

# THE EXETER EXCHANGE

The Newsletter for Customers of Exeter Fiduciary Services, LLC

Volume III Issue I

## Cultivating the Title Holding Trust



### *Overview*

#### **What exactly is a Title Holding Trust or Land Trust?**

The Title Holding Trust, often referred to as an Illinois Land Trust or simply a Land Trust, is a simple and inexpensive method for holding legal title to real estate or personal property. The Title Holding Trust is a fully revocable grantor trust designed specifically to acquire and hold real estate or personal property. It is very similar to a living trust, but has very important differences that provide some significant benefits that the standard living trust doesn't.

#### **How are Income Taxes Handled?**

The Title Holding Trust is a "pass-thru" entity and a "disregarded" entity for income tax purposes just like a standard living trust, so that all income, expenses and depreciation are passed thru and reported directly on the beneficiaries' income tax returns.

#### **Why Would I Use Title Holding Trust?**

Generally, the Title Holding Trust is used to buy, hold, manage and ultimately sell real estate or personal property on a confidential and private basis. It keeps your

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## 24 reasons to use a Title Holding Trust or Land Trust By William L. Exeter

**T**he Title Holding Trust or Land Trust is a device for acquiring, holding and selling real estate and/or personal property. It is a more desirable and advantageous property ownership structure than some of the more familiar forms in use today.

Title to real estate is held by the Trustee of the Title Holding Trust (Exeter Fiduciary Services, LLC) pursuant to a Title Holding Trust Agreement. The use and enjoyment of the property, or beneficial use, is retained by the beneficiary (owner) of the Title Holding Trust. Although the legal and equitable title to the real property and/or personal property is transferred to and held by the Trustee, the Trustee can act only upon the written authorization and direction of the beneficiary. The beneficiary retains complete control over, and use of, the real estate and/or personal property

held in the Title Holding Trust. All of the rights and conveniences of real estate ownership are retained by the beneficiary without the disadvantages of non-trust ownership. The reasons that you may want to use the Title Holding Trust to acquire, hold and dispose of real estate or personal property include:

**1. Confidentiality or Privacy of Ownership.** Confidentiality and privacy of ownership is without a doubt the most important benefit of the Title Holding Trust. Owners of real estate are entitled to just as much privacy as owners of stocks and bonds. Real estate ownership does not need to be, and should not be, a matter of public record. The Title Holding Trust provides an excellent method for acquiring, holding and disposing of real estate without revealing the true owner's identity. Title is simply transferred to or from the

Trustee upon the written authorization and direction of the beneficiary (owner).

The Title Holding Trust is particularly useful in landlord-tenant relationships where the landlord wants all tenant contact to be with the property manager and does not want the tenant to be able to

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## Tax implications with a Title Holding Trust

**T**he Title Holding Trust is a fully revocable grantor trust just like a living trust, and as such is a “pass-thru” entity so that all revenue, expenses and depreciation are passed thru and reported on the beneficiary’s own income tax return.

The Title Holding Trust is also considered a “disregarded entity” so that it is ignored or disregarded for income tax purposes. The real or personal property owned and held in the Title Holding Trust is treated as if owned directly by the beneficiaries of the trust for income tax purposes.

The Title Holding Trust does not file a separate income return and does not obtain its own taxpayer ID number. The beneficiaries’ taxpayer ID number would be used.

Taxpayers who own and hold title to their primary residence in a Title Holding Trust will still qualify for the \$250,000 or \$500,000 tax-free exclusion under Section 121 of the Internal Revenue Code upon the sale of their home. Likewise, investors who acquire and hold rental or investment property or property used in their businesses in a Title Holding Trust will still qualify for 1031 tax deferred exchange treatment under Section 1031 of the Internal Revenue Code when they sell and acquire replacement property through a 1031 exchange. ☒

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ownership out of the public records. There are many other reasons that you might want to use the Title Holding Trust (see accompanying article on benefits of the Title Holding Trust).

**Who Can Set-up a Title Holding Trust?** Title Holding Trusts can be set-up by individuals, multiple co-owners, general partnerships, limited partnerships, other trusts, other trustees or trust services providers such as out-of-state trust companies, limited liability companies, corporations or any other type of business entity.

**Who Serves as Trustee of the Title Holding Trust?** Exeter Fiduciary Services, LLC serves as Trustee of your Title Holding Trust. Exeter Fiduciary Services, LLC is a private, professional fiduciary services company providing specialty trust services to real estate owners, and is an affiliate of Exeter 1031 Exchange Services, LLC.

**Who Controls the Title Holding Trust?** The Beneficiary(ies) own and control the Title Holding Trust, and retain all of the rights and benefits and burdens of ownership over the real property held in the trust. The Trustee can not act without written authorization from the Beneficiaries of the trust.

**Who Owns the Real Estate or Personal Property?** Exeter Fiduciary Services, LLC owns and holds the legal title to the real property or personal property under its name in its fiduciary capacity as Trustee of the trust. Public records would reflect the ownership of the real estate as Exeter Fiduciary Services, LLC, as Trustee for, THT No. XX XXXX.

**Power of Direction:** The Beneficiary(ies) generally retain the power of direction over the trust unless they choose to delegate the power of direction to another individual or entity. The Trustee merely holds legal title to the real property or personal property subject to the direction of the Beneficiary(ies). ☒



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## 24 reasons: a useful device to buy, hold or sell *Continued from Page 1*

locate the true owner (landlord).

Anonymity may also be desirable in real estate negotiations where knowledge of true identities might otherwise hinder or complicate the transaction. For example, Walt Disney acquired all of his Florida property through a land trust before anyone knew what he had accomplished.

**2. Legal and Equitable Title.** The legal and equitable title in the property is conveyed to and held in the name of Exeter Fiduciary Services, LLC, as Trustee of the Title Holding Trust so that the real owner's name does not appear on any public record.

**3. Beneficial Interest is Personal Property.** Although the legal and equitable title to the real estate is transferred to the Trustee, the beneficial interest in the Title Holding Trust is retained by the beneficiary (owner).

The beneficial interest is considered to be personal property and not an interest in real property. This is because the beneficiary owns a beneficial interest in the Title Holding Trust and not a direct interest in real property. The Trustee owns and holds the interest in the real estate.

Many of the other benefits and advantages of the Title Holding Trust are due to the fact that the beneficiary's interest is considered personal property and not real property.

**4. Avoids Probate.** Real estate is generally subject to probate upon the death of the owner, unless the real estate is held in joint tenancy. However, when property is held in a trust, such as a Title Holding Trust, probate is not necessary to pass title since the Title Holding Trust Agreement provides for succession of ownership upon the death of the beneficiary. For example, a woman may create a Title Holding Trust and name herself as the beneficiary. Upon her death, the property will vest in her sister as her named successor beneficiary. Thus real estate may be passed at death from one person to another without the need for probate.

**5. Ancillary Probate (Non-Resident Ownership).** Owners of real estate who live in another state (i.e. are residents of another state) will generally be subject to probate in the state where the property is

located when they die. This is often referred to as ancillary probate. However, ancillary probate can be avoided by holding the real estate in a Title Holding Trust or Land Trust because the interest in the Title Holding Trust or Land Trust is personal property and not real property.

In addition, real property can be held in a Title Holding Trust for the benefit of another trust domiciled in another state. The Title Holding Trust works in conjunction with an existing trust and estate plan. This also assists out-of-state Trustees that



are not permitted to hold real estate located in other states.

**6. Succession of Ownership.** The beneficiary generally names one or more successor beneficiary(ies). The successor beneficiaries become the primary beneficiaries upon the death of the current beneficiary.

This can be especially useful for providing for one's children and grandchildren. The successor beneficiaries will have the right to control and use the property immediately after death since the Title Holding Trust avoids probate.

**7. Estate Planning Benefits.** The beneficiary can name and provide for one or more successor beneficiary(ies) today without actually transferring legal title of the real estate to them now. The beneficiary retains complete control over, and use of, the property. The successor beneficiary(ies) can easily be changed at any time by completing and executing a simple change of beneficiary form.

**8. Easy Integration with Estate Plan.** The Title Holding Trust can easily be integrated into the beneficiary's (owner's) existing estate plan or other asset protection strategy. The Title Holding Trust would

name the existing living trust or other asset protection entity as the beneficiary of the Title Holding Trust.

**9. Ease of Making a Gift.** Property held in a Title Holding Trust can be easily gifted to children, grandchildren or other parties by completing and executing an assignment of all or a portion of the beneficial interest in the Title Holding Trust. No recorded deed is required, making partial transfers exceptionally easy.

**10. Ease of Transferring or Financing Property.** Real estate owners must sign all of the necessary legal, financing and closing documents each time real estate is acquired, refinanced or sold. This burden can be eliminated by acquiring and holding real estate in a Title Holding Trust.

Only the signature of the Trustee would be required when real estate is held in a Title Holding Trust. The Title Holding Trust can be an especially useful tool when there are multiple beneficiaries (owners) or multiple properties being acquired and held. For example, a large commercial property is owned by ten (10) investors. The ten (10) investors decide to sell the property. Only the Trustee would have to sign all of the transaction documents instead of the ten (10) investors.

**11. Partial Distribution of Property.** It is not necessary to sign and record a deed or execute a real estate contract to transfer or convey real property to another party once it is transferred into and held in a Title Holding Trust. The beneficiary may decide to transfer all or a portion of his or her beneficial interest to whomever he or she chooses by easily assigning all or a portion of his or her beneficial interest in the Title Holding Trust.

The assignment of a beneficial interest in the Title Holding Trust is considered a valid transfer and conveyance of title to the recipient who becomes a beneficiary (owner) of the Title Holding Trust.

**12. Protection Against Liens or Judgments.** Liens or judgments against a beneficiary can not affect the real estate held in a Title Holding Trust because the beneficiary does not own the real estate.

The beneficiary owns a beneficial interest in the Title Holding Trust, which

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## 24 reasons: adding up the advantages *Continued from Page 3*

is personal property rather than real property. This can be particularly important when one of the beneficiaries in a Title Holding Trust may be prone to litigation, liens or judgments.

The Title Holding Trust protects the other beneficiaries in the same Title Holding Trust from these attachments. The real estate can still be sold if desired because the liens do not affect the title to the property. The liens or judgments would however attach to the beneficial interest in the Title Holding Trust belonging to the beneficiary whom the liens or judgments were filed against.

**13. Avoidance of Clouds on Title.** This is a very real concern when multiple investors acquire real estate together. They may be needlessly exposing the real estate to potential risks, liability and litigation from one or more of the owners if they hold title to the real estate in their individual names or entity names (i.e. as tenants-in-common). The individual investors can be prone to untimely deaths, divorces, bankruptcies, litigation, settlements, judgments, liens, tax liens, and more, which will affect the legal title to the real property.

However, multiple investors can protect the subject real estate by acquiring and holding it in a Title Holding Trust. The individual investors do not own real estate when property is held in a Title Holding Trust. They own a beneficial interest in the Title Holding Trust, which is considered to be personal property rather than real property. Therefore, the individual investors' legal problems can not affect the real property and harm their fellow investors. The legal problems can only affect their individual beneficial interest in the Title Holding Trust.

Investors can protect themselves from clouds on title by using a limited partnership, limited liability company or corporation. However, they lose the confidentiality and privacy of ownership with the formation of those entities through the Secretary of State's office.

**14. No Partition Action.** There is always the possibility that disagreements will erupt over the management of real property whenever two or more investors own real estate together. Either investor has the right to sue under a partition action when the disagreement cannot be resolved. The partition action forces the sale of the real

estate and divides the proceeds between the owners.

Real estate held in a Title Holding Trust can not be subject to a partition action because the beneficiaries do not own the real estate. The beneficiaries own a beneficial interest in the Title Holding Trust, which is personal property as opposed to real property.

**15. Multiple Beneficiaries (Owners).** The Title Holding Trust is particularly helpful in conveying or transferring ownership in property when there is more than one beneficiary since title to the real property is held in the name of the Trustee. For example, four children may have inherited their parents' property. In order to facili-



tate the sale of the property, it can be transferred into a Title Holding Trust. Thus, only the Trustee need execute the necessary transaction documents to complete a sale or refinance of the subject real property.

**16. No 1099-S reporting.** Assignments of beneficial interests in a Title Holding Trust do not require any 1099-S reporting.

**17. No Registered Agent.** A registered agent for service of process is not required for a Title Holding Trust unlike with a corporation or limited liability company.

**18. Pass-Thru Entity and Disregarded Entity.** The Title Holding Trust is a fully revocable grantor trust, which is therefore considered a pass-thru entity and a disregarded entity.

A separate Federal taxpayer identification number is not required for the Title Holding Trust. There are no separate income tax returns or other filings required when property is held in a Title Holding Trust. Taxable transactions are

reported directly on the beneficiaries' own income tax returns.

The assignment of a beneficial interest in the Title Holding Trust is considered a valid conveyance of title for income tax purposes and will also qualify for tax-deferred exchange treatment under Section 1031 of the Internal Revenue Code.


**19. Trustee Has No Personal Liability.** Exeter Fiduciary Services, LLC has no personal liability as Trustee of the Title Holding Trust.

**20. Cost Efficient.** Title Holding Trusts are much more cost effective compared to other forms of real estate ownership. There are no annual filing fees, no tax return preparation fees, no minimum annual taxes due, no Secretary of State filing fees and no registered representative costs. There is only the annual Trustee fee.

**21. Transactions are Private.** The terms and conditions of any transaction remain confidential and private. Any recorded documents are in the name of the Trustee and are signed by the Trustee.

**22. Saves on Title Insurance Premiums.** The Trustee of the Title Holding Trust is the insured party and remains the same before and after any transfer of beneficial interests. Therefore, there is no need to obtain costly title insurance endorsements when beneficial interests are transferred.

**23. Great Negotiating Advantage.** Real estate investors can acquire real property without tipping off sellers or competitors. (Walt Disney acquired all of the land in Florida through a land trust prior to construction of Disney World. This way no one was able to take advantage of Walt Disney by inflating prices.)

**24. Collateral for Financing.** The beneficiary's interest in a Title Holding Trust can be used as collateral for bank loans. The beneficial interest may be pledged as collateral without the additional need and expense of obtaining a mortgage. The beneficial interest may be pledged as collateral even where there is an existing mortgage against the real estate. 

*William L. Exeter is President and Chief Executive Officer of Exeter Fiduciary Services, LLC*