



Family Land Trust: A Legal Tool for Protecting ‘Ohana ‘Āina

People often associate land trusts with non-profit conservation organizations who protect land for community benefit. However, a different land trust model exists for family landowners who wish to keep land in the family for protection and stewardship.

In Hawai‘i, family land protection is increasingly important, as ‘ohana are losing ancestral lands due to many challenges, such as rising property taxes tied to escalating land values and pressure to sell land. There are different tools that families can use to protect their lands. For lands owned by multiple family members (heir property), formation of a family land trust may be a proactive option for keeping land in the family for generations to come.

What is a family land trust and how does it work?

A family land trust is a legal mechanism used to handle ownership of real estate. Establishing a family land trust is like weaving a basket that holds and protects shares of ‘ohana ‘āina. The basket is flexible and can grow as more ‘ohana members join the trust.

Similar to a revocable living trust, with a family land trust, title to real property is held by a designated trustee or group of trustees while the beneficiaries (i.e. other owners) retain the ability to enjoy all the rights and responsibilities of owning the property. Trustees can carry out regular land management activities, manage accounting and payment of taxes, collection of rent, and distribution of rent proceeds to beneficiaries. A family land trust can be flexible and tailored to each ‘ohana’s unique needs. For example, the trust can establish land management decision-making by majority vote or can even include a rule that land cannot be sold outside of the family, or that land must be offered to descendants of the family first and then to the trust, before being offered to an outside buyer as a last resort.

When property is placed into the family land trust, an owner’s interest is converted to personal property, which makes it easier to manage and convey than an interest in real property. Family land trust members can designate beneficiaries to receive their share when they die, which can save a family the time and money of going through a probate proceeding. Another important benefit to establishing a family land trust is that doing so can act as a defense to potential partition actions.

There are many different ways of structuring a family land trust, but the first step is to contact an experienced real estate or estate planning attorney to assist you with your needs.