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## **DEED OF TRUST AND PROMISSORY NOTE: Step by Step**

# **Real Property as Security for a Loan**

Disclaimer: This guide is intended as general information only. Your case may have factors requiring different procedures or forms. The information and instructions are provided for use in Sacramento County. Please keep in mind that each county may have different requirements. If you need further assistance, consult an attorney.

### **FORMS**

There is no Judicial Council form for this procedure. Instead, the relevant document must be typed on 28-line pleading paper. Customizable templates may be downloaded from these links:

**Deed of Trust**

**Promissory Note**

**Sample Promissory Note**

### **BACKGROUND**

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.

Note: A trust deed is *not* used to transfer property to a living trust (use a [Grant Deed](#) 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. See the Legal Research Guide on [Wills, Trusts, and Estate Planning](#) on our website for more information on that topic.

A trust deed is always used together with a promissory 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 (aka “beneficiary”) is then repaid from the proceeds.

## STEP BY STEP INSTRUCTIONS

### Step 1: Prepare the Deed of Trust and Promissory Note

The Law Library has resources that provide models of these documents, which you can use as a guide for drafting your own. Instructions for completing the documents can be found at the end of this guide. Customizable templates of these documents can also be downloaded from the library's website at <http://www.saclaw.org/Uploads/files/Step-by-Step/deed-of-trust.rtf> and <http://www.saclaw.org/Uploads/files/Step-by-Step/deed-of-trust-prom-note-blank.rtf>.

### Step 2: Get the Signatures Notarized

Notarization is required before recording a deed 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.

### Step 3: 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. In Sacramento, this is located at 600 8th St. downtown. You will need to pay a fee (you can check the current recording fees in Sacramento at <http://www.ccr.saccounty.net>). The clerk in the recorder's office will take your original deed, stamp it with the date, time, a filing number, and book and page numbers, make a copy, and give the original back to you. Note: Trust deeds are exempt from the documentary transfer tax, so no Preliminary Change of Ownership Form is required. [California Revenue and Taxation Code § 11921](#).

### Step 4: What Happens Next?

If the borrower pays off the loan without defaulting (as happens in most cases), the trustee then executes and records a deed reconveying the property to the borrower. You can find a [Deed of Full Reconveyance](#) on the Forms page of our website.

## FOR MORE INFORMATION

At the Law Library

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

**Electronic Access:** From any computer (library or home) via the Legal Information Reference Center, at <http://tinyurl.com/Nolo-E-Books> (the state is CA and password is Sacramento).

[101 Law Forms for Personal Use](#) KF 170 .L46 (Self Help)

**Electronic Access:** From any computer (library or home) via the Legal Information Reference Center, at <http://tinyurl.com/Nolo-E-Books> (the state is CA and password is Sacramento).

*IF YOU HAVE QUESTIONS ABOUT THIS GUIDE, OR IF YOU NEED HELP FINDING OR USING THE MATERIALS LISTED, DON'T HESITATE TO ASK A REFERENCE LIBRARIAN.*

## Instructions for Completing the Trust Deed

1. Where it says, "After Recording Return to:" fill in the lender's name.
2. Where it says, "(A) Security Instrument," fill in the date the trust deed is signed.
3. Where it says, "(B) Borrower," fill in the name and address of the person borrowing the money and giving his or her property as security.

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).

4. Where it says, "(C) Lender," fill in the name and address of the person who lent the borrower money. If the lender is a business, fill in the second sentence as well—for example, "Lender is a corporation organized and existing under the laws of California." If the lender is not a business entity, cross out that sentence.

5. Where it says, "(D) Trustee," fill in the name and address of the 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.

6. Where it says, "(E) Note," identify the promissory note that was executed to evidence the underlying debt. You should fill in the date the note was signed, the amount of the debt, and the date by which the note will be repaid.

7. Check the applicable box(es) under "(H) Riders," on page 2 *only* if any corresponding additional agreements are attached to the deed of trust.

8. Where it says, "Transfer of Rights In the Property" on page 3, in the first blank, fill in the word "county." In the second blank, fill in the name of the county where the property is located, e.g., "Sacramento." In the remaining blanks, fill in the street address of the property.

The next blank to fill in is on the last page of the form. Everything in the middle is standard language about the rights of the lender and borrower. For example, the borrower promises to keep the property in good repair, pay real estate taxes, and otherwise protect the lender's investment. If the borrower breaks one of these promises, the trustee can foreclose on the property. The trustee's powers are also set out.

## **Instructions for Completing Promissory Note Secured by Deed of Trust**

1. Check the box indicating whether you are borrowing the money individually or jointly and severally with another person or persons.

“Jointly and severally” 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 demand contributions from the other debtors.

2. Insert the name of the Lender.

3. Insert the amount of money to be borrowed.

4. Insert the interest rate.

5. Check the box indicating whether interest shall be calculated from the date the note is signed until the date it is due or is paid in full, whichever date occurs last; or from the date the note is signed until the date it is paid in full.

6. Insert the monthly installment amount.

7. Insert the number of days after a monthly installment is due and not paid that the entire amount of unpaid principal shall become immediately due and payable at the option of the lender.

8. Insert the address of the real property used to secure the loan.

9. Insert the name(s) of the owner(s) of the real property and the type of ownership interest.

10. Insert the date the trust deed will be signed.

11. Insert the name of the city in which the trust deed will be signed and the county in which it will be recorded.

12. Date the note, and insert the location where it will be signed and the address of the borrower.

13. A notary will witness your signature(s) and complete the rest of the form.

### Promissory Note Secured by Deed of Trust

1. For value received, ☐ I individually ☒ We jointly and severally promise to pay to the order of [Lollie Lender]  
\$ 1,000,000.00 at [123 Scott St., Sacramento, CA 95899]  
with interest at the rate of 10 % per year: **[choose one]**  
☒ 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 \$ [2,000] per month, due on the first day of each month, until such time as the principal and interest are paid in full.
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 and reasonable.
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 [321 Great St., Sacramento, CA 95811], owned by [Bob and Betty Borrower as Husband and Wife], executed on [January 13, 2012], at [Sacramento, California], and recorded on in the records of [Sacramento] County, California.

[January 13, 2012]  
Date  
[Sacramento, California]  
Location (city or county)  
[321 Great St., Sacramento, CA 95811]  
Address  
\_\_\_\_\_  
Signature of Borrower

[January 13, 2012]  
Date  
[Sacramento, California]  
Location (city or county)  
[321 Great St., Sacramento, CA 95811]  
Address  
\_\_\_\_\_  
Signature of Borrower

State of California }  
County of }

On \_\_\_\_\_, before me, \_\_\_\_\_, a notary public in and for said state, personally appeared \_\_\_\_\_, personally known to me (or 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 entity upon behalf of which the person(s) acted, executed the instrument.

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

[SEAL]