

## Deed of Trust and Promissory Note

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.

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 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 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 [Grant Deed](https://www.saclaw.org/learn/find-a-form/) 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 [Estate Planning](https://www.saclaw.org/legal_topic/making-a-will-trust-and-estate-plan/) for more information on that topic.

## Step-by-Step Instructions

### 1. 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.

#### **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 co-borrower.

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.

## 2. 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) (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) (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.

## 3. 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.

## 4. 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 [current recording fees in Sacramento](http://www.ccr.saccounty.net/Pages/Fees.aspx) (http://www.ccr.saccounty.net/Pages/Fees.aspx)). 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. [California Revenue and Taxation Code § 11921](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=RTC&sectionNum=11921) (http://leginfo.legislature.ca.gov/faces/codes\_displaySection.xhtml?lawCode=RTC&sectionNum=11921.)

## 5. 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 [Deed of Full Reconveyance](https://saclaw.org/resource_library/deed-of-full-reconveyance/) on the [Find A Form](https://saclaw.org/learn/find-a-form/) 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.

Recording requested by:  
**Lollie Lender**

And when recorded, mail to:  
**Lollie Lender  
123 Scott Street  
Sacramento, CA 95899**

1/1/2018: In addition to standard fees, a new \$75 fee is charged for recording documents. Leave this blank unless you qualify for an exemption.

For recorder's use

---

**DEED OF TRUST AND  
ASSIGNMENT OF RENTS  
SECURING A PROMISSORY  
NOTE**

Date this Deed of Trust will be signed

Name of Trustee. This should be a third party, not the lender. See Step 1 of this guide for more information.

**Declaration of Exemption From Gov't Code § 27388.1 Fee**

Transfer is exempt from fee per GC § 27388.1(a)(2):

recorded concurrently "in connection with" transfer subject to DTT

recorded concurrently "in connection with" transfer of interest in a dwelling to an owner-occupier

Transfer is exempt from fee per GC 27388.1(a)(2) if:

Fee cap of \$225.00 reached  No

Borrower's name(s), ownership interest, and address. See Step 1 of this guide for more information.

Lender's name(s) and address.

Enter the City and County where property is located. Enter the exact legal description of the property as shown on the current deed, and the Assessor's Parcel Number (APN).

Amount borrowed.

On this 13, 2012, between **Bob Borrower and Betty Borrower, Husband and Wife**, as Joint Tenants, whose address is 357 Oak Ave., Elk Grove, CA 95822, as the Trustor(s), **Total Trust Company, Inc.**, a California Corporation, as the Trustee, and **Lollie Lender**, whose address is 123 Scott Street, Sacramento, CA 95899, as the Beneficiary.

Trustor hereby **IRREVOCABLY GRANTS TO TRUSTEE IN TRUST, WITH POWER OF SALE,**

1.1 the real property in the City of Elk Grove, County of Sacramento, California, referred to as:

**Lot 14 of Blackacre Addition to the City of Elk Grove, as delineated on the map of said addition, recorded January 30, 1965, in Book 625, Page 013065.**

APN: 151-0134-005-0000

1.2 TOGETHER WITH the rents, issues and profits of the real property, subject to the provisions of §3.4, herein to collect and apply the rents, issues and profits,

1.3 For the purpose of securing payment of:

- the indebtedness evidenced by a promissory note of the same date executed by Trustor, in the sum of \$75,000;
- Any additional sums and interest hereafter loaned by beneficiary to the then record Owner of the real property, evidenced by a promissory note or notes, referencing this Deed of Trust as security for payment;
- The Beneficiary's charge for a statement regarding the secured obligations requested by or for Trustor; and
- The performance of each agreement contained in this Deed of Trust.

2. To protect the security of this Deed of Trust, Trustor agrees:

2.1 **CONDITION OF PROPERTY** – To keep the property in good condition and repair; not to remove or demolish any building; to complete and restore any building which may be constructed, damaged or destroyed; to comply with all laws affecting the property or requiring any alterations or improvements to be made; not to commit or permit waste; to cultivate, irrigate ...

Deed of Trust and Assignment of Rents (page 1)

- 3.1 **ASSIGNMENT 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 under any use of the property, to be applied to the obligations secured by this Deed of Trust.
- a) Prior to a default on this Deed of Trust by Trustor, Trustor will collect and retain the rents
  - b) On default by Trustor, Beneficiary will immediately be entitled to possession of all unpaid rents.
- 3.2 **ACCELERATION** – If payment of any indebtedness or performance of any agreement secured by this Deed of Trust is in default, Beneficiary may at Beneficiary’s option, with or without notice to Trustor, declare all sums secured immediately due and payable by:
- a) Commencing suit for their recovery or for foreclosure of this Deed of Trust
  - b) Delivering to Trustee a written notice declaring a default with demand for sale; a written Notice of Default and election to sell to be recorded by Trustee.
- 3.3 **TRUSTEE’S SALE** – On default of any obligation secured by this Deed of Trust and acceleration of all sums due, Beneficiary may instruct Trustee to proceed with a sale of the secured property under the power of sale granted herein, noticed and held in accordance with California Civil Code §2924 et seq.
- 3.4 **TRUSTOR’S OFFSET STATEMENT** – Within 10 days of Trustor’s receipt of a written request by Beneficiary, Trustor will execute a written estoppel affidavit identifying for the benefit of any assignee or successor in interest of Beneficiary: the then owner of the secured property; the terms of the secured note, including its remaining principal balance; any taxes or assessments due on the secured property; that the secured note is valid and the Trustor received full and valid consideration for it; and that Trustor understands the note and this Deed of Trust are being assigned.
4. **ADDENDA** – If any of the following addenda are executed by Trustor and recorded together with this Deed of Trust, the covenants and agreements of each will incorporate, amend and supplement the agreements of this Deed of Trust (check applicable boxes by hand):  owner-occupancy rider;  all-inclusive trust deed addendum;  impounds for taxes and insurance addendum  Private Mortgage Insurance (PMI) rider  other:
5. **RECONVEYANCE** – Upon written request from Beneficiary stating that all sums secured by this Deed of Trust have been paid, surrender of this Deed of Trust and the note to Trustee for cancellation, and payment of Trustee’s fees, Trustee will reconvey the property held under this Deed of Trust.
6. **SUCCESSORS, ASSIGNS AND PLEDGEES** – This Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary will mean the holders and owner of the secured note, or, if the note has been pledged, the pledgee.
7. **TRUSTEE’S FORECLOSURE NOTICES** – The undersigned Trustor(s) requests a copy of any Notice of Default and of any Notice of Sale hereunder be mailed to Trustor at the address herein set forth.

Date: \_\_\_\_\_ Trustor: \_\_\_\_\_  
(signature)

Date: \_\_\_\_\_ Trustor: \_\_\_\_\_  
(signature)

Deed of Trust (signature page)

**Promissory Note Secured by Deed of Trust**

One borrower or multiple borrowers. See Step 1 for more information.

1. For value received,  I individually  We jointly and severally promise to pay to the order of **Lollie Lender at 123 Scott Street, Sacramento, CA 95899** \$ **75,000** with interest at the rate of **10 %** per year: [choose one] **Amount borrowed and interest rate.**

from the date this note is signed until the date it is due or is paid in full, whichever date occurs last.

from the date this note is signed until the date it is paid in full.

2. The signer(s) of this note also agree that this note shall be paid in installments, which include principal and interest, of not less than \$ **2000** per month, due on the first day of each month, until such time as the principal and interest are paid in full. **Amount and due date of payments. Modify to fit your needs.**

3. If any installment payment due under this note is not received by the holder within **10** days of its due date, the entire amount of unpaid principal shall become immediately due and payable at the option of the holder without prior notice to the signer(s) of this note.

4. If the holder(s) of this note prevail(s) in a lawsuit to collect on it, the signer(s) agree(s) to pay the holder(s)' attorney fees in an amount the court finds to be just.

5. Signer(s) agree(s) that until such time as the principal and interest owed under this note are paid in full, the note shall be secured by a deed of trust to real property commonly known as **357 Oak Ave., Elk Grove, CA 95822**, owned by **Bob and Betty Borrower, as Joint Tenants**, executed on **January 13, 2012**, at **Sacramento, CA**, and recorded on in the records of **Sacramento** County, California.

**Owners of property used as security, and their ownership interest.**

**Address of property used as security for this loan.**

**Date and location this document is signed.**

**Don't sign until you are in front of a notary!**

Signature of Borrower \_\_\_\_\_ Signature of Borrower \_\_\_\_\_

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

**NOTARY SEAL**

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary

Promissory Note

**Date Created**  
03/30/2023