

# Supreme Title Solutions

## Assets That Do NOT go Through Probate

The most common kinds of non-pobate property are:

1. Property held in joint tenancy by more than one person  
For example, a house owned by a couple; persons unrelated by JTWROS or a bank account shared by more than one person
2. Assets for which a person is a designated as a beneficiary  
For example, a POD/TOD bank account, retirement account or life insurance proceeds
3. Assets held in a living trust



Florida is one of the few states that sets out, in its statutes, lawyers' fees that are presumed to be Reasonable for estates of a certain value (Fla. Stat Ann. §733.6171.) the fee is based on the value of the assets that go through probate, plus any income they may earn during the probate proceedings.

These fees are only for "ordinary" services. Anything the lawyer does that isn't ordinary – for example, Handling a will contest or giving tax advice – is presumed to justify a larger fee.

If a lawyer follows the fee schedule, the fee may be almost unrelated to the amount of the legal work done. It's the same amount of work to handle a \$1 million brokerage account as it is to probate a \$100,000 Account, but under the statutory fee schedule, the bill for the million-dollar account would be 10 times larger



**733.6171 Compensation of attorney for the personal representative.—**

(3) Compensation for ordinary services of attorneys in formal estate administration is presumed to be reasonable if based on the compensable value of the estate, which is the inventory value of the probate estate assets and the income earned by the estate during the administration as provided in the following schedule:

- (a) One thousand five hundred dollars for estates having a value of \$40,000 or less.
- (b) An additional \$750 for estates having a value of more than \$40,000 and not exceeding \$70,000.
- (c) An additional \$750 for estates having a value of more than \$70,000 and not exceeding \$100,000.
- (d) For estates having a value in excess of \$100,000, at the rate of 3 percent on the next \$900,000.
- (e) At the rate of 2.5 percent for all above \$1 million and not exceeding \$3 million.
- (f) At the rate of 2 percent for all above \$3 million and not exceeding \$5 million.
- (g) At the rate of 1.5 percent for all above \$5 million and not exceeding \$10 million.
- (h) At the rate of 1 percent for all above \$10 million.





The Trustee,  
NOT THE TRUST,  
holds legal title  
to the real property



## Who Can Act as Trustee?

Natural Person

Corporations



What this means to you, the Realtor,  
is that when you create a contract  
Your Seller (Buyer) **canNOT** be the Trust.

It has to be the **Trustee of the Trust**



1

**"AS IS" Residential Contract For Sale And Purchase**

THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR



1\* PARTIES: \_\_\_\_\_ ("Seller"),  
2\* and John Smith Trustee of the John Smith Revocable Trust w/e April 1, 2000 ("Buyer"),  
3 agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property  
4 (collectively "Property") pursuant to the terms and conditions of this AS IS Residential Contract For Sale And Purchase and  
5 any riders and addenda ("Contract");

2

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5 any riders and addenda ("Contract");



## EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company Will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

- 3. Defects, liens, encumbrances, adverse claims, or other matters:
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;



## Signature Blocks

\_\_\_\_\_  
John Smith, Individually and Trustee of the  
John Smith Revocable Trust UTD April 1, 2000

By: \_\_\_\_\_  
John Smith, Individually and Trustee of the John Smith Revocable Trust UTD April 1, 2000

By: \_\_\_\_\_  
John Smith, Individually and Trustee of stated Trust



## Can a Power of Attorney be used with a Trust?

Attorney's in fact (POA's) are now specifically prohibited from exercising powers And Authority granted to the principal as trustee

As a result, even if the trust document grants the trustee the power to authorize a POA, the POA may not be used if it was executed after October 1, 2011.



While Trusts **canNOT** hold title,  
they **CAN** and **SHOULD** have a bank account

Sales proceeds for a property held in a Trust  
**MUST** go to / into The Trust Account,  
**NOT** to the Trustee directly




## Information needed by Title Agent regarding the Trust


1. Name of the Trust
2. When was Trust executed
3. Name of the Settlor of the Trust
4. Identity and address of currently acting Trustee
5. Is the Trust Revocable or Irrevocable
6. Name of any Co-Trustees
7. Was the property ever the homestead property of the settlor or beneficiaries or their dependents?
8. Has the Trust been revoked, modified, or amended in any manner?
9. Does the Trust have a bank account?



Trusts are governed by  
**Chapter 689**  
of the  
**Florida Statutes**



<h2>The 2017 Florida Statutes</h2>		
<a href="#">Title XL</a> <b>REAL AND PERSONAL          PROPERTY</b>	<a href="#">Chapter 689</a> <b>CONVEYANCES OF LAND AND DECLARATIONS          OF TRUST</b>	<a href="#">View Entire          Chapter</a>
<h1>TITLE XL</h1> <p><b>REAL AND PERSONAL PROPERTY</b></p> <p><b>CHAPTER 689</b></p> <p><b>CONVEYANCES OF LAND AND DECLARATIONS OF TRUST</b></p>		
		

<p>689.01 How real estate conveyed.</p> <p>689.02 Form of warranty deed prescribed.</p> <p>689.03 Effect of such deed.</p> <p>689.04 How executed.</p> <p>689.045 Conveyances to or by partnership.</p> <p>689.05 How declarations of trust proved.</p> <p>689.06 How trust estate conveyed.</p> <p>689.07 "Trustee" or "as trustee" added to name of grantee, transferee, assignee, or mortgagee transfers interest or creates lien as if additional word or words not used.</p> <p>689.071 Florida Land Trust Act.</p> <p>689.072 Real estate interests transferred to or by a custodian or trustee of an individual retirement account or qualified plan.</p> <p>689.073 Powers conferred on trustee in recorded instrument.</p> <p>689.075 Inter vivos trusts; powers retained by settlor.</p> <p>689.08 Fines and common recoveries.</p> <p>689.09 Deeds under statute of uses.</p> <p>689.10 Words of limitation and the words "fee simple" dispensed with.</p> <p>689.11 Conveyances between husband and wife direct; homestead.</p> <p>689.111 Conveyances of homestead; power of attorney.</p> <p>689.115 Estate by the entirety in mortgage made or assigned to husband and wife.</p> <p>689.12 How state lands conveyed for educational purposes.</p> <p>689.13 Rule against perpetuities not applicable to dispositions of property for private cemeteries, etc.</p>	
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- 689.14 Entailed estates.
- 689.15 Estates by survivorship.
- 689.17 Rule in Shelley's Case abolished.
- 689.175 Worthier title doctrine abolished.
- 689.18 Reverter or forfeiture provisions, limitations; exceptions.
- 689.19 Variances of names in recorded instruments.
- 689.20 Limitation on use of word "minerals."
- 689.225 Statutory rule against perpetuities.
- 689.25 Failure to disclose homicide, suicide, deaths, or diagnosis of HIV or AIDS infection in an occupant of real property.
- 689.261 Sale of residential property; disclosure of ad valorem taxes to prospective purchaser.
- 689.27 Termination by servicemember of agreement to purchase real property.
- 689.28 Prohibition against transfer fee covenants.
- 689.29 Disclosure of subsurface rights to prospective purchaser.



**Settlor** – person who creates the Trust

**Trustee** – person who holds title to real property for the benefit of others

**Beneficiaries** – persons for whom the Trust was created



## What is the nature of a Trust?

...a **Fiduciary** relationship between the Settlor, Trustee and Beneficiaries.

### Who is a Fiduciary

A person to whom property or power is entrusted for the benefit of another



## Is there an advantage in using a trust instead of a will?

The main advantage to using a trust is that a trust helps to avoid probate.

Probate is the court process through which assets are transferred and debts are paid off.

The Probate process can be very expensive and can take a long time





## **A trust can be more flexible than a will.**

What if you have a complicated relationships and need a complicated estate plan.

For example, a wife in a second marriage might want her current husband to be able to live in their house before her interest passes to her children from her first marriage.



## **A trust has the ability to cover things that a will can't cover.**

This may include ...

retirement accounts  
jointly owned property  
life insurance policies



**A will becomes public after the property owner dies**

**A TRUST stays private**



**A trust doesn't have to transfer all the property at once, instead in can transfer property over time.**

A parent could set up a trust to take care of the bills of an adult child with special needs without burdening their child with a lump payment.

Parents of young children or young adults may want to provide payments monthly or yearly until the children become mature enough to handle their own money



In real estate law, "equitable title" refers to a person's right to obtain full ownership of a property or property interest.

This is often contrasted with or used in conjunction with the term "legal title." Legal title is the actual ownership of the land.



the beneficiaries hold  
equitable title



# Active/Express Trust

where the trustee is held accountable for additional responsibilities. With an active trust, those additional responsibilities can be in respect to the control or management of the trust, collection of rent, profits, and sale proceeds; in other words the administration of the trust property.



# Passive Trust

Passive trust is a trust in which the trustee has no active duties to perform.

In a passive trust the trustee has no duty other than to transfer the property to the beneficiary.

The retention of legal title is not essential to the performance of any duty imposed upon the trustee.

Passive trust is also termed as dry trust or nominal trust or simple trust.

a person transfers assets in order to pass them on to heirs or beneficiaries



#### How it works (Example):

For example, let's say John Smith's has a marriage about to go bust and wants to make sure \$5 million of his money goes to his children rather than his fourth wife, whom he may divorce. He puts the money in a passive trust for his children. The children are only 7 and 16 years old, but when they turn 18, they will have access to and control over the assets. In the meantime, John's wife cannot touch the assets, and a trustee manages the money on behalf of the children rather than on behalf of John Smith.



#### Why it Matters:

Passive trusts are a way to ensure that beneficiaries receive assets as intended, but they also mean that the benefactor gives up control over the assets. Additionally, age is typically the only condition of a passive trust, meaning that the trustee can't withhold funds from the trust if, say, John's children do something of which he disapproves, such as dropping out of college. The children simply must be at least 18 years old to obtain full control over the money.



# IRA Trust

An IRA Trust is a special type of revocable living trust designed for the sole purpose of holding your IRA accounts for the benefit of your loved ones after your death.

You can establish different subtrusts within the IRA trust agreement for the benefit of your beneficiaries, including your spouse if you're married.

You can design each subtrust to fit the unique needs of each beneficiary.



# Testamentary Trust

(sometimes referred to as a will trust or trust under will) is a trust which arises upon the death of the testator, and which is specified in his or her will.

A will may contain more than one testamentary trust, and may address all or any portion of the estate.



For a testamentary trust to be effective, the will which created it must be valid.

They only take effect upon the death of the settlor and are irrevocable except by some third party (if provided for in the will of the settlor). A beneficiary may also be designated to revoke the trust.

The will must be properly admitted to probate in Florida and the trustee must agree to serve in this capacity.

We will NOT insure title into, or out of, a testamentary trust unless the will has been probated in Florida.



## HOMESTEAD

Complications can come into play when the trust holds title to homestead property. The Florida constitution provides broad-ranging protections for spouses and minor children. Those protections cannot be avoided by merely placing homestead property in a revocable trust.



# Judgments and Liens

The determination of whether a recorded judgment or lien attached  
To the property depends on how title is vested and:

1. Against beneficiaries
2. Against the settlor
3. Against the Trustee individually or in his/her capacity of Trustee



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Title company in Indialantic, Florida

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**Phone:** (321) 557-9388

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