

Trusts

General Trust Guidelines:

HUD will insure HECMs on properties held in the name of an inter vivos or "living" trust. A living trust is created while grantors are alive rather than one created at/after death.

A trust agreement outlines the responsibilities of the trustee, who have a fiduciary responsibility to hold and manage the trust assets for the "beneficiary". The trust holds legal title, while the beneficiary holds equitable title, which means he or she has the right to use the property, or purchase it if the trust fails in some way to manage it properly.

Under the HECM program, all borrowers must be primary beneficiaries of the trust but not all primary beneficiaries must be borrowers as long as the non-borrowing primary beneficiaries could qualify for the HECM (be of age 62 or older). The borrower(s) may or may not be Trustee(s) of the trust; however, if they are, they must sign the required documents as both Borrower and Trustee.

Note: *Texas properties cannot close in a trust*

Revocable Trusts:

A revocable trust is one that:

- An individual created during his or her lifetime,
- Becomes effective during its creator's lifetime, and
- Can be changed or cancelled by its creator at any time, for any reason, during that individual's lifetime.

Please see below for Trust Approval requirements.

Note: The revocability of some trusts may change on the death of one borrower.

Irrevocable Trusts:

An irrevocable trust cannot be changed or cancelled once it is set up without the consent of the beneficiary. An irrevocable trust is an arrangement in which the grantor permanently departs with the ownership and control of the property.

Please see below for Trust Approval requirements.

Land Trusts:

A land trust provides a unique form of ownership of real property. In an Illinois land trust, the legal and equitable title lies with the trustee and the beneficiary retains what is referred to as a personal property interest. The beneficiary has the exclusive power to direct or control the trustee in dealing with the title and the exclusive control of the management, operation, renting and selling of the trust property together with the exclusive rights to the proceeds from the property. The only power the trustee has in relation to the land is the power to convey title; the trustee can only use this power when properly authorized by the beneficiary.

Please see below for Trust Approval requirements.

Beneficiaries:

The Borrowers must be the primary beneficiaries of the trust. They cannot be the residual, contingent, or alternate beneficiaries. For more information, consult your local counsel. Special legal opinions may be required for Illinois or Florida Land Trusts.

Trust Documents:

The trustee is under a fiduciary responsibility to hold and manage the trust assets for the beneficiary. The trustee's responsibilities are set out in a trust agreement.

A complete copy of the "Declaration of Trust" or "Trust Agreement" must be submitted to the underwriter and the title company with all amendments and schedules.

California loans:

California Probate Code Section 18100.5 provides a means by which the trustee(s) of a trust can provide a certification of trust in lieu of an actual copy of a trust agreement to a third party who is contemplating entering into a transaction with the trust. (This is acceptable as long as all information needed to determine whether trust is acceptable appears in the certificate of trust)

Trust Approval:

For all reverse mortgage products, the eligibility of a property held by trust is subject to review and approval of the trust by a qualified attorney AND the title company. An attorney's opinion letter must be submitted to or obtained by RFS prior to the loan being approved for final closing documents and/or purchase.

RFS requires the following vendors for trust review and approval:

For Irrevocable or Revocable Trusts:

Paul Lovegrove, Esq. OR Jack Miller, Attorney at Law
Attorney Trust Review Irelan McDaniel, PLLC
plovegrove@lovegrovelaw.com JMiller@IMTexasLaw.com
631-669-4370 Direct: 713-333-2942
Main: 713-222-7666

For Revocable Trusts only:

Gregg & Valby, PC
1700 West Loop South, Suite 200
Houston, TX 77027
legalreview@gregg-valby.com
713-960-1377

For Land Trusts: Underwriting Lending Guide

Law Offices of Solomon & Leadley
320 East Indian Trail
Aurora, IL 60505
Office: 630-892-7788
lendertrustreview@gmail.com

Trust Documents Signed at Closing:

- The Trustee(s) must sign the Notes, Mortgage Deeds and all riders at closing but do not execute the Loan Agreement. The Trustee(s) must also sign the Notice of Right to Cancel and the TIL document.
- The Borrowers must sign the Note, Mortgage Deeds and all other loan documents. If the Borrower(s) and the trustees(s) are one and the same, they must execute the Mortgage Deeds as both (Trustee and Borrower).
- The Trust Acknowledgment must be executed at closing for all loans closing in a trust.

Guardianship or Conservatorship

A Guardian (called a "Conservator" in some states) is appointed by a court to protect the borrower's interest because the borrower has become incompetent and does not have a valid Power of Attorney (POA) in place.

The following documents are required if the borrower has a guardian or conservator:

- A copy of the court order appointing a guardian or conservator over the person and the estate. (sometimes called "Letters of Guardianship or Conservatorship")
- A court order to state that the court approves the loan transaction for a HECM reverse mortgage.
 - The words "reverse mortgage" and "adjustable rate, negative amortized loan" **must** be included in the court order
 - The court order must be signed by the judge.
 - The court order should not include any interest rate or loan amount.
 - If an interest rate is listed, it must be stated as an "initial rate" noting that it is an adjustable rate for a negative amortized loan.
 - If a loan amount is listed, it must not be less than the proposed recorded deed amount, which equals 150% of the maximum claim amount.
 - If the property is in a trust, the court order will also need to authorize the trustee to act on behalf of the trust.
- The title company must confirm in writing that they will be able to close the transaction using the Conservator or Guardianship paperwork.
- The conservator or guardian must be counseled.

On the application and closing documents, the guardian's or conservator's signature must follow the guidelines laid out in the Guardianship Documents. A typical example: "Jane Smith by John Doe, as Guardian" Or, "John Smith by Jane Jones, as Conservator"

Temporary Guardianship or Conservatorship:

Temporary guardianships or conservatorships must be reviewed on a case by case basis. A guardianship or conservatorship must be valid, and in force with an expiration date past the funding of the loan.

If we use a POA because the borrower is incapacitated then she will not be required to be counseled. But the DR letter would have to state that she is incapacitated mentally not physically. This seems unlikely due to the short term nature of her incapacity. Best route is to have her counseled and have the POA sign everything.

POA Requirements:

Borrower is competent, however chooses not to sign:

- ♣ The borrower must execute the 1009 and HUD 92900A
- ♣ The borrower and the POA must be counseled and must execute the counseling certification
- ♣ A letter of explanation from the borrower indicating the reason they are having the POA sign on their behalf
- ♣ A notarized copy of the fully executed Durable POA (Title may require the original POA to be recorded at the time of closing)
- ♣ An acknowledgement from the Title company indicating the POA is acceptable to insure

Borrower is competent, however is physically incapacitated:

♣ A doctor's letter certifying the borrower is unable to sign and the nature of the borrower's physical incapacity. Please make sure a date (mo/year) of incapacity is included.

♣ The POA will sign the 1009 and the HUD 92900A

♣ The counseling session must be conducted with the borrower and the POA; the POA will sign the counseling certificate

An acknowledgement from the Title company indicating the POA is acceptable to insure

Borrower is mentally incompetent:

♣ A doctor's letter certifying that the borrower is no longer capable of handling their financial affairs;

• Letter must include the date on which the borrower became incapable of handling their financial affairs which must be AFTER the POA was executed.

• In those cases where the POA is executed within a short time period prior to the application, the letter should verify that the POA was capable of handling their financial affairs on the date the POA was signed

♣ IF POA is used in conjunction with a Trust Agreement additional documentation may be required as outlined in the Trust Agreement

♣ The POA must execute ALL application and closing documents

♣ Per Mortgagee Letter 2004-25 the vested owner's name should appear at the top of the Counseling Certificate; however the POA must attend the session and must execute the counseling certificate.

♣ A notarized copy of the fully executed Durable POA - (Title may require the original POA to be recorded at the time of closing)

♣ An acknowledgement from the Title company indicating POA is acceptable to insure