



THE SHIELD

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The Real Estate Trust Is Your Solution to Real Estate Privacy.

The American Dream

Owning one's home is the American Dream. Having income property makes us feel secure and successful. However, there is a downside to owning real estate. If you own real estate, someone, somewhere, somehow may try to take it from you. The first lesson in Asset Protection is rather basic; own nothing, and control everything.

Real Estate Trusts can and will give you the privacy to protect your property. Real Estate Trusts and Land Trusts have been around, in some form or another since 1868. From the first case in Illinois recognizing the validity of these trust instruments in Kerr v. Kotz in 1920, courts have upheld the Land Trust as a legal method of holding real estate.

If you own real estate in your own name, it is likely your name (and your connection to that particular piece of real estate) will appear in a public records office where it will be available to anyone who wants to find out who owns the property. With many public records now available on computer data bases,

anyone with a computer (including a growing number of telemarketers) can find out who just bought that expensive home or prime piece of commercial property. However, when your real estate is held in a Real Estate Trust, only the Trustee's (or officer's) name is made public. A Real Estate Trust can also avoid probate, inheritance and/or estate taxes and should be an integral part of any estate plan.

What is a Real Estate Trust?

A Real Estate Trust is a method of real estate ownership in which a Trustee has full power to dispose of the property and complete control over its management. The Trustee controls the assets and the income they produce. **The Real Estate Trust owns the land and any buildings on it.**

Who can set up a Real Estate Trust?

A Real Estate Trust can be created by anyone who has the legal capacity to enter into a contract. An individual, partnership, LLC, corporation, Contract Trust or any group of

individuals can establish a Real Estate Trust.

How is a Real Estate Trust set up?

Two primary documents are necessary to establish a Real Estate Trust: A Trust Agreement and a Warranty Deed. A Real Estate Trust can be created to protect the equity in property you already own, even if it is a mortgaged or for property you intend to purchase. If you are purchasing property, it is best to purchase it in the name of the Real Estate Trust. Your name never becomes public record associated with that property.

How does a Real Estate Trust work?

The Trustees retain complete control over all property in the Real Estate Trust, in the same manner as if they owned the property in their individual capacities. If a disinterested third party like a Trust President, is named he or she can only act with the express authorization of the Trustees. The Trustee has all the power to control or influence the direction of the property or its use.

The Trustees can modify, amend or terminate the Real Estate Trust at any time.

Succession

A Real Estate Trustee must designate a successor in the event of his/her death. The successor need only establish the death of the Trustee to immediately take over his or her interest. No court intervention is necessary.

Litigation

Being sued, losing the case, and having a judgment entered against you are no longer rare occurrences. Judgments become liens against the real estate owned by the losing parties. But Trustees of Real Estate Trusts do not own the real estate – the Real Estate Trust owns the property.

The confidential nature of Real Estate Trusts gives the Trustee a protected portfolio, providing insulation from harassment and potential lawsuits. The Trustees do not own the property; they simply manage the property.

Judgments against Trustees are not necessarily automatic liens against the real estate held in trust, allowing that property to be sold, gifted or financed when it might otherwise be difficult or not viable to do so.

Probate

A probate proceeding can be costly and time-consuming. Since real estate is governed by the law of the state in which it is located, the survivors of a decedent who owned real estate in two or more states may be faced with ancillary probate proceedings. The Real Estate Trust holds title to the real estate, and the Trust does not die when the Trustee does, thus negating probate altogether.

Flexibility

Any legally competent person or legal entity such as a corporation, partnership, limited liability company or Contract Business Trust can become the Trustee or officer of a Real Estate Trust.

Since the Trustees personally do not own legal title to real estate, matters which would encumber that title, such as judgments in litigation, divorce, bankruptcy, etcetera, have no bearing on the sale of the real estate.

Getting Started

The owner of real estate wishes to create a Real Estate Trust. A Real Estate Trust Agreement and a Warranty Trust Deed need to be prepared. The Real Estate Trust agreement, signed by the Trustee, sets out the details of the relationship between them. The Warranty

Deed places the property into the Real Estate Trust and subjects the real estate to the terms of the Real Estate Trust Agreement.

The Trustees manage, control, and derive benefits from the property while realizing the benefits that the Real Estate Trust offers.

If new property is being purchased, the seller executes a Warranty Deed to transfer the property into the buyer's Real Estate Trust.

Personal Property Trusts

Similar in nature to the Real Estate Trust, Personal Property Trusts hold title to cars, boats, motorcycles, RV's, personal watercraft, snowmobiles, even horses.

All of these are potentially high liability items. Having each in its own Trust insulates it and you against any possible lawsuits and judgments. Some states will not allow titling of vehicles, etcetera to a Trust, if there is an existing lien on the item.

If you would like to learn more about protecting your real estate and personal property, just call or email us for more information on the wisdom of using Real Estate Trusts and Personal Property Trusts.