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Mortgage satisfaction conundrum: What is in the future? Part 3

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Almost every year a new set of laws is being proposed and, in some cases, passed to create uniformity in the mortgage discharge process. Legislators are turning to the Uniform Residential Mortgage Satisfaction Act (URMSA) to pattern their State's laws. The URMSA is similar to the widely-adopted Uniform Commercial Code ("UCC") that has provided uniformity in laws among the States involving commercial transactions.

The URMSA follows this flow:

(1) Pre-closing: Request payoff (same method as always, but in writing).

(2) By closing: Lender's written payoff (maximum of 10 days) Specific to Mortgage or deed of trust.

(3) At least 30 days post-closing: Follow-up notice to lender that, if cancellation or discharge is not filed or within the next 30 days, the proposed statute provides for (a) penalties, actual loss, costs; or, (b) self-help satisfaction; or, (c) both.

(4) After more than 30 days following follow-up notice: If no objection by Lender (i.e., not paid in full or other cause) to self-help notice above, self-help satisfaction allowed by a satisfaction agent, which may be one of several people.

If the Lender objects erroneously or has not yet canceled or discharged the mortgage lien, the Lender is liable for actual loss, costs, damages due to detrimental reliance and penalties attach if paid in reliance on the written payoff statement. This pattern has set, at the very least, a benchmark or framework for legislators on which to model their mortgage discharge laws.

More recently, the ALTA's State Legislative and Regulatory Affairs Committee is addressing the issue of uniformity of State mortgage satisfaction laws. That Committee has committed to identify and address the issues in the upcoming year.

Private companies, such as reQuire, have also provided post-closing discharge tracking services that operate as a complementary post-closing service, separately contracted by the owner of the property and performed after the closing, recording, and disbursement of the transaction. The service is designed to police and enforce the paid-off Lender's duty to discharge mortgages when fully paid. Typically, the procedures and services associated with the fee charged to the obligor are neither a requirement to satisfy the conditions in a title insurance commitment nor are they duplicative of services provided by the title insurance policy issued.

Conclusion

While the issues surrounding undischarged mortgage liens are not of recent origin, attempts at a unified approach to assure that such liens are discharged are of relatively recent origin. Some attorneys are beginning to experience almost insurmountable problems because of the passage of time and closing or merging of entities to the extent that the new entities cannot or will not locate proof of previous payoffs or whether a discharge of a previous mortgage lien has been executed. The approach being taken or proposed, both through private companies such as reQuire or uniform legislation, is to verify that the mortgage lien was discharged as soon after the closing occurred as is practicable.

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