



# Single Family Lending Program Bulletin

October 1, 2019

Program Bulletin #2019-21

To: CalHFA Approved Lenders

## Updated CalHFA Subordinate Deed of Trust Reflecting MERS Changes

Effective for all reservations on or after November 4, 2019, CalHFA will require lenders to use the attached updated CalHFA Subordinate Deed of Trust, which reflects new required information by the Mortgage Electronic Registration System (MERS). Also, the Deed Modification Form, when needed, has been updated as well.

CalHFA has updated the subordinate Deed of Trust in the Closing Doc Wizard in [MAS](#). As a reminder, CalHFA strongly encourages lenders to use the Closing Doc Wizard in MAS during the doc drawing process. The Closing Doc Wizard ensures the closing docs are being drawn correctly with the applicable fields auto-populated.

The Subordinate Deed of Trust and the Deed Modification Form are also available on our website at <https://www.calhfa.ca.gov/homeownership/forms/>.

Lenders are encouraged to use this Subordinate Deed of Trust immediately.

Electronic Word versions of these documents are also available via email by contacting Lender Services at [LenderTraining@calhfa.ca.gov](mailto:LenderTraining@calhfa.ca.gov).

For questions about this bulletin, contact CalHFA Single Family Lending Division by phone at 916.326.8033 or by email at [SFLending@calhfa.ca.gov](mailto:SFLending@calhfa.ca.gov). Plus, you can always visit CalHFA's website at [www.calhfa.ca.gov](http://www.calhfa.ca.gov) or Single Family Lending directly at [www.calhfa.ca.gov/homeownership](http://www.calhfa.ca.gov/homeownership).

Attachment

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

For Recorder's Use Only

California Housing Finance Agency  
Single Family Lending Division  
Subordinate Loan Processing Unit  
500 Capitol Mall, Ste 400, MS 350  
Sacramento, CA 95814

CALIFORNIA HOUSING FINANCE AGENCY  
DEED OF TRUST WITH ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING  
*(Subordinate Loan Program)*

CalHFA Loan ID: \_\_\_\_\_

MIN: \_\_\_\_\_

THIS DEED OF TRUST is made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_

\_\_\_\_\_ (herein "Borrower"),  
whose address is \_\_\_\_\_

\_\_\_\_\_, to \_\_\_\_\_  
(herein "Trustee"), whose business address is \_\_\_\_\_, in  
favor of Mortgage Electronic Registration Systems, Inc., ("MERS"), as beneficiary (solely as nominee for  
\_\_\_\_\_ (herein "Lender"), and Lender's successors and assigns) and the  
successors and assigns of MERS. MERS is organized and existing under the laws of Delaware, and has an  
address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, Tel. (888) 679-MERS. Lender is  
organized and existing under the laws of \_\_\_\_\_, and has an address of  
\_\_\_\_\_.

BORROWER, in consideration of the indebtedness herein recited and the trust herein created, irrevocably grants  
and conveys to Trustee, in trust, with power of sale, the following described property located in the County of  
\_\_\_\_\_, State of California:

, which has the address of \_\_\_\_\_, California \_\_\_\_\_ (herein "Property Address");

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances and rents (subject however to the rights and authorities given herein to Lender to collect and apply such rents), all of which shall be deemed to be and remain a part of the property covered by this Deed of Trust; and all of the foregoing, together with said property (or the leasehold estate if this Deed of Trust is on a leasehold) are hereinafter referred to as the "Property". Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Deed of Trust, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the property, and to take any action required of Lender, including, but not limited to, releasing and canceling this Deed of Trust;

TO SECURE to Lender the repayment of the indebtedness evidenced by Borrower's note of even date herewith and extensions and renewals thereof (herein "Note"), in the principal sum of \_\_\_\_\_ Dollars (US\$ \_\_\_\_\_), together with interest due thereon, with the indebtedness, if not sooner paid, due and payable on the earlier of: (a) the thirtieth (30<sup>th</sup>) anniversary from the date of the Note; (b) the date on which the Primary Loan is paid in full; (c) the date on which the Primary Loan is refinanced or assumed; or (d) the date on which the Primary Loan becomes due and payable for any reason (the earlier of such dates is called the "Maturity Date"). "Primary Loan" as used herein is a loan made to Borrower evidenced by a purchase money promissory note and secured by a first deed of trust (the "First Deed of Trust") recorded concurrently herewith on the Property.

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property, and that the Property is unencumbered except for encumbrances of record. Borrower covenants that Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to encumbrances of record.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. *Payment of Debt.* Borrower shall promptly pay when due the indebtedness evidenced by the Note and interest, if any, as provided in the Note.
2. *Application of Payments.* All payments accepted and applied by Lender shall be applied in the following order of priority: (a) payment of amounts disbursed pursuant to paragraph 6 hereof, and (b) the balance in accordance with the terms and conditions of the Note.
3. *Prior Mortgages and Deeds of Trust; Charges; Liens.* Borrower shall perform all of Borrower's obligations under any mortgage, deed of trust or other security agreement with a lien which has priority over this Deed of Trust, including Borrower's covenants to make payments when due. Borrower shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Deed of Trust, and leasehold payments or ground rents, if any.
4. *Sale of Note; Change of Loan Servicer.* The Note or partial interest in the Note (together with this Deed of Trust) may be sold one or more times without prior notice to Borrower. A sale might result in a change in entity (known as the "Loan Servicer") that collects payments under the Note, if any, and this Deed of Trust and performs

other mortgage loan servicing obligations under the Note, this Deed of Trust, and applicable law. There also might be one or more changes of the Loan Servicer unrelated to the sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments, if any, should be made and any other information required under applicable law. If the Note is sold and thereafter the indebtedness evidenced by the Note is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

*5. Hazard Insurance.* Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage", and such other hazards as Lender may require and in such amounts and for such periods as Lender may require.

The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender; provided, that such approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgage clause in favor of and in a form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Deed of Trust. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 30 days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

*6. Preservation and Maintenance of Property; Leaseholds; Condominiums; Planned Unit Developments.* Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Deed of Trust is on a leasehold. If this Deed of Trust is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents.

*7. Protection of Lender's Security.* If Borrower fails to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such action as is necessary to protect Lender's interest. If Lender required mortgage insurance as a condition of making the loan secured by this Deed of Trust, Borrower shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law.

Any amounts disbursed by Lender pursuant to this paragraph 6, together with interest thereon from the date of expenditure at the amount allowed by law in effect at the date of this Deed of Trust, shall become additional indebtedness of Borrower secured by this Deed of Trust. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof. Nothing contained in this paragraph 6 shall require Lender to incur any expense or take any action hereunder.

8. *Inspection.* Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefor related to Lender's interest in the Property.

9. *Condemnation.* The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Deed of Trust.

10. *Borrower Not Released; Forbearance By Lender Not a Waiver.* Extension of the time for payment or modification of amortization of the sums secured by this Deed of Trust granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original Borrower and Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

11. *Successors and Assigns Bound; Joint and Several Liability.* The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 14 hereof. All covenants and agreements of Borrower shall be joint and several.

12. *Notice.* Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Deed of Trust shall be given by delivering it or by mailing such notice by first class mail addressed to Borrower at the Property Address or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by first class mail to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

13. *Governing Law; Severability.* The state and local laws applicable to this Deed of Trust shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of federal law to this Deed of Trust. In the event that any provision or clause of this Deed of Trust or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Deed of Trust and the Note are declared to be severable. As used herein, "costs", "expenses" and "attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

14. *Borrower's Copy.* Borrower shall be furnished a copy of the Note and of this Deed of Trust at the time of execution or after recordation hereof.

15. *Transfer of the Property or a Beneficial Interest in Borrower.* If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person), without Lender's prior written consent, Lender may require immediate payment in full of all sums

secured by this Deed of Trust. However, this option shall not be exercised by Lender if such exercise is prohibited by applicable law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with paragraph 11 within which Borrower must pay all sums secured by this Deed of Trust. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Deed of Trust without further notice or demand on Borrower.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

*16. Acceleration; Remedies.* Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenants or agreement in this Deed of Trust (but not prior to acceleration under paragraph 14 unless applicable law provides otherwise). Lender, prior to acceleration, shall give notice to Borrower as provided in paragraph 11 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than 30 days from the date of notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph 15, including, but not limited to, reasonable attorneys' fees and costs of evidence of title.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and Lender's election to cause the Property to be sold. Trustee and Lender shall take such action regarding notice of sale and shall give such notices to Borrower and to other persons as applicable law may require. After the lapse of such time as may be required by applicable law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or Lender's designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property so sold without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees and costs of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto.

*17. Assignment of Rents; Appointment of Receiver; Lender in Possession.* Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 15 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 15 hereof or abandonment of the Property, Lender, in person, by agent or by judicially appointed receiver shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Lender or the receiver shall be applied first to premiums on receiver's bonds, costs of management of the Property, collection of rents, and reasonable attorneys' fees, and then to the sums secured by this Deed of Trust. Lender and the receiver shall be liable to account only for those rents actually received.

18. *Reconveyance.* Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay all costs of recordation, if any. Lender may charge such person or persons a reasonable fee for reconvening the Property, but only if the fee is paid to a third party (such as a Trustee) for services rendered and the charging of the fee is permitted under applicable law. If the fee charged does not exceed the fee set by applicable law, the fee is conclusively presumed to be reasonable.

19. *Substitute Trustee.* In accordance with applicable law, Lender, may from time to time appoint a successor trustee to any Trustee appointed hereunder. The successor trustee shall, without conveyance of the Property, succeed to all the title, powers and duties conferred upon the Trustee herein and by applicable law.

20. *Statement of Obligation Fee.* Lender may collect a fee not to exceed the maximum amount permitted by applicable law for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California.

21. *Request for Notices.* Borrower requests that copies of the notice of default and notice of sale be sent to Borrower's address which is the Property Address. Lender requests that copies of notices of sale from the holder of any lien which has priority over this Deed of Trust be sent to Lender's address, as set forth on page one of this Deed of Trust.

22. *Use of Property.* The Property is not used principally for agricultural or farming purposes.

23. *Subordination.* This Deed of Trust is and shall be automatically subordinate to the First Deed of Trust referenced above. In the event the loan secured by this Deed of Trust is made under the California Housing Finance Agency's Zero Interest Program, this Deed of Trust shall be subordinate to any other California Housing Finance Agency deeds of trust recorded concurrently herewith. Except for the aforementioned subordinations, this Deed of Trust is intended to be and remain at all times prior and superior to any other deeds of trust on the Property.

24. *Certain Restrictions Terminate on Foreclosure of HUD-Insured First Mortgage.* In the event of foreclosure or deed in lieu of foreclosure of prior security deed or assignment of the first mortgage to the Secretary of Housing and Urban Development, any provisions herein or any provisions in any other collateral agreement restricting the use of the property or otherwise restricting the Borrower's ability to sell the Property shall have no further force or effect. Any person (including his successors or assigns) receiving title to the Property through a foreclosure or deed in lieu of foreclosure of a prior security deed shall receive title to the Property free and clear from such restrictions.

25. *Misrepresentations.* The Borrower understands that Lender has relied upon statements contained in the Borrower Affidavit and Certification (or similarly named instrument) and all other documents submitted in support of the loan application in the processing, financing and granting of this loan. Upon discovery of fraud or misrepresentation by the Borrower with respect to any information provided by Borrower in the loan application or Borrower Affidavit and Certification (or similarly named instrument) executed in connection with the Note, Lender may, in its sole discretion, by written notice to Borrower, declare all obligations secured by the Deed of Trust and all obligations payable under the Note immediately due and payable and exercise any other remedy allowed by law or provided by the Deed of Trust. Borrower shall notify Lender promptly in writing of any

transaction or event which may give rise to a right of acceleration hereunder. Borrower shall pay to Lender all damages sustained by reason of the breach of the covenant of notice set forth herein or by reason of such fraud or misrepresentation.

IN WITNESS WHEREOF, Borrower has executed this Deed of Trust.

\_\_\_\_\_  
\_\_\_\_\_

TIL and NMLSR ID

LOAN ORIGINATOR ORGANIZATION:

NMLSR ID#:

INDIVIDUAL LOAN ORIGINATOR NAME:

NMLSR ID#:





PLEASE COMPLETE THIS INFORMATION )  
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Recording requested by: )  
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When recorded return to: )  
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CalHFA #: \_\_\_\_\_ )  
Lender Loan #: \_\_\_\_\_ )

THIS SPACE FOR RECORDER'S USE ONLY

MIN # \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

MERS Phone: 1.888.679.6377

**MODIFICATION OF PERMANENT DEED OF TRUST**

This Modification of Permanent Deed of Trust ("Agreement") dated as of \_\_\_\_\_, 2\_\_\_\_\_, is entered into by and between \_\_\_\_\_

\_\_\_\_\_, ("Borrower"), \_\_\_\_\_ ("Lender"), and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS") (solely as nominee for Lender and Lender's successors and assigns) and the successors and assigns of MERS. "Lender" includes the present Lender, Past, and/or any future owner or holder, including pledgee of the indebtedness secured by the Promissory Note (defined below).

A. On \_\_\_\_\_, 2 \_\_\_\_\_, Borrower, as Trustor, did make, execute and deliver to \_\_\_\_\_, as Trustee, that certain Deed of Trust recorded \_\_\_\_\_, 2 \_\_\_\_\_, as Instrument No. \_\_\_\_\_ of Official Records in the office of the county recorder of \_\_\_\_\_ County, State of California ("Deed of Trust"), securing a promissory note dated \_\_\_\_\_, \_\_\_\_\_ in the amount of \$ \_\_\_\_\_, ("Promissory Note") in favor of Lender; and

B. Said Deed of Trust contained one of the following clerical omissions/errors contrary to the true intent of the parties of said Deed of Trust: (check one or more of the following)

- Dates of Deed of Trust do NOT conform to dates on Promissory Note
- Legal description of property omitted
- Subordination Clause omitted
- Tax Exempt Financing Rider was improperly attached
- Deed of Trust included name of borrower(s) not on the Promissory Note
- Deeds of Trust recorded out of proper sequence
- Other \_\_\_\_\_; and

C. The parties hereto desire to modify said Deed of Trust to conform to the true intent of the parties;

NOW THEREFORE, in consideration of the foregoing, the parties hereto do hereby modify said Deed of Trust as follows:

IT IS FURTHER AGREED, by and between the parties hereto, that in all other respects not inconsistent herewith, the terms of said Deed of Trust which are incorporated herein by referenced thereto shall remain in full force and effect and be binding hereon. Said Deed of Trust as herein modified shall constitute one Deed of Trust. This agreement shall inure to the benefit of and be binding upon the heirs, devisees, successors and assigns of the parties hereto.

By signing below, the parties accept and agree to the terms and covenants contained in this Modification Agreement.

**BORROWER(S):**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**LENDER:**

By: \_\_\_\_\_ Name, Title: \_\_\_\_\_

**MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (MERS):**

By: \_\_\_\_\_ Name, Title: \_\_\_\_\_

(All signatures must be notarized)

**ACKNOWLEDGEMENTS**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

) ss.

County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_

\_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_

Signature

(Seal)