

*Presenting a live 90-minute webinar with interactive Q&A*

# Clearing Title for Defects Due to Mortgage-Related Issues, Legal Description Errors, and Foreclosure

Identifying and Resolving Common Title Defects to Ensure Closing of the Deal

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Today's faculty features:

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**Clearing Defects Due to  
Mortgage-Related Issues,  
Legal Description Errors  
and Foreclosure**

# Generic Problems with Mortgages

- Unrecorded security deed
- Incorrect legal descriptions
- Not properly witnessed
- Not properly notarized
- Vesting Deeds and Security Deeds recorded out of order
- Name on Security Deed does not match name on Vesting Deed
- Priority problems
- Indexing problems

# Security Instrument Related Issues

- What if the prior security instrument is still open of record?
- Causes
- Ways to Correct the same

# How to fix an unreleased prior security instrument

- Equitable subrogation
- Open lien a HELOC?
- Age of open lien
- Put open lien on LoanGuard to protect against foreclosure – no junior lien notice requirements in many nonjudicial foreclosure states



# Equitable Subrogation

What is Equitable Subrogation:

Lender Advances Money for the purchase of property with the expectation that:

- Their lien receives First Priority
- What shows intention of priority?
  - loan application
  - closing instructions
  - title certificate
  - title commitment
  - title insurance policies
- The final element is:
  - The result will not prejudice the rights of the prior lienholder
  - The weighing of equities

# Equitable Subrogation (cont.)

## Limitations on Equitable Subrogation:

- Relief given only to the extent that it paid off a first priority security interest and only to the extent of such payment.
- Some states have bad case law for equitable subrogation in terms of missing interests or not being able to go back too many steps in the payoff chain,

# Equitable Subrogation (cont.)

## When is Equitable Subrogation NOT Applicable

- Second Lender Chargeable with culpable or inexcusable neglect
- Lien being of record doesn't necessarily prevent subrogation
- Imputing negligence of the examiner or closing attorney

# Equitable Subrogation (cont.)

## Practical Tips

- Get entire loan file and closing file
- Look at taxes and insurance and maintenance costs
- Determine your “gap” and how it effects resolution
- Owner’s Title Policy – how can it be used?

# Security Instrument Related Issues

- What if the existing security instrument lacks a proper Assignment?
- What can you do to correct the same?

# Security Instrument Related Issues

- What if the Lender no longer exists?
- Ways to track them down
- Ways to correct the same

# Security Instrument Related Issues

- Home Equity Lines of Credit (HELOCS)-What if the HELOC is still open?
- Creates large title issues
- Ways to correct the same

# Dealing with HELOCS

- Revolving loan account; zero balance does close loan
- Must be closed with a “Kill Letter”
- Kill letter must be signed by borrowers at the refinance and copy must be sent to holder of HELOC – even if they don’t request it
- What if the Borrower on the HELOC has run the balance up? Remedies?



# Legal Description Errors

- What if the Legal Description is incorrect on the vesting deed or the security instrument?
  
- What can you do to fix it?
  
- Litigation Options
  - Declaratory Judgment Action
  - Reformation Action
  - Quiet Title Action

# Legal Description Errors

- What if there is a discrepancy between the vesting deed AND the security instrument?
- What can you do to fix it?
- Litigation Options

# Legal Description Errors

- What if there is a discrepancy between the historical description and the survey description?
- What can you do to fix it?
- Litigation Options

# Stumbling blocks to a proper and legal Foreclosure

- What if the foreclosure was legally defective?
  - What does the law say?
  - Judicial vs. Non Judicial issues?
  - Saving Statutes to unwind foreclosure?
  - Options to avoid a lawsuit by the borrower

# Stumbling blocks to a proper and legal Foreclosure

- What if you did not properly serve some or all of the parties?
  - What does the law say?
  - Judicial vs Non Judicial issues?
  - Inclusion of all proper parties on security instrument
  - Options to avoid a lawsuit by the borrower

# Stumbling blocks to a proper and legal Foreclosure

- What if you did not properly serve some or all of the parties?
  - What does the law say?
  - Judicial vs Non Judicial issues?
  - Options to avoid a lawsuit by the borrower

# Stumbling blocks to a proper and legal Foreclosure

## ➤ Post Foreclosure Issues

- Title problems discovered late-what to do?
- Lingering partial interests of others on title
- Marketability of Title –Title Insurance
- Judicial vs. Non Judicial issues

# Stumbling blocks to a proper and legal Foreclosure

- Condominium Association Liens
  - Does the lien survive foreclosure?
  - If so, how much?
  - How do you calculate the amount?
  - Super liens?



# Thank You

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