



REI Mastery U



**GETTING
STARTED**

**THE REAL ESTATE
TRUST**

**A GUIDE
TO USING
REAL ESTATE
TRUSTS**

**JEFFERY S.
BREGLIO**

GETTING STARTED

in

THE REAL ESTATE TRUST

COPYRIGHT © 2019, All rights reserved
REI MASTERY U, LLC
www.REImasteryU.com
info@reimasteryu.com

This eBook is for educational and informational purposes only. It is not meant as legal, tax, financial or investment advice. Please seek the counsel of your own independent advisors before making any investment decision.

PRELIMINARY NOTES

Thanks for taking some time to read through this Getting Started eBook. We created this eBook as an introduction to the real estate trust. This is also called an asset holding trust (which is what I call it) or a “land” trust. As you probably have seen, the term “land” trust is used ubiquitously in real estate investing circles. But only a few states actually have a true “land” trust. In all other states, the trust is a different kind of document and works differently.

If you need additional information on these kinds of trust, check out “The 3 Trusts Used in Real Estate” video on our website, as well as other great content in our Library and webinars. See our website for more information.

Happy Investing!

Jeff

The Asset Holding Trust

This first section gives you a background on trusts generally and what has been called a “Land” Trust. This is a very important section to read if you do not live in a Land Trust state, which includes most states.

1. First, what is a Trust?

A trust is a legal document that can be comparable to a business entity (LLCs, partnerships, corporations) in many respects. One big difference is that a trust is NOT registered with the state like businesses are. This means that the trust document can be a totally private document. This is why it’s a common tool for real estate investors looking for privacy.

A trust must be formed correctly (like all business entities) through a written document. This trust document can then act similarly to a business. It can be a party to a contract—like being the named buyer on a real estate purchase contract—or hold title to real estate or other assets. The trust can also be sued like any other business, which leads us to the second big difference.

The second big difference between a trust and a business entity is that the trust does **NOT** provide any liability protection for the owners of the trust. Remember, we form business entities to protect the owners from liability the business has. A trust does not do this. So, for example, if a trust owns a rental property and there is a slip and fall, the plaintiffs will sue the owner of the property, being the trust. Since the trust doesn’t provide protection, the owners of that trust are directly liable for the damages. This is why we always recommend using a protective business entity in conjunction with the trust! We will explain more about this below.

So, a trust is like a “private” business entity. There are other differences that are also important. But this is a good way to start our discussion.

2. Is this like a family living trust?

No, not really. What we’re talking about here is not a family living trust. Although, it’s similar in structure. A family living trust is an estate-planning tool to hold family assets and allocate them when the Grantors (the person(s) that set up the trust) die. These trust are a lot bigger and more complicated as they cover a number of situations and types of assets that the Asset Holding Trust doesn’t need to bother with.

But, like we said, it is similar in structure. There are Grantors, Trustees and Beneficiaries. Those are the same. But the trust document for the Asset Holding trust is very different and serves a different purpose.

Every family (especially those that own real estate!) should also have a family living trust

established as part of their overall asset and family protection strategy. Please let us know if this is something you also need.

3. What is the structure of the Trust?

Most contracts have two people involved. Think of a real estate purchase contract. There is a buyer and a seller. And the two of them negotiate the terms and sign the contract. A trust, however, has THREE parties. It's kind of like a contract with a middleman (called the Trustee). Here are the three parties involved.

1. **Grantor**: This is the person that creates the trust, names the Trustee and Beneficiaries, puts assets inside the trust (we'll explain this later), controls what the Trustee does, and has the power to revoke (terminate) the trust. The Grantor is usually considered the current "owner" of the trust because they have the power to take assets back out. (This will vary a bit in the Asset Holding Trust.) But, while in the trust, those assets are held, technically, by the Trustee for the Beneficiaries. You may also see the words "Settlor" or "Trustor." These terms are the same as "Grantor."
2. **Trustee**: This is the middleman. Although it's better to think of the Trustee as the "manager" of the trust, like the manager of your LLC. The Trustee is responsible for signing documents and following the dictates of the trust and the Grantor/Beneficiaries. The Trustee also holds "legal" title to the assets. Legal title means the ability to buy, sell and control the asset. The Trustee is NOT an owner of the trust and does not enjoy any of the benefits of the assets. The Trustee only acts in a managerial position.
3. **Beneficiary**: This person receives the benefit of the trust. The Beneficiary owns the "equitable" title (or value) of the assets. This means they will enjoy the benefit of the assets at some future point in time. In a family living trust, the Beneficiaries become the "owners" when the Grantors die.

The Grantor puts an asset into the trust that is then "owned" by the trust and controlled by the Trustee for the benefit of the Beneficiary. The asset is said to be held "in trust" for the Beneficiary.

You need to understand these three roles as they are important—especially when it comes to understanding the Asset Holding Trust because it acts differently than most typical trusts. So, keep reading!

4. Are there other kinds of trusts?

Certainly. There are a number of different kinds of trusts, almost too many to form a list. Because trusts are, essentially, private contracts, you can create a trust for almost any purpose you want. For most of our real estate investor clients, the two types of trusts they will most likely encounter

are 1) the family living trust (for estate planning purposes) and 2) the “Land” trust (for privacy purposes). But, be careful of using that phrase “Land” Trust.

5. What, then, is a “Land” Trust?

Ah, this is a great question. Real estate investors almost certainly have heard of the “Land” Trust. The Land Trust is a specific type of trust used in real estate transactions. But, in order to be a “Land” Trust, the state in which you form and use the trust must have “Land” Trust laws on the books! This is something that many real estate investors do not understand.

States like Florida and Illinois have Land Trust statutes. These are laws created by the state legislatures that define exactly how to create a Land Trust and how they work. A few other states have adopted some of these laws through their court systems. In these states, it’s very clear what to do because there are laws that tell you what to do. Land Trusts work great in these states! And it’s from investors in these states that other investors have heard about the Land Trust.

However, in these states, the Land Trust is formed and works differently from most other kinds of trusts! This is very important! **If you don’t live in a Land Trust state, then you do not have a land trust and you cannot use a land trust. You will use something similar, but different.**

6. How are “Land” Trusts different?

This is an important section!

The biggest difference is that a true “Land” Trust does NOT have a Grantor. Remember what we said about the Grantor above! This is very odd because pretty much ALL other types of trusts must have a Grantor. The Grantor is the person that creates the trust and is also the one who can amend or even revoke the trust. In a Land Trust, the power to create, amend or revoke the trust rests with the beneficiaries (since there is no Grantor). This is defined by “Land” Trust laws. The law in those states allows a Beneficiary to create the trust.

This is why if you do not live in a Land Trust state, you cannot have a “Land” Trust! A “Land” Trust only has a Beneficiary and a Trustee (two parties). In all other states, you will have to have a Grantor (three parties)! So it won’t be a “Land” Trust, and it will act differently because of this.

The Land Trust is also sometimes called a “Beneficiary directed” trust because—since there is no Grantor—the beneficiaries control the trust. The beneficiaries tell the Trustee what to do, and have the power to amend or revoke the trust.

This distinction—who controls the trust—will become clearer and more important as you’ll see below.

If you do not live in a “Land” Trust state, then what you are really using is a standard, inter-vivos

grantor trust that has been modified to accomplish much of the same goals as the “Land” Trust.

7. What is an Inter-Vivos Grantor Trust?

Inter-vivos is a Latin term for “among the living.” It is your standard trust where a Grantor, who is living, creates the trust agreement, appoints a living Trustee to manage the trust for the benefit of the living Beneficiaries. The Grantor is the controller of the trust: defines the terms, appoints and directs the Trustee, names the beneficiaries, and has the power to amend or completely rescind the trust. Your typical family living trust is an inter-vivos grantor trust, as are most other types of trusts. The power to change and cancel the trust is an important power.

Keep this power in mind as you continue reading this eBook!

8. What is an Asset Holding Trust, then?

An Asset Holding Trust (or Real Estate Trust or Property Trust) is simply what we call an inter-vivos trust that has been modified in such a way as to replicate some of the benefits of the “Land” Trust. An Asset Holding Trust has the same ability to contract (be the named buyer or seller on a purchase contract), hold real estate and other assets, and even be sued.

But, again, the one key difference is who has the power to control and revoke (terminate) the trust. Remember, a true “Land” Trust does not have a Grantor, just a Beneficiary. And the Beneficiary has the power to control the trust. In an inter-vivos trust, that power rests with the Grantor. And this can cause some issues!

9. How has the Asset Holding Trust been modified?

The big difference between an Asset Holding Trust and other inter-vivos trusts is that the power to control and revoke the trust has been transferred to the beneficiaries. So, like the “Land” Trust, it is directed by the beneficiaries. But, unlike the “Land” Trust, there is still a Grantor named on the trust document!

This is the issue we just mentioned: Who now has the power to revoke the trust? The Grantor or the Beneficiary.

As we’ve stated, in states without “Land” Trust statutes, the law requires there be a Grantor. Normally, when the Grantor gives up the power to amend or revoke the trust, the trust becomes IRREVOCABLE! But this is not what we want to create for a number of reasons. What an Asset Holding Trust does is transfer the power to amend and revoke to the Beneficiaries. So the trust itself isn’t irrevocable, but the Grantor no longer has that power, which makes it “look” like it might be irrevocable.

It is unclear how courts will react to this. Since the trust isn’t irrevocable, can the Grantor

still change and terminate the trust even when that power has been transferred to the beneficiaries?

If the same person is the Grantor and the Beneficiary, this isn't a big deal. So the Asset Holding Trust works well to hold title to real estate for your own purposes.

However, this can become an issue if you use the Asset Holding Trust for wholesaling purposes (we will describe this issue below). This is also why we call it an Asset Holding Trust. If you are using the trust yourself for privacy purposes, it works great. If you are using it to wholesale, there can be issues, which we will describe below in the Wholesaling Section.

10. Can you summarize what you just said?

Of course.

Unless you live in a state that authorizes "Land" Trusts, you do NOT have a Land Trust and shouldn't call it that.

What you have is a simple trust that is designed to provide privacy in holding real estate. That's why we call it an Asset Holding Trust.

Many real estate investors use the Asset Holding Trust for other purposes, like wholesaling, and we will describe that below. But let's start with the main reason: Privately Holding Real Estate.

Using The Asset Holding Trust

Now that you have a better understanding of what the Asset Holding Trust is, let's talk about how you use the trust. From here on out, we will call the Asset Holding Trust the "AHT."

1. First, why is privacy important?

To own real estate requires a deed recorded at the county recorder's office. This recording is public information. Many investors don't want their name—or more likely their LLC!—showing up as owning a large number of properties. This creates a large target for plaintiff lawyers to shoot at. If a person incurs liability (for any reason), the plaintiff's lawyer will first search for assets to determine if the person is even able to pay out a judgment. If that lawyer finds a lot of real estate, they will be more likely to file a lawsuit.

If an investor titles everything in his LLC, then once a lawyer finds one property that LLC owns, she can find all other real estate owned by that LLC very quickly. The attorney can then look up the LLC at the state and find out who owns it. (There are some ways to keep even LLCs private, but that can be very cumbersome.) A Series LLC doesn't help alleviate this either because the name of the LLC is contained in the name of each series. So the LLC entity is great for asset protection but not so great for privacy.

Another benefit is privacy from tenants. Most investors that use the AHT are holding rentals. They want to create a buffer between them as the owner of the property and who manages it. This is also why they use manager-managed LLCs. Then—if they self-manage the property—they can simply say they are a Trustee of the AHT.

2. How does the AHT create this privacy?

As we mentioned above, the AHT (or any trust, really) is NOT recorded with any public entity, like the state division of corporations (for LLCs). So, the Grantor and the Beneficiaries are only named on the trust document, which is totally private. There is no way for anyone to find out who owns the trust unless you provide the trust document to them.

But what about the Trustee? The trust is the named owner of the property so there is obviously some public record. So the question really is, what is actually recorded on title?

The answer depends on the state you live in. Some states only require the name and date of the trust. The AHT works great in these states because even the Trustee is private. But other states require that the Trustee be named on the deed along with the name and date of the trust. For example:

John Doe, Trustee of the Main Street Property Trust dated January 1, 2018.

So, in these states, the Trustee's name is public information. If you live in one of these states (Utah is one of them), you will need to take this into account. If you're looking for privacy, you don't want to be the Trustee.

3. How do I create an AHT?

The first step is get with a lawyer who understands what an AHT is and have them create it for you. Some attorneys (our office included) can provide a form document for you to create your own trusts. But either way, you need the trust document. The next step is simply filling out the form. Here are the things you will need to know:

Name of the Trust

Date of the Trust

Grantor

Trustee

Beneficiary

That's it. But we should discuss each of those in more detail because how the trust works depends on how you fill in those blanks.

NOTE: There are rules that prohibit the same person from being the sole Trustee and sole Beneficiary! Please remember this! We will repeat it.

4. What do I call the trust?

Anything you want. Because it's not filed with the state, you don't even need to check if a name is available. Typically, investors name the trust something along the lines of the property address. This helps them keep their trusts clear as to which property it owns.

The only requirements are that the name start with the word "The" and end with the word "Trust." You cannot use words that might be confusing, like "association" or "company" or "corporation" and etc. because these words are associated with those kinds of entities. We also recommend not being misleading by naming it something that might refer to another business or person. Use the property address! Some examples:

The Main Street Property Trust

The 357 State Street Trust

The 345 W 600 South Trust

The Westside Duplex Trust

The Blue Bungalow Trust

Get the idea?

Can I create two trusts with the same name? Yes, and they can be distinguished by the date of the trust. But you don't want to. The whole point of using the trust is to keep people from finding other properties, so why be confusing.

5. What do I date the trust?

Ah, here is some important information. The trust has to be “created” or “dated”, prior to putting the asset into it. So it depends on what asset you're putting in.

If you currently own the property, then you can use today's date and transfer the property into it. This is because you already have the asset (the home) that you're putting into the trust.

If you are making offers to buy a house, then most clients don't want to bother creating a trust for every offer. They make the offer in the name of the trust—or better yet, the name of the Trustee. If it's accepted then they actually create the trust. BUT, they will date the trust prior to the signing of the purchase contract. If the trust didn't exist at the time of the signing, then there is an argument that the contract isn't valid because the buyer wasn't in existence. So this is important. The asset you are putting into the trust is the purchase contract! The trust is the named buyer and therefore the trust owns the right to buy the house. So the trust has to be created prior to putting the contract into it.

Signatures should also be dated accordingly.

6. Who do I name as the Grantor?

Remember that the Grantor is the person (or entity, like an LLC) that creates the trust and puts the asset into it. So, again, think about the asset you are putting in!

If you currently own a property (in your name or in an entity) and want to transfer it to a trust, then whoever owns that property will create the trust and be the Grantor.

If you're looking to buy a property, then you, or your entity that would normally buy this property, would create the trust and be the Grantor.

As we said above, you should ALWAYS use an entity in conjunction with the AHT because the trust doesn't have any asset protection. So we recommend both the Grantor and the Beneficiary be an entity. There are also income/tax considerations, especially if you use the trust to wholesale.

Therefore, if you are buying this property to hold as a rental, your entity that normally holds your rentals would be the Grantor. If you are buying this property to flip, then your entity that does flips would be the Grantor. If you are wholesaling this property, then your entity that does your wholesaling would be the Grantor.

7. Who do I name as the Trustee?

Anyone (or even an entity) can be the Trustee. This is mostly important for privacy purposes. If you're looking for privacy then you do not want to name yourself or an entity that you own as the Trustee. This is even truer in states that require the name of the Trustee be on the deed (like Utah). So you will want to choose a business partner, family member (with different last name) or possibly use a commercial fiduciary to be the Trustee.

Remember our note that the sole Trustee and the sole Beneficiary cannot be the same person or entity!

Also remember, that it is the Trustee that is the "manager" of the trust. The Trustee will sign the purchase contract, closing documents, the deed, turn on utilities and anything else on behalf of the trust. So you need to choose someone who is available and trustworthy for these things.

8. What is a commercial Trustee?

A commercial Trustee is a business that becomes the Trustee on trusts. Banks, attorneys and other businesses often do this for family trusts (especially for wealthy clients). They can also do this on the AHT. Our office does provide this service for a fee.

9. Can I use Co-Trustees?

Yes. In fact, we recommend it. You can have a Co-Trustee that signs the deed (and thus appears on title) and the other Co-Trustee that actually manages the trust (deals with the property). In order to do this, your trust document must allow each Co-Trustee to act independently.

10. Can I swap out the Trustee after title is recorded?

Yes. It is quite common for all kinds of trust to change Trustees over time. The initial Trustee can sign the deed (and thus be on title) and then can give up their position and assign it to someone else who will then manage the asset.

This can create issues, however. Many people you deal with, like utility companies, will look up title to see who owns it. They will see the former Trustee and may not allow the current Trustee to do things until the new Trustee is listed on title.

NOTE: Remember, this transfer of the Trustee position, which we will discuss in more detail below, must be documented and those papers kept in a safe place! It is these documents that will give the Trustee the power to not only deal with the asset, but sell the asset later. If that document is lost, you will have to go back to the original Trustee.

11. What powers does that Trustee have?

The Trustee can do pretty much anything related to the asset(s) held in the trust, including the power to SELL the asset. So, whomever you choose needs to be trustworthy. The law does require the Trustee to act in the best interest of the beneficiaries and there is a legal fiduciary requirement. It can even be criminal for the Trustee to act outside their authority. But we still recommend someone you trust.

12. Who do I name as the Beneficiary?

As we defined above, the Beneficiary owns the “equitable” interest in the asset. For our purposes with the AHT, the Beneficiary is the owner of the trust. And that is a fine way to view it. So, whom you name as the Beneficiary should be the person or entity that would otherwise “own” the asset.

If the asset is a rental property, the Beneficiary should be your entity that would otherwise own the rental. If the asset is a flip property, then the Beneficiary should be the entity that would otherwise do your flip. If you’re wholesaling a contract, then the Beneficiary would be the entity that you do your wholesaling in.

NOTE: We’ve already mentioned that you should always use an entity in conjunction with the AHT. Please read our Limited Liability eBook to get more information on LLCs.

The Beneficiary can be the same as the Grantor (and usually is). But remember the rule about the “sole Trustee” not being the same as the “sole Beneficiary!”

13. Can I make changes in the parties to the AHT?

Yes and no. You cannot change the Grantor, and there’s really no reason to. But you can change out Trustees, Co-Trustees and the Beneficiary(ies). If you are simply creating an AHT to hold your own real estate, you probably won’t need to make any changes. You certainly will have to make changes if you use the AHT to wholesale. So, we will discuss making changes in the next section on wholesaling.

14. What other issues are there?

1. **Title insurance.** Many title companies and some underwriters (the company that issues the title insurance) will not insure transactions where an AHT is involved. This is due to a number of reasons we won’t get into here. But, you will need to find a title company that will insure your transaction. This can also cause issues when you are flipping a house. You buy the property in a trust just fine at your title company, but then when you turn around and sell it, your retail buyer goes to their own title company who will not insure it. You will need to be clear with your buyers that they may have to close at your title

company.

2. **Utilities and other third parties.** Many people do not understand trusts in general, and the AHT in particular. You may have to explain the trust to them. Or, they may require information on your Trustee (like social security number) before letting you turn on the water. These things can usually be overcome, but do present complications.
3. **Wholesaling.** The AHT does get complicated in wholesaling situations. If your buyer takes the trust to their attorney who doesn't understand them, they may not want to go forward with the deal. They may also try their own title company that doesn't insure them. Changing out the Trustees and Beneficiaries also complicates the paperwork.
4. **Grantor.** We mentioned this above. Because the AHT is NOT a "Land" trust (which doesn't have a Grantor), the Grantor exists as the Grantor on the trust forever. If you are keeping this trust, it doesn't matter. But if you are wholesaling it, you (the Grantor) will be attached to the trust for as long as the trust is around. Do you want to be named on a trust document that you no longer own? This would make your wholesale buyer nervous thinking you could revoke the trust and take the house back. This would be very difficult and contrary to the terms of the trust. But it can make people nervous.
5. **Bank Account.** Your AHT cannot get a bank account and you wouldn't want it to. So you will use the Beneficiary's bank account for all purposes.
6. **Taxation.** Your AHT is a pass-through entity to the Beneficiary. So everything the trust does gets reported on the Beneficiary's tax return.
7. **Third Party Property Management.** If you hire a third party property manager, then the trust will sign the property management agreement with them. You can have them write checks to the Beneficiary.

15. How do I deal with my tenants & leases when I use an AHT?

This is the case if you self-manage a property owned by the AHT. As a summary, the trust will own the house. That means the title will name the trust as the owner and be on public record. The Beneficiary of the trust (your holding LLC!) will own the trust. So for all intents and purposes, your LLC owns the property. The AHT that we create allows the Beneficiary to manage the property. So you can put your LLC as the landlord and manage it as if the LLC owned the house directly. **However**, we recommend that you put the trust as the landlord and you sign your lease as the Trustee. Then, you can write in the rent payment instructions to simply deposit checks into an account for the Beneficiary.

Wholesaling The Asset Holding Trust

This section will discuss making changes to the Beneficiary(ies) in order to assign the trust to someone else or to the Trustee(s) if you need to swap out that position. This is also the way you would wholesale. But you should have a solid understanding of wholesaling first. You should read our Wholesaling eBook to better understand the techniques of wholesaling. Using the AHT to wholesale is an advanced wholesaling technique. We recommend using a simpler form of wholesaling if possible. But, if you need to, then you can follow these instructions.

1. First, what is wholesaling?

Wholesaling is the real estate investment technique of assigning the right to buy a home on a purchase agreement to someone else. There are numerous ways to achieve this. Using a trust is just one of the methods. This eBook is NOT an instruction on how to wholesale generally, or by using trusts specifically. You can download and read our Wholesaling eBook as a start. But if you're inexperienced, you should work with someone who has experience to help you.

2. What is wholesaling by the AHT?

Using the AHT to wholesale is means by which you can assign the right to buy a house under contract to someone else without having to change the named buyer on the contract. This can be useful in situations where you are not allowed to assign the contract or not allowed to change the buyer on the contract. This occurs with contracts that are not assignable by their terms or with short sales and REOs where the banks will not allow you to do so.

3. If I am going to wholesale the AHT, how do I start?

The first step is to write a purchase contract where the buyer is either the name of the trust or the name of the Trustee. We recommend using the name of the Trustee as you then have more flexibility in what you call the trust. You should remember what we said above about dating the trust! If you go under contract, the entity with the right to buy the house is the TRUST. And if YOU own that trust, you can then sell—by assigning—that trust to another buyer. You do not need to make any changes to the purchase contract or get seller permission. The buyer doesn't change; only the person who owns the buyer does. You may have to provide the trust document to your sellers or to a bank.

NOTE: Please be aware of fraud. Fraud is a crime and you can be prosecuted or sued for fraud. Do not use a trust to commit fraud in any way. Many people have used trusts to hide identities or commit fraud, and this is why many other people, like title companies, banks, lenders, attorneys, etc., are wary of trusts!

4. What if the seller or my title co asks for the trust?

While the seller can ask for a copy of the trust document, you are not required to do so. However, this might make the seller uncomfortable since there is no way for them to verify the existence of the trust. In this situation, you can provide a Certificate of Trust. This is a notarized document verifying that the trust exists and who the trustee is, but it keeps the rest of the information private. You can provide this to a bank as well.

Title companies will need a copy of the trust in order to close. This is standard and you should provide it to them. They may not release it to any other party without your approval. Most title companies will also accept a Certificate of Trust.

5. What do you mean by assignment?

Remember above how we said that the real owner of an AHT is actually the Beneficiary. And we said the trust has the right to enforce the contract to buy the house. So, whomever you named as the initial Beneficiary owns the trust and therefore has the rights to buy the house. Ownership in a trust is called the “beneficial interest” just like ownership in an LLC is called “membership interest.” We also mentioned that if you are going to wholesale, that the Beneficiary should be the entity that you would otherwise wholesale in.

Since the Beneficiary owns the trust, the Beneficiary can sell its beneficial interest (ownership) in that trust to another person (or entity). Once that person owns the trust, then that person has the right to buy the house on the contract where the trust is the named buyer. In a sense, it’s really that easy. Your entity sells the beneficial interest to another entity.

The “sales price” of that transfer can be thought of as your assignment fee. That fee will then go to your Beneficiary-entity (and not the trust) since it sold its beneficial interest in the trust. There are various ways of collecting this sales price (fee) that you can learn in other wholesaling education, like our Wholesaling eBook.

6. How do I assign the beneficial interest?

You will need an “Assignment of Beneficial Interest” document. This is different than your trust document and you will need to get this from an attorney as well. It will list all the details of the trust and who the initial Beneficiary is. It will then list details about the “new” Beneficiary and the sales price (assignment fee) and other details about the transfer. Once filled out and signed, the transfer has taken place. That’s it.

You can have multiple initial beneficiaries. One can sell its interest while the other doesn’t. You can sell to each other.

NOTE: If you are using trust in this way, you should confirm with your title insurance company if there are any considerations with swapping out the Beneficiary and your title insurance.

NOTE: Remember that trusts are private contracts. You do not need to voluntarily disclose this Assignment to others. But, as with ALL your dealings, do NOT commit fraud! If someone asks if the Beneficiary has changed, you must be honest.

7. Can I assign the beneficial interest for other reasons?

YES. If you are holding an asset in the trust and need to change the Beneficiary to another one of your own entities you can swap beneficiaries. Perhaps because you were going to flip this house (with your flipping company as the Beneficiary) and now you are going to hold the house as a rental (with your hold entity as the Beneficiary). You can simply assign the beneficial interest in the same way—The Assignment of Beneficial Interest document. You most likely will not have an assignment fee, obviously. But you should check with a qualified CPA to understand any tax implications of changing ownership! This is like “selling” the house from one entity to another.

8. Can I sell a house by assigning the beneficial interest?

What we mean here is assigning the Trust AFTER the purchase of the home rather than before (a wholesale). Remember, the trust owns the house and the Beneficiary owns the trust. So, by selling the ownership in the trust, you are selling everything the trust owns—the house. However, this is an advanced way of transferring real estate. This avoids a closing and associated closing costs. But, as we mentioned above regarding the revocable nature of the AHT and that the Grantor is still around, it is risky. You should discuss all the legal ramifications of selling a house this way with an attorney and your title insurance agent. There will also certainly be tax implications. This is NOT a way to avoid taxes! It will be considered a sale of a home.

9. What about the Trustee?

Great question. First, you must understand signing authority. A trust (like any other entity) cannot sign anything. It’s not a human with hands. So, someone must sign on behalf of the trust. That authority rests with the Trustee. Second, to have a valid purchase contract only someone with signing authority can sign that contract. Thus, whoever signed the contract as the Trustee MUST be listed on the trust as a Trustee (or Co-Trustee). If you don’t do this, your purchase contract is invalid and can be canceled!

If the Trustee was you and you’ve assigned your beneficial interest in the trust, you no longer need any authority to act on behalf of the trust. In fact, your new Beneficiary will demand that you be removed from having that authority for protection.

To remove a Trustee or appoint a new Trustee, you will need a “Removal and Appointment of Trustee” document. Again, you will need to get this from an attorney. It’s rather simple to fill out and it will accomplish the goal of swapping out the job of Trustee.

NOTE: Remember, again, that the Trustee has the authority to sign on behalf of the trust. Your

title company will need this Appointment to prove who can sign the closing documents if a Trustee has been changed. The trust will have your name on the trust document, but you are no longer involved! This Appointment document will be required by your title company.

NOTE: Swapping out the Trustee can also alert others (like the seller) that maybe something has happened to the owner of the trust because the new Trustee (new buyer) will be different than the one who signed the contract.

10. Any final thoughts?

Using the Asset Holding Trust and wholesaling via the AHT are advanced real estate investment techniques. It's a great way to hold assets, provide privacy, and even wholesale deals. But, it does make things more complicated and requires attention to details, having good documents and keeping good records. You should be an experienced wholesaler and educated about trusts before attempting using the AHT.

Thanks for taking the time to read our Getting Started in The Real Estate Trust eBook!

You can reach us at:

www.REImasteryU.com

info@reimasteryu.com