11.00

Land Trusts

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In General

Real estate may be held in trust in all states; however a few states have established by statute or case law, a land trust as a special kind of trust arrangement in which real property is the only asset.

The creation of a land trust follows the typical pattern of creation of any other trust: (1) a land trust agreement must be executed between the trustor and the trustee; (2) the legal title to the property is conveyed to the trustee; and (3) the beneficial interest in the trust property is vested in the beneficiary, who is usually the person who established or created the trust.

Under a land trust agreement, the trustee deals with the property only upon the written direction of the beneficiary. The trustee, as a matter of public record, has full power to deal with the real estate entrusted to the trustee, but at the same time, all the possessory rights of ownership remain in, and can be exercised by the beneficiary of the trust. The beneficiary has the rights to the possession, income, and proceeds of the sale of real property. Although real property is subject to the laws of the state in which it is located, because the beneficiary's interest in the property is considered personal property, this interest will pass, on the beneficiary’s death, under the laws of the state in which the beneficiary resided. If the deceased owned property in several states, additional probate costs and inheritance taxes can thus be avoided.

A beneficial interest under a land trust can be transferred merely by an assignment without the necessity of a deed and all its formal requirements. Also, it can be pledged as collateral for a loan without a mortgage being placed on record (through collateral assignment). Courts have held that real estate held in a land trust cannot be partitioned by the beneficiaries because their interest is not one in real estate but one in personal property.

Although usually only individuals create land trusts, corporations as well as individuals can be beneficiaries. A land trust ordinarily continues for a definite term, such as twenty (20) years. If the
beneficiary does not extend the trust term when it expires, the trustee is usually obligated to sell the real estate and return the net proceeds to the beneficiary.

Because land trusts were first recognized in Illinois, they are commonly referred to as "Illinois Land Trusts."