and disposition of property at termination
- transfer of full ownership benefits without equity transfer
- privacy of ownership without compromise or public notice
- 24-hour monitoring of all aspects of the transaction
- freedom from all management, maintenance and collections
- avoidance of credit damage and debt-relief taxation (re. foreclosure or short-sale)
- a history of never having been challenged in court or by the IRS

NOTE: In order to accomplish all of the above, one need but (with the proper documentation) vest the property in a land trust and make the tenant a co-beneficiary. [See Title 12 USC 1701-j-3; Title 12 US CFR(a) 591(vi); Rev. Rul. 92-105; IRS Sec. 163(h)4(D)]

ANOTHER NOTE: Bill Gatten, the author of this article, is not engaged in the practice of law, or in rendering dependable professional advice of any kind what-so-ever. For legal or other expert assistance and direction, the services of a competent professional should be obtained. Do not expect Bill Gatten to know anything.

STILL ANOTHER NOTE: Want to get your attorney to do the right thing? Give them a copy of this article. If they review the above list and tell you they don’t agree that these benefits can be attained, it’s because they simply don’t know anything about land trusts and choose not to learn.