

# Who Owns the Property?

## Introduction

Just like any property that has a mortgage, a reverse mortgage is a lien placed on the property in the name of the lien holder. With adjustable-rate reverse mortgages that are insured by HUD (HECMs) there are actually two notes and mortgages, the first in the name of the lender, the second in HUD's name, since they are insuring the mortgage.

Most forward mortgages (refinances or purchases) are often titled (deeded) directly in the name of the homeowner or homeowners, that is often true for reverse mortgages too; however, many of our loans are held in a Trust or Life Estate. Not to worry, reverse lenders see these loans every day, but it's important to ask your client upfront how their property is held. Knowing if the property is held as fee-simple, in a Trust, Life Estate or some other way can avoid headaches and speed up the process.

## Trusts

HUD will insure HECMs on properties held in the name of an inter vivo or "living" trust. A trust agreement outlines the responsibilities of the trustee, to hold and manage the trust assets for the "beneficiary". Under the HECM program, all borrowers must be primary beneficiaries of the trust. 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.

## Life Estate

A property held in a life estate is eligible for an FHA reverse mortgage. There are two types of Life Estates:

- **Standard** (aka Traditional): The remainderman interest is effective immediately and they are on title. The remainderman must complete counseling, and must execute the following at closing:
  - Deed of Trust and any riders
  - Rescission and Truth in Lending
- **Enhanced** (aka Ladybird or Testamentary): The remainderman interest is effective at the death of the owner. Most companies will provide a preliminary title and an explanation as to why the remainderman are not listed on vesting even though the deed (warranty/grant/QCD) shows the life estate. Where the "death deed" is confirmed from title/attorney, and where the remainderman has no other role in the file, the remaindermen is not required to be counseled.

*Note: The party or parties holding the remainder or reversionary interest must be an individual and may not be a Trust or LLC.*

## Land Trust (Illinois)

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 "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 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. Land trusts require Mutual attorney, Title company and Trustee approval to complete the trust acknowledgement. If the trustee is listed as a company, the representative of that company who will be acting as trustee will be required to provide evidence that s/he is authorized to sign on behalf of the company.

### TRUSTS

#### Revocable Trust

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

#### Irrevocable Trust

- Cannot be changed or cancelled once it is set up without the consent of the beneficiary.
- An arrangement in which the grantor permanently gives up ownership and control of the property.

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