Fidelity National Title

Requirements for Insuring Trusts

IN TODAY'S WORLD OF BUSY PROBATE COURTS AND EXORBITANT DEATH TAXES, THE LIVING TRUST HAS BECOME A COMMON MANNER OF HOLDING TITLE TO REAL PROPERTY. THE FOLLOWING MAY HELP YOU UNDERSTAND A FEW OF THE REQUIREMENTS OF THE TITLE INSURANCE INDUSTRY IF TITLE TO PROPERTY IS CONVEYED TO THE TRUSTEE OF A LIVING TRUST.

WHAT IS A TRUST?

An agreement between a trustor and trustee for the trustee to hold title to and administer designated assets of the trustor for the use and benefit of one or more beneficiaries.

CAN A TRUST ITSELF ACQUIRE AND CONVEY INTEREST IN REAL PROPERTY?

No. The trust is an arrangement between a trustee and the trustor only. The trustee, on behalf of the trust, may own and convey any interest in real property so long as the trustee acts within the powers granted by the trust to the trustee.

CAN THE TRUSTEE GIVE SOMEONE A POWER-OF-ATTORNEY?

Only if the trust specially provides for the appointment of an attorney in fact.

WHAT WILL THE TITLE COMPANY REQUIRE IF A TRUSTEE HOLDS THE TITLE TO THE PROPERTY WHICH IS PART OF THE TRUST?

First, a full copy of the trust and any amendments. Second, a certification that the copy of the trust and amendments (if any) are complete and true copies, and the names of the present trustees of the trust.

MY TRUST CONTAINS A CERTAIN AMOUNT OF MONEY TO BE GIVEN TO VARIOUS CHARITIES WHICH IS NONE OF YOUR BUSINESS. CAN I OMIT THESE PAGES?

Because many provisions may be on the same page, the answer must be no - but the companies may accept a copy of the trust with those amounts blacked out.

IF THERE IS MORE THAN ONE TRUSTEE, CAN JUST ONE SIGN?

Maybe. The trust must specifically provide for less than all to sign.

WHAT WILL THE TITLE COMPANY REQUIRE IF ALL THE TRUSTEES HAVE DIED OR ARE UNWILLING TO ACT?

If the trustor is not able to, or the trust provisions prohibit the trustor from appointing a new trustee, the court must do so.

WHO CAN BE A TRUSTEE?

Any individual not under a legal disability or a corporation that has qualified to do a trust business in California.

HOW DOES A NOTARY ACKNOWLEDGE THE SIGNATURE OF THE TRUSTEE?

Title is vested in the trustee. Hence, if the trustee is an individual or corporation, then the new general form of acknowledgment will be prepared to reflect the intrinsic nature of the trustee.

HOW WOULD THE DEED TO THE TRUSTEE ORDINARILY BE WORDED TO TRANSFER TITLE TO THE TRUSTEE?

"John Doe and Mary Doe, as trustees of the Doe family trust, under declaration of trust deed dated January 1, 1992."

ARE THERE ANY LIMITATIONS ON WHAT A TRUSTEE MAY DO?

Yes, the trustee is limited principally and most importantly by the provisions of the trust and, thus, may only act within the terms of the trust. The probate code contains general powers which, unless limited by the trust agreement, are sufficient for title insurers to rely on for sale, conveyance and refinance purposes.