

Session 2: Titles Issues 201

1:05pm – 1:50pm CT

- Title issues encountered in either an eviction or an REO closing
 - Minor defects in a legal description (typically resolved within a few weeks without litigation)
 - Typos, scrivener’s errors, missing words, missed calls in metes and bounds
 - Scrivener’s affidavits
 - Corrective deeds
 - Insured over by title company
 - Escalated title defects (may require litigation)
 - Missing power of sale
 - Multiple defects in the legal description
 - Material defects in the legal description
 - Missing pages of the security instrument
 - Security interest not of record
 - Major title defects (typically requires litigation)
 - Priority issues
 - Partial or no interest issues
 - Portion of intended lot missing
 - Encroachment issues
 - Fraud
 - Types of title defect litigation
 - Reformation lawsuit
 - Declaratory judgment
 - Quiet title action
 - Don’t forget about the Lis Pendens
 - Title Claim...Title Claim...Title Claim
 - The good
 - The sometimes bad
- Pandemic claims
 - Recent pandemic-related title issues
 - Restricted access to registry of deeds, land records, county court houses:
 - Delays in timelines due to late titles
 - Managing title vendors
 - Court delays
 - Actions taken post-March 2020
 - Title insurance company perceived risk arising from actions taken during various moratoriums
 - Statutory and contractual breach letters
 - Complaints
 - Publications
 - Sales

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- Local, state, and federal emergency orders and moratoria at the time of sale
- New processes implemented by the title insurance companies
- Specific CFPB requirements = scrutiny
 - Temporary procedural safeguards prior to referral
 - Exceptions to the safeguards:
 - Abandoned property – What does this mean and what is the standard?
 - More than 120 days delinquent prior to 3/1/2020
 - More than 120 days delinquent and borrower has not responded to outreach from servicer for 90 days or more
 - After borrower has been evaluated for options other than foreclosure, no options exist
 - What documentation will title insurance companies look for and what will be sufficient?
- Avoiding claims at the time files come off hold:
 - Order/recommend title updates if investors allow to avoid delays with title vendor backlogs
 - Updates will also provide visibility as to any activity in the last 18 months
 - Deceased borrowers
 - Super-priority liens (HOA, Tax, IRS, DOR, etc.)
 - Transfer in title
 - Assignments placed on record
 - Loan acquisitions
 - Borrower legal actions and filings (Lis Pendens, Injunctions, miscellaneous recordings to delay foreclosure that would create title issues)
 - Are there any title curative efforts from a filed title claim?
 - Confirm vacancy status
 - Determine status of file at the time it went on hold
 - Are there any unanswered borrower requests, debt disputes, QWR's etc.?
 - Have any aspects of the process gone stale and need to be redone?
 - Was/is the borrower represented by counsel?
 - Were there any modifications during the last 18 months?
 - Were there any bankruptcies during the last 18 months?
- Conclusion
- Impact of foreclosure and eviction litigation on successfully completing an REO transaction
 - What is the nature of the challenge and risk to title?
 - Former owner challenging the underlying judgment
 - Standing – As a general rule, standing implicates a court's subject matter jurisdiction and can be raised in any forum. Some states have legislative safeguards that cut off the rights or set a time when standing can be challenged.

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- Service/Personal Jurisdiction – Did the marshal or sheriff properly serve or give notice to the defendant? If notice was not proper, the court may have been without jurisdiction to enter a judgment against the defendant. A bona fide personal jurisdiction claim can create a serious problem in connection with an REO closing.
- Tenants challenging possession
 - Generally, a tenant challenge in an eviction will not upset the foreclosure judgment.
 - Impact on REO marketability
 - A litigious tenant or former owner could delay a closing if the REO purchaser is expecting a vacant property.
- How to resolve the challenge to complete the REO transaction
 - Comfort Orders – A comfort order is a request to the trial court judge that entered the foreclosure to enter an order stating the sale was final or foreclosure done properly. This is normally done at the request of the title company or buyer attorney.
 - Motions to enjoin – A motion to enjoin requests the court to enter an order that the defendant is no longer allowed to file any further motions. These are difficult to obtain and generally only provided in rare circumstances of abuse of judicial process.
 - Settlement – Can the litigation be resolved with monetary settlement or waiver of deficiency? This needs to be evaluated based on the risk presented in the case and chance of success recommended by local counsel.
- GSE expectations for title resolution
- First and foremost, for Title Resolutions, all titles must be delivered “Clear and Marketable,” as outlined in 9301.40 of our guide (see link)
<https://guide.freddie.mac.com/app/guide/section/9301.40>
- Primary issues we see, particularly close to the sale deadline:
- Deed is not in the bank’s name
 - Can be due to servicing transfer, prior foreclosure, etc.
- Origination errors recently discovered
- Legal description errors
- Large or priority liens
 - Examples are IRS liens, tax or water liens, etc.
 - Super lien states can lead to loss of first lien position due to unpaid fees or taxes
- Working to resolve issues prior to the foreclosure while clearly communicating if work is needed after the sale

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