

**Trust Overview**

Living Trust (revocable inter vivos): A living trust (inter vivos revocable), is created by a written legal document that transfers legal title to property from an individual to a trust, usually for estate planning or privacy purposes. The individual(s) that create the trust (often referred to as "creators", "settlers", "grantors", "trustors" or "donors") are usually named as trustees within the trust and have full control over the property. If the trust is revocable, the individual(s) establishing the trust have the right to revoke or alter the trust. CMG only accepts trusts that are revocable and meet all agency and secondary market requirements.

**TRUST CHECKLIST (Underwriter)**

Borrower's Name: \_\_\_\_\_ Loan Number: \_\_\_\_\_

An underwriter should complete this checklist if the borrower is an inter vivos revocable trust that owns the real property securing the anticipated mortgage loan. All answer to the following questions must be **True** for the trust to be approved.

\_\_\_\_\_ The trust is signed, notarized, and dated by all applicable parties.

You have a complete copy of the Full Trust Agreement including all referenced schedules and amendments except where an executed Certificate of Trust is acceptable instead of the entire trust agreement. Certificate of Trusts are not permitted (Full Trust Agreement required) in the following states: Colorado, Connecticut, Hawaii, Louisiana, New York, Oklahoma, Rhode Island.

\_\_\_\_\_ check here if full trust agreement is provided, reviewed, and retained in the loan file (some state statutes protects the privacy of the beneficiaries of trusts thereby prohibiting requesting the entire Trust Agreement. However, the borrower may voluntarily submit the entire Trust Agreement.)

\_\_\_\_\_ check here if Certificate of Title and relevant pages of Trust (first page, signature page, and pages that outline the trustee powers) are provided, reviewed, and retained in the loan file

\_\_\_\_\_ The trust must be enforceable and in compliance with state and local laws and regulations. Title cannot take exception.

\_\_\_\_\_ The individual(s) establishing the trust (Grantor/Trustor/Settlor) is alive at the time of loan application, and loan closing/funding. The trust document must become effective during the settlor's (creator's) lifetime.

\_\_\_\_\_ The trust has been established in writing by a natural person and is to be effective during their lifetime. (The trust is not created in a will or codicil; no corporations, partnerships or other trusts)

\_\_\_\_\_ The Grantor(s)/Trustor(s)/Settlor(s) has the right to revoke or alter the trust.

\_\_\_\_\_ The primary beneficiary of the trust is the Grantor(s)/Trustor(s)/Settlor(s) (the interest and principal of the trust estate is applied for their benefit) and the mortgage has been underwritten as if the Grantor/Trustor/Settlor (or at least one of the Grantor(s)/Trustor(s)/Settlor(s)) is the borrower (or the co-borrower, if there are additional individuals whose income or assets will be used to qualify for the mortgage.)

\_\_\_\_\_ The loan applicant(s) are both the Grantor(s)/Trustor(s)/Settlor(s) and the trustee (or one of the co-trustees).

\_\_\_\_\_ The trustees must include at least one of the Grantor(s)/Trustor(s)/Settlor(s), if there are two or more, or an institutional trustee that customarily performs trust functions (i.e., a bank).

\_\_\_\_\_ The trustee(s) has the power to mortgage and borrow money.

\_\_\_\_\_ The trust does not contain an unusual risk or impairment of the lender's rights (i.e., distributions required to be made in specified amounts from other than net income).

\_\_\_\_\_ The title must be vested: in the name of one trust; jointly in the trustee (s) on the inter vivos revocable trust and in the name (s) of an individual borrower (s); or in the trustee(s) name if more than one inter vivos revocable trust

\_\_\_\_\_ The title policy assures full protection to the lender, its successors, and/or assigns, and must state that title to the property is vested in the trustee(s) of the trust. (It must not list any exceptions arising from the trust ownership of the property.)

\_\_\_\_\_ A power of attorney is not required to close the transaction. (CMG does not permit POA on property held in a trust)

APPROVED \_\_\_\_\_ REJECTED \_\_\_\_\_ Date: \_\_\_\_\_

Reviewed by: \_\_\_\_\_  
Print Name/Title (underwriter)

## **Additional Document Requirements**

CMG requires the following additional documents (closing doc set):

- Addendum to the Note
- Inter Vivos Rider and Trust Acknowledgement

## **Signature Requirements**

Signature requirements for the Note and Addendum:

- All borrower' on the 1003 must sign
- All trustees must sign

If trustee is also a borrower, THEN trustee must sign both as individual and trustee in their fiduciary capacity

If trustee is NOT a borrower, THEN trustee must sign in their fiduciary capacity only.

Individuals who have ownership interest subject property, but have not signed the 1003 are not required to sign the Note.

Signature requirements for the Security Instrument, Closing Disclosure, and Notice of Right of Rescission (when applicable):

- All individuals with an ownership interest in the property due to title vesting or ownership rights afforded under state law must sign
- All trustees must sign (must sign as individual and in fiduciary capacity)
- In a state recognizing marital property rights, community property rights, domestic partners, civil unions, and homestead rights, all spouses/domestic partners/civil union partners of the following must sign:
  - Borrowers
  - Non-borrowing title holders, and
  - Trustees (in fiduciary capacity only)

## **Closing Checklist**

\_\_\_\_\_ Loan approval indicates the loan will close in the name of the trust and underwriter has completed Trust Checklist

\_\_\_\_\_ Confirm the title insurance provides full protection without exception to the trust

\_\_\_\_\_ Confirm documents not signed using power of attorney

\_\_\_\_\_ Signature requirements for the security instrument & Inter Vivos Rider and Trust Acknowledgment are met

\_\_\_\_\_ Signature requirements for the Closing Disclosure are met

\_\_\_\_\_ Signature requirements for the Notice of Right to Cancel are met

\_\_\_\_\_ Signature requirements for the Note and Addendum are met