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Closing Real Property Owned By a Trust

What is a Trust?

NA trust is a fiduciary arrangement in which a person (may be referred to as a grantor/trustor/settler) places his assets into the care of a third party (trustee) for the future benefit of a person or persons (beneficiary/beneficiaries). This is typically done for tax purposes, but is also done to allow the beneficiary quicker access to assets than through a will, avoids probate and court costs, and allows the grantor to dictate what happens to the estate even in death.

THERE ARE TWO TYPES OF TRUSTS YOU SHOULD BE AWARE OF — A REVOCABLE AND AN IRREVOCABLE

There are two types of trust you should be aware of – a revocable trust and an irrevocable trust. As a real estate professional is important that you know which type of trust a property is part of when working on a transaction.

A revocable trust has an agreement that can be modified by the grantor, allows for the trustee to convey assets in and out of the trust, often has the grantor also serving as the trustee, and the grantor owns the property until the time of his death. The assets in the trust are NOT PROTECTED FROM CREDITORS. If your client is purchasing property from a revocable trust any judgments in the grantor's name apply to the trust assets. Property is subject to claims for the duration of two years following the grantor's death.

An irrevocable trust is an agreement that cannot be changed by the grantor once it is established, is sometimes established through the will of the grantor, requires the trustee to be a third party as opposed to allowing the grantor to serve in this capacity as the revocable trust does, assets belong to the trust and no longer to the grantor once they are conveyed, and the trust has its own tax identification number. Assets in an irrevocable trust CANNOT BE TOUCHED BY THE GRANTOR'S CREDITORS.

The Trustee

The role of trustee is the one real estate professionals need to be most familiar with when dealing with a transaction of property from a trust. In instances of co-trustees, they must be in agreement on decisions just as co-owners would have to do. The trustee has the legal authority to make decisions in regards to the property. They act as the seller and can negotiate the selling price, make repairs as needed, and handle assets according to the grantor's wishes as established in the trust agreement.

The trustee holds the legal title to the trust which means they maintain management and control while following the provisions of the trust. The beneficiary holds the equitable title allowing him to enforce the trust and entitling him to the benefits.

The trustee is who the real estate professional must deal with in regards to any sales or purchases made of property held in trust. You will probably not have interaction with the

grantor or beneficiary unless he is also serving as the trustee.

A Real Estate Transaction with a Trust

The settlement agent should request a copy of the trust document. There may be circumstances where a trust will not disclose this, in which case a trust certificate will need to be acquired. Copies of both should be maintained by the agent in his files. The trust certificate will verify that a trust does exist and the date of execution of the trust document. It will identify:

- the grantor
- the trustee(s) and address(es)
- the powers bestowed on the trustee for transactions
- identify if it is a revocable or irrevocable trust and who holds the power to revoke the terms
- who can provide signatures for a transaction if there are co-trustees (does just one need to sign or do they all need to)
- the tax identification number of the trust or the social security number of the grantor

For all intent and purposes, a transaction with a trust should follow the normal timeline for a closing and involve the normal steps you would take if dealing with an individual. If a trust has multiple trustees, there is a chance they reside in different geographic locations so the length of time it will take to gather signatures can be a challenge. Additionally, a Power of Attorney cannot be designated by a trustee so if he is unavailable, a letter designating a successor trustee must be presented. By being organized and staying on top of this process it should proceed as other transactions do.

It is best practice to distribute the proceeds of the sale to the trust and not directly to the beneficiaries for a variety of reasons. There could be legal ramifications if it is not divided properly. Trusts can have amendments and you may not be aware of them. Money received from the sale of a portion or all of a trust must be reported to the IRS. By directing the proceeds to the trust, the settlement agent is only responsible for reporting the gross sales price on a 1099-S form. Finally, many lenders restrict payment to the owner of record, which is the trust. If payment is made to the individual beneficiaries, it may void the lending agreement for the buyer.

With an understanding of the type of trust you are working with, who the trustee is, and being organized with the closing, a real estate professional can expect a transaction with a trust to be very similar to any other deal.

See you at the settlement table!