



FREE AND CLEAR PROPERTIES

The Tale of the IGNORED DEED OF TRUST

In recent times a problem has surfaced with properties that title companies are showing on preliminary reports as free and clear of liens.

The problem lies in part with the title plant and in part with our own procedures.

THE TALE OF THE IGNORED DEED OF TRUST

One potential problem involves the interpretation of the data that the plant provides. In some instances, trust deed postings are ignored when a release of obligation or reconveyance is posted. In one case, a \$50,000 credit line deed of trust was shown as the only lien. An examination of the chain showed a prior \$120,000 deed of trust (posted as a “td”), and a reconveyance within the last year (posted as an “rl”). After the “rl” posting, there was another “rl” posting. That second “rl” posting was actually a document entitled “Rescission of Release of Reconveyance.” That document showed that the first reconveyance was recorded in error, and the deed of trust was reinstated. The second document was properly executed by both the beneficiary and the trustor and effectively reinstated the deed of trust.

The problem here was not in the title plant, but in the use of the plant data. Fortunately for most of us, the plant cannot think. If it could, we would be redundant. From time to time, we have to ask ourselves if the deal makes sense. In this case, we might have wondered why there were two “rl” postings for the same deed of trust. We might have wondered how a \$50,000 loan paid off a \$120,000 loan. Had these questions been asked, the hard copies of the documents might have been obtained and reviewed. Instead, we chose to trust the title plant’s indication that the loan was paid.

The ironic part about this situation was that the borrower insisted (repeatedly) to escrow that there was another loan to be paid. Escrow contacted the title unit and was told that such a lien did not exist, no matter what the borrower said. No further information was provided, and the transaction closed. When the holder of the first trust deed that was ignored commenced foreclosure proceedings, the owner of the property was rightfully angry. The owner pointed out that she tried her best to get the thing paid, but title wouldn’t listen. She was right. The escrow file was peppered with notes that the owner called concerning this matter, but no action was taken. The transaction closed, and the owner was handed \$120,000 too much. The owner was willing to pay the amount that would have been due at close of escrow seven months ago, but was unwilling to eat the interest fees and costs accrued since then. Why should she? She had been paying interest on the new loan from the close of escrow.

The problem in this case also left the owner with “mortgage late pays” on her credit report. As a part of the settlement process the company attempted to get the old lender to remove them from the reporting agencies, but had no particular leverage to get them to do so.

SO THEN WHAT DO WE DO?

1. If no lien is discovered, consider a Grantor run at the Recorder’s Office, especially if there is a reconveyance or release of a lien with no new financing. Think logically! Very few people own their own house free and clear.
2. Get hard copies of releases when there is no surviving lien. If one of those releases is a “Release of Obligation,” contact the title company that recorded it to determine if it was an error. Consider contacting the lender that was purportedly paid off to verify that the loan was in fact paid off.
3. Let the escrow officer know.
4. Suspect something if there is a posting of a secondary document (such as an assignment, a request for notice or substitution of trustee) for a deed of trust when the reconveyance has already recorded.
5. Above all, believe the homeowner when they say you are missing a lien. They should know!



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