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# Disclaimer

- Not your lawyer
- Not your CPA / tax adviser
- Don't rely on what is said here as tax or legal advice particular to your situation

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Let's Get a Feel  
of the Room

RAISE YOUR HAND IF...

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## Where we're going – Land Trusts



- History of land trusts and what they are
- Legal vs. Equitable Title
- The players
  - Trustee
  - Beneficiary
  - Holder of the Power of Direction
- The Documents
  - Deed
  - Trust Agreement
- Advantages & Disadvantages

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## History and What they Are

- Agency type relationship for holding property
- Started in Illinois
  - Case Law
- Came to Florida as a statute passed by the legislature
  - Florida Statute 689.071 and 689.073
  - Amended several times since early 1990's
- Makes it clear that legal and equitable title is all held by the trustee; beneficiary just has a personal property interest
  - (unless the trust agreement says otherwise)



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# Legal vs. Equitable Title

- Legal Title

<p>Prepared By and Return To: Consumer Title &amp; Escrow Services, Inc. 12425 28th St. N, Ste 302 St. Petersburg, FL 33716</p> <p>File No. <del>00000000</del> 6508</p> <p>Property Appraiser's Parcel I.D. (folio Number(s)) <del>094365/0200</del></p> <p>Price: 54,000.00 Doc: 378.00</p>	<p><b>SPECIAL WARRANTY DEED</b></p> <p>THIS SPECIAL WARRANTY DEED made this <u>16<sup>th</sup></u> day of <u>June</u>, 2011, by Federal Home Loan Mortgage Corporation existing under the laws of The United States of America, and having its principal place of business at 5000 Plano Parkway, Carrollton, TX 25067, hereinafter called the grantor and Kay Kelly whose post office address is 5181 Mountain Road, Chambersburg, PA 17202, hereinafter called the grantee:</p> <p>(Wherever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representative and assigns of individuals, and the successors and assigns of corporations.)</p> <p>WITNESSETH: That the grantor, for and in consideration of the sum of \$ 10.00 and other valuable consideration, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, alien, remises, releases, conveys and confirms unto the grantee, all the certain land situated in Pinellas County, Florida, viz:</p> <p>Condominium Unit 2002, Building 20, MADISON OAKS, a Condominium, according to the Declaration of Condominium thereof as recorded in Official Records Book 15505, Page 737, as thereafter amended, and as per plat thereof recorded in Condominium Book 146, Page 1, as thereafter amended, of the public records of Pinellas County, Florida.</p> <p>TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in any wise appertaining.</p> <p>TO HAVE AND TO HOLD the same in fee simple forever.</p> <p>AND the grantor hereby covenants with said grantee that the grantor is lawfully seized of said land in fee simple, that the grantor has good right and lawful authority to sell and convey said land, and hereby warrants the title to said land and will defend the same against the lawful claims of all persons claiming by, through or under the said grantor.</p>
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# Legal vs. Equitable Title

- Equitable Title

- Power to:

- Lease
- Sell
- Encumber
- Convey
- Occupy
- Drill
- Build
- Use
- .....



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# The Players

- Trustee
  - Holds legal AND equitable
- The “face” of the property
- Signs everything
  - Leases
  - Permit Applications
  - Notices of Commencement
  - Deeds
  - Closing Documents



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# The Players

- Beneficiary
  - Only holds beneficial interest in trust
    - Usually considered personal property
    - Not real property
  - May be one or many in the trust



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## The Players

- Holder of the Power of Direction
  - May or may not be a beneficiary
  - It's the person who gives written direction to the trustee when action is needed
  - Trustee can rely on the holder's directions unless beneficiaries direct otherwise



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## The Documents

- Deed into the trustee
  - Trust name & date
  - Trustee name
  - Legal Description
  - Powers language
- Land Trust Agreement
  - Same info as deed
  - Details powers of trustee
  - Insurance requirements
  - Communication Requirements
- Beneficiary Agreement
  - Mini-partnership/JV agreement



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# Privacy Advantages



- Ownership of a property is not shown on the public record.
- Financial information related to buying or selling property is not disclosed.
- By selling your beneficial interest in the Trust rather than conveying the property by deed, transfer of the property is private.
- Property in the Trust is protected against judgments or liens (except RICO) against the beneficiaries or the trustee individually.

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# Privacy Advantages



- CAVEAT:
  - Privacy is NOT absolute
  - IRS knows (form 56)
  - Property appraiser knows limited info (form DR-430)
  - Anyone with a subpoena, judgment or court order *may* find out
    - Attorney-client privilege may protect disclosure
    - But post-judgment collections will get the judgment debtor's tax returns, then they'll know everything.
  - FINCEN/FBI knows
    - They see all the banking transactions
    - March 1, 2026 – New Entity Real Estate Reporting Rules

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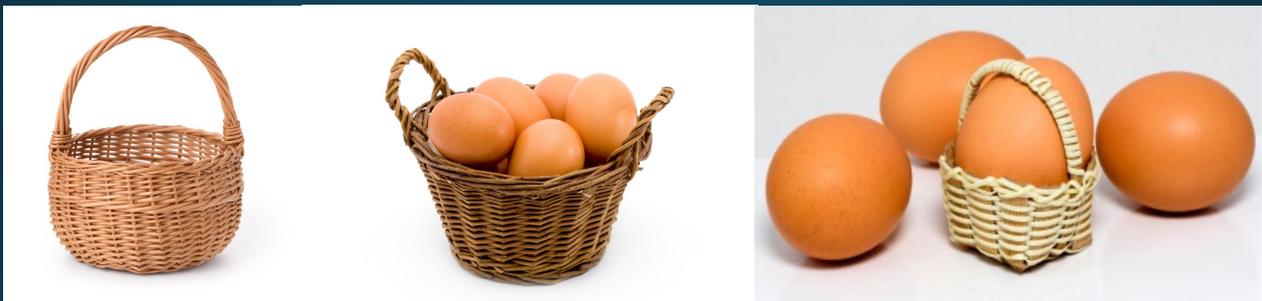
## Management Advantages



- Better control, particularly when several partners own a property.
- Easier management of rental properties when dealing with tenants as simply an agent of the Trust, rather than the landlord.
- Avoids the danger that one partner may force the other partner to sell or partition the property.
- Beneficiary agreements can be used to spell out in detail the beneficiaries' rights and responsibilities in the management of the property.

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## Asset Protection Advantages



- Liability Protection
  - Liens against the trustee of the trust attach only to that trust property.
  - Liens against the beneficiary do not attach to the trust property.
  - Liens against the beneficiaries' other properties do not attach to the property held in trust.
  - Title Note 31.06.02(8)

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# Financial Advantages



- Documentary Taxes
  - Property that is subject to a mortgage:
    - If moving into a land trust where the grantor is the beneficiary, will not pay any documentary taxes on the outstanding mortgage;
    - If moving into an LLC or other entity other than a land trust, *will* be subject to documentary taxes on the outstanding principal balance of the mortgage.

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# Financial Advantages



- Documentary Taxes  
Let's talk more about these

Calculating, when due, complexity, doesn't depend on the *type* of deed you're using. They're due, they're due, they're due! Pay them!  
3 year SOL

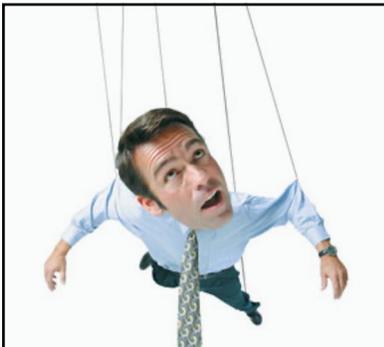
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## Financial Advantages



- Unrecorded “mortgages”
  - The Beneficiary can use the beneficial interest in the trust as collateral for a loan.
  - Need a note and then a security agreement, and you’re done.
  - Lender simply takes the beneficial interest in event of default

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## Control Disadvantages

- The Beneficiary, if a third-party trustee is used, must go through the third party to have all leases, contracts, permit applications, and other documents related to the party signed by the trustee.
- Prospective tenants distrust anyone other than the trustee
  - Reluctant to give rent or deposits directly to the beneficiary or even a management company unless the trustee gives the OK
- Governmental agencies
  - Trustee authorization required to
    - Pull construction permits
    - Activate utilities

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## Control Disadvantages

- Management Agreements (but not really)
  - Leasing liability increases
  - Destroys anonymity
  - Trustee shirking duties
- My personal philosophy on the issue and how we address the beneficiaries' control
  - Address changes for certain mailings
    - HOA
    - Tax Bills
    - Insurance
    - Utilities
    - Name stays the same, but the address where the mail goes, changes
  - Letters of authorization, proxies, and limited POA's
    - Utilities
    - HOA
    - Showing the property to prospective buyers/tenants



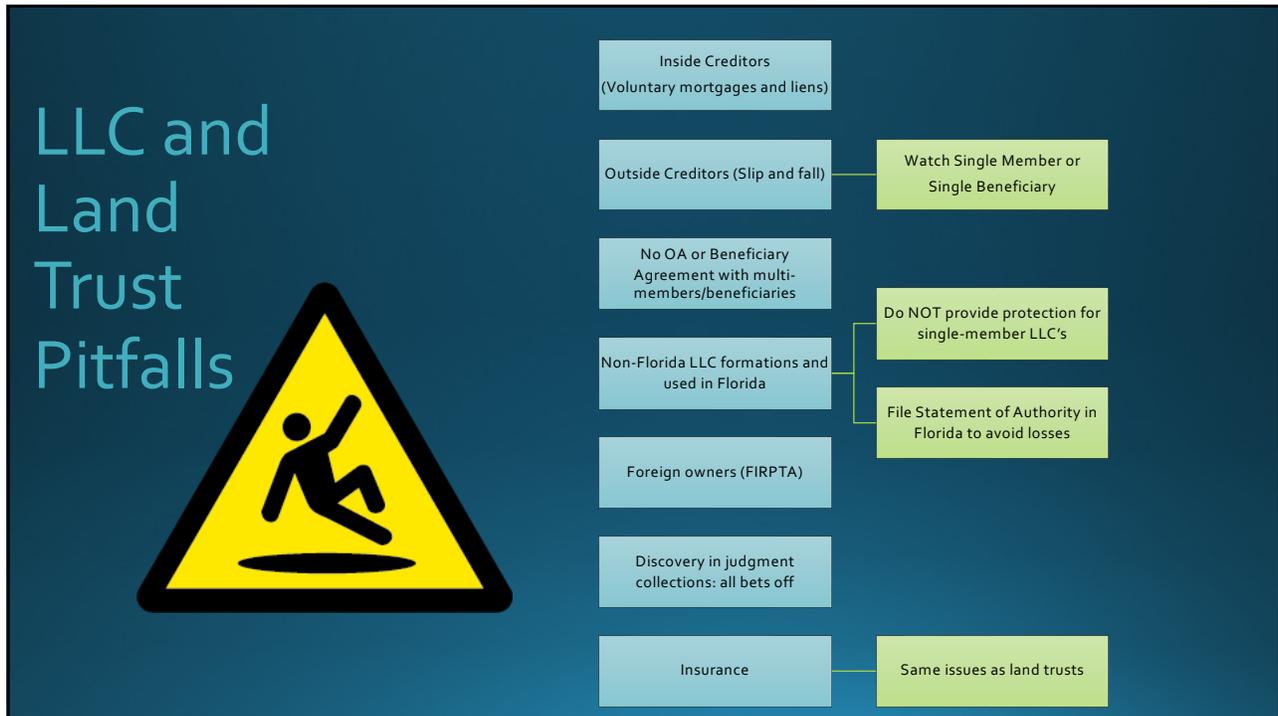
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## Insurance Disadvantages

- In Florida, homeowners' insurance companies will not provide liability coverage in a policy of insurance on a property held in a land trust or any other entity. This would require the trust to obtain a separate business premises liability policy for such protections.
- Exceptions: Insured vs. Additional Insured



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# FinCEN Reporting

**LLC's – No BOI reporting is not required**

- Still the law, constitutional, effective, not repealed
- Just not enforced

**Land Trusts – Not yet for real estate reports**

- Starting March 1, 2026, must file real estate reports
- Residential property purchased by a non-human (entity, LLC, trust...) without bank financing.
  - Seller financing, private mortgage, hard money don't count
- Must report the trustee, members/shareholders, managers, beneficiaries, property info, etc.

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## Bringing it together



- Use the LLC to “do your business”
  - Buying/flipping
  - Wholesaling
  - Managing
  - Acting as trustee
- Use the land trust to hold title to real estate or mortgages for anonymity of ownership
- Use different LLC’s to be the beneficiary of the land trust
  - S-Corps for short-term holds
  - Pass-throughs for long-term holds
- Another LLC can be the trustee of the trust if you want to maintain control.
- Another LLC can be your “property manager” to collect rents from tenants
  - Doesn’t hold the rents long term, but may charge a fee for collection and disbursement as income
  - Distributes income to beneficiary LLC’s each month or quarterly
- Who gets sued?
  - The trustee as trustee of the trust
  - The property manager LLC

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*The End*

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## Contact info



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