Fidelity National Title

Understanding Title Insurance Requirements for Insuring Living Trusts

In today's world of busy probate courts and a desire for privacy, 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 and administer designated assets of the trustor for the use and benefits of one or more beneficiaries.

Can a trust itself acquire and convey interests in real property?

No. The living trust is an arrangement between a trustee and a trustor. Only the trustee, on behalf of the trust, may own and convey any interest in real property. The trustee may only exercise the powers granted in the trust.

What will the title company require if a trustee holds the title to the property, which is part of the trust?

A certification of trust containing the following information: 1) date of execution of the trust instrument, 2) identity of the trustor and trustee, 3) powers of the trustee, 4) identity of the person with the power to revoke trust, if any, 5) signature authority of the trustees, 6) manner in which title to the trust assets should be taken, 7) legal description of any interest in the property held by the trust, and 8) a statement that the trust has not been revoked, modified, or amended in any manner which would cause the certification to be incorrect and that the certification is being signed by all currently acting trustees of the trust.

If there is more than one trustee, can just one sign?

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

Can the trustee give someone a power-of-attorney?

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

What will the title company require if all the trustees have died or are unwilling to act?

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

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 the title insurers to rely on for sale, conveyance, and refinance purposes.

Trusts:

If title is vested under the trust, the trustee needs to have an account under the name of the trust. Escrow funds will only be issued the way title is held.

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