FAQ:

Q: As a prospective seller, investor, or buyer, interested in the *PAC/NEHTrust*™, how and where do I begin?

A: If you're not already a Network Member, read through these FAQ and review all the documents/discussions/articles on our website (www.landtrust.net). The book, *Fortune in Free Real Estate*, and the Quick Start Success Pack (both available via our website) are also valuable resources. Better yet, take a look at our Events Calendar and attend one of our workshops. If you have additional questions, contact North American Realty Services, Inc. at

(800) 207-4273 (toll free), or visit our website at www.landtrust.net.

If you're armed with enough knowledge and ready to get going, start filling out the Proposal Template, available via our website, with as much information as possible. The more complete the Proposal is, the quicker and smoother the subsequent steps. NARS and its legal advisors are committed to working closely with you, from the proposal to the close of the transaction. NARS will handle all consultation, prepare all documentation, provide the corporate trustee and third party collection service, and will work hand in hand, from beginning to the end, with all parties.

Q: Can a *PAC/NEHTrust*™ Resident Co-Beneficiary (the Buyer) legitimately move from the Trust property before the end of the agreement?

A: Yes. Though all agreements that comprise the *PAC/NEHTrust*™ must be honored, a Resident Beneficiary may lease or rent the property out, sell their interest, or even leave the property vacant, so long as the other beneficiaries concur, and their interests are not compromised or imperiled by such actions.

Q: Can the *PAC/NEHTrust*™ be utilized in buying or selling commercial property?

A: Yes. A Title-Holding Land Trust can hold commercial property. Multiple beneficiaries can hold varying percentages of beneficiary interest (as little as 10% each) in such a trust. Do note, however, that

specific protection under the Garn-St. Germain Act (i.e. transfer of the property – the lender's security – to a trust cannot trigger a due-on-sale action), extends only to a residential property of fewer than five units.

Q: What would happen if a beneficiary were to die during the term of a *PAC/NEHTrust*™?

A: Beneficial interest in the *PAC/NEHTrust*™ will naturally pass to the heirs of a deceased beneficiary, in which parties inherit precisely the same obligations, responsibilities, rights, and privileges as were held by the original beneficiary.

Q: How would a Seller's placing a home into a Title-Holding Trust, and then creating a *PAC/NEHTrust*™ (with respect to the Seller's applying for another home loan), be viewed by a new lender?

A: By holding a property in a *PAC/NEHTrust*™, that property is leased to the co-beneficiary; the Non-Resident Beneficiary will be seen by any lender as an “income property” owner (as if he/she were one of two partners in a rental property). However, the absence of the standard expenses of maintenance, management and vacancies, coupled with *higher than normal* rent, oftentimes provides an excellent incentive for a much higher than normal Income to Rental Expense consideration by the new lender.

Q: What happens when a Resident Beneficiary fails to make payments when due?

A: In the event of such default, the party or entity acting as landlord would issue a *3-Day Notice to Pay or Quit*, which would be followed by an *Unlawful Detainer Action*.

By their own agreement, the default itself (within itself) becomes *constructive notice* (to the non-defaulting beneficiary/ies) of the defaulting party's intent to relinquish his/her interest in the Trust. The trust agreement may then be revoked and its property either offered for sale or returned to the original owner.

Any claim of *equity* due the defaulting party (if any were provable) would then be guaranteed in the form of an *unsecured* promissory note; this note would become due upon sale or final disposition of the property formerly held in the trust. Proof of equity due (by formal MAI appraisal only) becomes the burden of the defaulting party. Prior to the receipt of any monies, the defaulting party must bring all deficiencies current, and, along with the cost of the MAI appraisal, pay a $2,000 “Default Fee.” Such penalties are paid *in addition* to payments due, late fees and/or delinquent taxes and insurance due.

Q: What if a *PAC/NEHTrust*™ property was to lose value during the term of the agreement?

A: If, at the end of the *PAC/NEHTrust*™*,* the property couldn't be sold/purchased by the Resident Beneficiary for enough to return the Non-Resident Beneficiary's initial contribution (e.g., his/her equity at start), and should the Non-Resident choose not to reduce its refundable contribution amount, the Resident Beneficiary could choose to simply vacate the property with no further obligation. Alternatively, by mutual agreement, the parties could extend the contract. *As is the case with any Real Estate purchase, down payment monies, or cost of improvements can, in fact, be lost due to ordinary downward trends in Real Estate demand.*

Q: How is the property's “Mutually Agreed Value” determined at the inception of the *PAC/NEHTrust*™, since there is not necessarily a sale price?

A: The *MAV* is set purely for the purpose of determining the Non-Resident Beneficiary's initial contribution at start (e.g. “equity,” or “equity-credit” and non-recurring closing costs paid). The *MAV* is generally the *greater* of **A**) the fair market value inferred by a professional Comparative Market Analysis, **B**) the value of the property reflected by a mutually acceptable appraisal, or **C**) the amount of the existing loan(s) against the property.

Q: Why might a buyer choose a *PAC/NEHTrust*™ purchase, even when the loan on the property is greater than the property's value?

A: The over-encumbrance on a *PAC/NEHTrust™* property is often perceived as simply a *trade-off* for a party's inability to qualify for a mortgage loan, or lack of a standard down payment/preferred credit. In that the *PAC/NEHTrust™* purchase may avoid the handicap of self-employment, newness on the job, limited job history, or marginal credit history, one might choose to disregard the over-encumbrance. If, by the end of the agreement, the resale value of the property did not increase sufficiently to cover the loan against it, then the resident may **1**) petition to extend the agreement, or **2**) move out. If the monthly (after-tax) payment is in keeping with normal rent, and if the loan need not be paid off at any particular time, a *PAC/NEHTrust™* buyer might find an over encumbrance inconsequential.[1]

Q: Could a mortgage lender claim that the *PAC/NEHTrust™* violated its Due-On-Sale clause?

A: Yes, although doing so would be contrary to the provision of Federal Law (e.g. the Garn-St. Germain Act provides that any homeowner may place their property into a qualified living trust, and lease the trust property to anyone he/she might choose, irrespective of what a lender's preferences might be). No one can predict what a mortgage lender may claim, but, inasmuch as none of the *PAC/NEHTrust™* documents are recorded, and since the *PAC/NEHTrust™* does not adversely affect the lender's security interest, such an assertion by a lender would be unlikely. Nonetheless, it is conceivable that a lender could declare the intent of the *PAC/NEHTrust™* to be contrary to their best interest, and assert that it was a scheme to circumvent their ability to capitalize on the borrower's misfortune. Such misfortune might include an owner's inability to afford the payments or to sell without a loss, an inability to lease without major negative cash flow, or simply to avoid major tax penalties for short-sale or foreclosure.

In such protest by the lender, the court would need to determine if any laws had been broken, as well as if/how the lender-plaintiff had been injured. Therefore, the actual effect of the *PAC/NEHTrust™* is protection of the lender's interests by its avoidance of **A**) alienation, **B**) prohibited ownership transfer of title involvement, and **C**) an unwise transfer of real property ownership under threat of financial loss or duress. The Resident Beneficiary in a *PAC/NEHTrust™* does not receive Real Estate ownership, any bargain purchase option, or a loan of monies. If, and/or when, the Resident Beneficiary would choose to acquire ownership of the property owned by the trust, such purchase would only be by means of an ordinary purchase offer. Such an offer, if accepted, would be followed by an ordinary mortgage loan application,

or a petition for a *bona fide Assignment and Assumption* of the existing loan.

Q: Have Title-Holding Land Trusts (in their 90+ years of use in the U.S.), ever been challenged by lenders claiming damage by the unrecorded and private assignment of a Title-Holding Land Trust's beneficial interest to a third party?

A: Yes. However, one must note that the Title-Holding Land Trust in most states is not a statutory instrument, meaning that there in no statute (law) or judicial history relative to it, and that no specific “Land Trust Act” yet exists. The title holding land trust in most states is, however, wholly operative and legal by virtue of its exclusion from specific prohibitions under the states' “Statute of Land Uses.” Though we know of none in recent years, a few such actions have been brought in the past, and each case, the decision of the court was in favor of the defendant.[2]

Q: Since North American Realty Services, Inc., has its own attorneys and accountants, should I consult with my own legal and accounting advisors regarding the feasibility of the *PAC/NEHTrust™* in my situation?

A: Yes. One should always seek out and heed the advice of his/her own legal and tax advisors, as well as of one's own independent Real Estate agency. Although North American Realty Services, Inc. certainly welcomes inquiries from any of these professionals, its accounting and legal staff may represent only its own interests.

Q: Are most attorneys and accountants familiar with the *PAC/NEHTrust™* or the workings of the *Title-Holding Land Trust* in general (i.e., the underpinning of the *PAC/NEHTrust™* System)?

A: No. In most states where the title holding land trust is not statutory, few attorneys and accountants would be well versed in the specifics and subtleties of *Title-Holding Land Trusts*.

Our advice is to suggest that you inquire early on as to an attorney's (or accountant's) specific knowledge of the intricacies of the *Illinois*

Land Trust (the generic model for title-holding land trusts in all states). A qualified and objective professional evaluation of all aspects of the *PAC/NEHTrust™* as pertinent to current Real Estate law, Trust law, Probate law, and State/Federal income tax law is crucial.

Q: What would happen in the event of an irreconcilable dispute between the Co-Beneficiaries in a *PAC/NEHTrust™*?

A: Such occurrences are rare due to the *third party trustee* aspect of the *PAC/NEHTrust™* arrangement, and the meticulous and comprehensive nature of North American Realty Services' documentation. However, *PAC/NEHTrust™* beneficiaries do contractually agree in advance that such a dispute, should one ever occur, will be settled by the rule of binding arbitration, and that each party will abide by and rely upon the decision of and arbitrator associated with/designated by the American Arbitration Association.

Q: What would stop a Grantor, in his own *revocable trust* (a trust which is set up in his own name), from revoking it, without the consent of the other beneficiary/ies?

A: Of prime importance is the fact that a *Title-Holding Trust* is mutually directed by ALL of its beneficiaries (*Power of Direction* is apportioned equally among said beneficiaries). Unless special provisions are made in advance, no single beneficiary or group of beneficiaries can direct the legal owner – the Trustee – to do anything, sign anything, or approve anything involving the property's title without the absolute concurrence and mutual direction of *ALL of the beneficiaries*. Since the Trustee must acknowledge any legal action, a beneficiary cannot alter the trust agreement, borrow money on the trust property, or bring about a lien against it, without the full agreement and direction of the other beneficiary/ies. Likewise, a Resident Beneficiary cannot add a room, install a swimming pool, or otherwise encumber the property without the full knowledge, consent, and mutual direction of the other beneficiary/ies.

Q: Is there a minimum or maximum allowable term for a *PAC/NEHTrust™*?

A: Yes. It is reported that any land trust whose term is deemed a contrivance to avoid payment of income tax could, and possibly would be declared by the IRS as “dry” or “failed.” For example, if the trust's term clearly conflicted with time requirements of certain tax deferment or exemption provisions, the trust could be characterized as a non-standard corporate entity or a security agreement (as pertinent to residential property deferment or §1031 tax-exchange). A *failed trust* could 1) deprive the Resident Beneficiary of mortgage interest and property tax deductions, and/or 2) create an untimely capital-gains tax event for the Non-Resident Beneficiary. For these reasons only, it is recommended that two years be considered the minimum term for any Trust.

Relative to a maximum term for a Title-Holding Trust, the *Rule of Perpetuities*[3] can be applied to, 1) land trusts with terms of more than twenty one years, 2) those without a precisely stated shorter term, or 3) those wherein *remainder interests* succeed (and exceed) the stated term of the agreement. With proper contract verbiage however, the *PAC/NEHTrust*™ may extend for the term of the property's underlying mortgage financing without conflict with the *Rule of Perpetuities.*

Q: What might be the standard costs for establishing a *PAC/NEHTrust*™?

A: Apart from the Realtors commission, typical closing costs for a *PAC/NEHTrust*™ equity holding title transfer transaction, combining all closing costs from Settlor, Resident and/or Investor Beneficiaries, run from two percent (2%) to three percent (3%) of the property's *Mutually Agreed Value* (MAV) at inception of the transaction. The fee for setting up the Trust itself, and NARS' consultation fee (including facilitation and documentation) generally comprises less than one-half of that amount. The remainder (beyond the consulting and setup fee) includes, but is not necessarily limited to: the escrow company fee, title insurance, pro-rated and advance property taxes, hazard insurance premium, credit report, home warranty insurance (optional), and termite inspection (optional). Though not a part of the Closing Costs, one should take care to also budget for the first payment due on the contract and for at least one monthly payment to be held in a Contingency Fund (as a buffer for delayed payments) to be held by the Trustee.