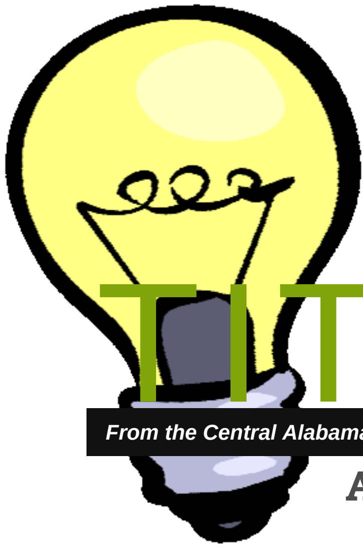

Central Alabama Title Center

TITLE TIP

From the Central Alabama Title Center, LLC March 24, 2014

Avoiding Title Claims: Part 3, Mortgage Payoff: How much is really owed?

This is the third in a three part series that will discuss avoidable title insurance claims.

MORTGAGE PAYOFFS: HOW MUCH IS REALLY OWED?

For a refinance transaction, the title agent reported an open mortgage for $125,000 on the initial title commitment, in favor of Bank A. Before the closing, the borrower provided a mortgage payoff statement which indicated that the amount due was $160,000 and that the lender was Bank B. The refinance transaction was completed, and $160,000 was sent to Bank B in accordance with the payoff statement.

Several months later, Bank A commenced a mortgage foreclosure proceeding, alleging that its mortgage was unpaid.

An investigation revealed that several months before “our” closing, the borrower had refinanced his home for $160,000. The lender’s attorney, who also acted as the title agent in that refinance, had neither paid off the prior mortgage for $125,000 owed Bank A nor recorded a new mortgage for $160,000 in favor of Bank B.

At “our” closing, the closer knew there was an open mortgage of record, but simply paid off a mortgage reflected on the payoff statement provided by the borrower, recognizing neither the discrepancy between the face amount of the recorded mortgage and the amount needed for the payoff nor the difference between Bank A (the holder of the open mortgage of record) and Bank B (the lender that was being paid off.) Had this discrepancy been noted, a further inquiry might have uncovered issues with the liens and mortgage loans affecting the property.

The Basics: Amounts claimed to be needed for payoffs must be checked and compared against the items as reflected in the title commitment *PRIOR* to closing.

The claims that have been presented over the past few weeks in Tips one through three resulted from seemingly simple errors: not checking the names on the mortgage; giving a large sum of money to a person over whom the closer had no control; not comparing the amount of an open mortgage to the amount required payoff; and not checking to see if that the holder of the mortgage was the same as the lender who was receiving the payoff fund. Failure to follow these basic practices is like sailing in unchartered waters; simply a recipe for disaster. So always be cautious to check everything thoroughly before you close the transactions, because it is always easier to correct, fix or change something prior to closing, than it is after the closing and the funds have been disbursed and you are now facing a claim.

Claims can be avoided, we simply must be diligent in reviewing the closing documents prior to actually closing the loan.

As always, should you have questions, please feel free to give CATC at call at 888-207-6200

Information compliments of Feb. 2014 edition of Agency Insights, Frank Carroll, Regional Counsel, FNTG.