Home Buying Tips: What is a Mortgage?

Most of us are accustomed to calling our home loan a **mortgage**, but that isn't an accurate definition of the term. A mortgage is not a loan, and it is not something that the lender gives you. It is a security instrument that you give to the lender, a document that protects the lender's interests in your property.

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How a Mortgage Works

- There are two parties to a mortgage. You are the mortgagor, or borrower, and the lender is the mortgagee.
- A mortgage document creates a lien on the property, which serves as a lender's security for the debt. The lien is recorded in public records, probably at your county courthouse.
- Ownership cannot be transferred to someone else until you pay the debt to release the lien.
- Even if your loan is secured by a mortgage, you still have full title to the property.

  No one else has rights of ownership.

- A mortgage gives the lender the right to sell the secured property to recover funds if you do not pay the debt. The sales process is called foreclosure.
- When a mortgage is used for security, foreclosure must usually progress through the court system. That type of foreclosure is called a judicial foreclosure.

Deed of Trust

Over half of the states in the United States use mortgages as security instruments. The other states use a **deed of trust**, which serves the same purpose, but with a few important differences.

- A deed of trust is a special kind of deed that is recorded in public records, where it tells everyone that there is a lien on your property.
- A deed of trust involves three parties. You are the trustor, the lender is the beneficiary, and a third party is the trustee--someone who holds temporary (but not full) title until the lien is paid.
- The trustee should be a neutral third party, someone who won't favor either you or the lender if problems crop up. In some states, attorneys act as trustees, and in others, title insurance companies often provide the service.
- The trustee cannot take your property for no reason--documents are in place to protect against that.
- The deed of trust is cancelled when the debt is paid.

The Bottom Line

The differences between a mortgage and a deed of trust affect home buyers only when foreclosure is an issue, because the trustee has the power to sell the house if your loan becomes delinquent. The lender must give the trustee proof of the delinquency and ask the trustee to initiate foreclosure proceedings.

The trustee must progress as allowed by law and as dictated in your deed of trust, but the process bypasses the court system, making it a much faster and cheaper way for the lender to foreclose.

You cannot choose the way your loan is secured, that's determined by where you live, but it's important to have an understanding of the type of lien that secures the debt for your home.