

SHOULD YOU WEAR SUSPENDERS WITH YOUR BELT?

ASSET PROTECTION BY LAND TRUST...AND LLC

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Having been in the land trust transfer and facilitation business for nearly fifteen years, we get frequent questions from our clients and students around the country regarding the superiority of the (Illinois-type) land trust versus the limited liability company (the LLC) as asset protection devices. My response is always the same: An LLC will protect YOU; the land trust will protect your property, and when used together t your real estate holdings can be virtually “armor-plated.”

But irrespective of what the answer might be, never forget that, “In today’s litigious society, holding real estate in your own name is tantamount to walking down Lawyer Boulevard with a sign on your back saying: *“I dare you. Sue me. I’m rich.”*

THE LLC:

The LLC is a *company* (not a corporation) that combines many of the features of a corporation, but which is more akin to a sole proprietorship or partnership, depending upon the number of its members. In comparison the LLC, as a pass-through tax entity affords its members simplicity in tax accounting and reporting. Beyond that, however, the entity’s primary purpose is that of shielding its member-owners from litigation that

would befall the company and its assets. In other words, were an LLC to be established for the purpose of operating a packing plant and someone were to slip and fall into a meat grinder and lose a leg or two, the claimant's legal recourse would be limited to the assets of the company, and not to any other assets owned by its operators (members) outside the company. Even were the business to be taken over, or closed down and liquidated by the claimant, the owner's homes, golf club memberships, automobiles, furniture and private bank accounts would remain out of the reach of the law suit.

Relative to this article, bear in mind that any company in operation could, should it so choose, hold as its only asset, a single house, condominium, townhouse or apartment building. In any of these instances an LLC, LP (limited partnership) or FLP (family limited partnership)...all of which protect their members (owners) from claims against themselves personally...are considered by many to be the most ideal forms of small business ownership.

*[For additional info. re. limited liability entities
see (for example): www.mycorporation.com]*

AND NOW THE LAND TRUST:

Much has been written in the last twenty or thirty years about the feasibility, functionality and versatility (and safety) of the "Illinois-type" Title-Holding Land Trust. Be that as it may, however, there continues to exist a major lack of knowledge as to what a land trust is, its uniqueness, and all that it can do for its beneficiaries. For example, few attorneys are aware, and will argue in ignorance to the contrary, that when a property is placed into such an entity, its real property ownership is converted to ownership of pure personalty (i.e., both legal and equitable title are vested with the trustee, leaving the grantor/beneficiary with only a personal property interest in the trust, and no further

ownership of the property, but with full directive control over the actions of the trustee owner).

In such an “equitable conversion,” the land trust provides its beneficiaries with all the protection that the law affords personal property owners (limited partition rights by outside parties; anonymity; privacy of ownership; inability of judgment creditors (including the IRS) to penetrate a (co-beneficiary) land trust in order to reach its corpus (the property); the avoidance of a lender’s due-on-sale clause upon fractional transfers of beneficiary interest (assuming that the borrower/transferor is a “natural person” under the law...i.e., not a commercial enterprise to whom the loan was made).

It is also infrequently known that land trusts are legal in all states, although they are officially recognized only as “Uses in Land” versus “Uses in Trust” in Louisiana and Tennessee. One can transfer a property’s full ownership benefits with one brief document without escrow, title, or lender involvement. When a property’s title is held by a third-party land trust trustee, the property is for the trust term essentially in a state of “Escrow,” meaning that during the trust term no single beneficiary can act unilaterally (i.e., without the unanimous consent and direction of all beneficiaries). A co-beneficiary in a bona fide land trust can in-fact lease the property from the trust and, given at least a ten-percent beneficiary interest in the trust, receive full treatment by the IRS as a homeowner with full income tax benefits for mortgage interest and property tax deductions (IRC163(h)4(D)).

Now...couldn’t a person armed with this information place its real property into a land trust and name his/her LLC as a co-beneficiary in order not only to shield it from

public view, but to also hold it beyond the reach of potential judgment creditors
(including the IRS)?