

# **The Sins of Title-A look at title claims from the loan policy perspective**

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Key  
definitions  
to keep in  
mind.

**Deed**- A conveyance of real property; a writing signed by a grantor/s, whereby title to the real property is transferred from one to another.

**Deed of Trust** -A document in which the owner pledges their title of a property to the lender as security for a loan described in a promissory note.

**Note** – It is a written promise/contractual obligation to pay a debt in full by a specified date.

# Foreclosure and the Loan Policy

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**Foreclosure**- The mechanism by which a party, who has loaned money, secured by a deed of trust on real property, initiates the sale of the property, pursuant to the sale requirements prescribed in the DOT, to recover the money owed, when the debtor fails to make payments on the promissory note.

**In Rem Action** – Foreclosure is an “In Rem” action. In rem means that the action is an action against the land, and not against the parties that own the land (“In Personam”) \*\*\* This term becomes especially important when someone has been deeded off the property, but a refinance has not occurred. The person who was removed from title does not understand how they are getting a Foreclosure Notice.

**The Loan policy** – When a borrower defaults on the Note and the lender decides to foreclose, there must be a review of title to determine whether the lender has a perfected interest in the property (ie collateral). If a defect is discovered, the Lender will not be able to foreclose and will be required to file a title claim on the loan policy to correct the defect.

# Who signs what?

**Deed**- The Current owner/s of the property, signing in their official capacity, with appropriate labels.  
ie. Grantor, Trustee, PR etc.

**Deed of Trust**- Whomever owns the property. Only the individuals that appear on the vesting deed need to sign the DOT. This document pledges the property as the collateral for the note.

**Note**- The note needs to be sign by the debtor. The individual/s who applied for the loan and had their credit ran. You may have people appear on the Note that do NOT appear on the Deed or Deed of Trust. The Note is the contractual obligation to pay

# What common mistakes are we going to cover?

1. Having the wrong legal description- ie attaching the wrong or incomplete description
2. Omitting pertinent information such as the Storage unit, Parking space etc.
3. Having a missing interest- failing to get the appropriate signors to sign in their correct capacity.
4. Failure to record the Deed of trust, POA or recording documents in the incorrect order
5. Failure to check for bankruptcy, divorce etc. and understanding its effect on Tenancy
6. Failing to send the close out letter for an equity line.

# The Wrong Legal Description

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A wrong legal description is an example of an issue that may go unnoticed if the borrower never goes into default. Once the DOT had been paid and released, the defective legal becomes irrelevant.

However., when the DOT is missing a legal description, or the legal description is insufficient to reasonably identify the property, you may have potentially blocked the lender's ability foreclose because their collateral is questionable. The lender would be required to file a claim to address the incorrect legal and establish their collateral.

# Missing Information

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What happens if you forget to include a parking space, storage unit or an additional parcel?

We then need to ask ourselves:

Does the bank have the ability to foreclose on the parking space when foreclosing on the condo? Are they in separate deed's and do that have different Tax Id's?

Did the bank rely on the value of the parking to loan the amount they did?

# Bankruptcy, Divorce and Missing Searches

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When we are reviewing title, it is incredibly important to make sure that we have checked every resource available to determine who the parties are and who needs to sign what document.

Did the parties get divorced? Is there a trust? Do we have a new trustee?

Did someone die? Did someone file a Chapter 7 BK? Was there a POA?

Is there an LLC? Is there a Successor PR?

\*\* Having someone sign in the wrong capacity can preclude the lender from foreclosing



# Missing Interest

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Missing a signature- When a DOT is recorded without the signature of someone who has an interest in the property, a missing interest has been created.

Life Tenant, Remainderman. PR, Trustee, Successor etc. – What was the mistake that causes the missing interest? Did the parties not sign in their correct capacity? Did we fail to understand the tenancy? Was there a change in PR or Trustee? Did we miss a successor? Did we fail to realize that the laws change from jurisdiction to jurisdiction?

# Recording Errors

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First and Second Mortgages- When a borrower is closing on a first and a second mortgage, it is imperative that the mortgages are recorded in the correct order. Recording in the wrong order will affect the lenders priority and therefore affect their ability to foreclose.

Reverse Mortgages- When a borrower takes out a reverse mortgage, two DOT's will be recorded. One securing the lender and an identical DOT securing HUD. Recording these DOT's out of order can again affect the lender's ability to foreclose.

\*\* Remember, Foreclosure notices only wipe out Jr. lienholders, so did the recording error effect the priority of the lender?

# Close out letters for equity lines

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\*\* When a first mortgage is paid off, the loan is automatically paid off because the loan now reflects a zero balance. However, when an equity line has been paid in full and the balance is now zero, the loan remains open. The loan will remain open because the loan is designed to take draws and then pay back to zero. The only way to close the ability to draw on this loan is to send a written request to close, signed by the borrowers, with the last payment. If this is not done, the loan will remain open.

\*\*\* Let's talk about living in a “Van down by the River” to help understand the importance of the close out letter.

# What is our main take away ?

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1. Understand who needs to sign and why?
2. What is the collateral ? What property did the lender evaluate as the basis for providing the loan?
3. What Documents are we recording and in what order?
4. Have we affectively completed our searches to make sure we have the right people, their right capacity, for the right property and evidenced by the correct documents?



**Thank you!! Questions ???**

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