

WHITECAP INVESTMENTS

“Passive” Investor Benefits

Land Trust System – A Foreclosure “Alternative”

Whitecap Investments' Land Trust Foreclosure Bail out system gives investors a tool to acquire and hold real property as asset for security, without taking out a new loan, and without the liability of being on title.

The funds of a *cash investor*¹ may be utilized in various types of Land Trust transactions. One of the most powerful ways the Land Trust is being used is to assist homeowners who are facing foreclosure, and who have few choices for dealing with their situation.

For those individuals there may seem to be only four options when a homeowner is in foreclosure situation:

- 1. Payoff the past-due payments to the bank and keep the home;**
- 2. Refinance the home and payoff the lender;**
- 3. Rent the house out and hope they get enough up front to bring the payments current, and that they can get enough per month to continue to cover the payments; or**
- 4. Sell the home before it's too late.**

However, there is one more option. If the homeowners have decided that their first choice is to stay in the home, and yet are not in a financial position to payoff the past-due payments and are unable to refinance for personal, credit or financial reasons, you may still be able to help them and put a profit in your pocket. It can all happen quickly and legitimately without a new loan or loan assumption. This is a little known option open to those facing foreclosure. The program entails finding a cash investor to become a partner with the homeowner and with Whitecap Investments helping to stop the foreclosure.

The cash investor, in exchange for a beneficial interest in the trust into which the property will be placed, will bring in enough cash to catch up the past-due payments. The property is put into a specialized revocable inter-vivos trust (land trust). The homeowner keeps his equity in the home. A portion of the trust's beneficial interest is conveyed to the cash investor (instead of selling the real estate). Also a portion of the trust's beneficial interest is conveyed to the Whitecap Investments and its affiliates. After a set period of time at the end of the Land Trust, the homeowner will either refinance and is at the “market value” at the time of the refinance or sale (if necessary determined by an appraisal).

If the homeowner continues to live in the house as a tenant, their payments for a year will be discounted to be less than they are paying as an owner. At the end of the Land Trust, the homeowner has first right of refusal to buy the property back. If it is sold the encumbrances against the property are paid off, and this includes the investor beneficiary who will first receive his refundable contribution to the trust plus interest. The homeowners will then receive their beginning equity in the trust. After these payouts, the balance of the equity would then be split among the remaining beneficiaries in accordance with their beneficial interest in the trust. This is a very good option in many situations, and should be explored as early as possible in the foreclosure cycle. As an alternative, the homeowner may choose to allow a third party resident to live in the house and take over the payments and maintenance of the property. In this case, the distribution of proceeds would still be similar to the above.

HOW IT WORKS

The Beginning

1. Whitecap Investments will locate the *seller*², who is willing to keep the existing loan in his/her name (for a while). This may be a seller in foreclosure. The seller will create a land trust in his/her own name and places the property into it: i.e., Robert and Mary Jones vest the property with “The Robert and Mary Jones Trust.” In that the trust is an inter-vivo (i.e., living) trust; and because it is directed solely by Robert and Mary; and since no sale of Real Estate has taken place; and since the trust is in the borrower's name only: there are no income tax consequences, no documentary tax stamps (in most states) and ... the lender's Due-on-Sale Clause is not violated. The Garn-St. Germaine Act of 1982) emphatically prohibits lenders from taking exception to a borrower's right to place its

- property into such a trust.
2. Next, Whitecap Investments obtains information from the homeowner who must complete a Homeowner Information Form, to determine whether the property will meet the criteria for a Land Trust. This form requires information on the property, all encumbrances (mortgages, liens, etc.) on the property, information on taxes, homeowners or condo associations CC&R's, and any other obligations or liens attached to the property.
 3. If the property qualifies for the Land Trust Bail out criteria, the homeowner will receive an Offer that sets the Mutually Agreed Value on the property. This amount will generally be similar to the amount they would receive if they sold their property through a real estate agent and paid closing costs.
 4. An investor will be identified that is interested in the transaction.
 5. A title search will be conducted to determine that the title of the property is clear.
 6. An Appraisal will be conducted, if one has not already been provided, to ascertain the current value of the property.
 7. A closing will take place in which all legal documentation is signed, and the title of the property is transferred into a specialized revocable inter-vivo trust (land trust), of which the homeowner will be a beneficiary, as will the investors. A trust termination period is set at that time to allow the homeowner (referred to from this point as the Settlor) to refinance or sell the property (usually 1 to 3 years).
 8. Next, the occupancy and possession, a co-beneficiary interest in the trust is assigned to a second party. Note that, although it can be forfeited at termination, at least a 10% beneficiary interest should always be retained by the Settlor, in order to conform to the IRS' 10% rule (i.e., no land trust beneficiary may hold less than a 10% interest and receive the tax benefits of the underlying real estate); to discourage "Due-On-Sale" disputation; and to avoid a property tax reassessment.
 9. The cash investor must bring in sufficient funds to bring the loan and other past-due obligations current. These funds must also cover closing fees, and Transaction Fees payable to Whitecap Investments and their affiliates.
 10. The banks, tax authorities, homeowner's associations, and all others who have past-due payments and liens on the property will then be brought current.

The Middle

1. An Agreement for Use and Possession between the trustee and the new co beneficiary is created, whereupon the IRS, and most states (Tennessee and Louisiana not withstanding), characterize the resident beneficiary as an owner of an "IRC §163 Qualified Property," even though the real estate has itself been converted by the land trust to personal property. [See IRC §163(h)4(D) pertinent to real property held in estates and certain trusts, in which ownership is characterized as personal property]
2. If the Settlor is in foreclosure and chooses to stay in the house, his monthly payments will be decreased by about 5% per month.
3. The payments are made directly to the Trustee. The payments will include the discounted monthly obligations.

The End

1. At the end of the trust period, if the Settlor chooses to remain in the property, they will refinance or buy the property at the appraised market value, and the title will be transferred to their name and the trust terminated.
2. If the Settlor chooses not to remain in the property, the property is sold on the open market and the trust will be terminated.
3. At the time of the refinance or sale, the underlying encumbrances and liens on the property will be paid off.
4. The cash investor beneficiary's refundable contribution is returned to him in accordance with the agreements signed at the original closing.
5. The Settlor's existing equity (based on the Mutually Agreed Value) will be returned to the Settlor. The Settlor may either apply the equity towards the refinance amount (thereby allowing them to borrow less on the property), or take the equity as a cash payment.
6. The additional equity - that is, the difference between the Mutually Agreed Value and the appraised value of the property at the time of the refinance or sale - is split among the

beneficiaries in accordance with their beneficiary interest in the trust.

MORE ABOUT THE LAND TRUST SYSTEM FOR INVESTORS

Because the Land Trust System uses independent holding companies acting as Trustees the cash investor can acquire properties without any management responsibility, loan qualifying, or credit application, while avoiding: negative cash-flow, vacancies and management and maintenance costs ... even the costs of insurance, property and monthly payments are paid by the Trust. The Trustees duties performed can allow a real estate investor to remain passive and to acquire unlimited numbers of cash-flowing properties (even over-encumbered properties), with all of the above benefits as well as all the following profitable advantages:

1. Upfront monies are collected at start from an incoming resident co-beneficiary.
2. Existing equity at start for the investor.
3. The true value of the property at start can be adjusted upward ("bumped") with respect to those less than "standard" buyers who come in with minimal cash and no, marginal or bad credit (NOTE: the absence of good credit is compensated for by virtue of the ease of eviction, and by the in-coming party's posting of a Contingency Fund of one or more aggregate monthly payments to be used in the event of the necessity of repairs or eviction and dispossession)
4. Equity build-up from principal reduction by making payments over the term.
5. Future property appreciation potential
6. A positive cash flow throughout the term of the land trust.
7. Negotiation of the income tax write-off for mortgage interest and property can actually increase the net rental income.
8. The passive tax write-off (Depreciation) throughout the term of the agreement
9. A "Triple Net" type lease structure that includes all management costs, maintenance expense, repairs, upkeep, taxes and insurance.
10. Avoidance of capital gains tax imposition for the "seller" upon creation of the land trust.
11. Avoidance of transfer and conveyance tax (stamps) upon acquisition or disposition of the property.

AT TERMINATION:

In a typical Land Trust transaction, the contract provides for the resident beneficiary to either sell or refinance the property, and pay the investor all monies due from of the proceeds of such sale or other disposition at that time. The sale price at termination is agreed in advance to be whatever the Fair Market Value is determined to be at the time, MINUS any moneys owed to the acquiring party by virtue of its beneficiary interest in the underlying land trust. Such sale price is agreed to be determinable at the trust's (and lease's) termination by a mutually acceptable appraisal (disagreements settled by the dissenting party right to order a full M.A. appraisal).

Other benefits to using the Land Trust System.

The Land Trust system may be seen an effective legal shield for virtually ANY creative financing objective. It can, in essence be tantamount to a Long Term Lease (i.e., a lease for more than 3 years); a Lease Option; a Lease Purchase, an All Inclusive Trust Deed, an Equity Share Arrangement, or a Land Contract (e.g., Contract for Sale, Contract for Deed, Contract for Warranty Deed, etc.). The Land Trust can meet the objectives and functions of any of these arrangements without the many risks associated with them.

The Land Trust is a title-holding device that allows for easy conveyance of ownership, and incidents of ownership (including tax write-off benefits). In the arrangement, a neutral 3rd party trustee, whose actions in dealing with the property's title are wholly at the direction of the beneficiaries, holds title to the property. Upon one's becoming a beneficiary, all or a portion of that beneficiary interest can be sold, traded, transferred or hypothecated by means of a simple Assignment of Beneficiary interest. In that the lender's security interest is not impinged upon when a property is placed into such a revocable trust, Federal Law eliminates the need of involvement by, or permission being required of, the secured party in the underlying mortgage loan (FDIRA, 12 U.S.c. 1701(d)-3).

Investors may utilize the Land Trust in various ways. For example, any time a seller is willing to remain on the existing financing (keep their names on the loan), the Land Trust becomes an ideal vehicle for acquiring the property conveniently and anonymously. That is, easily, quickly and without Public Notice (Recording), as well as without the potential for the triggering of a mortgage lender's Due on Sale provision. Land Trust tends, in-fact, to effectively protect the property against liens, suits creditor judgments and even IRS tax liens on behalf of either party. Also avoided are

dangerous or unnecessary “Creative Financing” schemes. With all these benefits the Land Trust becomes an ideal acquisition vehicle.

AS A LONG TERM LEASE: A Co-Beneficiary Land Trust can be set up for up to twenty years, with a Lease of the property to a Resident Co-beneficiary for just under 3 years. The lease with the trust will stipulate that at the end of the original lease term, the tenant may “hold-over” in the property until the end of the trust period, unless evicted sooner. Since an eviction would have to be by mutual direction by ALL beneficiaries: the tenants being one of the beneficiaries, protects him and effectively continues his/her holdover until the termination of the trust.

AS AN AITD (Wrap-Around): A seller places its property into a Land Trust, assigning a full Beneficiary Interest to the “buyer,” with the agreement that the property will be leased to the co-beneficiary on a Triple-Net basis for some specified period of time. The property is then scheduled to be sold at the end of the Agreement. Upon sale there is a distribution of proceeds to (between) parties with respect to each of their proportionate shares of Beneficiary Interest. In order to avoid reassessment for property tax purposes, and to justify mutual Power of Direction, we recommend that the shares of Beneficiary Interest remain at 90%: 10% in favor of the “buyer.” Then at the end of the term, the “seller” can forfeit its 10% in consideration of the co-beneficiary’s prompt payment record and strict adherence to the contract.

AS A LAND CONTRACT: (Contract for Deed): Benefits are the same as above.

AS A LEASE OPTION: The property is placed into a Land Trust with the understanding that, at the end of the Agreement, the property will be sold to the Resident Co-Beneficiary for Fair Market Value, minus any and all sums owed to the Resident Co-Beneficiary. In this scenario verbiage is such that there is actually no “Option” per se; and that there is no “bargain buy-out” provision other than “... at Fair Market Value, less amounts due the respective beneficiaries.”

AS A LEASE PURCHASE: Same as above, except that the Agreement provides that the property will definitely be acquired by the Resident Beneficiary at termination irrespective of market conditions, relative values, etc. The Rider in this scenario provides that the co-beneficiary has the obligation to either sell or refinance at termination.

AS AN EQUITY SHARE: Same as above, except that parties share in the Beneficiary interest with the Land Trust investor beneficiaries, with an agreement to share all net profits proportionately at termination.

AS A BRIDGE-LOAN DEVICE (e.g., when a buyer can’t finance, or afford a down payment for several more months or years and the seller may be willing to wait awhile): The Land Trust affords such a buyer the opportunity to live in the property, while paying all costs and enjoying all the benefits and incidents of homeownership, including tax write-off and waiting until financing and outright purchase is possible. In this scenario, the Land Trust is set up to coincide with that point in time when the property can be purchased outright by the Resident Beneficiary.

AS A VEHICLE FOR HIGHER RENTS AND FREEDOM FROM ACTIVE LANDLORD

RESPONSIBILITIES AND COSTS: A prudent landlord would be well advised to consider making his rental tenant a Co-Beneficiary in a Land Trust in which the rental property’s title is vested. This will give the landlord an ideal opportunity to trade such items as tax write-off, equity, equity build-up, appreciation and the psychological peace of homeownership, for such commodities as free maintenance, repairs, upkeep, and property management for lower rents. Each one of these “items of trade” has a value, and giving up all or some of each one can more than make up for rent decreases while simultaneously reducing the expense of renting for the tenant.

WHITECAP INVESTMENTS AND AFFILIATES WILL PROVIDE THE FOLLOWING:

- All documentation, consultation and trust set up for between 0.5% and 3.5% of the property’s Mutually Agreed Value at inception.
- We will speak with your clients, buyers, sellers and brokers at any time at all (at our expense).
- Affiliated with the requisite Corporate Trustee and Land Partners (Trustee Fee is collected monthly as a part of the regular month payment).
- Bonded collection service (PAC Management or Equity Management). Collection and impounding of all monthly payments, and disbursement to all payees. Legal services (evictions, foreclosure, substitutions, assignments, delivery, etc.) - Fee Schedule upon request

Notes:

Whitecap Investments is not a law firm, or an accountancy business. All inquiring parties are encouraged to seek independent legal, accounting advice and representation.

1. *A cash investor as used in this document shall mean the investor beneficiary who provides only funds to the transaction and has no other responsibility in the transaction.*
2. *The word seller in this instance is used to mean the current owner of the property who for one reason or another is placing their property in a land trust.*