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Community
Foundation

Inspiring and Connecting Thoughtful Giving

"Giving" Advice

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Since 1973, the **Toledo Community Foundation** has provided individuals, families and businesses interested in the well-being of our community with an *efficient, effective, low-cost, professionally managed* mechanism to achieve their charitable goals.

For philanthropists wishing to maximize the impact and life of their charitable gifts, the Foundation provides *resources for thoughtful giving*. Using its expertise and personalized services, **Toledo Community Foundation** helps donors transform their philanthropic impulse to measurable community impact. Beyond the gifting of assets, the Foundation helps donors identify issues of importance to them and *inspires engagement* with community organizations addressing these issues, thereby maximizing the impact of charitable gifts and creating a greater sense of fulfillment.

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A Revocable Trust 101

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Origination News

Last month I represented two different mortgage borrowers who were refinancing their existing loans to a lower rate. Each deal was very straight forward - strong credit scores, nice equity - except that in each case, the borrower's home had been transferred, for inheritance purposes, into a revocable trust.

The lender on each deal (Bank of America and Chase) required that the home be transferred out of trust back into the individual borrowers' names before the loans could actually close. Because trusts are common, mortgage brokers and loan originators should be sensitive to the mechanics of these types of deals because of the extra time involved.

Both of the borrowers came to me for representation. My job was to complete the deed transfers out of the trust and then to review the loan closing documents for possible problems. (I had originally represented them in creating an estate plan which included the revocable trust.) In case you are unaware, trusts are used for many reasons, including avoiding probate when an inheritance is involved.

In order for a trust to actually control real estate, the real estate (usually, but not always, a home) has to be transferred to the trustee of that trust. (Usually the homeowner is the trustee of their own trust.) When a home has a mortgage on it, the transfer of that home from the individual to themselves as trustee of their trust is permitted by federal law - provided the mortgage is government insured or government-backed, as in Fannie Mae, Freddie Mac, FHA, VA and the Rural Housing Service.

Even though you can usually transfer a home into a trust when you have a mortgage, if you later refinance the mortgage, the lender may require that the loan borrower be an individual as opposed to the trustee of a trust. This will necessitate a deed transfer from the trustee of the trust back to the individual homeowner. (This is why we have lawyers.)

This probably all relates to secondary market investor issues - that is, making sure the borrower is actually an individual as opposed to a trustee. I find this odd since trustees usually have the ability under state law to mortgage property. It is a fine example of the golden rule - he who has the gold (the lender) makes the rules.

The wrinkle on both of these refinancings was that the lenders wanted title transferred out of trust and back to the homeowners and a deed recorded before the closing and not at the closing. This is not hard to accomplish but it takes time. In fact, it could be a significant amount of time unless someone physically takes the deed to record at a county office. During this time, bad things can happen - like a rate lock blowing up, someone losing a job and so on.

I would suggest that mortgage brokers and retail loan officers contemplate these trust scenarios upfront and ask their customers at the time of application if title is held in a trust. This way you can appear as a hero and save the day, and the rate lock, by starting the process of deed transfer ahead of time if the property is in trust.

I would also suggest that mortgage brokers and loan originators look to estate planning attorneys as a solid lead source for borrowers. People who have an estate plan are typically gainfully employed, have assets and in many instances second homes. These folks are often in need of assistance in obtaining a mortgage and appreciate referrals to competent mortgage professionals.

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