

From: Eric Jones eric@recovery-compass.org
Subject: Property Title Discrepancy
Date: May 24, 2025 at 2:59 PM America/Los_Angeles
To: willpennycook@gmail.com
Cc: Nuha Sayegh nuha@recovery-compass.org



Dear Will,

I'm writing to clarify why the 2010 Grant Deed for 17742 Berta Canyon Road still shows title under Judy L. Jones individually, even though the property has been trust-owned since 2008. In short, this appears to be a paperwork discrepancy, and I want to explain the likely cause and our plan to correct it.

Likely Reason for Title Discrepancy: It's common in estate practice that either an original trust transfer deed was never recorded due to oversight, or a refinance transaction temporarily took the property out of the trust and it was never deeded back. In Judy's case, the property may have been removed from the trust for a 2010 mortgage refinance and, due to **lender or escrow oversight**, the follow-up deed retitling it into the trust was never recorded cunninghamlegal.com. Simply put, either a clerical miss or the bank's refinance process left the **county record** showing Judy as the owner of record, even though she **intended** the home to be held by her revocable trust.

Trust Documentation – Schedule A & Certification: Importantly, the **home is indeed listed as an asset of the Judy Brakebill Jones 2008 Revocable Trust** (as affirmed by Schedule A of the trust, including the July 13, 2016 amendment). This Schedule A listing is concrete evidence of Judy's intent and the property's trust status. In addition, Judy executed a **notarized Certification of Trust in 2008**, which confirms the trust's existence, names, and her authority over trust assets. (Under California Probate Code §18100.5, a trustee can provide a **Certification of Trust** to establish the existence and terms of a trust in lieu of the full trust instrument business-attorney.com.) Together, these documents verify that **17742 Berta Canyon Rd. was part of Judy's trust estate** all along, despite the outdated deed.

California Law – Heggstad Doctrine: Under California law, the absence of a recorded trust deed does **not** invalidate the trust's claim to the property as long as the settlor's intent to hold it in trust is clear. This principle comes from the landmark *Estate of Heggstad* case (1993). In that case, a settlor transferred his residence out of his trust for a refinance and passed away before re-transferring it back – yet the court upheld the home as a trust asset because his intent was clearly documented keystone-law.com. In practice, courts allow a successor trustee to **confirm a property as a trust asset** if the trust instrument **specifically mentions the property and shows the settlor's intent to include it** cunninghamlegal.com. Here, Judy's trust explicitly includes the Berta Canyon property in writing, which is legally sufficient to confirm the home belongs to the trust even without a newer deed on record keystone-law.com. This means the property bypasses probate and is under my authority as trustee, consistent with Judy's estate plan.

Planned Resolution – Confirmatory Deed: To align the public record with this reality, I plan to record a **confirmatory trust transfer deed (or an acknowledged Certification of Trust)** pursuant to Probate Code §18100.5. California law explicitly permits a trustee to record a certification of trust (including a legal description of the real property) with the County Recorder to establish the trust's interest in that property codes.findlaw.com. In our case, this recording will serve as a **corrective instrument**, effectively updating the chain of title to reflect the trust's ownership. The result will be a clear public record showing **title in the name of the trust**, which should satisfy any title company or third party reviewing the history.

Please let me know if you need any additional information or documentation. I appreciate your guidance as we ensure all trust assets are properly documented. Thank you for your help in this process.

Sincerely,
Eric Brakebill Jones, Trustee
Judy Brakebill Jones 2008 Revocable Trust

Sources:

- Kevin Snyder, *Snyder Law*, explaining that a refinance often leads to property being taken out of a trust and not deeded back due to oversight cunninghamlegal.com.
- Lisa D. Simantob, Esq., noting that a Certification of Trust can be used in lieu of the full trust to establish trust terms and authority (per Prob. Code §18100.5) business-attorney.com.
- CunninghamLegal, *Out of the Box – What happens when property is not titled in your trust?*, describing the *Estate of Heggstad* solution: a court will honor the trust if the asset is listed in the trust and the settlor's intent is clear cunninghamlegal.com.
- *Estate of Heggstad* outcome: even without a recorded deed, a home remained a trust asset because the decedent's intent was documented and the court upheld the trust's ownership keystone-law.com.
- California Probate Code §18100.5, which allows a trustee's certification of trust (with a property legal description) to be recorded, thereby confirming trust ownership in county records codes.findlaw.com.