



# nerej

## **Stump the underwriter: McNutt of Title Resources Guaranty Co. answers 5 questions**

June 17, 2009 - Spotlights

This article will focus on preventing claims on a national level.

### Questions:

1. A lender gives loan instructions of a loan to A, but your commitment shows other parties in addition to A in title. Can you take a deed of trust from A alone?
2. In searching title, you find a recent purchase of the property by a party with a loan. Very recently, you find a release filed of that loan. Can you ignore the lien without further inquiry?
3. You receive an order from a lender for a HEL or HELOC, but in reviewing the commitment you see a prior loan for a HEL or HELOC not released. Can you close without a release if another title agent states they paid the loan?
4. You receive a request to mail all the buyers' papers or e-mail them to their home. Can you comply? Do you need to use a bonded notary service to close if the lender allows a mail out?
5. You pay a HELOC loan off at closing but never receive a release. Could this lead to a claim? Can the borrower make another draw after the sale?

### Answers:

1. You must pay close attention to vesting in your commitment. If a party is only one of the owners, all owners must be joined in the deed of trust in order to give the lender a lien on all the interest in the property.  
TRGC had a claim in which the closer said, "But the lender wanted me to have only the borrower sign the deed of trust, so I obeyed its instructions." This blind obedience cost the company a claim, because after foreclosure the lender was only co-owner of part of the property.
2. Be alert to suspicious releases recently filed. It is a red flag that the lien was released without a new loan. Any release filed outside of a title closing must be verified as paid with the lender that is purported to have signed the release. We have seen some very good forged releases.
3. Unreleased home equity loans have become big claims. A party pays off its home equity line of credit and makes another line of credit on a loan, without a release of the first home equity lien being filed. Without that of record, you could have a later re-borrowing by your owner, and upon default on that loan have a prior lender foreclose its lien and wipe out your insured loan. Always

require the release of any prior home equity loan, even if another title company closed the loan and provides you proof of payment. The payment does not cancel the right to re-borrow by the owner, unless a release is filed.

4. We have had several claims for improper execution where a borrower later alleged the loan was invalid because either a forgery had occurred, or in one Texas case -where home equity loans must be closed in the office of a title company, lender, or attorney's office - the co-borrower alleged that he signed at Starbucks. We recommend that you use a bonded notary service and obtain copies of the identification.

5. Payment of a home equity line-of-credit without obtaining an agreement by the lender to cancel it is a certain claim. We have had several claims of re-borrowing later by owners who have sold the property, perhaps believing they were just making a personal loan. At least that is their story later, when we find them.

Paul McNutt, general counsel, Title Resources Guaranty Co., Dallas, Tex.

New England Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540