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# Deed of Trust and Promissory Note – Step by Step Guide

A deed of trust, also called a trust deed, is the functional equivalent of a mortgage. It does **not** transfer the ownership of real property, as the typical deed does. Like a mortgage, a trust deed makes a piece of real property security (collateral) for a loan. If the loan is not repaid on time, the lender can foreclose on and sell the property and use the proceeds to pay off the loan.

# **Templates and Forms**

- Deed of Trust Form RTF\_(https://saclaw.org/wp-content/uploads/2023/04/sbs-deed-of-trust-and-promissory-note-deed.rtf)
- Promissory Note (for Deed of Trust) RTF (https://saclaw.org/wp-content/uploads/2023/04/sbs-deed-of-trust-and-promissory-note-prom-note-1.rtf)

A trust deed is always used together with a promissory note (also called "prom note") that sets out the amount and terms of the loan. The property owner signs the note, which is a written promise to repay the borrowed money.

A trust deed gives the third-party "trustee" (usually a title company or real estate broker) legal ownership of the property. This means that the that topic.

trustee has no control over the property as long as the borrower (aka property owner or "trustor") makes the agreed-upon loan payments and keeps the

property owner or "trustor") makes the agreed-upon loan payments and keeps the other promises in the trust deed. If the borrower defaults, however, the trustee has the power to sell the property to pay off the loan without having to file an action in court. The lender (also known as "beneficiary") is then repaid from the proceeds.

# Deed of trust is not used for transferring property to a trust

A trust deed is not used to transfer property to a living trust (use a <u>Grant Deed (https://www.saclaw.org/learn/find-a-form/)</u> for that). Other than the terminology, trust deeds and living trusts have nothing in common. A living trust is used to avoid probate, not to provide security for a loan. Visit our page on <u>Estate Planning</u>

(https://www.saclaw.org/legal\_topic/making-a-will-trustand-estate-plan/) for more information on that topic.

# **Step-by-Step Instructions**

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### **Determine the Parties to The Agreement**

There will be three parties to these agreements. Identifying these parties ahead of time will make it easier to complete the forms.

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#### **Beneficiary**

The beneficiary, more commonly known as the lender, is the person or company that lends the borrower money, and who will be entitled to be repaid from the proceeds of a foreclosure. If the lender is a corporation, be sure to include language such as "Lender is a corporation organized and existing under the laws of California" in your documents.

#### Borrower(s)

If there are two or more borrowers, they will be borrowing the money "jointly and severally." This means each debtor is responsible (liable) for the entire amount of the debt. A creditor may collect from whichever debtor has the "deep pocket" (lots of money); the debtor who pays may demand contributions from the other debtors. Joint borrowers will want to carefully consider whether or not they wish to be jointly responsible with their coborrower.

When the property used as security for the loan is owned by more than one person, you may want to consider who you will name as borrowers and owners of the property on the deed of trust. The names of **all** owners of the property, and their spouses, must be included to give the entire property (all owners' interests in the property) as security. A co-owner can only give as security his or her interest in the property. In other words, a lender wants to be sure that all owners and their spouses sign the deed of trust as a condition of lending the money (unless the lender is willing to take as security one co-owner's interest in property).

#### **Trustee**

When a bank or savings and loan finances the purchase of real estate, the trustee is almost always a title or trust company. Sometimes real estate brokers act as trustees. Attorneys commonly write in the name of a title company as trustee on a trust deed, without consulting the title company. Title companies even give out trust deed forms with their names already printed in the "trustee" space. They don't mind being named as trustee because a trustee has nothing to do unless the borrower defaults. If that happens, most title or escrow companies turn the deed over to a professional foreclosure firm.

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### **Prepare the Deed of Trust and Promissory Note**

The Deed of Trust and Promissory Note must be in a format that the Sacramento County Clerk/Recorder's Office will accept. Customizable templates may be downloaded from these links:

- Promissory Note (https://www.saclaw.org/wp-content/uploads/2023/04/sbs-deed-of-trust-and-promissory-note-prom-note.rtf)
- Deed of Trust (https://www.saclaw.org/wp-content/uploads/2023/04/sbs-deed-of-trust-and-promissory-note-deed.rtf)

Sample filled-in forms with instructions are available at the end of this Guide.

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#### **Get the Signatures Notarized**

Notarization is required before recording these documents with the County Recorder. The notary's acknowledgment of the trustor's signature is formal proof that the signature is genuine. You can find a notary at your bank, a mailing service, or in the Yellow Pages. with instructions are available at the end of this Guide.

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#### Record the Signed Documents at the County Recorder's Office

Take the original signed and notarized Deed of Trust and Promissory Note to the County Recorder's Office for the county where the property is located. In Sacramento, this is at 3636 American River Drive, Ste. 110, Sacramento CA 95864. You will need to pay a fee (you can check the <u>current recording fees in Sacramento (http://www.ccr.saccounty.net/Pages/Fees.aspx)</u>). The clerk in the recorder's office will take your original documents and stamp them with the date, time, a filing number, and book and page numbers. The original documents will be mailed back to you. Note: trust deeds are exempt from the documentary transfer tax. <u>California Revenue and Taxation Code § 11921 (http://leginfo.legislature.ca.gov/faces/codes\_displaySection.xhtml?lawCode=RTC&sectionNum=11921.)</u>.

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#### What Happens Next?

If the borrower pays off the loan without defaulting (as happens in most cases), the beneficiary (lender) will request the trustee execute and record a deed reconveying the property to the borrower. You can find a <u>Deed of Full Reconveyance</u> (https://saclaw.org/resource\_library/deed-of-full-reconveyance/) on the <u>Find A Form (https://saclaw.org/learn/find-a-form/)</u> page of our website.

### For more Information

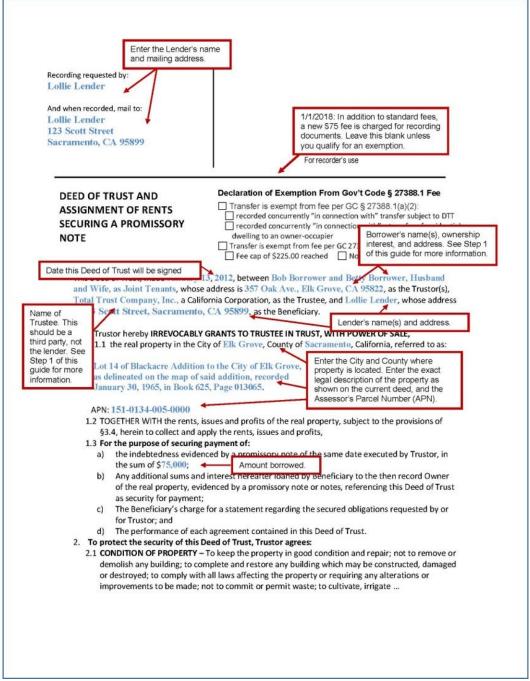
At the Law Library:

Deeds for California Real Estate KFC 170 .R36 (Self Help)



## **Samples**

The Deed of Trust must be in a format the Sacramento County Recorder's Office will accept. See the sample templates of the Deed of Trust and the Promissory Note below.



Deed of Trust and Assignment of Rents (page 1)

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3.1 ASSIGNME	ENT OF RENTS – Trustor hereby assigns and transfers to Beneficiary all right, title and
interest in	rents generated by the property, including rents now due, past due, or to become due
7.007	use of the property, to be applied to the obligations secured by this Deed of Trust. o a default on this Deed of Trust by Trustor, Trustor will collect and retain the rents
하고 준이 얼굴 살아 있다.	fault by Trustor, Beneficiary will immediately be entitled to possession of all unpaid rents.
	TION – If payment of any indebtedness or performance of any agreement secured by this
	ust is in default, Beneficiary may at Beneficiary's option, with or without notice to Trustor, sums secured immediately due and payable by:
	nencing suit for their recovery or for foreclosure of this Deed of Trust
#P30007025 (4)	ring to Trustee a written notice declaring a default with demand for sale; a written Notice of
	It and election to sell to be recorded by Trustee.  SALE – On default of any obligation secured by this Deed of Trust and acceleration of all
	Beneficiary may instruct Trustee to proceed with a sale of the secured property under the
	ale granted herein, noticed and held in accordance with California Civil Code §2924 et seq.
	S OFFSET STATEMENT - Within 10 days of Trustor's receipt of a written request by
	y, Trustor will execute a written estoppel affidavit identifying for the benefit of any assignee or in interest of Beneficiary: the then owner of the secured property; the terms of the
secured no	ote, including its remaining principal balance; any taxes or assessments due on the secured
	that the secured note is valid and the Trustor received full and valid consideration for it; and or understands the note and this Deed of Trust are being assigned.
	any of the following addenda are executed by Trustor and recorded together with this Deed
of Trust, the co	ovenants and agreements of each will incorporate, amend and supplement the agreements
	f Trust (check applicable boxes by hand):owner-occupancy rider; all-inclusive trust
rider other	m; Impounds for taxes and insurance addendum Private Mortgage Insurance (PMI)
	CE – Upon written request from Beneficiary stating that all sums secured by this Deed of
	en paid, surrender of this Deed of Trust and the note to Trustee for cancellation, and
	ustee's fees, Trustee will reconvey the property held under this Deed of Trust.  ASSIGNS AND PLEDGEES – This Deed of Trust applies to, inures to the benefit of, and binds
	eto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The
	ry will mean the holders and owner of the secured note, or, if the note has been pledged,
the pledgee. 7 TRUSTEF'S FOR	RECLOSURE NOTICES – The undersigned Trustor(s) requests a copy of any Notice of Default
	tice of Sale hereunder be mailed to Trustor at the address herein set forth.
Date:	Trustor:
Date:	(signature)
Date:	
Date:	(signoture)
Date:	(signoture)
Date:	(signeture)
Date:	(signoture)

Deed of Trust (signature page)

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nore information.		Secured by Deed of Trust	Lender's name and address where payments will be
For value receive		ointly and severally	
	the order of Lollie Lender and terest at the rate of 10 % per y		
	ate this note is signed until the		
	ate this note is signed until the o	500 00 10 10 10 10 10 10 10 10 10 10 10 1	Therever date occurs last.
170	this note also agree that this not s than \$ 2000 per month, due o		
The second secon			
	, another di	nd due date of payments. Mo	
	it payment due under this note i		
	inpaid principal shall become im	mediately due and payable at t	he option of the holder withou
prior notice to the	signer(s) of this note.		
4. If the holder(s) of	of this note prevail(s) in a lawsuit	to collect on it, the signer(s) a	gree(s) to pay the holder(s)'
attorney fees in an	amount the court finds to be ju	Address of property used a	s security for this loan
	s) that until such time as the prin		
	red by a deed of trust to real pro		
	ed by Bob and Betty Borro		
	nento, CA, and recorded on in		
Owner	rs of property used as security		5
January and the	eir ownership interest.	January 13, 2012	Date and location this
Sacramento, C		Sacramento, CA	document is signed.
Location signed (city or co	ounty)	Location signed (city or county)	
357 Oak Ave.,	Elk Grove, CA 95822	357 Oak Ave., Elk ( Borrower's Address	Grove, CA 95822
Borrower's Address		10 702 TAX ST TO TO THE	
Borrower's Address	Don't sign until you	are in front of a notary!	
	Don't sign until you	are in front of a notary!	
Borrower's Address Signature of Borrower	Don't sign until you	Signature of Borrower	
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Signature of Borrower  A Notary Public or other o		Signature of Borrower the identity of the individual who signed th	e document to which this certificate is
Signature of Borrower  A Notary Public or other of attached, and not the truth State of California	officer completing this certificate verifies only	Signature of Borrower the identity of the individual who signed th	e document to which this certificate is
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Promissory Note