The Myth Behind Land Trusts

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If you've read some of my other newsletters, you've read about the very difficult topic of protecting a client's personal residence. In my recent newsletters, I discussed the pros and cons of using **Qualified Personal Residence Trusts** (QPRTs); **Equity stripping and the 1% CFA mortgage**, **Limited Liability Companies and Intentionally Defective Grantor Trusts (IDGTs).** If you would like read the newsletters I did on these topics or would like a free PowerPoint presentation on the 1% CFA mortgage, please e-mail info@thewpi.org**.**

What prompted this newsletter are some of the responses I received from many readers who wanted to know why I did not discuss "Land Trusts" as a viable tool to protect not only the personal residence, but also any other real estate owned by a client.

What is a Land Trust?

Simply put, a land trust is a "revocable*" living trust with unique features when it comes to "hiding" the true owner of property in the trust. (*Land trusts can also be irrevocable trusts which would provide terrific asset protection due to the fact that the client no longer owns the property. Clients use land trusts to keep the property in their possession and hide them not to give assets irrevocably out of their estate (which may have gift and income tax consequences)).

If you've read my newsletters for any amount of time, you'll know that I get **disgusted** when I hear "asset protection" advisors tell clients that a good way to protect assets is by "hiding" them. There is NO legal way to "hide" assets. Having said that, land trusts many times are sold on this very concept.

Because asset protection is such an important topic today, marketers have picked up on this and are heavily marketing land trusts as asset protection tools. Why? To generate legal/administration fees. The problem is that a client or advisor reads that land trusts can be an affective asset protection tool and blindly jumps in to use them not knowing that there is no real asset protection provided.

What's the problem?

As stated above, a land trust is a "revocable" trust. Asset protection 101 is that revocable trusts provide NO asset protection from creditors. For example: If Dr. Smith has a Christmas party at his house where he serves alcohol where someone drinks too much and drives home and gets into a terrible car accident killing three people in another car, Dr. Smith is going to be sued. As a general statement, ANY assets in his own name or ANY assets in a "revocable" living trust will be at risk to the lawsuit that will ensure.

The sale's pitch

The sale's pitch with land trusts is that everyone should have their real estate in a land trust because when a plaintiff suing you (or thinking of suing you) does a search to find out what assets you own, they will not be able to "find" the assets you own in a land trust because they are affectively "hidden."

I found one web-site which gave an example of a client getting in a car wreck where the client was sued for $3,000,000. The client had $1,000,000 of auto insurance and because the client had his house in a "land trust," the plaintiff's lawyer was not able to find the house and therefore, settled for the $1,000,000 of insurance coverage instead of going after $3,000,000 in assets.

The above example is **absolutely absurd** and one of the reasons I'm moved to write this newsletter. Remember that I had several people e-mail me and basically tell me that they thought land trusts would "asset protect" their homes. Land trusts technically provide NO asset protection.

Hiding Assets

Land trusts only temporarily hide your assets so that IF a personal injury attorney does a search to find your assets, the attorney will not be able to do so from an initial cursory search. In the car crash case, the client is going to be sued and the assets owned by the client will be found.

Isn't a land trust better than nothing? I suppose. If having real estate in a land trust will help you sleep at night, than use one IF and ONLY IF the land trust is coupled with other asset protection tools such as Limited Liability Companies, Family Limited Partnerships, etc. The problem with the way land trusts are pitched is that they give the client a false sense of security that the land trust will "protect" the assets in the trust. Again, land trusts provide NO asset protection from creditors.

You need to understand that in the "real world" what will happen with a lawsuit is that a personal injury attorney will file suit and then take the deposition of the person being sued. At that deposition, the attorney will simply ask the client to list off of their assets. While it may be premature and objectionable, in a deposition the question will be answered, the defendant will have to disclose assets in a land trust and the objection will be noted. Again, there is no legal way to hide assets.

Conclusion

In my opinion, land trusts are not very useful when it comes to "asset protection." If you use one, make sure the asset(s) being transferred to the trust are already owned by a separate entity which provides "real" asset protection. The bottom line is that land trusts do not protect assets notwithstanding what the marketers of the topic will tell you.