

# RECONVEYANCE OF TITLE



Once the note has been paid, the beneficiary must request reconveyance of the title, and the trustee must comply.

Most real estate owners today are, or have been, parties to a trust deed, a form of security device.

Few owners, however, took on their roles knowing how the trust deed works, who is involved, or what rights and duties were created and exchanged under this security device.

In a typical real estate loan, the borrower signs a note and conveys his property's legal title to a neutral person (or company) by using a trust deed.

Technically, legal title to the property is held by this "middleman" in trust for the lender to carry back seller. However, in reality this simply imposes a lien on the property as security for the obligation.

Should the owner ever default on the terms of the note or trust deed, the trustee can sell the property to satisfy the debt.

Becoming a party to a trust deed requires only a promise to perform some act (usually payment of debt evidenced by a promissory note) and a signature (the owner's).

## THE TRUSTOR

In all cases, the trustor must be an owner of the property interest encumbered.

Usually, the owner is involved in a loan as a borrower (the payor/debtor on the promissory note)

## THE TRUSTEE

Historically, when an owner executed a trust deed, he conveyed the "whole estate" he owns to the trustee. Modernly however, the law holds that only a lien is imposed on the property. The trustee's sole function is to conduct a foreclosure in the event of a default.

All ownership interest not absolutely necessary for performance of the trust and not later disposed of to others (leased or further encumbered) are retained by the owners.

Most clearly, the possessory right to the property and its rent is not transferred.

To everyone but the trustee, the owner is still the legal owner of the property.

The trustor is free to sell, lease or further encumber this property—subject only to the existing trust deeds.

The trustee's main function is to hold title to the property in trust until the debt is repaid, or until other acts promised have been performed.

If ever called on to foreclose on the property, the trustee is required to act impartially.

## THE BENEFICIARY

The beneficiary must be the person entitled to performance of the promised activity, usually repayment under a note. (*Watkins v. Bryant* (1891) 91 C 492, 27P.775)

The beneficiary is usually the lender or carry back seller.

The beneficiary receives no legal interest in the property through the trust deed.

Because of his secured relationship to the property, the beneficiary acquires an equitable interest to the extent permitted under the title rights given to the trustee. (CC §§ 864, 865).

