

INSURING LIVING TRUSTS

Living trust has become a common manner of holding title to real property. The following information may help you understand a few of the requirements of the title insurance industry if title to the 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 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 person with 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7) legal description of any interest in the property held by the trust, and 8) a statement that the trust has not been revoked, modified, or amended in any manner which would cause the certification to be incorrect and that the certification is being signed by all currently acting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 join?

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 trustee?

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