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The Illinois Land Trust—Shroud with a Silver Lining?

On September 21, 1973 the Illinois General Assembly approved House Bill 1508 which became effective on October 1, 1973. The bill is intended to avert certain abuses brought about by the Illinois land trust device and provides:

whenever any trustee of a land trust, or any beneficiary or beneficiaries of a land trust make application to the State of Illinois or to any of its agencies or political subdivisions for any benefit, authorization, license or permit, relating to the land which is the subject of such trust, any interest therein, improvements thereto, or use thereof, such application shall identify each beneficiary of such land trust by name and address and define his interest therein.2

Such a disclosure requirement, although obviously limited in scope, evidences a desire on the part of the General Assembly to eliminate anonymity as an element of the beneficiary's interest in a land trust. Concomitantly, this enactment indicates generally a growing public disfavor with "secret land trusts." Recent newspaper articles,3 coupled with a virtual onslaught of legislative proposals in Springfield, illustrate the fact that Illinois land trusts represent to many a haven for the unscrupulous monied who seek financial refuge from public scrutiny.4 This image, created to a great extent by the news media and politicians who are often non-lawyers, calls for an inquiry into the role that the land trust plays in Illinois today—its favorable aspects and its potential for abuse.5

BACKGROUND

An excellent description of the Illinois land trust was put forth by

2. The statute further provides that false verification is subject to the penalty of perjury. Id. § 73.
the Illinois Appellate Court:

The land trust is a device by which the real estate is conveyed to a trustee under an arrangement reserving to the beneficiaries the full management and control of the property. The trustee executes deeds, mortgages or otherwise deals with the property at the written direction of the beneficiaries. The beneficiaries collect rents, improve and operate the property and exercise all rights of ownership other than holding or dealing with the legal title. The deed in trust conveys the realty to the trustee. Contemporaneously with the deed in trust, a trust agreement is executed. . . . The trustee is not required to “inquire into the propriety of any direction” received from the authorized persons. The trustee has no duties in respect to management or control of the property or to pay taxes, insurance or to be responsible for litigation. . . . The [trust] agreement forbids its recordation in the Recorder’s Office or elsewhere and forbids the trustee to disclose the name of any beneficiary. . . .

Unlike the trustee of an ordinary trust, the land trustee holds both legal and equitable title for the benefit of the trust beneficiary. The beneficiary has all the benefits of ownership without holding title to the realty. The resulting interest of the trust beneficiary is considered to be personal property only.

The Illinois land trust, as its name suggests, originated in Illinois as a product of the common law. It appears to have been used in real estate transactions in Cook County, Illinois as early as 1891 but it was not until 1957 that this form of trust became the subject matter of legislative consideration. Although slow in its development in downstate Illinois, the land trust is widely employed in the Chicago metropolitan area. It has been estimated that almost four out of every five parcels of real estate in Cook County (which consists of approximately 1,300,000 parcels of real estate) have been or are now being held in land trusts. The few states other than Illinois that recognize

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9. Hart v. Seymour, 147 Ill. 598, 35 N.E. 246 (1893), is credited with providing the judicial justification for the land trust. The court recognized that legal title to real property could be held in trust and that the nature of the trust was to be determined by the trust agreement alone. The court further held that by virtue of the trust agreement, the trust created was active and not in contravention of the Rule Against Perpetuities.
10. ILL. REV. STAT. ch. 77, § 18(b) (1973) (authorization of a corporate trustee's waiver of redemption).
11. 9 S. Olsen, The Cook County Recorder 1 (Sept. 1, 1972); Address by William
the validity of land trusts have done so by special legislation.\(^2\)

The major obstacle to the development of the Illinois land trust in other states is the Statute of Uses. The Statute of Uses executes trusts when one person is seised to the use of another.\(^3\) If the ministerial duties given to the trustee are not sufficient to support an active trust, the trust is dry, passive or executed and the beneficiaries have equitable title with no benefit from the supposed trust.\(^4\) This problem has been remedied by statute in several states.\(^5\) The Illinois Supreme Court, however, when first confronted with this problem\(^6\) held that the duties imposed upon the trustee of having the real property subdivided and platted, and the powers given to it to control, improve, use, sell, lease and mortgage the land made the trust active and therefore not executed by the Illinois Statute of Uses.\(^7\) Illinois case law now holds that either the duty to convey upon the direction of the beneficiary\(^8\) or the duty to conduct a sale upon the termination of B. Higginbotham, Assistant Vice-President, LaSalle National Bank, 27th Annual Trust Conference of the Illinois Bankers Association at Rockton, Illinois, April 24, 1964, in \textit{The Trust Bulletin} 3 (May 1964).

12. Four states have insured the validity of the land trust by statute:
  
  
  
  


15. \textit{See, e.g., Ind. Ann. Stat.} § 31-1413 (Supp. 1972) which provides:

If the trust property consists only of real property, and, under the terms of the trust,

(a) The beneficiary has the power to manage the trust property, including the power to direct the trustee to sell the property; and

(b) The trustee may sell the trust property only on direction by the beneficiary or other person or may sell it after a period of time stipulated in the terms of the trust in the absence of a direction; then [the Statute of Uses] shall not apply to defeat the trustee's title;


No trust relating to real estate shall fail, nor shall any use relating to real property be defeated because no beneficiaries are specified by name in the recorded deed of conveyance to the trustee or because no duties are imposed upon the trustee. The power conferred by any such instrument on a trustee to sell, lease, encumber or otherwise dispose of property therein described shall be effective and no person dealing with such a trustee shall be required to make inquiry as to the right of such trustee to act nor shall he be required to inquire as to the disposition of any proceeds.


18. Crow v. Crow, 348 Ill. 241, 245, 180 N.E. 877, 879 (1932); Chicago Title
the trust\textsuperscript{19} is sufficient to render the trust active.\textsuperscript{20} In a jurisdiction where the Statute of Uses is strictly construed and in the absence of a statute to the contrary, land trusts are not possible.\textsuperscript{21}

There are, of course, additional reasons for the slow development of land trusts. In downstate Illinois, unlike the Chicago metropolitan area, few city or farm properties are held in land trusts. This exiguous use is largely attributed to a lack of familiarity on the part of attorneys, trustees, and real estate owners with the many desirable features of the land trust arrangement.\textsuperscript{22} In other states, the absence of supportive case law is a great impediment to the widespread use of land trusts. In Texas, for example, some land trusts exist but generally there is a reluctance to employ them because of their uncertain validity.\textsuperscript{23} Another commonly recited rationale for the unpopular status of land trusts is that they tend to decrease the volume of business that accrues to attorneys, real estate brokers and title insurance companies. As a result, banks and trust companies do not publicize their many advantages.\textsuperscript{24} A final factor that is present in both downstate Illinois and other states is the conclusion that land trusts are used mostly for anti-social purposes.\textsuperscript{25}

The land trust has prospered in Illinois because of its numerous and diverse advantages. While the following discussion is by no means exhaustive, it is an attempt to point out the land trust's vital role in Illinois as a unique and indispensable syndication device. A primary advantage is ease of transferability. Many problems inherent in joint ownership of real property are avoided by the use of a land

\textsuperscript{20} A trust is commonly limited to twenty years thereby avoiding the Rule Against Perpetuities. If the trust agreement does not specify a precise term or if the term is longer than twenty-one years, and if contingent or vested remainder interests can succeed to any part of the beneficial interest, the rule may apply. See Hatfield, Perpetuities in Land Trusts, 40 ILL. L. REV. 84 (1945).
\textsuperscript{21} See, e.g., Janura v. Fencl, 261 Wis. 179, 52 N.W.2d 144 (1952).
\textsuperscript{25} See note 3 supra.
trust. Under the typical land trust agreement, only the trustee's signature is required to convey title to the property though the beneficial owners may be scattered throughout the country. The entire beneficial interest may be transferred by simple assignment that is recorded only on the books of the trustee.\textsuperscript{26} The interest of the beneficiaries may also be represented by certificates of ownership which are easily transferred without the complexities present in a conveyance of realty.\textsuperscript{27} Although the ownership of these certificates may change frequently, record title to the real property remains undisturbed.\textsuperscript{28} Similarly, the title of the land in trust will not be encumbered by the death, insanity or bankruptcy of one of the owners. In general, the legal nature of a land trust makes it quite useful in allowing large groups of people to own and deal with land as a single entity.

Another desirable feature of the land trust concerns judgment liens. A judgment rendered against a beneficiary does not create a lien against the real estate title held in the land trust.\textsuperscript{29} By statute in Illinois a judgment lien is a lien on the real estate of the person against whom it is rendered.\textsuperscript{30} Real estate, as defined in the statute, includes "lands, tenements, hereditaments and all legal and equitable rights therein and thereto."\textsuperscript{31} Since the beneficiary has no legal or equitable title in the real estate, judgments against him cannot attach and legal title to the trust corpus remains unencumbered. For this reason, a judgment against one of several beneficiaries will not restrict or impede the operation of trust property and the beneficial interests remain freely and readily transferable. As the beneficiary's interest is one of personal property, a judgment creditor may have a lien on the avails and proceeds of the land but not a lien on the real property itself.\textsuperscript{32}

Supplementary proceedings under Section 73 of the Illinois Civil Prac-

\textsuperscript{26} The assignability of beneficial interests is thoroughly discussed in Levine v. Pascal, 94 Ill. App. 2d 43, 236 N.E.2d 425 (1968).

\textsuperscript{27} Certificates of beneficial interest became popular in the latter days of the Depression when many properties were emerging from bond issue foreclosures and the certificates were issued in exchange for the bonds, the title to the property being taken in the land trust. See H. KENOE, LAND TRUST PRACTICE (Ill. Inst. for CLE, 1972).

\textsuperscript{28} Certificates of beneficial interest are no longer used as widely because of problems associated with their disappearance, attempted negotiation or hypothecation and the possibility that they may be considered securities under the Illinois Securities Act. Address by William B. Higginbotham, Assistant Vice-President, La Salle National Bank, 27th Annual Trust Conference of the Illinois Bankers Association at Rockton, Illinois, April 24, 1964, in THE TRUST BULLETIN 3, 32-33 (May 1964).


\textsuperscript{30} ILL. REV. STAT. ch. 77, § 1 (1973).

\textsuperscript{31} Id. § 3.

Land Trusts

tice Act must be instituted if the beneficial interest is to be reached. Consubstantially, the Illinois Supreme Court has held that a federal tax lien against a land trust beneficiary cannot be a lien against the real estate since the trustee holds full and exclusive title. The federal courts have held, however, that a federal tax levy filed against a beneficial interest does attach and assures the government priority over a later transfer of the beneficial interest.

The characterization of beneficial interests as personal property enables them to be freely transferred and dealt with without the concurrence of the beneficiary's spouse. Dower has been abolished in Illinois but in states where it still exists this may be a desirable feature. The land trust permits either spouse living under separate maintenance to acquire, own and deal with real estate without having the title clouded by pending court proceedings or alimony and child support liens. It is also possible to set up a land trust where the interests of the spouse are protected, but where the spouse's signature is not necessary. Notwithstanding these flexible aspects with regard to dower rights, a land trust employed for the sole purpose of defeating a spouse's marital rights will fail. The Illinois courts have consistently denied this objective and have protected the spouse from such an abuse.

If title to real estate is held directly in the names of its owners, each co-owner has an absolute right to resort to partition proceedings and to cause a public sale of the property. In a situation where real estate is being developed and improved, a dissident co-owner has the power to effectively frustrate any program of development with which he disagrees. This right to partition is not available in a land trust arrangement because the beneficial interest is personal property.

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35. "In the application of a federal revenue act, state law controls in determining the nature of the legal interest which the taxpayer had in the property . . . sought to be reached by the statute." Morgan v. Commissioner, 309 U.S. 78, 82 (1940).
42. Where only a part of the title is held in a land trust, partition is maintainable. See Masters v. Smythe, 342 Ill. App. 185, 95 N.E.2d 719 (1950).
and the usual trust agreement expressly precludes the vesting of any legal or equitable right in the beneficiary.\(^4\)

An unhappy beneficiary, however, is not without remedies. He may simply sell his interest.\(^4\) In the event of hopeless deadlock in the management of the trust, the court may order a sale of the beneficial interest and the proceeds distributed in accordance with the rights and interests of the respective beneficiaries.\(^4\) Unlike partition, judicial sale is limited to circumstances where a continuation of the beneficiary relationship is virtually impossible.\(^4\) This form of relief is further distinguished from partition because the entity of the trust—record title—remains undisturbed, even though the individual interests are transferred.\(^4\) Land trust beneficiaries, when operating the trust property for profit, are usually characterized as partners\(^4\) and liquidation of the beneficial interest is possible under the Uniform Partnership Act\(^4\) or under the provisions of the partnership agreement. An accounting may also be demanded by a beneficiary\(^5\) and the procedure is provided for in the Uniform Partnership Act where a partnership is found to exist. In the absence of a partnership, there is a duty to account based upon fiduciary responsibility.\(^6\)

For estate planning purposes the land trust is particularly effective. The trust agreement may provide for the beneficial interest to vest in a successor upon the death of the first named beneficiary.\(^6\) It may provide for a joint tenancy with rights of survivorship. It may also provide for intervening life estates with contingent and vested remainders.\(^6\) If the remainderman is properly provided for in the trust agreement,\(^6\) the trust res need not be inventoried in a probate estate}


\(^{44}\) Breen v. Breen, 411 Ill. 206, 212, 103 N.E.2d 625, 629 (1952).


\(^{46}\) Id. at 279, 203 N.E.2d at 734.

\(^{47}\) Id. at 280, 203 N.E.2d at 735.


\(^{51}\) In Illinois, a minimum of formality (death certificate and inheritance tax waiver) is required to recognize a successor beneficiary. See Conley v. Peterson, 25 Ill. 2d 271, 184 N.E.2d 888 (1962).

\(^{52}\) A land trust used in this manner is not subject to attack on the ground that the trust has not been executed in compliance with the Statute of Wills. Conley v. Peterson, 25 Ill. 2d 271, 273, 184 N.E.2d 888, 889 (1962).

\(^{53}\) For testamentary purposes, the trust agreement and supporting documents should be carefully drafted. The right of a vested or contingent remainderman to participate in the exercise of the power of direction should be avoided to facilitate sale of the property prior to the beneficiary's death. The trust agreement should also pro-
and the beneficial interest devolves directly to the remainderman by virtue of the provisions of the trust agreement.

For testamentary purposes, a land trust is preferable to a joint tenancy arrangement. Unlike a surviving joint tenant, the legatee or remainderman of the beneficial interest can be excluded from participating in the disposition or management of the trust property until the legator's death or until the event which accelerates the remainder interest. In this manner, the beneficiary can sell or mortgage the property without the remainderman's concurrence. Furthermore, a party is precluded from breaking the arrangement by transferring out which is always possible under a joint tenancy. In the case of nonresident ownership of land, double probate may be avoided. At death, the beneficiary's interest, as personalty, passes to his personal representative in the state of the decedent's domicile and administration in the state where the land is situated is not necessary.

The value of the land trust as an alternative device for holding real estate is manifested in the area of secured transactions under Article Nine of the Uniform Commercial Code. As personalty, the beneficial interest of the trust may be pledged to secure a debt, eliminating the cumbersome and time-consuming procedure of mortgage foreclosure. Two recent Illinois Appellate Court cases have determined that the beneficial interest under an Illinois land trust is a general intangible under section 9-106 of the Code and may be perfected by filing in accordance with section 9-302 of the Code. The availability of the beneficial interest as collateral in financing transactions provides for the distribution of proceeds of financing and sale to the immediate beneficiary or the retention of the proceeds for the use of a contingent beneficiary.

H. Kenoe, Land Trust Practice § 3.7, at 7 (Ill. Inst. for CLE, 1972).


Where certificates of beneficial interest are issued, they may be considered instruments under ILL. REV. STAT. ch. 26, § 9-105(g) (1973), and perfection is accomplished by taking possession under ILL. REV. STAT. ch. 26, § 9-305 (1973).


The four essentials to the validity of a financing transaction in which the beneficial interest is pledged as collateral are as follows:

1. The loan must be negotiated and the land trust created as separate transactions.
2. The land trust must have antedated the loan and have been created for a purpose not related to the loan.
3. The loan documents do not require a sale of the title to the property as a consequence of a default under the loan documents.
4. Only the beneficial interests should be the subject matter of the pledge and the collateral securities securing the payment of the indebtedness.
both lenders and borrowers with a modus operandi that is relatively fast, simple and convenient.63

PRIVACY OF OWNERSHIP

At the heart of the land trust controversy is the non-disclosure provision contained in the typical trust agreement. The only recorded instrument is the deed in trust which discloses only the name of the trustee, the date of the trust agreement and the number of the trust. The name of the beneficiary who has the actual power of management and direction of the property is not disclosed.64 It is this aspect of the land trust that has come under the most severe attack.65

Because of the "secrecy" involved, it is felt that land trusts are responsible for the creation and perpetuation of slum properties. In the past, one drawback of the land trust form was that it furnished a shield for the slumlord and enabled him to avoid duties owed to tenants. In 1963 the Illinois General Assembly enacted the first of its disclosure statutes66 in an attempt to curtail this abuse. The statute states that a land trustee, upon receipt of a written notice of violation of an ordinance, resolution or regulation relating to the condition or operation of real property affecting health or safety, must disclose the identity of every beneficiary to the department sending the notice.67 While nothing in the statute calls for public disclosure of the beneficiary, such a requirement, in this instance, appears to be unnecessary. If property ordinances are violated with impunity by unidentified owners who hold their realty in a land trust, it is only because the statute is little known and rarely invoked.

Another area where concealment of an owner's identity has been productive of abuse is in the sale of real estate by installment contract.


66. ILL. REV. STAT. ch. 80, § 81 (1973).

67. In the event of non-compliance, ILL. REV. STAT. ch. 80, § 82 (1973), provides: Notwithstanding any exculpatory provision in the trust instrument or management agreement, a trustee or managing agent who violates this Act shall be fined $100 for each day of such violation.
Prior to the passage of a 1969 law, an ignorant purchaser of residential property had no assurance that he had dealt with the party who actually possessed the power of direction. In an effort to combat fraudulent conveyances the Illinois General Assembly enacted a statute providing:

Residential property which is the subject of a land trust may not be sold under a real estate installment contract unless at the time of execution of such a contract a full disclosure of the name of the trustee and the designation of the trust and all of the beneficiaries of the trust is made by the seller to the contract purchaser and the contract is signed by the beneficiaries having the power of direction.

It should be noted that the statute not only requires disclosure but goes on to add:

Each such "real estate installment contract" shall be deemed to include a provision, whether actually incorporated in the "real estate installment contract" or not, that the beneficiaries undertake to convey or cause to be conveyed the real property which is the subject of the "real estate installment contract" in accordance with the terms of the "real estate installment contract."

The statute's major thrust is toward protecting the low income purchaser of modest property. Any violation of the statute renders the installment contract voidable at the purchaser's option.

More recently, the Illinois land trust with its non-disclosure provisions has been the brunt of political windfall scandals. In apparent response to the public outcry, Illinois Governor Walker proposed comprehensive legislation that was nevertheless promptly defeated. As part of a total ethics package, the bill required complete public disclosure of the beneficiaries and beneficial interests of all real property

68. ILL. REV. STAT. ch. 29, § 8.31, 8.32 (1973).
69. ILL. REV. STAT. ch. 29, § 8.31 (1973) provides:
"Residential property" means any single family residence or multiple dwelling structure containing 6 or less single dwelling units for 6 or less family units, living independently of each other.
70. Id. § 8.32.
71. Id.
72. Id.
73. See, e.g., a series of articles by reporters Edward T. Pound and Thomas J. Moore, based on their investigation with the Better Government Assn., revealing Alderman Thomas Kean's (31st Ward-Chicago) "secret" land trust ties to the Airport Parking Co. of America, which had a lucrative city parking contract at O'Hare International Airport. Chicago Sun-Times, Dec. 10-17, 1972.
75. S.B. 2, § 1(d), provided:
"Public information" means information that (i) is recorded or registered in the Office of the County Clerk, Recorder of Deeds or the Registrar of Titles,
trusts in Illinois, including those created before the effective date of the statute. The bill also called for disclosure in the event of a conveyance of trust property and in any action brought by a trustee or a beneficiary related to trust property. Governor Walker’s bill was thorough and far-reaching. It specified a simple procedure for disclosure and provided civil and criminal sanctions for noncompliance. Despite the clamor for disclosure, it appears as though Illinois legislators did not desire such sweeping legislation.

At the other end of the spectrum is the aforementioned House Bill 1508. Like Senate Bill 2, House Bill 1508, as originally set forth, did contain a provision requiring disclosure in the case of a lawsuit but this section was eliminated ostensibly to facilitate passage in the General Assembly. The least comprehensive of all disclosure bills introduced, this statute does little to alter pre-existing disclosure requirements.

While uncovering beneficial interests after corrupt dealings are discovered has never been considered troublesome, the misdealings which victimize the public have already transpired. In light of the defeat of Senate Bill 2 and the ineffectuality of House Bill 1508, the problem of identification before the fact remains. At first glance, the enactment of a 1969 statute appears to fill this gap. The statute calls for disclosure of every owner and beneficiary having any interest

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as the case may be and in the county where the real property is located and
(ii) is available for inspection by the public.

76. S.B. 2, § 2.
77. S.B. 2, § 2, provided:
No conveyance . . . relating to real property held by a real property trust shall be accepted for recording . . . unless such conveyance . . . contains the public disclosure of beneficiaries and beneficial interests of such real property trust . . .

78. S.B. 2, § 6, provided:
No trustee or beneficiary may file or maintain any action, claim or counterclaim relating to any real property held by a real property trust in any court unless the pleading setting forth such action, claim or counterclaim . . . contains the public disclosure of beneficiaries and beneficial interests of such real property trust . . .

80. S.B. 2, § 7.
82. For example, one pre-existing disclosure requirement provides:

Before any contract relating to the ownership or use of real property is entered into by and between the state or any local governmental unit or any agency of either and a trustee who has title to such real property or a managing agent having power to contract in relation to such real property, such trustee or managing agent must disclose the identity of every owner and beneficiary having any interest, real or personal, in such property.

Ill. Rev. Stat ch. 102, § 3.1 (1973)

83. Discovery procedures set forth in ILL. REV. STAT. ch. 110A, § 201 (1973), provide an adequate method for the identification of undisclosed beneficial interests.

84. ILL. REV. STAT. ch. 102, § 3.1 (1973), fully cited at note 82 supra.
in real property that is the subject of a contract entered into between the state or any local governmental unit and the trustee of such property. Despite the harsh penalty for its violation, the statute has failed as an effective deterrent and scandals such as the "Airport Parking Lot Deal" have continued to emerge. The statute’s major weakness is that it fails to specify a procedure for disclosure—it does not indicate to whom the disclosure must be made. Furthermore, the penalty for non-compliance applies only to persons holding official positions. A non-officeholder trustee who fails to adhere to the statute’s requirements does not face a penalty.

Two bills now pending in Springfield deserve attention. They are both designed to remedy the flaws of the 1969 statute. The first is Senate Bill which has been passed by the Illinois Senate. This bill is on the House calendar and will be taken up for consideration when the First Special Session reconvenes on April 4, 1974. The bill provides that no monies may be paid by the State or any local governmental unit for title to or the right to use any real property acquired by purchase, lease, contract, exchange, donation, or conveyance until all interested persons have been identified. The bill specifies an adequate procedure for disclosure and provides that the information shall be open to public inspection. The bill sets forth

85. In an attempt to disclose the true beneficiary of the trust, not merely a "straw-person," the statute further provides:
This Section shall be liberally construed to accomplish the purpose of requiring the identification of the actual parties benefitting from any transaction with a governmental unit or agency involving the procurement of the ownership or use of real property thereby. ILL. REV. STAT. ch. 102, § 3.1 (1973).
86. A public official who violates section 3.1 is guilty of a Class 4 felony and will have his official position vacated as part of the judgment of the court. ILL. REV. STAT. ch. 102, § 4 (1973).
87. Alderman Keane scandal, supra note 73.
89. ILL. REV. STAT. ch. 102, § 4 (1973).
90. Id. § 4 provides:
Any alderman, member of a board of trustees, supervisor or county commissioner, or other person holding any office, either by election or appointment under the laws or constitution of this state, who violates any provision of the preceding sections...
92. S.B. 10 is an act to amend Section 3 and 3.1 of and to add Sections 3.2, 3.3, 3.4, 3.5, 3.6 and 3.7 to "An Act to prevent fraudulent and corrupt practices in the making or accepting of official appointments and contracts by public officers", approved April 9, 1872, as amended.
93. S.B. 10, § 3.1.
94. S.B. 10, § 3.6, provides:
Each affidavit shall be filed with the county clerk of the county in which the real property is located, and if the public body is the State or an agency or instrumentality thereof, a copy of such affidavit shall be additionally filed with the Secretary of State. Such affidavit shall be open to public inspection.
exactly what information is required and eliminates any problems with nominees by stating:

If the record owner or owners, or beneficiary, or person having the power of direction, is a nominee or managing agent, such nominee or managing agent shall set forth in the required affidavit the name of each person... who... has directly or indirectly, any interests, real or personal, in such property... .

The major flaw in Senate Bill 10 is that it is silent on condemnation proceedings. House Bill 21 has been approved by the Illinois House of Representatives and may be taken up for consideration when the First Special Session reconvenes on April 4, 1974. This bill calls for an affidavit of disclosure before any contract for the sale, acquisition, leasing, or any other use of real estate is entered into between the State or any governmental unit and any person having an interest in the real estate. Unlike Senate Bill 10, however, this bill also requires disclosure of all beneficial interests in eminent domain proceedings.

The procedure for disclosure as provided in the bill is specifically set forth but contains several objectionable features. Again unlike Senate Bill 10, House Bill 21 places the burden on the condemning or contracting governmental unit to procure the affidavits of disclosure before it may proceed. The bill also requires affidavits of disclosure from all owners in condemnation proceedings, including owners of single family resi-
In this instance, an uninformed small home owner would have to employ an attorney to be assured of avoiding the severe penalty that is provided. The bill raises serious doubts as to the ability of a public body to effectively proceed in public projects. A record property owner who cannot be located or who resides out of state can effectively thwart any contractual or condemnation proceeding for an indefinite period of time.

TORT LIABILITY

Much of the controversy revolving around land trusts has been in the area of tort litigation. The lay person’s general impression is often that land trusts are established for the sole purpose of enabling the anonymous trust beneficiary to hide behind the trust arrangement and thereby absolve himself from personal liability. This has not been the case in Illinois. Tort actions involving trust property usually arise from negligent operation and maintenance of the property. The duty to maintain and operate the trust property in a reasonably safe manner rests upon the beneficiary who retains the right to possession, management, operation and control. This responsibility renders the beneficiary solely liable in an action based on injuries sustained as a result of negligent operation of the property. Without such a duty, the land trustee is insulated from liability, but he may be made a party defendant initially for the purpose of disclosing the identity of the beneficiary. The problem of disclosure is resolved by requiring the trustee to divulge the names and addresses of the beneficiaries through interrogatories. The beneficiary is then impleaded as party defendant and the trustee is dismissed. In actions under the Illinois Dram Shop Act, liability is also imposed upon the beneficiary and

103. H.B. 21, § 3.3(a).
104. Under H.B. 21, § 3.5(a), any person who willfully fails to file an Affidavit or who willfully furnishes false, inaccurate or incomplete information is guilty of a Class 4 felony.
106. The trustee’s insulation against tort liability is not absolute. See H. Kenoe, LAND TRUST PRACTICE § 6.9, at 10 (Ill. Inst. for CLE, 1972). The usual situation, however, is that the land trustee remains immune from liability notwithstanding the fact that he holds legal and equitable title to the real estate and is the named lessor in the lease. See Levi v. Adkay Heating and Cooling Corp., Ill. App. 3d 509, 274 N.E.2d 650 (1971).
108. All other requirements of ILL. REV. STAT. ch. 110, § 46 (1973), must of course be observed.
cannot be effectively asserted against a trustee who has no duty to control the use of intoxicating liquors on the trust property. The identity of the beneficiary is ascertained in the same manner as in other tort actions. For statute of limitations purposes, service upon the trustee within the statutory period effects the relation back of an amendment joining the beneficiary after the statute has run.

Conversely, the trust beneficiary has the right to collect rent from a tenant occupying the demised premises but only if he is named as the lessor in the lease. Illinois courts uniformly hold that a beneficiary who is not a party to the lease is not entitled to maintain an action for rent. Whether he is being sued or bringing suit, the undisclosed trust beneficiary does not gain an unfair advantage solely because of his anonymity.

CONCLUSION

As indicated above, Illinois land trusts are not truly secret. In addition to the disclosure statutes already in existence, the District Director of Internal Revenue has an up-to-date record of the beneficial interests of all land trusts in Illinois. As a practical matter, the identity of the land trust beneficiary may very well be available to those who deal with the trust property. The beneficiary may pay the taxes, negotiate leases, purchase supplies and enter into contracts in his own name. It should also be pointed out that with rare exceptions, the trustees of Illinois land trusts are banks or other regulated corporations that enjoy and seek to maintain favorable reputations in their communities. These relatively stable institutions are certainly more accessible to the public than individual title holders.

On the other hand it is often asserted, and rightfully so, that there are lawful, desirable reasons for insulating ownership of real estate from the public record. A developer who is assembling a large tract of land on a parcel-by-parcel basis may wish to avoid the inflated prices that would inevitably result if his identity were known. Land trusts are often established by elderly apartment owners who then deal

112. ILL. REV. STAT. ch. 110, § 46(4) (1973). Mere service upon the trustee is, of course, insufficient. All other requirements of section 46(4) must be observed.
with their trust property through management companies. In this manner they avoid the day-to-day confrontations with tenants that would otherwise take place. Finally, an owner of real estate simply may not wish his holdings to be publicly known. With regard to the right of privacy, there seems to be no reason why real property assets should be any more a matter of public record than bank accounts or corporate stocks and bonds.

The potential for abuse that remains is not due to weaknesses inherent in the land trust form but rather to poor legislation that can only be seen as a result of political dissension in the General Assembly. Of all the proposed and enacted legislation in Illinois, House Bill 21\textsuperscript{116} comes the closest to addressing itself to the problems surrounding land trusts, but in doing so it creates further problems that demand further remedies. Disclosure measures are urgently needed but not at such a great public expense. It is time that Illinois legislators put aside their political differences and come up with workable legislation that fairly and effectively protects the public.

Any alteration of the land trust form itself should only be done with thorough appreciation of the consequences. The importance of the land trust's role in Illinois was well stated by the Illinois Supreme Court:

> The law of this State and the decisions of reviewing courts for more than 80 years have encouraged public reliance upon the real property concepts exemplified in the land trust now before us. Millions, and probably billions, of dollars have been and now are invested in similar trust arrangements and thousands of titles depend thereon for their validity.\textsuperscript{117}

The few isolated examples of misuse of the land trust could have been prevented without calling into question an extremely valuable legal device.

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\textsuperscript{116} H.B. 21, \textit{supra} note 98.