

Trust Agreements

For sellers with properties held in trust, a notarized Certification of Trust according to California Civil Code Section 18100.5 is required. The title company may ask for additional documentation, such as pages that identify trustee(s) or successor trustee(s), the trust name, powers of the trustee(s), and the signature page.

In the event of the original trustee's death, the successor trustee must provide a certified copy of the death certificate and sign an Affidavit Death of Trustee. The successor trustee must also be ready to provide a full copy of the trust for review by the title insurer.

For buyers, many lenders will not loan to a trust in a purchase or refinance. The buyer may need to deed out of the trust and obtain the loan as individuals, according to the lender's requirements. If the buyer is paying all cash for the property and wishes to hold title in a trust, the same documentation as required for sellers is necessary.

Note that either the trust TIN number or the trustee's Social Security number must be provided for 1099 reporting purposes. If the seller is a successor trustee, the sale proceeds cannot be disbursed to anyone other than the trust. A TIN for the trust is required, as a Social Security number cannot be used. If a bank account has not yet been established for the trust, it should be done early in the transaction to prevent any delay in the issuance of sale proceeds.

