Fidelity National Title

Understanding Living Trusts

UNDERSTANDING LIVING TRUSTS

Estate planners often recommend "Living Trusts" as a viable option when contemplating the manner in which to hold title to real property. When a property is held in a Living Trust, title companies have particular requirements to facilitate the transaction. While not comprehensive, following are answers to many commonly asked questions. If you have questions that are not answered below, your title company representative may be able to assist you, however, one may wish to seek legal counsel.

WHO ARE THE PARTIES TO A TRUST?

A typical trust is the Family Trust in which the Husband and Wife are the Trustees and, with their children, the Beneficiaries. Those who establish the trust and transfer their property into it are known as Trustors or Settlors. The settlor's usually appoint themselves as Trustees.

WHAT NEEDS TO BE PROVIDED IN ORDER TO DETERMINE WHO IS AN AUTHORIZED SIGNER AFTER THE DEATH OF A TRUSTEE/TRUSTOR?

A certified version of the death certificate along with an affidavit of death of trustee, a full copy of the trust agreement, any amendments and a trust certification completed by the current trustees are required.

CAN A TRUST HOLD TITLE TO REAL PROPERTY?

No. The Trustee holds the property on behalf of the Trust.

HOW WOULD TITLE BE WORDED WHEN HELD IN A TRUST?

"John Doe and Mary Doe, as Trustees of the Doe Family Trust, under declaration of trust deed dated January 1, 2016."

IS A TRUST THE BEST WAY TO HOLD MY PROPERTY?

Only your attorney or accountant can answer the question; some common reasons for holding property in a Trust are to minimize or postpone death taxes, to avoid a time consuming probate, and to shield property from attack by certain unsecured creditors.

WHAT HAPPENS WHEN THERE IS A DEATH OF ONE OF THE ORIGINAL TRUSTEES/TRUSTORS?

Often upon the death of the first Trustee/Trustor (if there is more than one) or when all of the original Trustees/Trustors have died, the trust agreement will indicate who is then authorized to sign.

CAN A TRUSTEE BORROW MONEY AGAINST THE PROPERTY?

A Trustee can take any action permitted by the terms of the Trust, and the typical Trust Agreement does give the Trustee the authority to borrow and encumber real property. However, not all lenders will lend on a property held in trust, so check with your lender first.

CAN SOMEONE ELSE HOLD TITLE FOR ME "IN TRUST?"

Some people who do not wish their names to show as titleholders make private arrangements with a third party Trustee; however, such an arrangement may be illegal, and is always inadvisable because the Trustee of record is the only one who is empowered to convey, or borrow against, the property, and a Title Insurer cannot protect you from a Trustee who is not acting in accordance with your wishes despite the existence of a private agreement you have with the Trustee.

CAN A POWER OF ATTORNEY BE USED FOR PROPERTY WHEREIN TITLE IS HELD IN A TRUST?

Not typically, only if the trust provides for it.