



CAPITAL TITLE - LEGAL UPDATE

TRUSTS: WHAT ARE THEY AND HOW DO THEY AFFECT MY TITLE?

By Tamara Brooks, Georgia Underwriting Counsel WFG National Title
Reprinted with permission from WFG National Title Insurance Company

What is it?

A trust is defined as a relationship created at the direction of an individual, in which one or more persons hold the individual's property subject to certain duties as set out in the trust document. There are various types of trusts that can hold real property:

- Inter Vivos – created during the settlor's life
- Testamentary – created by a will
- Revocable – settlor retains the power to revoke, alter or amend the trust
- Irrevocable – cannot be amended by the settlor
- Express – express intention of owner of property to create a trust
- Implied – resulting trust

Continued on Page 2



How do trusts affect my title?

If you discover that the seller or borrower of your upcoming transaction is a trust, the most important thing to do is to verify that the property is correctly held in the name of the trustee, and not the trust itself. In most states, trust is not a legal entity that can hold property itself. Then, the trustee's authority to conduct the proposed transaction needs to be verified. Does the trustee have the authority to convey the property out of the trust? The trust document will set out the trustee's authority. Do the beneficiaries have to agree to the conveyance? Can the trustee borrow money on behalf of the trust? Depending on your state, the trustee may need to provide a copy of the entire trust agreement for review. In some states, a review of a certificate of trust is sufficient, but you'll need to review your state specific trust laws to verify whether this is acceptable and consult with your local WFG Agent, Capital Title.

After verifying the trustee's authority, the manner in which title is shown on the deed into the trustee also needs to be reviewed.

Incorrect:

The Jane Doe Trust

Correct:

Jim Doe, as Trustee of the Jane Doe Irrevocable Trust, created on June 5, 2001.

Why does this matter?

Marketability of title could be affected when property is not correctly conveyed to a trustee, a business entity or an individual and subsequently conveyed out. This creates a cloud on title that must be resolved prior to closing your transaction. If a trustee has conveyed trust property in the back-chain and it was properly titled into the trustee of the trust, the presumption is that the trustee had the authority to convey title out. A certificate of trust should be recorded with the trustee's deed to indicate the trustee had the power to convey the property. This eliminates future questions regarding the transaction. The trust document itself does not and probably should not be recorded in the deed records due to privacy concerns.