

# Trusts & Mortgaging Property held in Trust

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# Definitions

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☀️ **Trust:** *An obligation arising out of a confidence reposed in the trustee or representative, who has the legal title to property conveyed to him, that he will faithfully apply the property according to the confidence reposed, or, in other words, according to the wishes of the grantor of the trust.\**

☀️ Individual or entity holds legal title to property for the benefit of another in accordance to a written set of instructions.

\*Blacks Law Dictionary: <http://thelawdictionary.org/trust/>

# Key Terms

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-  **Settlor or Grantor:** *The person who conveys the property and creates the trust.*
-  **Trustee:** *The person or entity who the settlor gives control of the property held in the trust. Legal title is held by the trustee under the terms of the trust.*
-  **Beneficiary:** *The person for whose benefit the property is being held.*

# Types of Trusts

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- ☀️ **Revocable Trust:** *A trust that allows the settlor or grantor to revoke the trust and reclaim property placed in trust. Settlor can amend the trust.*
- ☀️ **Irrevocable Trust:** *The settlor or grantor are not able to revoke or amend the trust. They are allowed to act as trustee but with only administrative powers. (Greater protection from creditors)*
- ☀️ **Beneficiary:** *The person for whose benefit the property is being held.*
- ☀️ **Inter Vivos Trust or Living Trust:** *Trust that becomes operative during the lifetime of the settlor.*
- ☀️ **Testamentary Trust:** *Trust that becomes operative upon the death of the settlor.*

# Types of Trusts

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- ☀️ **Land Trust:** *Trustee holds bare legal title to the property and the power to manage the property remains with the beneficiary of the trust.*
- ☀️ **Special Needs Trust:** Trustee holds title to property for the benefit of a child or adult who has a disability.
- ☀️ **QTIP Trust:** (Qualified Terminable Interest Trust) Allows settlor to provide for a surviving spouse and maintain control over how the trusts assets are distributed once the surviving spouse has also died. Written minimize tax consequences upon death of the grantor.

# FANNIE MAE & FREDDIE MAC Requirements



## ☀️ **Trust Must Be Inter Vivos Revocable Trust**

☀️ Created during the individuals lifetime.

☀️ Becomes effective during its creator's lifetime.

☀️ Can be changed by its creator at any time, for any reason, during the individual's lifetime.

☀️ **Revocable:** *At the time of the consummation of the mortgage financing the trust must be revocable.*

☀️ **Borrower Must Be the Creator of The Trust:** *Also referred to as the creator, grantor or settlor and must be a natural person.*

☀️ **Borrower Must Be One of The Trustees:** *Borrower must be the trustee or one of the co-trustees of the trust. (Institutional trustee that customarily trust functions is also acceptable).*

☀️ **Primary Beneficiary:** *Borrower must be the primary beneficiary of the trust. May have more than one primary borrower provided the income or assets of at least one of the individuals establishing the trust is used to qualify for the mortgage.*

☀️ **Power to Mortgage:** *Trustee must have the power to mortgage.*

# Lender Responsibilities

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- ☀ Determine that the trust and mortgage satisfy Fannie Mae or Freddie Mac eligibility criteria and documentation requirements.**
- ☀ Confirm the property and occupancy type is eligible.**
- ☀ Determine that it can originate mortgages under inter vivos revocable trusts and that the trust laws of the state in which it does business do not conflict with terms and conditions specified by Fannie Mae or Freddie Mac.**
- ☀ Review mortgage documentation, applicable state law, trust documents, and title insurance commitment to ensure title insurance will provide full title insurance coverage without exceptions for the trust or the trustees.**

# Signature Requirements Note & Mortgage



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 **Individual Trustee Who is Both a Settlor and a Credit Applicant:**

*Gary A. Coffin, **individually and as Trustee** of the Coffin Family 2014 Trust under trust agreement dated August 1, 2014.*

 **Institutional Co-Trustee and for an Individual Co-Trustee Who is Not Both A Settlor and a Credit Applicant:**

*Judith Daniels as **Trustee** of the Coffin Family 2014 Trust under trust agreement dated August 1, 2014.*

# Use of Signature Addendum



- ☀ **Individual borrower must sign note.**
  - ☀ **Addendum for trustee signatures.**
  
- ☀ **The form and content must comply with applicable state laws and federal laws governing the use of an allonge.**
  
- ☀ **Addendum must be permanently affixed to the related note and must clearly identify the note.**
  - ☀ **Last name of borrower.**
  - ☀ **Date of note.**
  - ☀ **Amount of note.**
  - ☀ **Address of security property.**
  
- ☀ **Note MUST clearly and accurately reference attached signature addendum.**
  
- ☀ **Fannie Mae's status of a "holder in due course" must not be impaired.**

# Rider to Security Agreement



- ☀️ **Borrower:** *Defines “Borrower” as trustee and grantor jointly and severally and their heirs, successors and/or assigns in addition to any others listed as “Borrower”.*
- ☀️ **Borrower(s) Not Named on Mortgage:** *Obligates grantor and trustee whether or not they are named as “Borrower” on the first page of the mortgage.*
- ☀️ **Occupancy:** *One or more of the Grantors will occupy the Property and that one or more of them will be primary beneficiary ....during his or her lifetime.*
- ☀️ **Change in Occupancy:** *Grantor and Trustee agree to notify Lender within 15 calendar days of a change in the primary occupants of the property or change in primary beneficiary.*
- ☀️ **Change in Revocability:** *Trustee agrees to notify Lender in writing within 15 days of trust becoming irrevocable due to death of revocable trust grantor.*

# Common Issues (Secondary Market)

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## **Borrower the Primary Beneficiary**

 *Husband Settlor and Trustee and wife the beneficiary.*

## **Massachusetts Realty Trust**

 Lists a schedule of beneficiaries that can change. Borrower may or may not be included in schedule.

## **Trust Not Revocable**

 *Not revocable trust. Okay to have trust become irrevocable after death of settlor/primary beneficiary.*

# Title and Title Insurance Requirements

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## **Copy Requirement:**

-  Maintain a copy of any trust documents that the title insurance company requires in the individual mortgage file.

## **Security Requirement:**

-  Title held in the trust does not in any way diminish creditors rights including rights to cure a default under.

## **Title Insurance Requirements:**

-  Ensures full title protection.
-  Policy to state property is vested in the trustees of the inter vivos trust.
-  No exceptions with respect to the trustee holding title or to the trust.

# FAQ'S

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## **What documents are required when a trust is in title to real property?**

-  A copy of the trust agreement, and any amendments and verification that the trust was properly created.
-  Who are the named trustees and to confirm the powers and/or restrictions of the trustee.
-  A signed certification from the trustee or co-trustees indicating that they are the current trustee or trustees, that the trust has not been amended or revoked and the trust is in full force.

# FAQ'S

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**☀ There are 2 co-trustees named, but only one will be signing the deed, is this acceptable?**

*This answer depends on a review of the trust agreement by the closing agent. If the trust agreement permits a co-trustee to act alone, or if the trust agreement is silent but state law provides for a co-trustee to act alone then one co-trustee may sign a deed. If the trust agreement does not permit a co-trustee to act alone or it is not permissible under state law, then both co-trustees would be required to sign the deed.*

# FAQ'S

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 **The trustee is conveying to themselves individually, is this acceptable?**

*A trustee may not take part in any transaction where the trustee has an interest which is adverse to that of the beneficiary without the beneficiary (or beneficiaries) providing written approval. A trustee has a fiduciary duty to maintain and preserve trust property and must avoid any type of self-dealing.*

# FAQ'S



## **Do we need to be provided with a full copy of the trust agreement?**

*You may get a request from an attorney for a trustee who is reluctant to provide a full copy of a trust agreement because of privacy concerns. In that case you should obtain copies of the pertinent portions of the trust agreement that name the trustee(s) and successor trustee(s) and any powers and/or restrictions that are placed on the trustee.*

-  *Trust Must Be Revocable: At the time of the consummation of the mortgage financing the trust must be revocable.*
-  *Borrower Must Be the Creator of The Trust: Also referred to as the creator, grantor or settlor.*
-  *Borrower Must Be One of The Trustees: Borrower must be the trustee or one of the co-trustees of the trust.*
-  *Primary Beneficiary: Borrower must be the primary beneficiary of the trust.*



Questions  
are  
guaranteed in  
life;  
Answers  
aren't.