

TITLE PROBLEMS CAN SNAG YOUR CLOSING

You put your house on the market and you find a buyer right away who offers you not only your asking price, but also is willing to pay in cash with no contingencies.

Everything is going perfectly! But then it all comes crashing down.

The title company calls to let you know the title is not clear because there is an unreleased lien from 1997. They ask you for proof of payoff and reconveyance. You panic. Who keeps paperwork from that long ago? And what is an unreleased lien?

The unexpected unreleased mortgage lien rears its ugly head all too often, according to those of us charged with shepherding consumers through the last stages of home buying.

This situation usually occurs when homeowners pay off their mortgage and continue to live in their homes without obtaining proof that the loan was paid in full. It is not until they try to sell or refinance that they discover they have an unreleased mortgage lien. By then, the bank that originated the loan most likely has been absorbed by several bigger banks. It's still possible to reconvey the mortgage lien but it's going to take a lot of work. And if you are the heir of the homeowner, it is going to be even more of a hassle.

The unreleased mortgage lien can appear in all kinds of conditions, regardless of the property or loan type. And when it does, it often means delayed closings. You can avoid the aggravation of an unreleased lien by understanding what a lien is, and how to make sure you take care of it properly.

What is a lien?

A lien is a legal claim against property that must be satisfied when the property is sold. The lien provides notice that the bank has a secured interest in the property and guarantees the bank that the property cannot be sold or transferred without either the loan being repaid, or assumed.

What is an unreleased lien?

An unreleased lien is a cloud on title that prevents property from being conveyed. Even though a mortgage has been paid off, the lien is still a valid cloud on title until it is reconveyed.

So how does a lien get reconveyed?

When a bank loan is paid off, a reconveyance is provided by the bank and recorded at the County Recorder's Office to provide notice that the prior lien has now been paid in full and reconveyed from the property.

When I refinance, what is the lien release process?

In a refinance, the title company handles paying off the bank and is responsible for following up to make sure that the lien has been reconveyed. This can be challenging as most banks now handle the reconveyance processing and recording. If the title company is allowed to handle the reconveyance, there can be a charge or lien release fee to handle the processing and recording of the reconveyance.

What about when I sell my house?

When a property is sold, the title company, together with Escrow, will arrange to pay off existing liens and arrange for the reconveyance of the liens. Once closed, the new owner's property is then free and clear of the old liens. The same challenge can exist for obtaining the reconveyance for the old lien if the lender processes them. The reconveyance will be recorded after the sale documents have recorded, so it's always a good idea to follow up with your title company and find out if the reconveyance has recorded.

I just paid off my mortgage. Do I need to do anything else?

Yes, you need to make sure that the lien has been reconveyed. Either the lender will send the reconveyance to the county or County Recorder's Office on your behalf and forward you the recorded reconveyance, or they will send you the unrecorded reconveyance, which you will then have to record.

I inherited my parents' house. When I tried to sell it, I was told there was an unreleased mortgage lien. What should I do?

Obtain proof that the loan was paid off, then call the last known servicer of the loan in order to request a reconveyance. This can become tricky if the loan was paid off a long time ago, since the loan servicer at the time of payoff might have been merged into several other banks, but eventually, you should be able to determine who took over the records and can provide a reconveyance.

I have an equity line with a zero balance. Does that need to be reconveyed?

Just because your equity line has a zero balance does not mean that it has been reconveyed from the property. You need to request for the account to be closed and for a reconveyance to be sent to you, which you then will need to record at the County Recorder's Office.

Source: Washington Post, "Where We Live" blog. Washingtonpost.com/wherewelive By: Joe Gentile, Esq. at Federal Title & Escrow Company



CypressTitleCo.com