

Vesting Title in a Trust

Upon review of a Trust's governing documents, Axos Bank may approve the Trust for vesting. **A Trust will not be a borrower or co-borrower.** The promissory note will be in the name of an individual and all interest statements, payment coupons, etc., will be issued in the individual's name. ¹

For all Trusts, preapproval of the Trust must be received from Axos Bank prior to loan closing. Please provide the following documentation for review:

1. Notarized copy of the fully-executed and dated trust agreement and any amendments thereto, as well as the Preliminary Title Report.
2. Such other documents and certifications reasonably requested by Axos Bank or the title company, or as required under state law.

Trust documents should be uploaded with the loan file. Axos Bank charges a fee of \$300.00 for its review of each trust.

Axos Bank reserves the right to request additional documents and due diligence materials, including but not limited to, an opinion letter from the trust's attorney.

Axos Bank retains the right to invoice Broker for any fees or costs, both third party and internal, related to the review of all loans and trust vesting requests.

¹ Any request for the trust to serve as borrower must be made under the DSCR Entity program at the outset of the application. Such requests will be considered on a case-by-case basis, subject to Axos Bank's discretion, and cannot be approved on any file involving individual co-borrower(s) or collateral outside California.

Checklist for Review of Qualified Personal Residence Trusts

Axos Bank evaluates Qualified Personal Residence Trusts for vesting approval on a case-by-case basis.

A. Criteria for the Trust:

1. The trust must be established by a written document during the lifetime of the individual(s) establishing the trust (individually and collectively, the “grantor”). The entire trust agreement, including all addenda, must be submitted to Axos Bank and the agreement must be executed by all parties, dated and notarized.
2. The trust will normally have a set term. If the term of the trust is shorter than the term of the Note, all beneficiaries must execute the Note and Mortgage. The beneficiaries must have the legal capacity to be bound to the Note and Mortgage (i.e. minors cannot execute).
3. The primary beneficiary of the trust will normally be someone other than the grantor. The beneficiary may not have any powers to control the trust.
4. The trust document must name one or more trustees to hold legal title to, and manage, the property that has been placed in the trust.
5. The trustee(s) must have the power to mortgage the security property for the purpose of securing a loan to the natural person “borrower(s)” under the mortgage or deed of trust note.
6. The grantor and the trustees of Trust must execute the note. The individuals executing the note must be the persons whose income and assets were used to qualify for the loan. If real property is in a community property state, the spouse must sign the note.
7. The trustee(s) of the trust must have the ability to mortgage the property and the lender must be able to enforce its rights under the mortgage.

B. Criteria for the Mortgage:

1. The security property must be a one-family principal residence that is occupied by at least one of the grantors (and whose income or assets are used to qualify for the mortgage) or a one-family second home.
2. Full title to the security property must be vested in the trustee(s) of the trust. There may be no other owners.
3. The title insurance policy must assure full title protection and must state that title to the security property is vested in the trustee(s) of the trust. There may not be any title policy exceptions with respect to the trustee(s) holding title to the security property or to the trust.
4. The mortgage must be underwritten as if the grantor (or at least one of the grantors, if there are two or more) were the borrower (or a co-borrower, if there are additional individuals whose income or assets will be used to qualify for the mortgage).

Checklist for Review of *Inter Vivos* Revocable Trusts

For all Agency files, Axos Bank adheres to the below requirements for *Inter Vivos* Revocable Trusts (also known as revocable living trusts) taken directly from Fannie Mae's Selling Guide. Axos Bank may also determine that additional guidelines apply. Please review the Fannie Mae requirements posted on its website to monitor updates to these requirements.

FNMA Trust Requirements

Except as expressly provided elsewhere in the Selling Guide, Fannie Mae only accepts individuals as credit-qualifying borrowers. In addition, Fannie Mae normally deems property in which no borrower has an ownership interest as ineligible collateral. However, to accommodate the use of *inter vivos* trusts as an estate planning tool, Fannie Mae provides an exception for property held by *inter vivos* revocable trusts created by credit-qualifying borrowers.

***Inter Vivos* Revocable Trust as Eligible Mortgagor**

An *inter vivos* revocable trust is a trust that

- an individual creates during their lifetime;
- becomes effective during its creator's lifetime; and
- can be changed or canceled by its creator at any time, for any reason, during that individual's lifetime.

Fannie Mae will accept an *inter vivos* revocable trust that has an ownership interest in the security property as an eligible mortgagor (a party to the security instrument) for all transaction types, provided it complies with certain requirements.

Note: A trust must meet Fannie Mae's revocability and other eligibility requirements at the time the loan is delivered. Trust eligibility is not affected if the trust documents contain a provision that the trust will, in the future, become irrevocable upon the death of one of the

settlers. However, such a change in the trust structure after delivery of the mortgage loan may affect the eligibility of the trust as a mortgagor in a subsequent loan transaction.

Trust and Trustee Requirements

The *inter vivos* revocable trust must be established by one or more natural persons, solely or jointly. The primary beneficiary of the trust must be the individual(s) establishing the trust. If the trust is established jointly, there may be more than one primary beneficiary as long as the income or assets of at least one of the individuals establishing the trust will be used to qualify for the mortgage.

The trustee(s) must include either:

- the individual establishing the trust (or at least one of the individuals, if there are two or more); or
- an institutional trustee that customarily performs trust functions in and is authorized to act as trustee under the laws of the applicable state.

The trustee(s) must have the power to mortgage the security property for the purpose of securing a loan to the individual (or individuals) who are the borrower(s) under the mortgage or deed of trust note.

Note: In the event the originally named trustee is unable or unwilling to serve, and the trust instrument has a mechanism for appointment of a successor trustee, the trust can properly act through the successor trustee.

Eligible Property and Occupancy Types

All property and occupancy types are eligible. For properties that are the borrower's principal residence, at least one individual establishing the trust must occupy the security property and sign the loan documents.

Underwriting Considerations

The loan must be underwritten with at least one individual establishing the trust as borrower. Additional individuals, including other individuals establishing the trust, may also be considered co-borrowers if those individuals' credit will be used to qualify for the loan.

Title and Title Insurance Requirements

The following requirements apply to title and title insurance:

- Title held in the trust does not in any way diminish Fannie Mae's rights as a creditor, including the right to have full title to the property vested in Fannie Mae should foreclosure proceedings have to be initiated to cure a default under the terms of the mortgage.
- The title insurance policy ensures full title protection to Fannie Mae/
- The title insurance policy states that title to the security property is vested in the trustee(s) of the *inter vivos* revocable trust.
- The title insurance policy does not list any exceptions with respect to the trustee(s) holding title to the security property or to the trust.
- Title to the security property is vested solely in the trustee(s) of the *inter vivos* revocable trust, jointly in the trustee(s) of the *inter vivos* revocable trust and in the name(s) of the individual borrower(s), or in the trustee(s) of more than one *inter vivos* revocable trust.