Fidelity National Title

Title Documents Defined

Grant Deed, Quit Claim Deed

A deed is a written instrument by which title to or an interest in real property is transferred from an individual or legal entity (the grantor) to another (the grantee). There are basically two kinds of deeds in general use in California. The Grant Deed, and the Quit Claim Deed. The primary difference between the Grant Deed and the Quitclaim Deed lies in the operative words of conveyance if any warranties are being conveyed. The word "Grants' is expressly designated by statue in the Grant Deed, whereas, the operative words of conveyance, "remise, release and forever quitclaim" are associated with Quitclaim Deed types.

Trust Deed

A Deed of Trust is a security instrument used by the borrower (also called the trustor) to convey "bare legal" title to the property, to a neutral party (called Trustee), for the purposes of securing an obligation (usually of a promissory note) payable to the lender (called the beneficiary). The trustee is authorized under "power of sale" to "nonjudicially" foreclose in the event of a default on the obligation by the trustor, or his/her successors in interest. The proceeds of the trustee's sale (non-judicial foreclosure) of the secured real property will apply as payment toward the defaulted obligation.

When the debt or obligation secured by the deed of trust has been satisfied, the beneficiary must execute a request for full reconveyance and any other documentation necessary to cause the deed of trust to be reconveyed. The trustee will then execute and record a "Full Reconveyance" in the county wherein the deed of trust was recorded.

All Inclusive Deed of Trust With Assignments of Rents

An "All-Inclusive Deed of Trust", called an AITD, is a security instrument designed to meet special financial requirements. The Formalities contained therein are parallel to the "conventional form" of deed of trust, i.e., the borrower (called the trustor) conveys "bare legal title to the property to a neutral party (called the trustee for the purpose of securing an obligation (usually of a promissory note) payable to the lender (called beneficiary). The primary difference between the all-inclusive deed of trust and the "conventional form" deed of trust, is that the all-inclusive type not only secures indebtedness for its own obligation but also includes the balance due on one or more senior encumbrances.

Full Reconveyance

Whenever the trustor (borrower) executes a deed of trust he/she conveys "bare legal" title to the property described therein to a party called the trustee. The trustee holds the property in trust (for the benefit of the beneficiary-lender) until a recorded "Full Reconveyance" (sometimes referred to as a deed of reconveyance) reconveys the bare legal title back to the person(s) entitled to said title. Therefore, when the debt or obligation secured by a deed of trust has been satisfied, the beneficiary, or successor must, within 30 days, deliver the original note (promissory note) and deed of trust, together with a request for full reconveyance, to the trustee. The trustee, then, within 21 calendar days, must secure the fee that may be charged for the reonveyance, and the recorder's fees, to responsibly fulfill the execution and recordation of the "Full Reconveyance" in the county wherein the deed of trust was recorded.

Affidavit - Death of Joint Tenant

Upon the death of a person, holding title to real property as a joint tenant, the surviving join tenant(s) should have an "Affidavit - Death of Joint Tenant" recorded in the county where the property is located. This document imparts "constructive notice" on the public record that at the time of death of the deceased in interest held in the real property vested (passed ownership) immediately in the surviving joint tenant(s). In order to be recorded, the affidavit must be attached to a certified copy of the death certificate of the deceased joint tenant.

Request For Partial Reconveyance

It is common practice among subdividers/developers to provide a "Partial Reconveyance" on property covered by "blanket" deeds of trust, which encumber several lots within a subdivision or numerous parcels destined to be separated for project purposes. Partial reconveyance provisions must be expressly imposed and the exact terms and conditions should be specified with certainty. When executing a partial reconveyance, the trustee normally requires that the note (promissory note) be submitted by the beneficiary, for the purpose of issuing an endorsement as evidence that a partial reconveyance has been issued. Upon recordation, only the specific property described in said partial reconveyance will be "reconveyed" while the remaining parcels will be unaffected.

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Assignment of Deed of Trust

An "Assignment of Deed of Trust" is utilized to transfer the beneficial interest (tender's interest) in a specific deed of trust. The lender assigning (executing) the beneficial interest under the deed of trust is called the "assignor", and the party acquiring the interest is called the "assignee". When recorded, the assignment operates as constructive notice to all persons that the beneficial interests, together with the obligation secured by said deed of trust (usually a promissory note), has been transferred to the assignee named in the assignment.

Substitution of Trustee

The "Substitution of Trustee" document is utilized when the beneficiary (lender) determines a need to change the trustee under a recorded deed of trust. The trustee, if a corporation, may be "winding up" its affairs and ceasing to carry on its business; or if an individual, may become incapacitated or deceased, which would necessitate the substitution of a new trustee. In some instances, the substitution may be made by the beneficiary when the trustee declines to act in its fiduciary capacity. Regardless of the circumstances, the trustee does not have to agree to step aside.

Substitution of Trustee and Full Reconveyance

A "Substitution of Trustee and Full Reconveyance" is a document that combines the functions of a "Substitution of Trustee" document and a "Full Reconveyance" document. A Substitution of Trustee and Full Reconveyance is normally used when a deed of trust is assigned to a new beneficiary who wishes to substitute itself as trustee and at the same time record a full reconveyance.

Subordination Agreement

A "Subordination Agreement," when recorded effects a change in the normal priority of liens, encumbrances, and interests affecting the real property. The priority between different documents is generally (but not always) determined by the dates on which they were recorded (first to record - first in priority). Quite often, for one reason or another, it becomes necessary to subordinate (lower in position) the lien, encumbrance or interest(s) of one document to another. The most common occurrence is when a deed of trust already existing on the public record, is subordinated (made junior to a new deed of trust), by the concurrent recording of the "Subordination Agreement".

Notice of Action (Lis Pendens)

A "Notice of Lis Pendens" should be recorded in the office of the county recorder of the county in which the real property is located, whenever there is court action pending. The legal term "Lis Pendens" means "litigation pending". The recorded "Notice of Lis Pendens" imparts constructive notice (knowledge) of the existence of the pending court action and the rights established thereby. A "Notice of Lis Pendens" is effective only during the time that the action is pending, which is the period for the time of its commencement until final determination upon appeal, or until the time for appeal has passed. Therefore, the effect of the "Notice of Lis Pendens" ceases when the action is dismissed and a withdrawal of Lis Pendens is recorded, or when a judgment is rendered that has become final.

Mechanics Liens

A "Mechanics Lien" is a statutory lien imposed and enforced (judicial foreclosure proceedings) upon real property to secure the compensation of persons ("contractors") whose labor and/or materials have contributed to the improvement of the property. To be effective, a claimant must record a "Mechanic's Lien" in the office of the county recorder of the county in which the real property is located, pursuant to the prescribed conditions and time periods dictated by statute. A "Mechanic's Lien" is binding on the real property for a duration of time defined in Civil Code Section 3144.

Release of Mechanic's Lien

When a claim of "Mechanic's Lien" has been satisfied (paid in full), a "Release of Mechanic's Lien" should be recorded in the office of the county recorder of the county where the property is located. This will eliminate the effect of the "Mechanic's Lien" from the public record. The release must be signed (executed) by the same person or company (claimant), who signed executed) the "Mechanic's Lien". The "Release of Mechanic's Lien" acts like a recorded receipt to evidence (prove) that the owner has paid the claim of the mechanic's lien.

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Notice of Default

Non Judicial foreclosure proceedings under the power of sale contained in the deed of trust is commenced when the trustee or beneficiary executes and records a "Notice of Default." The notice of default when recorded provides "Constructive Notice" of a default in the terms and provisions of said deed of trust. The notice of default identifies the deed of trust by giving the recording information; the names(s) of the trustor(s); that a default has occurred and the details thereof; plus, it must state that the beneficiary has elected to proceed to sale (foreclose), to satisfy the obligation secured by the deed of trust. Note: Any material discrepancies could void the entire trustee's sale proceedings.

Notice of Trustee Sale

On any non-judicial foreclosure proceeding of a deed of trust, a "Notice of Trustee's Sale" must be recorded in the office of the county recorder of the county in which the property is located at least 14 days prior to the date of the trustee's sale. The "Notice of Trustee's Sale" provides constructive notice of the intention to proceed to foreclose and, in addition to other matters, provides: information relating to the trustee conducting the sale; the reasonable estimation of the amount necessary to pay the obligation; and the location, time and place of the sale. The "Notice of Trustee's Sale" must also be posted, published and mailed in accordance with the State of California Civil Code Section 2924.

Notice of Rescission

When a default on the obligation secured by a deed of trust has occurred, the beneficiary (lender) will cause a "Notice of Default" to be recorded as evidence of the default. This signals the commencement of the non-judicial foreclosure proceedings. Following the recording of said notice, the trustor (borrower) may cure the default by paying to the beneficiary all past due payments, together with costs, interest and fees, until five business days prior to the date of the trustee's sale. In the event all amounts are paid, the beneficiary and/or the trustee will execute and record a "Notice of Rescission; thereby canceling the effect of the "Notice of Default" and termination of the foreclosure proceedings.

Trustees Deed Upon Sale

This Deed is used at a public sale which has resulted from the nonjudicial foreclosure by the trustee under the power of sale provisions of a deed of trust. The "Trustee's Deed Upon sale: should contain full recitals in regard to all matters connected with the sale.