

Topic: Illinois Land Trusts, Living “Inter Vivos” Trusts, and Life Estates

Illinois Land Trusts

InterFirst recognizes Illinois land trusts as eligible forms of ownership. In an Illinois land trust, the property owner transfers the property title to a corporation or financial institution that is in the business of acting as a trustee under Illinois land trusts. The owner (beneficiary) retains the power to manage, sell, and control the property.

Requirements

Illinois land trusts are subject to the following requirements:

- All beneficiaries must be individuals
- The mortgage applicant(s) must be one of the beneficiaries of the trust
- The trustee must be a corporation or financial institution customarily engaged in the business of acting as a trustee under Illinois land trusts
- The beneficiaries have sole power of direction over the land trust and the trustee
- All beneficiaries are obligated as individuals under the terms of the note
- The mortgage applicants must be qualified borrowers who meet the requirements of the product
- The land trust mortgage must be secured by a 1 to 4-unit primary residence
- The term of the trust agreement is at least as long as the term of the security instrument

Required Documentation

The following additional documentation is required for a property held in a land trust:

- Land Trust Rider to the Mortgage/Deed of Trust
- Land Trust Rider to the Note
- Security Assignment Of Beneficial Interest In Land Trust

The trust agreement must be reviewed by the underwriter. No additions, deletions, or other riders to the standard forms are permitted.

The Note, Mortgage and documents required above must be completed and executed as follows:

- The Note and Mortgage must include the number of the trust and the date on which the trust was created. This information should follow the name of the trustee on the documents
- The beneficiary must execute the Note and Land Trust Rider to the Note
- The trustee must execute the Mortgage, Note, and Land Trust Rider to each
- The beneficiary must assign his/her beneficial interest in the Note and Trust Agreement to the seller
- The riders must be dated and executed the same day as the Mortgage and Note

NOTE: A Power of Attorney (POA) is not allowed for an Illinois land trust. Illinois land trusts are not allowed for investment properties.

Illinois Land Trusts, Living “Inter Vivos” Trusts, and Life Estates (cont.)

Living “Inter Vivos” Revocable Trusts

InterFirst will fund loans to a living “inter vivos” revocable trust as permitted by the applicable product. A living revocable trust that has an ownership interest in the security property is treated as an eligible borrower for the transaction.

Eligibility

To be eligible, the borrower must be all of the following:

- The settlor or the person who created the trust
- The beneficiary or the person who is designated to benefit from the trust
- The trustee or the person who will administer the trust for the benefit of the beneficiary (the borrower)

Eligible borrowers may be:

- One or more borrowers with one living trust
- Two or more borrowers with separate living trusts
- Multiple borrowers with one or more holding title as an individual and one or more holding title as a living trust

Required Documentation

An Attorney Opinion letter from the borrower’s attorney and a complete copy of the trust documents (certified by the borrower) are required.

1. The Attorney Opinion letter from the borrower’s attorney must verify all of the following information:

- The trust was validly created and is duly existing under applicable law
- The trust is revocable
- The borrower is the settlor and beneficiary of the trust
- The trust assets may be used as collateral for a loan
- The trustee is:
 - Duly qualified under applicable law to serve as the trustee
 - The borrower
 - The settlor
 - Fully authorized under the trust documents and applicable law to pledge or otherwise encumber the trust assets.

2. The complete copy of the trust documents must be certified by the borrower to be accurate.

OR

This may be substituted for an abstract or summary of the trust documents if the property is located in a jurisdiction that requires the lender to review and rely on these instead of the trust agreements.

Illinois Land Trusts, Living “Inter Vivos” Trusts, and Life Estates (cont.)

Exception for Trust Certificate Authorized States

In lieu of the Attorney’s Opinion letter and a copy of the trust documents, a Trust Certification from the title company is acceptable for the following states:

Alabama	District of Columbia	Michigan	New Hampshire	Pennsylvania	Utah
Arizona	Idaho	Minnesota	New Mexico	South Carolina	Vermont
Arkansas	Iowa	Missouri	North Carolina	South Dakota	Virginia
California	Kansas	Nebraska	Ohio	Tennessee	Washington
Delaware	Maine	Nevada	Oregon	Texas	Wyoming

The terms and conditions for the Attorney’s Opinion letter shown above apply here as well.

Other Title and Closing Requirements

In addition, the following title and closing requirements apply to living “inter vivos” trusts:

- The title to the property must be vested in the trustee on behalf of the trust (or other customary practice)
- The title binder cannot contain any exceptions to coverage based on the mortgaged property being held in the living trust
- The Note must be executed individually by the settlor and by the trustee on behalf of the trust
- The Mortgage or Deed of Trust must be executed by the individual borrower and the trustee on behalf of the trust. The Revocable Trust Rider must be used with the Mortgage or Deed of Trust.
- The date of the trust must be reflected on the Note as part of the description below the trustee’s signature, e.g. Jane Doe, Trustee of the Jane Doe Trust dated April 1, 2000.

NOTE: A POA is not allowed for living “inter vivos” revocable trusts.

Life Estates

Life estates are not eligible for financing. A life estate is an estate that’s duration is limited to the life of the party holding it, or some other person, upon whose death the right reverts to the grantor or the heirs.