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MAY THE BENEFICIARY OF AN ILLINOIS LAND TRUST PROCEED UNDER CHAPTER XII OF THE BANKRUPTCY ACT?

It is a matter of general knowledge that a financially distressed debtor, under certain circumstances, may file for bankruptcy in federal court.¹ It is not commonly known, however, that in lieu of declaring bankruptcy a debtor can arrange to pay off his creditors over an extended period of time.² Chapter XII of the Bankruptcy Act³ contains provisions for one such arrangement. These provisions are available only to persons other than corporations who legally or equitably⁴ own chattel real or real estate which was pledged as security for a debt.⁵ If the debtor is the legal or equitable owner of such real property, Chapter XII provides a means whereby the debtor can satisfy his creditors and still retain ownership and possession of his property. On its face, Chapter XII appears to be available to any financially troubled noncorporate debtor who owns real property. However, whether the beneficiary of an Illinois land trust qualifies as such a person, thereby having access to Chapter XII, is an important but unsettled question.

In Illinois and a handful of other states,⁶ an owner of real property can convey that property to a trustee contemporaneously with a land trust agreement.⁷ In so doing the owner trans-

1. 11 U.S.C. §§ 1-1103 (1970).

2. The Bankruptcy Act has provisions for such arrangements. *Id.* §§ 701-1086 (1970).

3. *Id.* §§ 801-906 (1970).

4. An example of an equitable owner for bankruptcy purposes appeared in *In re Colonial Realty Inv. Co.*, 516 F.2d 154 (1st Cir. 1975).

The term "equitable interest," as used throughout this comment, refers to equitable title which is defined as follows: "A right in the party to whom it belongs to have the legal title transferred to him; equity regards as the real owner, although the legal title is vested in another." BLACK'S LAW DICTIONARY 1656 (4th ed. 1951).

5. 11 U.S.C. § 806(6) (1970) defines a debtor for the purpose of Chapter XII as follows:

'debtor' shall mean a person, other than a corporation as defined in this title, who could become a bankrupt under section 22 of this title, who files a petition under this chapter and who is the legal or equitable owner of real property or a chattel real which is security for any debt. . . .

See In re Chalkey, 34 F. Supp. 969 (D.C. Tenn. 1940).

6. FLA. STAT. ANN. § 689.071 (West Supp. 1977); IND. CODE § 4-2-13 (1971); N.D. CENT. CODE § 59-03-02 (1967); VA. CODE § 55-17.1 (1962).

7. In creating a land trust agreement, two instruments are executed simultaneously. A deed in trust is used to convey legal title of the property to the trustee, while a separate instrument defines what powers the

forms his legal and equitable interest in the real property to an interest in personal property.⁸ It is this transformation of real property into personal property which creates a question in this area. If the owner's interest in the real property has become an interest in personal property, can the owner-debtor proceed under a Chapter XII arrangement?

Two salient issues are raised by this dilemma. First, if the beneficiary of an Illinois land trust⁹ has an interest in personal property only, is this interest included within the provisions of Chapter XII of the Bankruptcy Act? Second, does the beneficiary of an Illinois land trust actually have an equitable interest in real property, regardless of the fact that land trusts in Illinois are commonly regarded as personal property? A brief examination of the Illinois land trust will bring these two issues into proper focus and perspective, demonstrating the importance of resolving this seeming dichotomy.

MAJOR ATTRIBUTES OF ILLINOIS LAND TRUSTS

Owners of real property have discovered that there are several elements of an Illinois land trust which are more favorable than outright legal ownership of the property. One such element is that the beneficiary's name does not appear on the public records,¹⁰ which allows the beneficiary the privacy of ownership that can be extremely valuable under certain circumstances.¹¹ Another benefit is that if a judgment or tax lien is entered against the beneficiary of a land trust, the legal title to the real estate is not subject to a judgment lien or a tax lien.¹² Also important are the facts that a beneficiary can get a mortgage loan without recourse¹³ and can transfer his bene-

trustee is to have. *Robinson v. Chicago Nat'l Bank*, 32 Ill. App. 2d 55, 176 N.E.2d 659 (1961).

8. An excellent explanation of this principle was stated in *Levine v. Pascal*, 94 Ill. App. 2d 43, 236 N.E.2d 425 (1968):

The Illinois land trust, by its very nature, is characteristically different from a common-law land trust. While the common-law accomplishes a split between the legal title in the trustee and the equitable title in the beneficiary, in an Illinois land trust, the trustee has both legal and equitable title. . . . By placing with the trustee the full, complete and exclusive title to the real estate, both legal and equitable, the beneficiary in an Illinois land trust is left with a personal property interest only.

Id. at 50, 236 N.E.2d at 428 (citations omitted).

9. For an excellent discussion of all aspects of the Illinois land trust, see H. KENOE, *LAND TRUST PRACTICE* (IICLE 1974).

10. Turner, *Some Legal Aspects of Beneficial Interests Under Illinois Land Trusts*, 39 ILL. L. REV. 216, 219 (1945).

11. For example, if a private developer wants to put together several, separately owned tracts of land, his anonymity could prevent sellers from drastically increasing their prices.

12. *Whitaker v. Scherrer*, 313 Ill. 473, 145 N.E. 177 (1924).

13. H. KENOE, *LAND TRUST PRACTICE* 1-8 (IICLE 1974).

ficial interest by assignment.¹⁴ This avoids the expense and the burden involved in the conveyance of real property.

Still another advantage available to the beneficiary of a land trust is that because the Illinois courts treat the beneficial interest as a chose in action,¹⁵ the beneficiary may pledge his interest in the land as security for a debt or loan. Furthermore, when the beneficiary dies his interest in the land trust passes to his executor or administrator as personal property.¹⁶ This is often preferable to having a real property interest pass at death in that the executor or administrator can dispose of the personal property interest more expeditiously.

Because of these obvious advantages to outright legal ownership of real property, there is little doubt that the use of the Illinois land trust will increase as more real property owners are made aware of its existence. Equally probable is that as more land trusts are created, the amount of litigation they engender in the area of bankruptcy can be expected to increase. Consequently, the beneficiary of the land trust who finds himself in financial difficulty may be interested to know whether or not he can retain his land while still paying off his creditors in lieu of going into a straight bankruptcy. An examination of Chapter XII of the Bankruptcy Act aids in bringing this problem into focus.

REAL PROPERTY ARRANGEMENT ADVANTAGES OVER BANKRUPTCY

Initially, we must consider why a debtor would want to proceed under Chapter XII instead of going into bankruptcy.¹⁷ Although not a panacea, many debtors and creditors find that a Chapter XII arrangement leaves them in a better position than would a straight bankruptcy proceeding. For example, by filing a petition under Chapter XII the debtor can retain possession of his property while repaying his creditors over an extended period of time.¹⁸ Both creditor and debtor benefit from these circumstances. The debtor is still in control of his property, albeit subject to court supervision, and can assure its continued use in a productive manner. The debtor is thus assured that

14. See *Burns v. Epstein*, 413 Ill. 476, 109 N.E.2d 774 (1952).

15. *Levine v. Pascal*, 94 Ill. App. 2d 43, 236 N.E.2d 425 (1968).

16. *In re Peters*, 34 Ill. 2d 536, 217 N.E.2d 3 (1966).

17. The noncorporate debtor who gave his land as security cannot always use the other arrangements provided for under the Bankruptcy Act. For example, Chapter X of the Bankruptcy Act is available only for corporate reorganization, 11 U.S.C. §§ 501-676 (1970); Chapter XI applies only to unsecured debts, *id.* §§ 701-99 (1970); and Chapter XIII only applies to wage earner plans and not to real estate, *id.* §§ 1001-086 (1970).

18. 11 U.S.C. § 11(9) (1970); *In re Dick*, 296 F.2d 912 (7th Cir. 1961).

the person in charge of the property is interested in maintaining and protecting it while enjoying the additional security of his own and judicial supervision. Creditors additionally benefit in that they are able to advise the court of their approval or rejection of any new payment arrangement offered by the debtor. This is a strong influence on the court, as it is the court's duty to approve the arrangement after determining that it is in the creditor's and debtor's best interest.¹⁹

Another advantageous factor is that the filing of a Chapter XII petition²⁰ causes an automatic stay to be enacted regarding all other judicial action. This prevents any creditor from enforcing a lien against the real property or chattel real of the debtor.²¹ Were a judgment to be entered in a state court after the filing of the Chapter XII petition, the state court judgment would have no effect on the bankruptcy court,²² nor could a claim be supported upon the judgment procured in any state court proceeding.²³ Furthermore, the stay provision apparently has reference to all property of the debtor and is not limited to his real property.²⁴

The financial position of the debtor is also enhanced by not filing a bankruptcy action in that a discharge in a Chapter XII proceeding does not preclude the debtor from later filing a bankruptcy petition. Conversely, if the debtor were to be discharged in bankruptcy, he could not apply to the bankruptcy courts for aid until six years had passed since his discharge.²⁵

It should be evident that many debtors may benefit by the provisions of a real property arrangement, but the critical question is whether it was within the intent of Congress to extend these benefits to the beneficiary of an Illinois land trust. The basic premise is that the courts have jurisdiction to hear bankruptcy cases only if given that jurisdiction by Congress.²⁶ Consequently, if the beneficiary of an Illinois land trust cannot

19. See *Gonzalez Hernandez v. Borgos*, 343 F.2d 802 (1st Cir. 1965).

20. Bankruptcy petitions are filed in federal court. 11 U.S.C. § 822 (1970).

21. *Id.* § 828 (1970). It must be noted, however, that an arrangement filed under Chapter XII must include all provisions modifying or altering the rights of creditors who hold debts secured by real property or chattel real of the debtor. *Id.* § 861(1) (1970). Consequently, the court's power in granting this stay is to be exercised only to aid the consummation of a new financial arrangement whereby the debtor will pay off his creditors. In the absence of an acceptable arrangement the court should dismiss the Chapter XII proceeding entirely. See *Kunze v. Prudential Ins. Co.*, 106 F.2d 917 (5th Cir. 1939).

22. 11 U.S.C. §§ 814, 907 (1970); *In re Potts*, 142 F.2d 883 (6th Cir. 1944).

23. *In re Potts*, 142 F.2d 883 (6th Cir. 1944).

24. *In re Kunz*, 28 F. Supp. 730 (D.C. Mont. 1939).

25. 11 U.S.C. § 32(c) (1970).

26. See note 29 *infra*.

satisfy the definition of a "person who is the legal or equitable owner of real property or chattel real"²⁷ within the meaning of the Bankruptcy Act, then a bankruptcy court will lack jurisdiction to hear the Chapter XII petition.²⁸ Leaving aside the question of its character, whether the beneficial interest is encompassed by congressional intent can be better understood by looking at the history of the Bankruptcy Act.

HISTORICAL PERSPECTIVES OF THE BANKRUPTCY ACT

The United States Constitution provides that, "Congress shall have the Power . . . to establish uniform Laws on the subject of Bankruptcies throughout the United States."²⁹ If the founding fathers voiced opposition to the concept of uniform bankruptcy laws, such opposition was not recorded in the debates of the Constitutional Convention.³⁰ James Madison wrote of this principle of uniformity of bankruptcy laws in *The Federalist* No. 42:

The power of establishing uniform laws of bankruptcy is so intrinsically connected with the regulation of commerce, and will prevent so many frauds where the parties or their property may be or be removed into different states, that the expediency of it seems not likely to be drawn into question.³¹

From the clarity of favorable writing on the issue of uniformity and the lack of unfavorable rhetoric, it is apparent that the intent of the framers of the Constitution was to allow Congress to have the power to make bankruptcy laws applicable to all of the states in the Union.

Judicial interpretation of the Constitution's bankruptcy clause has indicated that the power of Congress to establish uniform bankruptcy laws is virtually unrestricted. Under existing case law, it is clear that the only limitation put on Congress with respect to the enactment of bankruptcy legislation is that the laws must be uniform throughout the United States,³² with uniformity having only geographic reference.³³

Nature of the Bankruptcy Court

It has also been judicially settled that the bankruptcy courts are courts of equity, and as such possess the power to interpret

27. 11 U.S.C. § 806(6) (1970).

28. *Sumida v. Yumen*, 409 F.2d 654 (9th Cir. 1975). See *In re Colonial Realty Inv. Co.*, 516 F.2d 154 (1st Cir. 1975).

29. U.S. CONST. art. 1, § 8.

30. V ELLIOTS DEBATES 120, 488, 503-04, 560 (2d ed. 1881).

31. THE FEDERALIST NO. 42 (J. Madison), 183 (Frederick Unger Pub. 1959).

32. *Continental Bank v. Rock Island & Pac. Ry.*, 294 U.S. 648 (1934).

33. *Stellwagen v. Clum*, 245 U.S. 605 (1918).

the laws in order to achieve the most equitable result.³⁴ The Seventh Circuit Court of Appeals demonstrated this equitable power in the case of *In re Knickerbocker Hotel Co.*³⁵ In *Knickerbocker*, an action was filed for a corporate reorganization under section 77B of the Bankruptcy Act.³⁶ The creditor challenged the court's jurisdiction on the ground that the corporation that had filed for reorganization had been formed solely for the purpose of filing a section 77B petition. The court first noted that if this were true it would dismiss the case, but it then went on to say:

However, a court of bankruptcy, being a court of equity, looks through the form to the substance of the transaction in determining whether the petition of Knickerbocker here under consideration presents a situation properly cognizable under section 77B of the Bankruptcy Act. . . .

. . . .
 . . . The debt here is not that of an individual who would have no standing under the provisions of section 77B, but it has at all times remained a corporate debt and the fact that an individual was holding the naked legal title to the premises for the use of the bondholders in no way brands it as individual property. The individual who thus held the nominal title owned no part of the debt and was in no position to invoke the benefits of section 74 of the Bankruptcy Act.³⁷

As a court of equity, the bankruptcy court looked to the substance of the transaction rather than its mere legal form. By applying this rationale to Illinois land trusts, it appears that the bankruptcy court can look at the actual property interests involved in a land trust situation and find that the beneficiary has an equitable interest in the real estate.³⁸

Federal v. State Regulation

At this juncture, a different question arises. The tenth amendment of the United States Constitution provides, "[t]he powers not delegated to the United States by the Constitution nor prohibited by it to the States, are reserved to the States respectively, or to the people."³⁹ One such state power is the power to make laws governing the formation of contracts by the state's citizens. As set forth in the Constitution,⁴⁰ Congress should not interfere with state legislation. As far back as 1798,

34. *In re Denver & R.G.W. R.R.*, 23 F. Supp. 298 (D.C. Colo. 1938).

35. 81 F.2d 981 (7th Cir. 1936).

36. 11 U.S.C. § 77B (1934) (amended 1975).

37. *In re Knickerbocker Hotel Co.*, 81 F.2d 981, 983-84, 985 (7th Cir. 1936).

38. This notwithstanding that in legal form, the beneficiary of an Illinois land trust holds only a personal property interest. See note 8 *supra*.

39. U.S. Const. amend. X.

40. *Id.*

the Supreme Court in *Calder v. Bull*⁴¹ stated that Congress could not pass laws that destroy or impair the lawful private rights of citizens. By applying this proposition to beneficiaries of land trusts, it appears that treatment of their interest as anything other than personal property as defined by state law would be impairing the beneficiaries' private rights.

For example, the Illinois courts have established that the beneficiary of a land trust can contract with respect to his beneficial interest.⁴² Let us assume that a beneficiary of an Illinois land trust pledged his beneficial interest to a creditor. In all probability, the creditor would believe that he was receiving a personal property right, and would protect that right by following the filing procedures applicable to personal property.⁴³ If what the creditor believed was personal property was subsequently held to be real property, the creditor could suffer catastrophically as a result of not complying with the applicable real property filing statutes.⁴⁴ Although the broad reach of *Calder v. Bull* has been lessened,⁴⁵ it has never been repudiated. Similarly, the Supreme Court has stated that Congress, while without power to impair the obligations of contracts by laws acting directly and independently to that end, undeniably has authority to pass legislation pertinent to any of the powers conferred on it by the Constitution.⁴⁶ This holds true even when the congressional legislation operates to collaterally or incidentally impair or destroy the obligations of private contracts.⁴⁷

This supremacy-of-federal-law doctrine was clearly enunciated in the renowned case of *Erie Railroad v. Tompkins*,⁴⁸ where the court stated, "[e]xcept in matters governed by the Federal Court or by acts of Congress, the law to be applied in any case is the law of the state."⁴⁹ Therefore, because Congress has preempted the bankruptcy area, its broad power prevents the states from passing or enforcing laws that interfere with the purposes of the Bankruptcy Act.⁵⁰

41. 3 U.S. (3 Dall.) 386 (1798).

42. See *Duncanson v. Lill*, 322 Ill. 528, 153 N.E. 618 (1926).

43. ILL. REV. STAT. ch. 26, § 9-302 (1975).

44. ILL. REV. STAT. ch. 30, §§ 29-30 (1975).

45. See *Knox v. Lee*, 79 U.S. (12 Wall.) 457, 549-50 (1870) (wherein the court stated, *inter alia*, that the congressional legislation which provided that "greenbacks" were legal tender should be applied to contracts made prior to the enactment of the acts).

46. *Highland v. Russell Car Co.*, 279 U.S. 253, 261 (1928); *Louisville & Nashville R.R. v. Mottley*, 219 U.S. 467, 482 (1910); *Knox v. Lee*, 79 U.S. (12 Wall.) 457 (1870). *But see Fry v. United States*, 421 U.S. 542 (1974), which alludes to the fact that the tenth amendment is still alive and can be resorted to under the appropriate circumstances.

47. *Fry v. United States*, 421 U.S. 542 (1974).

48. 304 U.S. 64 (1938).

49. *Id.* at 78 (emphasis added).

50. *International Shoe Co. v. Pinkus*, 278 U.S. 261 (1929); *California State Bd. of Equalization v. Goggin*, 245 F.2d 44 (9th Cir. 1957).

This principle was applied to the bankruptcy laws in *Continental Bank v. Rock Island Railway*,⁵¹ where the Court said, "[a]nd under the express power to pass uniform laws on the subject of bankruptcies, the legislation is valid though drawn with the direct aim and effect of [changing contract rights]."⁵² It is only when federal legislation attempts to confer power upon the national government that is not within the express or implied powers given to it by the Constitution that the legislation becomes vulnerable to a tenth amendment challenge.⁵³ Consequently, it appears that even if contract rights under state law are thereby infringed, Congress may pass bankruptcy laws that are uniformly applicable throughout the country under the power delegated to it by the Constitution.⁵⁴

Notwithstanding the broad congressional power to pass uniform bankruptcy laws, it may nevertheless be argued that uniformity will not be vitiated if the state categorizes property interests. Proponents of this position can be expected to concede that where federal law conflicts with local law the federal legislation prevails,⁵⁵ but still insist that a conflict with federal legislation vis-à-vis the uniformity principle is nonexistent. Case law may be found to support this position, but such a stance totally ignores the fact that increased use of the land trust throughout the United States could emasculate the congressional purpose of providing for real property arrangements.

STATE DETERMINATION OF PROPERTY INTERESTS

Traditionally, the law of the state in which the bankruptcy court sits has been applied to determine what constitutes the property of the debtor.⁵⁶ For example, in *Wiley v. Public*

51. 294 U.S. 648 (1934).

52. *Id.* at 680.

53. See, e.g., *United States v. 2.74 Acres of Land in Williamson County*, 32 F. Supp. 55 (D.C. Ill. 1940).

54. See note 29 *supra*.

55. In the case of *Holmberg v. Armbrecht*, 327 U.S. 392 (1945), the Court held that claims on which the New York statute of limitations had run could nevertheless be asserted in a bankruptcy court. The Court said, "[t]he considerations that urge adjudication by the same law in all courts within a state when enforcing a right created by the state are hardly relevant for determining the rules which bar enforcement of an equitable right created not by a State legislature but by Congress." *Id.* at 394.

This federal supremacy rule was also clearly applied in the case of *Prudence Realization Corp. v. Geist*, 316 U.S. 89 (1941). *Geist* involved a bankruptcy proceeding in which the Supreme Court stated:

Nothing decided in [*Erie R.R. v. Tompkins*] requires a court of bankruptcy to apply such a local rule governing the liquidation of insolvent estates. The bankruptcy act prescribes its own criteria for distribution to creditors. In the interpretation and application of federal statutes, federal, not local law applies.
Id. at 95.

56. *Stout v. Green*, 131 F.2d 995 (9th Cir. 1942).

Investors Life Insurance Co.,⁵⁷ the trustee in a Louisiana bankruptcy sought to recover payments withheld by the bankrupt's employer pursuant to a contract entered into four years earlier. Under section 70(a) of the Bankruptcy Act, the trustee in bankruptcy is vested with the title to the bankrupt's property as of the date of the filing of the petition.⁵⁸ Relying on this principle the trustee in bankruptcy sought to recover all sums that were withheld, based on the theory that all such withholdings were voidable preferences.⁵⁹ Under Louisiana law, however, such a contract between an employer and employee results in a prior lien on any amount that becomes due. The Fifth Circuit Court of Appeals stated that for purposes of property transfers, *state law* defines the property of the bankrupt. Therefore, pursuant to Louisiana law, any property right transferred prior to bankruptcy was not a part of the bankrupt's estate.⁶⁰

By looking to the law of Ohio, the federal bankruptcy court in the sixth circuit determined the status of property interests in *In re Clemens*.⁶¹ In *Clemens*, a constructive trust was imposed over the property in the hands of the trustee in bankruptcy. The court stated, "[t]he existence or validity of third party equities in property held by a Trustee in Bankruptcy is determined by local state law."⁶²

Although the outcome of the case was contrary, an analogous situation arose in *In re Fabers, Inc.*⁶³ In *Fabers*, forty-five consumers petitioned the court to have a constructive trust imposed over cash deposits that they made to Fabers, a retail rug dealer who had filed for bankruptcy. Under Connecticut law a constructive trust can be imposed only if there is actual or constructive fraud when the transaction was entered into.⁶⁴ The court did not find fraud, and refused to invoke a constructive trust holding that, "the role of a federal court applying trust law in a bankruptcy proceeding is rigidly circumscribed; its only task is to determine the law of the state in which it sits. It cannot create new law, however great the need may seem."⁶⁵

State law was also looked to by the bankruptcy court to determine if the debtor had standing to file a Chapter XII

57. 498 F.2d 101 (5th Cir. 1974).

58. 11 U.S.C. § 110 (1970).

59. *Id.* § 107 (1970).

60. See also *Mutual Trust Life Ins. Co. v. Wemyss*, 309 F. Supp. 1221 (S.D. Maine 1970), where an analogous situation under the common law, as opposed to the Louisiana civil law, arose.

61. 472 F.2d 939 (6th Cir. 1972).

62. *Id.* at 942. See also *Hertzberg v. Associates Discount Corp.*, 272 F.2d 6 (6th Cir. 1959).

63. 360 F. Supp. 946 (D.C. Conn. 1973).

64. *Worobey v. Sibieth*, 136 Conn. 352, 71 A.2d 80 (1949).

65. *In re Fabers, Inc.*, 360 F. Supp. 946, 948 (D.C. Conn. 1973).

petition in the case of *Ellis v. J.R.M. Corp.*⁶⁶ In *Ellis*, a mortgagee failed to file its interest in land under the Torrens system. Pursuant to Hawaii law, this failure to file meant that the mortgagee had no legal or equitable title to the land. This failing to file, *inter alia*, resulted in the action being dismissed.

It is thus obvious that the bankruptcy courts look to state law to decide what interests a person has in property. This, however, is not dispositive of the question of the availability of a Chapter XII proceeding to an Illinois land trust beneficiary. The United States District Court for the Northern District of Illinois dealt with this issue in bankruptcy proceedings on several occasions. The decisions, however, shed little light on this difficult and unresolved issue.

FEDERAL BANKRUPTCY COURT DECISIONS REGARDING ILLINOIS LAND TRUSTS

The first time that the bankruptcy court for the northern district of Illinois dealt with the issue of the status of a beneficiary's interest was in the case of *In re Kerflin*.⁶⁷ In *Kerflin*, two debtors filed a petition for a real property arrangement pursuant to Chapter XII of the Bankruptcy Act. The creditors moved to dismiss the petition for lack of jurisdiction. The debtors, who were the beneficiaries of an Illinois land trust, asserted that their interest in the trust was a chattel real, and they thereby were able to satisfy the statutory provisions.⁶⁸ Their argument, *inter alia*, was based on the fact that they had the right to control the property through the trustee, that they were obligated to pay taxes on the property and keep it in repair, and that they were liable for tort claims arising out of their ownership of the property. The debtors further argued that even if the trust agreement established a personal property interest in the beneficiaries' *res*, that classification of the interest was only applicable as between the trustee and the beneficiaries. According to the debtors' position, third parties such as creditors should not be allowed to deprive the debtors of what was, in fact, a chattel real. In an opinion by Judge Thomas James, the court rejected these arguments and dismissed the action on the ground that the debtors owned personalty, and therefore did not satisfy the definition of "debtors" in accordance with section 406(6) of the Bankruptcy Act.⁶⁹

66. 324 F. Supp. 768 (D.C. Hawaii 1971).

67. *In re Kerflin*, No. 75B6637 (Bankr. Ct. N.D. Ill., Oct. 15, 1975).

68. See note 5 *supra*.

69. Although scheduled to be appealed before Judge Lynch of the United States District Court, according to a conversation held with the attorney for the debtor, this matter was never pursued and was subsequently dismissed without a relitigation of the issue.

In accord with this position is Judge Frederick J. Hertz's opinion in *In re Romano*.⁷⁰ In *Romano*, the debtors were the owners of the beneficial interest in an Illinois land trust, and owned no other real estate. A creditor, Citizens Bank and Trust Company, successfully moved to dismiss the proceedings on jurisdictional grounds.

This case was appealed to the United States District Court for the Northern District of Illinois and affirmed by Judge Joel M. Flaum.⁷¹ In reaching his decision, Judge Flaum applied a two-pronged test. The first step of this test was to analyze Illinois law to determine the nature of the ownership interest in the land trust *res*. Based on Illinois law, the court found that the beneficial interest in the land trust was personal property. The second step in the court's analysis was to determine what type of debtor was within the congressional intent in enacting Chapter XII. In answering this second point the court reasoned that section 406(6) of the Bankruptcy Act⁷² was designed to make Chapter XII relief available only to those persons whose debts were governed by traditional real property laws. Judge Flaum further reasoned that a holding that Chapter XII was unavailable to a beneficiary of a land trust would in no way vitiate the Constitutional requirement of uniform bankruptcy laws.⁷³ The court said:

[W]hat the appellants fail to appreciate is that this court is not a legislature and can not expand on the express language and purposes of congressional legislation in order to rectify an alleged unfairness. Congress, in enacting the reorganization provisions of the Bankruptcy Act, may have left a small hole into which the Romanos have fallen. . . . Furthermore, no uniformity problem arises because the holding of one's wealth in beneficial interests is not compelled by the state of Illinois. The Romanos were completely free to choose the manner in which they would invest their wealth.⁷⁴

Although prior to the *Romano* holding, a contrary position on this issue was twice taken by Judge Richard L. Merrick of the bankruptcy court for the northern district of Illinois. In *In re Enrique Schwartz*,⁷⁵ seventy percent of the debtor's real property, which provided the security for the debts owed, was in an Illinois land trust. The creditors, the Federal Deposit Insurance Corporation and the Heritage Bank of Oak Lawn, sought to have the debtor's Chapter XII petition dismissed on jurisdic-

70. No. 76B2212 (Bankr. Ct. N.D. Ill., Sept. 28, 1976).

71. *In re Romano*, No. 76B2212 (N.D. Ill., Feb. 15, 1977).

72. 11 U.S.C. § 806(6) (1970).

73. See note 29 *supra*.

74. *In re Romano*, No. 76B2212, slip op. at 19, 20 (N.D. Ill., Feb. 15, 1977).

75. No. 75B11296 (Bankr. Ct. N.D. Ill., March 29, 1976).

tional grounds. The creditors argued that Illinois law should apply to determine the debtor's interests in the subject property. If such a finding were to be made, then the debtor would not be the legal or equitable owner of real property or chattel real, thereby depriving the court of jurisdiction. Judge Merrick rejected the creditors' position, and allowed the debtor to proceed under Chapter XII.⁷⁶

Judge Merrick again ruled on this issue in *In re Gordon*.⁷⁷ In *Gordon*, two partners were the beneficiaries for an Illinois land trust with their interests serving as partial security for a debt. The creditors, *inter alia*, moved to attack the court's jurisdiction on the ground that the beneficiaries were not debtors within the meaning of Chapter XII. In his opinion, Judge Merrick ruled that as far as the bankruptcy court is concerned, the beneficiary of an Illinois land trust *in fact* has an equitable interest in real estate.⁷⁸ The court explained that because the bankruptcy laws are to be uniform throughout the United States, it would be deleterious to allow a state to exclude from the bankruptcy court's jurisdiction what is, in reality, an equitable interest in real estate. The court reasoned that it was the intent of Congress to provide for real property arrangements and that the beneficial interest in a land trust was surely within that congressional intent.

Because of these conflicting opinions handed down by the courts for the northern district of Illinois, it has yet to be clearly established whether the uniformity-of-the-bankruptcy-laws approach of Judge Merrick or the look-to-the-state-law position determines if the court has jurisdiction over a land trust beneficiary's Chapter XII petition. Notwithstanding the judicial vacillations, a closer scrutiny of the laws relating to land trusts in Illinois aids in ascertaining why the beneficiary of a land trust actually has what appears to be equitable interest in the real property.

ILLINOIS LAND TRUST LAW

Illinois land trusts⁷⁹ have been judicially recognized as early

76. Written opinions were not handed down by the court in either *Kerflin* or *Schwartz*.

77. *In re Gordon*, No. 76B5585 (Bankr. Ct. N.D. Ill., July 19, 1976).

78. *In re Gordon*, No. 76B5585 (Bankr. Ct. N.D. Ill., Nov. 3, 1976).

79. The case of *Robinson v. Chicago Nat'l Bank*, 32 Ill. App. 2d 55, 176 N.E.2d 659 (1961), probably contains the best judicial definition of a land trust:

The land trust is a device by which the real estate is conveyed to a trustee under an arrangement reserving to the beneficiaries the full management and control of the property. The trustee executes deeds, mortgages or otherwise deals with the property at the written direction of the beneficiaries. The beneficiaries collect rents, improve and operate the property and exercise all rights of ownership

as 1893.⁸⁰ There is little doubt that a literal application of subsequent statutory and case law characterizes the beneficial interest in the land trust as personal property,⁸¹ but careful study of several Illinois statutes and decisions leads one to suspect that, notwithstanding the popular personalty notions, the beneficiary has an equitable interest in real property.

Legislative Treatment of Illinois Land Trusts

A basic attribute of the land trust is that the beneficiary's name is kept off of the public records, creating privacy of ownership.⁸² Statutory law on the other hand, reveals at least four instances in which the name of the beneficiary must be disclosed. According to the statute, where building ordinances are alleged to have been violated the trustee is required to disclose the identity of the beneficiary upon written request of the governmental unit having enforcement authority.⁸³ Disclosure of the beneficiary also must be made where the legal title to the property is being sold pursuant to an installment sales contract⁸⁴ or in any transaction involving governmental contracts.⁸⁵ Another instance of when the beneficiary's name is made public occurs when the beneficiary applies to an agency of the state or its political subdivisions for any type of benefits, authorizations, or permits.⁸⁶ While these four examples alone may not be suffi-

other than holding or dealing with the legal title. The arrangement is created by two instruments. The deed in trust conveys the realty to the trustee. Contemporaneously with the deed in trust a trust agreement is executed. The pertinent provisions of the trust agreement are summarized as follows: While legal title to the real estate is held by the trustees, the beneficiaries retain 'the power of direction' to deal with the title, to manage and control the property, to receive proceeds from sales or mortgages and all rentals and avails on the property. The trustee agrees to deal with the *res* of the trust only upon the written direction of the beneficiaries or the persons named as having power of direction. . . . The trustee is not required to 'inquire into the propriety of any direction' received from the authorized persons. The trustee has no duties in respect to management or control of the property or to pay taxes, insurance or to be responsible for litigation. The only specified duties upon the trustee are to execute deeds or otherwise deal with the property upon the direction of the beneficiary or other named authorized persons.

Id. at 58, 176 N.E.2d at 661.

80. See *Hart v. Seymour*, 147 Ill. 598, 35 N.E. 246 (1893).

81. A description of a land trust appears in ILL. REV. STAT. ch. 29, § 8.31 (1975). This section provides, "Land Trust' means any arrangement under which the title, both legal and equitable, to real property, is held by a trustee and the interest of the beneficiary is personal property" See also *Spachman v. Overton*, 16 Ill. App. 3d 385, 306 N.E.2d 743 (1974); *Robinson v. Chicago Nat'l Bank*, 32 Ill. App. 2d 55, 176 N.E.2d 659 (1961).

82. See notes 10-11 and accompanying text *supra*.

83. ILL. REV. STAT. ch. 80, § 81.82 (1975).

84. ILL. REV. STAT. ch. 29, §§ 8.31-32 (1975).

85. ILL. REV. STAT. ch. 102, § 3.1 (1975).

86. ILL. REV. STAT. ch. 148, § 72 (1975). A contrary piece of legisla-

ent evidence to establish that the beneficiary has an equitable interest in real property, they do indicate that the state legislature is concerned with who actually controls the real property as opposed to the identity of the nominal owner—the land trustee.

Another indication of the Illinois Legislature's persuasion as regards the classification of a land trust beneficiary's interest appears in the Illinois Uniform Commercial Code.⁸⁷ Until 1973, the Illinois Uniform Commercial Code allowed creditors with a security interest in a land trust to perfect that interest by filing a financing statement and security agreement with the Secretary of State.⁸⁸ However, the July 1, 1973 amendments to the Illinois Uniform Commercial Code expressly exclude those persons holding beneficial interests in a land trust from the filing provisions.⁸⁹ Although not judicially tested as of this writing, it is arguable that if a security interest in a land trust can be perfected without filing, it is not recognized as personal property under this section of Illinois statutory law.

Although there is no state statute to this effect, an equitable interest in real property seems to be recognized by the Cook County Assessor's Office. This office allows real property owners over the age of 65 years a Homestead Tax exemption on their real property taxes.⁹⁰ This exemption is also granted to beneficiaries of Illinois land trusts who are over the age of 65 years as a matter of course.⁹¹ The granting of this exemption to

tion, however, is the Real Estate Transfer Tax Act which expressly protects the identity of the beneficiary of the land trust. ILL. REV. STAT. ch. 120, § 1003 (1975).

87. ILL. REV. STAT. ch. 26, §§ 1-101 to 10-101 (1975).

88. ILL. REV. STAT. ch. 26, §§ 9-106, 9-302 (1971) (amended 1973). See *Bank of Broadway v. Goldblatt*, 103 Ill. App. 2d 243, 243 N.E.2d 501 (1968); *Levine v. Pascal*, 94 Ill. App. 2d 43, 236 N.E.2d 425 (1968).

89. ILL. REV. STAT. ch. 26, § 9-302(1) (1975) provides, "A financing statement must be filed to perfect all security interests except the following:

(c) a security interest created by an assignment of a beneficial interest in a trust or decedent's estate"

The committee comments to this section do not clear up this area. The comments provide, in pertinent part:

This paragraph changes the rule followed in *Levine v. Pascal* . . . , decided under the pre-1972 text, in which a beneficial interest in an Illinois land trust was held to be a general intangible which could be perfected only by filing. Filing is no longer necessary to perfect a security interest in a beneficial interest in a trust or a decedent's estate.

ILL. ANN. STAT. ch. 26, § 9-302(1) (c) (Smith-Hurd 1975).

90. ILL. REV. STAT. ch. 120, § 500.23-1 (1975). *But cf.* ILL. REV. STAT. ch. 52, § 1 (1975) (the regular Homestead Tax exemption is not available to the beneficiary of a land trust); see *Sterling Sav. & Loan v. Schultz*, 71 Ill. App. 2d 94, 218 N.E.2d 53 (1966).

91. This information was obtained from the Cook County Assessor's Office. When asked under what authority these exemptions were given

senior citizens who are the beneficiaries of land trusts has not been challenged in the courts nor has the Attorney General written an opinion on the subject. Despite the lack of legal sanction, this action by one government agency clearly implies that it treats the beneficiary of a land trust as the owner of an equitable interest in real property. Certainly, all of the above cited examples of legislative and executive action strongly suggest that the beneficiary in fact has an equitable interest in the land.

*Judicial Treatment of the Beneficial Interest
as Real Property*

Although Illinois courts characterize the beneficial interest in a land trust as personal property,⁹² many of its decisions lend support to the proposition that there is at least an equitable interest in the real estate. For example, Illinois case law reveals that the beneficiary of a land trust may be found liable for torts committed on his property.⁹³ The Dram Shop Act⁹⁴ manifests this principle and provides, "[e]very person who is injured in person or property has a right of action . . . against . . . any person owning, renting, leasing or permitting the occupation of any building or premises."⁹⁵ The appellate court has suggested that the owner referred to in the Dram Shop Act is the beneficiary, and not the trustee, of an Illinois land trust.⁹⁶

What also may be categorized as evidence of an equitable interest in the land arises out of judicial interpretation of the Illinois Recording Act,⁹⁷ which provides for the acknowledgment of a person's interest in, "[d]eeds, mortgages, conveyances, releases, powers of attorney or other writings of or relating to the sale, conveyance or other disposition of *real estate or any interest therein* where the rights of any person may be affected in law or in equity."⁹⁸ The appellate court's interpretation of this section evidences that an assignment purchaser of a beneficial interest in a land trust may also rely on the Recording Act. This was demonstrated in the case of *Kahn v. Deerpark Investment*

to beneficiaries of land trusts, the clerks interviewed replied that they have been providing these exemptions for years. All that is required is that a copy of the trust agreement accompany the application for the exemption.

92. See note 8 *supra*.

93. See *Fields v. 6125 Indiana Ave. Apt., Inc.*, 47 Ill. App. 2d 55, 196 N.E.2d 485 (1964); *Brazowski v. Chicago Title & Trust Co.*, 280 Ill. App. 293 (1935); *Whittaker v. Central Trust Co.*, 270 Ill. App. 614 (Abst.) (1933).

94. ILL. REV. STAT. ch. 43, §§ 94-209 (1975).

95. *Id.* § 135 (1975).

96. See *Robinson v. Walker*, 63 Ill. App. 2d 204, 211 N.E.2d 488 (1965).

97. ILL. REV. STAT. ch. 30, §§ 1, 27 (1975).

98. *Id.* § 19 (1975) (emphasis added).

Co.,⁹⁹ where the owner of real estate had assigned his rents as security for the payment of a judgment against him. The assignee of the rents failed to record the instrument of assignment. Subsequently, the property was conveyed to a land trust, with the beneficial interest being properly assigned to another creditor. Shortly thereafter, the two assignees each claimed priority to the rents from the property. The court found that the land trust beneficiary was protected against the unrecorded assignment of the first assignee. Therefore, it seems apparent that the assignee of a beneficial interest in a land trust can rely on the recording statute which pertains to the recording of interests in real property. Ostensibly, it is the beneficiary's equitable interest in the realty which gives rise to access to the recording system, as one who holds a mere "personal property interest" is, by definition, ineligible to record it.

Although denying that an interest in real property exists, the case law pertaining to leases entered into by the beneficiary of the land trust with tenants suggests that, in fact, there may be an equitable interest in the real estate. The Illinois Judgment and Decrees Act,¹⁰⁰ in defining the term "real estate,"¹⁰¹ includes leasehold estates when the unexpired term of the lease exceeds five years. The Illinois courts have held that if the trust agreement so authorizes, the beneficiary of the land trust may also be the lessor.¹⁰² If the beneficiary can be the lessor and create real estate interests in the lessee, it logically follows that the lessor also has an interest in the real estate.¹⁰³

The courts also have held that if authorized by the trust agreement, the beneficiary may be found liable for a broker's commission if he defaults after contracting to sell his property to a real estate agent.¹⁰⁴ The courts have completely ignored the fact that the trustee is the legal title holder of the land, while the beneficiary supposedly has no real property interest.¹⁰⁵ As an agency relationship does not exist between a land

99. 115 Ill. App. 2d 121, 253 N.E.2d 121 (1969).

100. ILL. REV. STAT. ch. 77, §§ 1-68(a) (1975).

101. *Id.* § 3 (1975) provides: "The term 'real estate' when used in this act shall include lands, tenements, hereditaments, and all legal and equitable rights and interests therein and thereto, including estates for the life of the debtor or another person, and estates for years, and leasehold estates, when the unexpired term exceeds five years."

102. See *Harden v. Desideri*, 20 Ill. App. 3d 590, 315 N.E.2d 235 (1974); *Jakovljevic v. Alvarez*, 113 Ill. App. 2d 302, 252 N.E.2d 50 (1969).

103. One cannot convey what one does not possess.

104. *Bernard Kilbanow & Co. v. Shafer*, 2 Ill. App. 3d 392, 276 N.E.2d 446 (1971).

105. *LaSalle Nat'l Bank v. Brodsky*, 51 Ill. App. 2d 260, 201 N.E.2d 208 (1964).

trustee and the beneficiary of a land trust,¹⁰⁶ it appears that the courts look beyond the mere legal form of ownership to the actual substance of the transaction. If this is the situation, it certainly can be asserted that the beneficiary has, at the very least, an equitable interest in the real property.

The area of easements gives yet another indication that the beneficiary has an equitable interest in real estate. Illinois law insists that the creation of an easement wherein the land trust property is either the dominant or servient estate involves an interest in land.¹⁰⁷ Proceedings to enforce easements against the beneficiaries of land trusts are common practice.¹⁰⁸ When enforcing easements requiring beneficiaries to remove obstructions to ingress and egress, case law is clear that the courts will not be deterred by the argument that the beneficial interest is only personal property, and therefore that the beneficiaries have no power to affect the land. Rather, the courts have held that title to the land is not at issue, but only the removal of an obstruction.¹⁰⁹ Nevertheless, it may be logically argued that if the court can order the beneficiary to perform an act affecting the land, he must have at least an equitable interest in the real property.

An equitable interest in land also seems to inure to the beneficiary when a tax sale of his interest occurs.¹¹⁰ In *Spachman v. Overton*,¹¹¹ the major issue presented to the court was whether an assignee of the beneficial interest in an Illinois land trust is entitled to redeem from a tax sale of the beneficial interest. The court looked to the Illinois Constitution of 1870 for aid in deciding the case and found that it provided, in pertinent part, "[t]he right of redemption from all sales of real estate for the non-payment of taxes . . . shall exist in favor of owners and persons interested in such real estate. . . . And the general assembly shall provide by law for reasonable notice to be given to the owners or parties interested."¹¹² The court then ex-

106. See *Barkhausen v. Continental Illinois Nat'l Bank*, 3 Ill. 2d 254, 120 N.E.2d 649 (1954).

107. *Waller v. Hildebrecht*, 295 Ill. 116, 128 N.E. 807 (1920).

108. E.g., *Keessen v. Zarattini*, 119 Ill. App. 2d 284, 293, 256 N.E.2d 377, 379-80 (1969).

109. *Id.*

110. Note, however, that the beneficiary is not entitled to notice of the tax deed proceeding. *First Lien Co. v. Marquette Nat'l Bank*, 56 Ill. 2d 132, 306 N.E.2d 23 (1973).

111. 16 Ill. App. 3d 385, 306 N.E.2d 743 (1974).

112. ILL. CONST. art. IX, § 5 (1870). Furthermore, the court in *Spachman* stated:

Section 8(b) of article IX of the Illinois Constitution retains the phrase 'persons interested in such real estate.' The Verbatim Transcripts of the Sixth Illinois Constitutional Convention . . . indicate that the 1870 grant of redemption to owners and 'persons interested

plained that the pertinent statutory provisions implementing the right of redemption did not define with specificity who was entitled to redeem, and subsequently stated, "[w]e therefore conclude that although the beneficiary of a land trust has no legal or equitable estate in the subject real estate, he is a 'person interested' in the real estate and has an 'interest' in the land sufficient to permit him to redeem."¹¹³ If the court found an interest in the land for purposes of redemption, it does not seem inconsistent to find that the Illinois land trust beneficiary has an interest in the land for other purposes, such as Chapter XII of the Bankruptcy Act.

A further example of an equitable interest in property is evidenced by judicial treatment of mechanics' lien claims against the beneficiary of a land trust. In the recent case of *Dunlop v. McAtee*,¹¹⁴ the beneficiary of a land trust contracted to have work done on the land subject to his beneficial interest. The owner of the beneficial interest defaulted on his payments to the contractor. The contractor complied with the provisions of

in the real estate' is meant to be continued in the 1970 Constitution; and that what constitutes a person interested is largely a question of judicial interpretation.

16 Ill. App. 3d 385, 388, 306 N.E.2d 743, 747 (1974) (citations omitted).

The court noted however, that the fact that the land trust beneficiary is not entitled to notice of a tax sale, *see, e.g., Lois, Inc. v. Halverson*, 5 Ill. App. 3d 149, 275 N.E.2d 172 (1971), does not require a contrary result. 16 Ill. App. 3d 385, 306 N.E.2d 388 (1974).

It is interesting to note that since the *Spachman* case was initially filed, the legislature amended a portion of the Revenue Act, ILL. REV. STAT. ch. 120, providing in pertinent part, "[r]eal property sold under the provisions of this Act may be redeemed by owners and persons interested in such real estate, *other than undisclosed beneficiaries of Illinois land trusts*, whether or not the interest in such property is recorded or filed . . ." ILL. REV. STAT. ch. 120, § 734 (1975) (emphasis added). The prior provision on redemption, ILL. REV. STAT. ch. 120, § 734 (1971), made no mention of land trust beneficiaries.

Addressing this problem in a different context is *Shefner v. University Nat'l Bank*, 40 Ill. App. 3d 978, 353 N.E.2d 126 (1976). In *Shefner*, the beneficiary of an Illinois land trust assigned his interest in the trust as security for a loan. The assignor became delinquent in repaying the loan. Consequently, the assignee bank gave the assignor notice of a public sale and proceeded to sell the beneficial interest. The assignor brought suit to establish that he had a right to redeem the property. The assignor asserted that this loan transaction was analogous to a first mortgage and as such, that he had a statutory right of redemption. The court however, found that the financial transaction was a simple collateral note secured by assignment of personal property which is not allowed the benefit of redemption. The court stated, "[c]onsequently, we hold that the sale of the plaintiff's beneficial interest in the land trust was a sale of personalty and, as such, does not entitle the litigant to a right of redemption." 40 Ill. App. 3d 978, 981, 353 N.E.2d 126, 129 (1976).

It must be noted that although *Spachman* and *Shefner* involve substantially the same issues, the first district court in *Shefner* did not cite *Spachman* nor assert any of the rationale relied on by the appellate court for the second district in *Spachman*.

113. *Spachman v. Overton*, 16 Ill. App. 3d 385, 390, 306 N.E.2d 743, 748 (1974).

114. 31 Ill. App. 3d 56, 333 N.E.2d 76 (1975).

the Illinois Mechanics' Lien Act,¹¹⁵ and sought to have a mechanics' lien judgment entered against the owner of the beneficial interest of the land trust. In Illinois it is well established that the provisions of the Mechanics' Lien Act are to be strictly construed, applying only to the owners of real property.¹¹⁶ Therefore, the fact that the court allowed the contractor's claim creates more doubt as to whether or not the beneficiary actually owns only personal property.

The above examples demonstrate that under several varied circumstances, the beneficiary of a land trust is not treated as owning only personal property, but rather as having an equitable interest in the real estate itself. Whether or not this somewhat nebulous equitable interest in real property is applicable to all other aspects of Illinois law is not at issue. Rather, assuming that there is an equitable interest in real property, the question is whether this interest is sufficient to satisfy the requirements of Chapter XII of the Bankruptcy Act. The treatment of the beneficiary's interest by the Illinois courts and legislature suggest an answer to this question. Their actions indicate that there is, in fact, an equitable interest in real property. This, coupled with the constitutional provision for uniform bankruptcy laws, should leave no doubt that the beneficiary of an Illinois land trust should be allowed to enjoy the benefits of a Chapter XII arrangement under the Bankruptcy Act.

CONCLUSION

Although the bankruptcy courts have not clearly disposed of this issue, logic dictates that for bankruptcy purposes the beneficial interest in an Illinois land trust must be treated as an equitable interest in real property. To hold otherwise would emasculate the constitutional criterion of having uniform bankruptcy laws. The purpose of Chapter XII is to allow an owner of land a vehicle through which he can retain his ownership and control of land while satisfying his creditors by an extended repayment plan. As a practical reality, it would be difficult to deny that the beneficiary of the land trust does, in fact, have an ownership interest in the real property involved. Therefore, forbidding the benefits of the Chapter XII provisions to a land trust beneficiary would defeat the thrust of its congressional intent.

Congress has the means to solve this problem at its disposal. An amendment to the Bankruptcy Act should be proposed and

115. ILL. REV. STAT. ch. 82, §§ 1-39 (1975).

116. This strict adherence to the provisions of the Mechanics' Lien Act is a result of its being in derogation of the common law. *Eisendrath Co. v. Gebhardt*, 222 Ill. 113, 78 N.E. 22 (1906).

passed, expressly recognizing the ownership interest of a land trust beneficiary. This would eradicate all doubt as to the availability of the Chapter XII benefits to the financially troubled noncorporate debtor who owns a beneficial interest in a land trust. That the Illinois type land trust is growing in use and popularity throughout the country cannot be denied.¹¹⁷ Precisely because of the increased use and recognition of this unique device, and the inevitable increase in bankruptcies involving land trusts, congressional action is both necessary and warranted. By so acting, Congress can put this important yet unsettled question to rest.

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117. Judicial recognition of land trusts has taken place in *Bowen v. Watz*, 5 Ariz. App. 519, 428 P.2d 694 (1967); *In re Tutules*, 204 Cal. App. 2d 481, 22 Cal. Rptr. 427 (1962); *Kinzer v. Bidwell*, 55 Wis. 2d 749, 201 N.W.2d 9 (1972).