

Information & Instructions: Deed of trust to obtain a Lien and security interest in property subject of a Deed with Vendor's Lien

PREVIEW

1. Deeds of trust are used to create a security interest in the real estate that is conveyed by the seller to the buyer.
2. A Deed of Trust technically transfers an equitable ownership in the property from the buyer to a beneficiary.
3. The beneficiary holds title in his or her name pursuant to the Deed of Trust. In the event of a breach of the Deed of Trust or accompanying Promissory Note, the beneficiary is entitled to have the trustee foreclose on the property pursuant to the terms of the Deed of Trust, assuming the Deed complies with the Texas Property Code requirements applicable to real estate foreclosures.
4. Senate Bill 754 has amended Section 16.35 of the Texas Civil Practice and Remedies Code. This section provides a four year statute of limitations period on which to sue to enforce a Lien on real property. The changes replace debt with the word Lien and other clean up statements. Section 16.36 allows a signed Lien extension to extend the four year limitation period.
5. Texas Property Code Section 11.003 requires the grantees address to be shown on the any document that conveys an interest in real property. The clerk will normally return the document and request the grantee's address if the document does not contain the address. If the attorney still desires the document filed, without the address, the document may be filed if a \$25 fee (or twice the statutory recording fee, which ever is greater, is paid per Section 11.003 (a)(2)).
6. This Deed of Trust is used to obtain a Lien and security interest in the property that is the subject of the Deed with Vendor's Lien.

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Form: Deed of trust

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

THANK YOU

Date of conveyance:

Grantor's name:

Grantor's mailing address:

[Include the county]

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Grantee's name:

PREVIEW

Grantee's mailing address:
[Include the county]

Trustee's name:

Trustee's mailing address:
[Include the county]

Beneficiary's name:

Beneficiary's mailing address:
[Include the county]

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Promissory Note information:

Date of the Note:

Amount of the Note:

Maker of the Note:

Payee of the Note:

Final maturity date of the Note:

THIS DOCUMENT

Legal description of the property:
[Include any improvements)]

Prior Lien information:
[Include recording information]

Conveyance: Grantor conveys the above identified property unto the above identified Trustee in trust for the term and purposes stated in this Deed of Trust.

Consideration: The consideration for this conveyance is the above described Promissory Note. This Deed of Trust is given to secure payment of the above described Note.

THANK YOU

Warranty: Grantor warrants and agrees to defend the title to the property. If Grantor performs all the covenants and pays the Note according to its terms, then this Deed of Trust shall have no further effect, and Beneficiary shall release it at Grantor's expense.

Grantor's initials:

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Grantor agrees to:

PREVIEW

1. Keep the property in good repair and condition;
2. Pay all taxes and assessments on the property when due;
3. Preserve the priority of Lien as it is established in this Deed of Trust;
4. Maintain, in a form acceptable to Beneficiary, an insurance policy that:
 - a. covers all improvements for their full insurable value as determined when the policy is issued and renewed, unless Beneficiary approves a smaller amount in writing;

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- c. provides fire and extended coverage, including windstorm coverage;
 - d. protects Beneficiary with a standard mortgage clause;
 - e. provides flood insurance at any time the property is in a flood hazard area; and
 - f. contains such other coverage as Beneficiary may reasonably require;
5. Comply at all times with the requirements of the 80% co-insurance clause;
6. Deliver the insurance policy to Beneficiary and deliver renewals to Beneficiary at least ten days before expiration;
7. Keep any buildings occupied as required by the insurance policy; and
8. If this is not a first Lien, pay all prior Notes that Grantor is personally liable to pay and abide by all prior Lien instruments.

THIS DOCUMENT

Beneficiary's Rights:

1. Beneficiary may appoint in writing a substitute or successor trustee, succeeding to all rights and responsibilities of Trustee.
2. If the proceeds of the Note are used to pay any debt secured by prior Liens, Beneficiary is subrogated to all of the rights and Liens of the holders of any debt so paid.
3. Beneficiary may apply any proceeds received under the insurance policy either to reduce the Note or to repair or replace damaged or destroyed improvements covered by the policy.
4. If Grantor fails to perform any of Grantor's obligation, Beneficiary may perform those obligations and be reimbursed by Grantor, on demand, at the place where the Note is payable for

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any sums so paid, including attorney's fees, plus interest on those sums from the date of payment at the rate stated in the Note for that period, to pay any sums.

PREVIEW

- a. The sum to be reimbursed shall be secured by this Deed of Trust.

5. If Grantor defaults on the Note or fails to perform any of Grantor's obligations, or if default occurs on a prior Lien Note or other instrument, and the default continues after Beneficiary gives Grantor notice of the default and the time within which it must be cured, as may be required by law or by written agreement, Beneficiary may:

- a. declare the unpaid principal balance and earned interest on the Note immediately due;

request Trustee to foreclose this Lien, in which case Beneficiary or Beneficiary's agent shall give notice of the foreclosure sale as provided by the Texas Property Code as then amended; and

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- c. purchase the property at any foreclosure sale by offering the highest bid and then have the bid credited on the Note.

Trustee's Duties

If requested by Beneficiary to foreclose this Lien, Trustee shall:

1. Either personally or by agent give notice of the foreclosure sale as required by the Texas Property Code, as then amended.

THIS DOCUMENT

2. Sell and convey all or part of the property to the highest bidder for cash with a general warranty binding Grantor, subject to prior Liens and to other exceptions to conveyance and warranty; and

3. From the proceeds of the sale, pay, in this order:

- a. expenses of foreclosure, including a commission to Trustee of five percent of the bid;

- b. to Beneficiary, the full amount of principal, interest, attorney's fees and other charges due and unpaid;

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- c. any amounts required by law to be paid before payment to Grantor; and

- d. to Grantor, any balance.

Trustee Not Liable For Damages

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1. Trustee shall not be liable for any error of judgment or act done by Trustee, or be otherwise responsible or accountable under any circumstances whatever.

2. Trustee shall not be personally liable in case of entry by him or anyone acting by virtue of the powers granted him upon the mortgaged premises for debts contracted or liability or damages incurred in the management or operation of the mortgaged premises.

3. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by him hereunder or believed by him in good faith to be genuine.

4. Trustee shall be entitled to reimbursement for expenses incurred by him in the performance of his duties hereunder and to reasonable compensation for such of his services hereunder as shall be rendered. Grantor will save and hold him harmless from and against any and all loss, cost, liability, damage and expense whatsoever incurred by him in the performance of his duties.

5. All monies received by Trustee shall, until used or applied as herein provided be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other monies (except to the extent required by law) and Trustee shall be under no liability for interest on any monies received by him hereunder.

6. Trustee may resign by giving of notice of such resignation in writing to Beneficiary. If Trustee shall die, resign or become disqualified from acting in the execution of this Trust or fail or refuse to exercise the same when requested by Beneficiary so to do or if for any reason and without cause Beneficiary shall prefer to appoint a substitute trustee to act instead of the original Trustee named herein, or any prior successor or substitute trustee, Beneficiary shall have full power to appoint a substitute trustee and, if preferred, several substitute trustees in succession who shall succeed to all the estate, rights, powers and duties of the Trustee.

7. Such appointment may be executed by an authorized officer, agent or attorney-in-fact of Beneficiary (whether acting pursuant to a power of attorney or otherwise), and such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the Board of Directors or any superior officer of Beneficiary.

8. Any new Trustee appointed pursuant to any of the provisions hereof shall, without any further act, Deed of conveyance, become vested with all the estates, properties, rights, powers and trusts of its or his predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but, nevertheless, upon the written request of Beneficiary or his successor trustee, the Trustee ceasing to act shall execute and deliver an instrument transferring to such successor trustee, upon the trust herein expressed, all the estates, properties, rights, powers and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and monies held by the Trustee to the successor trustee so appointed in its or his place.

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9. Trustee may authorize one or more parties to act on his behalf to perform the ministerial functions required of him hereunder including, without limitation, the transmittal and posting of any notices.

10. Trustee shall not be required to take any action toward the execution and enforcement of the trust hereby created or to institute, appear in or defend any action, suit or other proceeding in connection therewith where in his opinion such action will be likely to involve him in expense or liability, unless requested to do so by a written instrument signed by Beneficiary and, if Trustee so requests, unless Trustee is tendered security and indemnity satisfactory to him against any and all costs, expenses and liabilities arising therefrom.

General Provisions

1. If any portion of the property is sold under this Deed of Trust, Grantor shall immediately surrender possession to the purchaser. If Grantor fails to do so, Grantor shall become a tenant at sufferance of the purchaser, subject to an action for forcible detainer.

2. Recitals in any Trustee's Deed conveying the property will be presumed to be true.

3. Proceeding under this Deed of Trust, filing suit for foreclosure, or pursuing any other remedy will not constitute an election of remedies.

4. This Lien shall remain superior to Liens later created even if the time of payment of all or part of the Note is extended or part of the property is released.

5. If any portion of the Note cannot be fully secured by this Deed of Trust, payments shall be applied first to discharge that portion.

6. Grantor assigns to Beneficiary all sums payable to or received by Grantor from condemnation of all or part of the property, from private sale in lieu of condemnation, and from damages caused by public works or construction on or near the property.

a. After deducting any expenses incurred, including attorney's fees, Beneficiary may release any remaining sums to Grantor or apply such sums to reduce the Note.

b. Beneficiary shall not be liable for failure to collect or to exercise diligence in collecting any such sums.

7. Grantor assigns to Beneficiary absolutely, not only as collateral, all present and future rent and other income and receipts from the property. Leases are not assigned.

a. Grantor warrants the validity and enforceability of the assignment. Grantor may as Beneficiary's licensee collect rent and other income and receipts as long as Grantor is not in default under the Note or this Deed of Trust.

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b. Grantor will apply all rent and other income and receipts to payment of the Note and performance of this Deed of Trust, but if the rent and other income and receipts exceed the amount due under the Note and Deed of Trust, Grantor may retain the excess.

c. If Grantor defaults in payment of the Note or performance of this Deed of Trust, Beneficiary may terminate Grantor's license to collect and then as Grantor's agent may rent the property if it is vacant and collect all rent and other income and receipts.

d. Beneficiary neither has nor assumes any obligations as lessor or landlord with respect to any occupant of the property. Beneficiary may exercise Beneficiary's rights and remedies under this paragraph without taking possession of the property.

e. Beneficiary shall apply all rent and other income and receipts collected under this paragraph first to expenses incurred in exercising Beneficiary's rights and remedies and then to Grantor's obligations under the Note and this Deed of Trust in the order determined by Beneficiary.

f. Beneficiary is not required to act under this paragraph, and acting under this paragraph does not waive any of Beneficiary's other rights or remedies.

g. If Grantor becomes a voluntary or involuntary bankrupt, Beneficiary's filing a proof of claim in bankruptcy will be tantamount to the appointment of a receiver under Texas law.

8. Interest on the debt secured by this Deed of Trust shall not exceed the maximum amount of non-usurious interest that may be contracted for, taken, received, charged, or received under law; any interest in excess of that maximum amount shall be credited on the principal of the debt or, if that has been paid, refunded.

a. On any acceleration or required or permitted prepayment, any such excess shall be canceled automatically as of the acceleration or prepayment or, if already paid, credited on the principal of the debt or, if the principal of the debt has been paid, refunded. This provision overrides other provisions in this and all other instruments concerning the debt.

9. When the context requires, singular nouns and pronouns include the plural.

10. The term "Note" includes all sums secured by this Deed of Trust.

11. This Deed of Trust shall bind, inure to the benefit of, and be exercised by successors in interest of all parties.

12. If Grantor and Maker are not the same person, the term "Grantor" shall include Maker.

13. Grantor represents that this Deed of Trust and the Note are given for the following purposes:

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a. The debt evidenced by the Note is in part payment of the purchase price of the property; the debt is secured by this Deed of Trust and by a Vendor's Lien on the property, which is expressly retained in a Deed to Grantor of even date.

b. This Deed of Trust does not waive the Vendor's Lien, and the two Liens and the rights created by this instrument shall be cumulative.

c. Beneficiary may elect to foreclose under either of the Liens without waiving the other or may foreclose under both.

d. The Deed is incorporated into this Deed of Trust.

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[Name]

Prepared by:
[Name and address of law firm]

After recording return to:
[Name and address of title company or law firm]

State of Texas
County of _____

THIS DOCUMENT
This instrument was acknowledged before me on _____ by _____

Notary Public, State of Texas

Notary's typed or printed name

My commission expires: _____

THANK YOU
[or Notary's Stamp]

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