

Definition of Deed of Trust

Why is a Deed of Trust Different From a Mortgage?

By Elizabeth Weintraub



A deed of trust is notarized before recording.

Most buyers sign a deed of trust at closing. The amount of paperwork home buyers sign at closing is astounding. Most of those documents will be generated by the buyer's lender. Without reading them and just signing, it can take buyers almost an hour to finish. Although, every once in a while, I will attend a closing with buyers who actually take time to read the documents, and that is refreshing.

What is a Deed of Trust?

If you have never read a deed of trust, you might have questions about it. After all, it is the security for your loan. It is the document that is recorded in the public records.

A deed of trust contains three parties:

- The Trustor, which is you, the borrower
- The Trustee, which is an entity that holds "bare or legal" title
- The Beneficiary, which is the lender

The deed of trust is an instrument that identifies the following:

- Original loan amount
- Legal description of the property being used as security for the mortgage
- The parties
- Inception and maturity date of the loan
- Provisions of the mortgage and requirements
- Late fees
- Legal procedures
- Acceleration and alienation clauses
- Riders, if any, regarding such clauses as prepayment penalties or terms of an adjustable rate mortgage

What is a Trustee?

Because mortgages do not contain a trustee, many borrowers are confused between a mortgage and a deed of trust. Deeds of trust contain a trustee, an independent third party that does not represent the borrower nor the lender.

- The trustee is an entity, generally a title company, that holds the "Power of Sale" in the event of default.
- The trustee also reconveys the property once the deed of trust is paid in full.
- In the event of a default, the trustee files a Notice of Default; however, in most instances, the trustee will substitute another trustee to handle the foreclosure under a Substitution of Trustee.
- After the 90-day period in the public records, and a 21-day publication period in the newspaper, the trustee then has the power to sell the property on the courthouse steps without a court procedure.
- During the three months following recordation of the Notice of Default, the borrower can redeem the property by making up the back payments and paying the trustee's fees.
- Once the trustee sells the property at a Trustee's sale, it is final.

What is a Promissory Note?

Whereas the deed of trust is security of the debt, secured by the property, the promissory note is secured by the deed of trust and is the evidence of the debt.

- The promissory note is a promise to pay, signed by the borrower in favor of the lender.
- It contains the terms of the loan such as the interest rate and payment obligations.
- The promissory note is generally not recorded.
- When the loan is paid, the promissory note is marked "paid in full" and returned to the borrower, along with a recorded Reconveyance Deed.
- During the term of the loan, the lender retains the promissory note.

Before Signing a Promissory Note and Deed of Trust

Read both documents, including the pre-printed portions. You might ask the closer to send you a blank deed of trust and promissory note beforehand. Because preparers are human and can make mistakes, here are the important items to review:

- Spelling of trustors' names
- Principal balance of the loan
- Interest rate (and the rider, if adjustable)
- Payment amount
- Prepayment penalties, if any
- Address of property

*Source: http://homebuying.about.com/od/marketfactstrends/qt/111307_DofTrust.htm
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