

Form: Deed of trust to secure assumption regarding real property in a divorce proceeding

DEED OF TRUST TO SECURE ASSUMPTION

DATE: [Date]

GRANTOR:	[Petitioner Name]
GRANTOR'S MAILING ADDRESS (including county)	[Address]
TRUSTEE	[Trustee Name]
TRUSTEE'S MAILING ADDRESS (including county)	[Address]
BENEFICIARY:	[Beneficiary Name]
BENEFICIARY'S MAILING ADDRESS (including county):	[Address]

NOTE AND DEED OF TRUST ASSUMED

DATE: [Date]

AMOUNT: [Amount]

MAKER AND GRANTOR: [Make of Note]

PAYEE AND BENEFICIARY: [Payee of Note]

PROPERTY (including any improvements):

[Property Description]

PRIOR LIEN(s)(including recording information):

Other Exceptions to Conveyance and Warranty:

By deed with the same date affixed as this Deed of Trust to Secure Assumption, Beneficiary conveyed the property herein to Grantor, and as partial consideration therefore, Grantor made promise to pay the note assumed and to be bound by the assumed deed. Beneficiary retains a vendor's lien on the property.

For value received and as security for assumption by Grantor, Grantor conveys the property in trust to Trustee. Grantor makes warranty and agreement to defense of title to the property. Upon Grantor's performance of all covenants of the assumed note and assumed deed of trust, and in the failure of Beneficiary to make notice of advancement, this Deed of Trust to Secure Assumption and the vendor's lien of Beneficiary shall be released by execution of a Release of the Deed of Trust Assumed.

BENEFICIARY'S RIGHTS

1. Upon written appointment, Beneficiary may nominate a substitute or successor to succeed to all rights, duties and responsibilities of Trustee.
2. Upon Grantor's failure to perform any obligations ascribed under the note or Deed of Trust Assumed, Beneficiary may fulfil said obligations, make advancement of funds required, and be entitled to reimbursement by Grantor for sums advanced, including the obligation for payment of legal fees and expenses and interest accrued from the date of payment at the highest rate of interest then legal. Sums to be reimbursed to beneficiary are made secure by this Deed of Trust to Secure Assumption.
3. If deemed appropriate, a verified notice of advancement may be filed by Beneficiary in the property records of the County Clerk in [Suit County]. The notice by Beneficiary shall make detail of payments made and their date at the highest legal rate of interest. Sums to be reimbursed to beneficiary are made secure by this Deed of Trust to Secure Assumption.
4. Upon Grantor's failure to reimburse sums advanced on the demand of Beneficiary, and upon the continuation of failure to reimburse after Beneficiary gives notice and the opportunity to cure by date certain, as may be legally required or required by written agreement, then Beneficiary may:
 - a. request foreclosure of this lien by Trustee action, upon which Beneficiary or the agent of Beneficiary shall make proper notice of sale by foreclosure, according to the then current provisions of the Texas Property Code as it may be amended; and
 - b. make purchase of the property at said foreclosure sale upon offer of the highest bid and having credit to the reimbursement due Beneficiary.

TRUSTEE'S DUTIES

Upon request of foreclosure of this lien by Beneficiary, Trustee shall perform the following:

1. Give personal notice or notification by agent of the foreclosure sale as may be required by the provisions of the then current Texas Property Code.
2. Make sale or conveyance of the property to highest cash bidder with a general warranty to bind Grantor, subject to all prior liens on the property and subject to other exceptions to conveyance and warranty; and
3. Make distribution of the proceeds of sale, in the order shown:
 - a. all expenses of the foreclosure sale, to include a 5% commission to Trustee upon the bid;
 - b. the full amount of the advancement, legal expenses and fees, and such other charges as may be due and unpaid;

- c. any amounts which the law requires to be paid before any payment to Grantor;
- d. any remaining balance to Grantor.

GENERAL PROVISIONS

1. Upon sale of any portion of the property under this deed of trust, possession of the property shall be immediately surrendered by Grantor to the purchaser. Upon Grantor's failure to surrender said property, Grantor becomes a "tenant at sufferance" of said purchaser, subject to forcible detainer.
2. All recitals in any Deed of Trust which make conveyance of the property are presumed true.
3. No election of remedies is made by any proceeding under this Deed of Trust to file a foreclosure suit or pursuit of any other remedy and said proceedings do not constitute such election.
4. The lien created by this Deed of Trust to Secure Assumption is superior to all other liens which may be created even upon the absence of advancements by Beneficiary.
5. In the event that any portion of advance payments by Beneficiary are not secured by the Deed of Trust to Secure Assumption, all payments shall be first applied in discharge of the unsecured portion.
6. If there is any sale under this Deed of Trust to Secure Assumption, such sale shall not extinguish the lien which is created by the Deed of Trust to Secure Assumption.
7. Grantor makes assignment to Beneficiary of all rent, income and receipts from the property, absolutely and not as collateral, and not of leases. Grantor makes warranty that the assignment herein is valid and enforceable. For so long as Grantor does not default upon the note and performance of the Deed of Trust to Secure Assumption, Grantor may collect as the licensee of Beneficiary, all rent, income, and receipts. Upon collection of said rents, income and receipts, Grantor will apply all said amounts to payment of the note and performance of the Deed of Trust to Secure Assumption, provided that in the event the rent, income and other receipts are in excess of any amounts due on the note or performance of the Deed of Trust to Secure Assumption, the excess amounts may be retained by Grantor. Upon default by Grantor in note payments or in performance of the Deed of Trust to Secure Assumption, Beneficiary's license to collect by Grantor may be terminated, permitting Beneficiary as Grantor's agent to rent the property if vacant and to then make collection of all rents, income or receipts from the rental of the property. Beneficiary specifically disclaims present or future obligations as lessor or landlord as they might pertain to any occupant. Without the taking of possession of the property, Beneficiary retains rights and remedies under this paragraph. Beneficiary shall make application of all rent, income and receipts collected to the expenses first incurred in the exercise of the rights and remedies of Beneficiary and then to the obligations of Grantor under the note and Deed of Trust to Secure Assumption, as may be decided by Beneficiary. Nothing in this paragraph shall be implied to require Beneficiary's actions hereunder, and any action taken by Beneficiary does not operate to waive any other right or remedy

held by Beneficiary. If Grantor files voluntary or involuntary bankruptcy proceedings, the filing of a claim in bankruptcy by Beneficiary is tantamount to a receiver being appointed pursuant to the laws of Texas.

8. Interest as stated, implied or otherwise evidenced within this note shall not exceed any maximum amount of nonusurious interest that may be the subject of contract, a taking, reservation, charge or receipt under law and if so applicable, interest in excess of that maximum is credited upon the principal of the debt. In the event of acceleration or either required or permitted prepayments, excess interest shall be automatically canceled as of accelerated payments or prepayments, and if paid, such excess interests will be credited to the principal amount of the debt then existing and if the principal of the debt has been extinguished, the interest will be refunded. The provisions of this paragraph are intended to override and supersede any other provision herein or in other instrument relating to the debt.

9. If the context of the language herein requires, nouns and pronouns in the singular include the plural.

10. The definition of "note" includes all sums which may be secured by this Deed of Trust to Secure Assumption.

[Petitioner Name]

State of Texas
County of _____

This instrument was acknowledged before me on _____ by

_____.

Notary Public, State of Texas

Notary's typed or printed name

My commission expires: _____

[or Notary's Stamp]

AFTER INSTRUMENT IS RECORDED, RETURN TO:

[Attorney's name]

[Address]

PREPARED IN THE OFFICE OF:

[Attorney's name]

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