



ELDER LAW AND ESTATE PLANNING

Joseph Karp

Home refinance may involve temporarily removing it from living trust

Question: My wife and I want to refinance our house. We bought it about 10 years ago. It has a mortgage on it. The house is titled in the name of our living trust. We have spoken to two lenders and are getting contradictory information. One lender told us that in order to refinance, we must remove the house from our living trust. Is this required? If so, does it go back in the trust after the refinancing, and who is responsible for doing that? The other lender tells us none of this is required for refinancing purposes. Who is correct?

Answer: There is no “correct” or “incorrect,” or “required” or “not required” in this matter. Whether the house is left in your living trust or removed from it for refinancing purposes boils down to just one thing: the preferences of the particular lender.

Some lenders, like the first you describe, are skittish about refinancing property held in a living trust. There are a number of possible reasons for this. Among them is that if the house is left in the trust, the lender may want to make sure that the trustees have the legal authority to mortgage the property. Checking that would require the lender to hire an attorney to review the trust, an additional expense for the lender.

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Yes, the house should go back into the trust after the refinancing is done. Federal law allows a home to be removed from a trust and then put back in without affecting the underlying mortgage. If you decide to go with the lender who requires this, either you or the lender can put the house back in the trust. It has been my experience that most clients prefer to do it, rather than let the title company do it.

Joseph Karp, a member of the Florida and New York Bars, is a Nationally and Florida Bar Certified Elder Law Attorney and founder of The Karp Law Firm, located in Palm Beach and St. Lucie counties. The firm assists clients with wills, trusts, Medicaid and VA benefits planning, special needs planning, asset preservation, probate/trust administration and estate litigation.