



HOW TO TITLE FLORIDA REAL ESTATE

What New Florida Property Owners Should Know

According to the U.S. Census Bureau, Florida had the highest net migration rate in 2022, with 400,000 more people coming into Florida than leaving – over 1,000 every day. As a result, the Florida real estate market continues to be the hottest in the U.S., a trend that shows no signs of slowing down. One consideration for [new Florida residents](#) and other property owners in Florida is how their Florida real estate should be titled - an important decision that can have long lasting effects.

Special Note Regarding Homestead Property

Florida homestead law offers some of the strongest asset protection found under any state constitution. Most judgment creditors cannot force the sale of Florida homestead property to collect a judgment. Among other factors, a homestead must be owned by a “natural person” to receive protection under Florida law. As a result, we often simply recommend holding title in one’s own name for an unmarried person, and as [tenants by the entirety](#) for married couples. One Florida court case has held that the creditor protection attributable to a Florida homestead was “lost” upon transfer to a revocable trust. Although this case may not be good law and other court cases have held to the contrary, a more cautious approach may be advisable. In any case, care should be taken when deciding how to hold title to homestead property in Florida.

Otherwise, there are several options to consider, including:

- **Revocable Trust** - though revocable trusts (including [dynasty trusts](#)) generally provide no asset protection during the lifetime of the trust creator (“grantor”), titling non-homestead property in the name of a revocable trust will help avoid [probate](#) upon the death of the grantor.
- **Limited Liability Companies** - LLCs have become a popular form of ownership for many real estate investors. LLCs protect owners from personal liability associated with LLC-owned real property. In addition, Florida law generally protects the assets of an LLC from the LLC owner’s creditors by limiting creditors to obtaining a “[charging order](#)” against the owner’s interest in the LLC, which is a benefit not afforded to corporations. A charging order is a weak creditor remedy, as it only allows a creditor to collect against the owner’s share of LLC distributions if such distributions are made. A creditor of the sole owner of a single-member LLC, however, is not limited to a charging order under Florida law and may foreclose against the LLC and ultimately obtain LLC assets. For asset protection purposes, it may be wise to create a multi-member LLC from inception or convert an existing single-member LLC to a multi-member LLC.
- **SLAT** – a [Spousal Lifetime Access Trust](#) is an irrevocable trust where one spouse (“grantor spouse”) gifts assets to the SLAT with the other spouse as beneficiary. SLAT assets are protected under Florida law from both spouses’ creditors. When creating a SLAT, the grantor spouse will use some (or all) of their lifetime gift tax exemption. With the current high lifetime gift tax exemption amounts, a SLAT can be an effective way to utilize existing tax exemption amounts before they disappear.
- **QPRT** – another irrevocable trust option is the [Qualified Personal Residence Trust](#), which allows a grantor to (i) gift real property to a trust, (ii) live on the property for a term of years, and (iii) designate beneficiaries upon the expiration of the QPRT term. As with a SLAT, the amount gifted to beneficiaries in a QPRT falls under the grantor’s lifetime federal gift tax exemption. The gift tax value is calculated at the time of the transfer, and all future appreciation will escape the grantor’s taxable estate.
- **Land Trust** – the main benefit of [Florida land trusts](#) is privacy - the beneficiary of a Florida land trust is not publicly known, as the trustee of the land trust holds legal title on behalf of the beneficiary. Potential litigants and creditors cannot discover the beneficiary of a land trust through a public records search and may be disincentivized from filing suit as a result. In addition, if a lawsuit is filed against the named Trustee of the land trust, only the real property owned by that specific land trust is at risk.