

L.T.S.C. INFO SHEET is a short summary of a legal issue of interest to some of our clients. Keep in mind that the law changes and is subject to different interpretations. See a lawyer if you need specific legal advice.

Should you put your homestead in a land trust?

Using a Florida land trust for a homestead is more complicated than for rental properties. While the law allows them for homesteads, the law does not follow the Florida Constitution's rules for homesteads and the property appraisers usually require the beneficiary's name to be listed.

Florida has two different kinds of homestead exemptions:

1. *Homestead exemption from creditors' claims.* Under Florida's constitution, your homestead can never be taken from you no matter how much money you owe. (Except for limited criminal, fraud or home improvement claims.) O. J. Simpson moved to Florida because Florida allows you to keep your homestead even if you have a multi-million-dollar judgment against you for killing someone! The law was changed to protect only \$125,000 of equity for new residents and to require residence in Florida for over three years for greater protection. But such protection is still available and long term residents can use their homestead to protect millions of dollars in equity from creditors.

2. *Homestead tax exemption.* This exempts part of your homestead's value is exempt from property taxes and the amount that the assessment can be raised is limited to 3% per year. But to qualify for this most property appraisers require your name to be on the public records, so you lose the secrecy in exchange for the tax savings.

It might be possible to convince a property appraiser to not list your name on-line after granting the exemption by just showing the trust. Some of our clients have done this, but it is rare.

How to get the homestead tax exemption with a trust:

You can get the homestead tax exemption on your land trust property, if we put special wording in the land trust deed and the trust agreement. Then you can show these to the property appraiser when you apply for the exemption. As explained they may want to list your name on their web site as the holder of the homestead interest.

Another issue:

Some insurance companies don't want to issue homeowners insurance policies when the property is in trust because they think they are liable for anything that the trustee does. This doesn't make legal sense, but they make the rules for their policies. So ask your insurance agent to be sure he can get you a homeowners policy for your property when it is in trust.

Bottom line:

If you want to avoid probate and keep your homestead, that is easy. If you want secrecy you might need to give up the tax exemption.