

# RECONVEYANCE OF TITLE

NOTE



Once a note secured by a deed of trust has been paid, the beneficiary must request the trustee to reconvey the deed of trust and the trustee must comply within a specified time frame. Most real estate owners today are, or have been, parties to a trust deed, which is 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 the deed of trust.

In a typical real estate loan, the borrower signs a note and executes a deed of trust to secure repayment, which creates a lien against the property.

Technically, legal title to the property is conveyed to a neutral third party to be held "in trust" for the lender or carry back seller. However in reality this simply imposes a mortgage on the property as security for the loan.

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

In order to be valid, a deed of trust must secure a promise to perform some act (usually payment of debt evidenced by a promissory note), and must be signed by "trustor", that is, the property owner.

## THE TRUSTOR

In all cases, the trustor must own an interest in the property that's being encumbered.

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

## THE TRUSTEE

Historically, when an owner executed a trust deed, he conveyed his or her "whole estate" to the trustee. Modernly however, the law holds that the deed of trust only creates a lien against the property. The trustee's sole function is to conduct a foreclosure in the event of a default, or reconvey at the request of the beneficiary once the obligation has been satisfied.

All ownership interests not absolutely necessary to secure the deed of trust and not later disposed of to others (i.e., leased or further encumbered) are retained by the owners.

So long as the obligation is not in default, the trustor remains the legal owner and in possession of the property.

The trustor is free to sell, lease, or further encumber the property – subject only to existing deeds of trust, liens and encumbrances of record.

If ever called on to foreclose on the property, the trustee is required to act impartially and in accordance with the statutory requirements.

## 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)

Usually, the beneficiary is the lender or carry back seller.

Although the beneficiary acquires an equitable interest in the property as security for the obligation, the beneficiary does not become the legal owner.

**Customer Service** cs@caltitle.com | 844-544-2752

**Los Angeles** 100 N. First Street, Suite 404 | 818-382-9889

**Orange County** 28202 Cabot Road, Suite 625 | 949-582-8709

**San Diego** 2365 Northside Drive, Suite 250 | 619-516-5227



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