Jay Law | California estate planning attorneys

A GUIDE FOR FINANCIAL ADVISORS AND THEIR CLIENTS

# Privacy-preserving trust design: how to keep your name off your home's public record

When and how to design a trust that keeps your name private, how to keep your name from surfacing even with a private trust setup, and why planning should start before you buy.

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INSIDE

01 Common questions

02 Considerations

- Can a property deed be titled in the name of a trust alone?
- What can a privacy-preserving trust do, and not do?
- Where else could your name show up, and how can you prevent it?
- What if you need a mortgage?
- What if you already own your home?
- Can this all be avoided by using an LLC instead?

03 Illustrative scenario

04 Summary and key considerations

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# Common questions

> I just had a liquidity event. How do I buy a new home without signaling how much I made?
>
> I set up a trust, so why is my name still on the public record? Can I change it?
>
> Can I invest in property without it being tied to my name, my day job or my personal life?
>
> When should I discuss my real estate purchases with an estate planning attorney if privacy matters to me?

# Considerations

## Can a property deed be titled in the name of a trust alone?

In many states, a trust can't hold title in its own name.[1] A trust is a relationship, not a legal entity, so title belongs to the trustee. Title insurers generally insist on vesting title in the trustee, so a deed made out simply to "The Smith Trust" with no trustee named is a title defect that insurers won't accept without a corrective deed.[2]

In California, this is well established. The state Supreme Court has described a trust as a relationship in which the trustee holds legal title,[3] and California courts have held that a trust can't own property or be sued in its own name.[4] The Probate Code only provides for transferring property to a person "as trustee," never to a trust by name.[5] The California Land Title Association tells consumers the same thing, and title insurers vest title in the trustee.[2] A few states allow a trust to hold title directly. Colorado, for example, permits a trust to acquire and convey real property in its own name.[6] Others, like Maine, treat a deed made out to a trust as a deed to its current trustees.[7] Even where a trust can hold title by itself, an outgoing trustee must still execute a recorded deed or transfer document when property is sold or refinanced, surfacing the trustee on record.

In practice, then, a deed to trust property usually shows two names: the trust's and the trustee's. The trust's name can be anything you choose. The trustee's name is the one that matters for privacy, and in a typical living trust, that's you. So the privacy comes from two choices: what the trust is called and who serves as trustee.

## What can a privacy-preserving trust do, and not do?

A typical living trust is named after the person who creates it, with that person as trustee. The deed then reads something like "Jane Smith, Trustee of the Jane Smith Trust," so her name appears on the deed. A privacy-preserving trust changes both. Nothing requires a trust's name to include yours, so it can be named after a street, a year or anything neutral.

The trustee doesn't have to be you or someone related to you. Title insurers accept a person or a company authorized to act as a trustee,[2] so the options include a licensed professional fiduciary or a trust company. If you choose an individual, pick someone whose name doesn't lead back to you. A spouse — especially in community property states where spousal interests complicate title — or a relative sharing your surname defeats the privacy goal. The deed then reads "[Trustee], as Trustee of The Shattuck Avenue Trust," and your name doesn't appear.

You don't give up control. Because the trust is revocable, you can change it, revoke it and replace the trustee at any time. You also keep the benefits of owning the home personally, including property tax protections and access to standard mortgage options (subject to lender rules regarding trustee structures).

What a privacy trust does is keep you out of a name search. Most of the exposure people worry about comes from one place: the county recorder's index of deeds, which anyone can

**KEY CONSIDERATION 1**
Give the trust a neutral name, like "The Shattuck Avenue Trust."

**KEY CONSIDERATION 2**
Appoint a trustee other than you, like a licensed professional fiduciary or a trust company.

search by name. In San Francisco and Alameda counties, that search is available online.[8] Data-broker and "people search" sites copy the index and the assessor's tax roll, so once your name is in the index, it spreads. With the design above, your name never enters the index, so there's nothing for those sites to copy. That helps far more than trying to remove it later.

For someone who has just had a liquidity event, that search is a breadcrumb trail. It ties your name to an address and a purchase price, and anyone curious about what you made, or where you're putting it, can follow it. A privacy trust breaks that trail.

What it won't do is stop a determined adversary. A privacy trust defeats a name search of public records and the sites that scrape them. Someone who already knows your address can trace the parcel to the trustee, and in many legal proceedings a trustee may be required to identify the person behind the trust. Lender files, title company records, and confidential tax forms can be subpoenaed. Voter registration, DMV records, and utility accounts are separate systems with their own rules. For most people, defeating the title search is the goal.

## Where else could your name show up, and how can you prevent it?

Even when your trust follows the design above, your name can still reach the public record in a few ways. Most can be avoided with planning; one is permanent once it happens.

If you already have a trust and still see your name, the cause is usually one of three things: the trust is named after you, you're serving as trustee, or the home was bought in your name and moved into the trust later. The first two can be fixed going forward by renaming the trust and appointing a different trustee, so current title no longer shows you. Earlier deeds stay in the index, though, so the record of your past ownership can't be erased. Your next purchase can avoid it entirely by having escrow deed the property directly to the trustee.

| RECORD | PUBLIC? | HOW TO KEEP YOUR NAME OFF IT |
|---|---|---|
| The deed, as buyer | Yes | A trustee other than you |
| The deed, as seller | Yes | Buy directly into the trustee's name. If you already own the home, this happens once. |
| The mortgage | Yes (acknowledgment/rider recorded) | An institutional trustee (a short lender-required acknowledgment or signature page is recorded alongside the security instrument) |
| Homeowners' exemption list | Yes | Skip the exemption, worth about $70–90 a year |
| Trust certification | Only if recorded | Leave your name out and don't record it |
| Tax bill and assessment roll | Yes | Shows the trustee; use the trustee's address |
| Property transfer form | No | Signed by the trustee, with the trustee's address |

The most important prevention step is timing. When escrow deeds the home directly from the seller to the trustee, your name never appears on the deed as buyer or seller. If you buy in your own name and move the home into the trust later, your name stays in the index permanently as the seller on that second deed.

The deed must also list an address where the tax bill goes, and the property transfer form asks for a mailing address.[9] Use the trustee's office or a P.O. box on both, so your home address isn't tied to your name anywhere else.

Title companies ask for a "certification of trust," a short summary that confirms the trust exists and who the trustee is. California law lets it leave out who created the trust.[10] Give the title company a certification without your name, and ask that it not be recorded, since a recorded certification becomes public. Standard title company forms ask for the creator's name, so expect some discussion.

One trade-off surprises people. In California, the homeowners' exemption takes $7,000 off your home's assessed value, which saves about $70 to $90 a year.[11] The claim form is confidential, but the assessor must keep a public list of who receives the exemption, which ties your name directly to the parcel.[12] If full anonymity matters, skipping the exemption may be worth it.

A few things sit outside the public record. Homeowner's insurance, utilities, and HOA accounts are private, though separate; the trustee can be the named insured, with you added as an insured. Your agent, lender, and title officer will know who you are, so request confidentiality in writing prior to closing. And for information people-search sites already have, California's Delete Act lets residents ask registered data brokers to delete it through a single state portal.[13] People facing real safety risks, such as survivors of domestic violence, may also qualify for state address-confidentiality programs; even for them, the Legislature's own guidance is to hold the home in a revocable trust.[14]

**KEY CONSIDERATION 3**
Set up the trust before you make an offer, then buy directly into the trustee's name so you never appear as buyer or seller.

**KEY CONSIDERATION 4**
Use the trustee's address, like their office or a P.O. box, on the deed and tax forms.

**KEY CONSIDERATION 5**
Keep the trust certification private, like leaving your name out and asking that it not be recorded.

**KEY CONSIDERATION 6**
Decide whether to claim the homeowners' exemption. Skipping it costs about $70–90 a year and keeps your name off a public list.

## What if you need a mortgage?

Fannie Mae and Freddie Mac, whose rules most conventional home lenders follow, will lend on a home held in a revocable trust under conforming loan limits. You still sign the note personally as borrower, but the recorded mortgage shows the trustee. The catch is who can serve as trustee: guidelines generally require either you individually or an institutional trustee (such as a bank or regulated trust company). A friend or non-institutional fiduciary serving alone may not meet standard agency automated-underwriting rules, requiring special lender approval or institutional co-trusteeship. Additionally, lenders typically require a short borrower acknowledgment or signature page recorded alongside the security instrument.[15]

| OPTION | YOUR NAME ON THE RECORD | GOOD FIT FOR |
|---|---|---|
| Institutional trustee from the start | Nowhere on title (borrower acknowledgment recorded with loan document) | Full anonymity |
| You serve as co-trustee at closing, then step down | Once in the history, not on current title | Clients who'd rather not pay a trust company long term; the lender should consent |
| Close in your own name, move to the trust later | Permanently, as buyer and seller | Not recommended if privacy is the goal |

Many retail lenders default to the third option because it's simpler for them. If privacy matters, talk to an estate planning attorney before you make an offer and before you choose a lender. The trust has to exist before closing, and your attorney, lender and escrow officer should agree on the structure before the loan documents are drawn.

## What if you already own your home?

You can still move it into a privacy trust. In California, a transfer into your own revocable trust doesn't trigger reassessment or transfer tax, and federal law prevents your lender from calling the loan as long as you stay a beneficiary and keep living there. Give the lender notice of the transfer.[16]

The cost is one permanent public entry: your name, as seller, on the deed that moves the home into the trust. From then on, current title shows only the trustee. Before you transfer, check your owner's title insurance. Policies issued on 2006 and later standard forms generally carry coverage over to the trustee; older policies may need an endorsement.[17]

## Can this all be avoided by using an LLC instead?

An LLC does keep your name off the deed, which is why it's the advice many people hear first. But it also has privacy gaps. California requires LLCs to file a Statement of Information listing members or managers, so your name appears unless a third-party manager is designated.[18] Fannie Mae and Freddie Mac do not purchase residential owner-occupied mortgages originated directly to LLC borrowers.[19] And in California, holding primary residential property in an LLC can complicate parent-child property tax exclusion transfers and homestead protections compared to a revocable living trust.

Investment property is different. If you're buying a rental and want it separate from your day job and personal life, an LLC can make sense, mainly to limit liability from tenants or guests. The privacy gaps and tax tradeoffs still apply, so it's worth weighing both structures before you buy.

ILLUSTRATIVE SCENARIO

### The founder who wanted her first home off the record

A founder in her late 30s had just sold her company and was buying her first home in the Bay Area. Years earlier she'd made a trust online, named after herself, with herself as trustee. Her financial advisor called us before she made an offer.

**What was at stake**

Her existing trust would have put her name on the deed twice, tying it to the address and price days after the sale made the news.

**What we did**

Restated her trust under a neutral name, named a trust company as trustee to fit her lender's rules, and gave the title company an unrecorded certification.

**Where it landed**

Her name isn't on the public deed or tax bill (with loan document acknowledgments handled per lender requirements), and her estate plan was updated for the new wealth at the same time.

A composite for illustration, not an actual client.

# Summary

If you're weighing these tradeoffs, talk with an estate planning attorney before you make an offer. Jay Law is licensed in California and can design the trust and coordinate with your lender, escrow and title company. As you plan, keep these key considerations in mind.

## Key considerations

1. Give the trust a neutral name, like "The Shattuck Avenue Trust."
2. Appoint a trustee other than you, like a licensed professional fiduciary or a trust company, keeping your lender's rules and loan limits in mind.
3. Set up the trust before you make an offer, then buy directly into the trustee's name so you never appear as buyer or seller.
4. Use the trustee's address, like their office or a P.O. box, on the deed and tax forms.
5. Keep the trust certification private, like leaving your name out and asking that it not be recorded.
6. Decide whether to claim the homeowners' exemption, since claiming it puts your name on a public list.


### ABOUT THE AUTHOR

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### WORK WITH US

Financial advisors and CPAs can introduce a client at jaylaw.co/advisors. We coordinate with the client's lender and escrow, and keep you updated with the client's permission.

### NOTES AND SOURCES

1. See Restatement (Third) of Trusts § 2 (a trust is a fiduciary relationship with respect to property); 33 Me. Rev. Stat. § 851-A(6) (deeds to trusts construed as conveyances to trustees).
2. California Land Title Association, Title Consumer Series No. 14; Old Republic Title, *Insuring Living Trusts* and *Common Ways to Hold Title*.
3. Moeller v. Superior Court (1997) 16 Cal.4th 1124, 1132 fn. 3.
4. Portico Management Group, LLC v. Harrison (2011) 202 Cal.App.4th 464; Boshernitsan v. Bach (2021) 61 Cal.App.5th 883.
5. Cal. Prob. Code § 15200.
6. Colo. Rev. Stat. § 38-30-108.5.
7. 33 Me. Rev. Stat. § 851-A.
8. San Francisco Assessor-Recorder and Alameda County Clerk-Recorder online grantor-grantee indexes; Cal. Gov. Code § 27288.1.
9. Cal. Gov. Code § 27321.5 (tax statement address on deeds).
10. Cal. Prob. Code § 18100.5.
11. Cal. Rev. & Tax. Code § 218(a) ($7,000 exemption). Estimate assumes a total property tax rate of about 1.0% to 1.25% (the 1% base rate plus local voter-approved rates): $7,000 × 1.0% = $70; × 1.25% ≈ $88.
12. Cal. Rev. & Tax. Code §§ 218, 408(a).
13. Cal. Civ. Code § 1798.99.80 et seq. (Delete Act).
14. Cal. Gov. Code §§ 6205 et seq., 6209.5 (Safe at Home).
15. Fannie Mae Selling Guide B2-2-05; Freddie Mac Single-Family Seller/Servicer Guide § 5103.5.
16. Cal. Rev. & Tax. Code §§ 62(d), 11930; 12 U.S.C. § 1701j-3(d)(8); 12 C.F.R. § 191.5(b)(1)(vi).
17. ALTA Owner's Policy (2006 and 2021), Conditions § 2; Kwok v. Transnation Title Ins. Co. (2009) 170 Cal.App.4th 1562.
18. Cal. Corp. Code § 17702.09 (LLC Statement of Information).
19. Fannie Mae Selling Guide B2-2-01; Fannie Mae Servicing Guide D1-4.1-02.


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