

# **Special Report**

## **Mortgages to Trusts:**

***How trustees and professional fiduciaries  
can turn the untapped equity  
in trust owned realty  
into cash***

***The Suburban Group***

***Mortgage Bankers*** ***Probate Specialists***

## ***What mortgage financing options are available to Trustees and Professional Fiduciaries?***

***Trustees and Professional Fiduciaries*** can obtain equity-based mortgages for up to 50-65% of the property value, per lender's appraiser. This depends on the type and quality of the property and the complexity of the file. Interest rate premiums for first mortgages are typically 2.5-4% above the equivalent 30 year fixed rate for a conventional loan for a fully qualified, "A" paper borrower. Mortgage terms available are usually shorter than for conventional loans: 10-15 years on average. Shorter terms are not uncommon.

Lenders will require that the subject property be in insurable condition, since the mortgage is primarily qualified by the soundness of the security (the property's equity).

Loans to non-natural person borrowers, trust entities in these cases, are by definition non-conforming borrowers. When a borrower desires to obtain a loan and sign as a trustee or successor trustee, it is the trust entity taking out the loan.

This is important to a trustee borrower because most lenders resell their mortgages and won't make a loan they can't resell later. Since the lender has no recourse beyond the security (real estate) for such a loan, traditional mortgage sources such as Fannie Mae and other lending channel will not buy these loans.

Banks and mortgage brokers typically advertise **conventional** loans with rates that only the best borrowers qualify for. Occasionally, a lender will make a portfolio loan (a loan that they intend to keep) to an individual who holds title to property in a trust if they are will to be personally obligated for that loan and they are the grantor or settler trustee. Otherwise, these borrowers only fit the **non-conventional** equity lender guidelines.

***So, what can you do with mortgage financing?*** Here are just a few examples:

1. Pay attorney fees
2. Pay for elderly care or living expense
3. Resolve dispute "work-outs"
4. Provide quick funds for emergencies
5. Pay Medi-Cal and other creditors
6. Stop foreclosure
7. Pay delinquent taxes
8. Money for repairs

Loans to ***Trustees and Professional Fiduciaries*** may take as few as 10-15 working days to close if the trust document provides you full power to encumber trust owned real estate. If not contained in the trust, you may have these powers pursuant to RE: Encumber PC § 16228 "The trustee has the power to encumber, mortgage, or pledge trust property for a term within or extending beyond the term of the trust in connection with the exercise of any power vested in the trustee."

Absent sufficient power otherwise, it will be necessary to petition the court for an **Order Authorizing Trustee to Borrow on Security of Trust Asset**. This may take from as few as several days (Ex Parte) to several weeks to accomplish.

***What must the attorney need to do to obtain financing for client?***

- Review trust for “Power to Encumber” or evidence of statutory powers.
- Power to borrow not sufficient (does not pledge realty asset as security)
- If no Power, requires Court Order to Borrow
- If Power present, need Death Cert. and/or Trust Transfer documents
- If Successor Trustee, need copy of entire Trust Agreement & recent Trustee’s Certification of Trust Status (to obtain title insurance)

***Frequently Asked Questions:***

*Q: A loan officer at Lender XYZ says they can give me a loan for 6-7%. How can they do this?*

A: In truth, they can’t. Lender XYZ is erroneously quoting a conventional loan. What they are quoting **will only apply if** you are willing to transfer the property out of the trust and to an individual who qualifies for their loan or co-sign the loan.

*Q: What if a lender’s borrower pre-qualification letter doesn’t specify the vesting?*

A: Don’t be surprised if, at the last minute, the lender requires the property to be transferred and vested in the name of the borrower personally. Demand a written statement that clarifies this matter if the loan is to be made to an estate or trust.

*Q: I’m not sure how to best structure this transaction. Any suggestions?*

A: Yes, help is available. If your lender is experienced with estate and trust financing, they will have sample petitions and other forms, or provide this service for a small additional cost.

Putting equity to work in this way is much more time and cost effective than selling. Get pre-qualified for a loan by contacting **Rick Harmon** at:

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***800.779.2552***

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