



Title Topics



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Risks in a Shaky Real Estate Market Foreclosure Rescues, Short Sales & Tax Sale Bailouts

As you can tell from reading the increasing number of Sheriff's Sale advertisements, the "sub-prime" crisis has led to a substantial increase in mortgage defaults and foreclosures. What goes hand in hand with the poor market is the rise of short sales with negotiated payoffs, and tax sale bailouts by third parties. In our opinion, these third parties are nothing more than opportunists and charlatans who prey upon financially distressed homeowners. While there are legitimate companies and/or individuals who purport to rescue homeowners from dire economic circumstances, it is often difficult to recognize the helpful from among those seeking to defraud.

We have been asked to exercise extreme caution before insuring any transaction that appears to be a foreclosure rescue or involves a short sale or tax sale payoff/redemption. What follows is a discussion of the most prevalent practices our clients may face.

FORECLOSURE RESCUES

Foreclosure rescue red flags could include the following:

- The owner is deeding the property to a 'buyer', but staying in the property after closing. There may be a lease agreement or a new contract signed at closing allowing the owner/seller to re-purchase the property;
- There are third parties involved in the transaction (with names like "Foreclosure Savers" or "Home Keepers") who are listed as payees on the HUD;
- The deed consideration is substantially less than fair market value or is the balance remaining on the existing mortgage or the 'buyer' is taking title subject to the existing loans;
- The buyer is putting no money down, closing a purchase money mortgage for the full purchase price;

- The seller requests that the HUD settlement statement be prepared in a way not accurately reflective of the transaction.

SHORT SALE ISSUES

Short sales involving payoffs of less than the full amount due to the lender must be carefully addressed with lender payoff instruction letters and requirements being strictly complied with. *Any* deviation in following lender payoff instructions, no matter how slight, could result in a refusal to discharge the mortgage being paid.

If there is a simultaneous 'quick flip' sale, that second deal could likely be uninsurable if the short sale lender can claim fraud.

TAX SALE ISSUES

Tax sale payoff and redemption issues are also resulting in increased title claims. The title industry has taken the position that any title derived through a Final Judgment in a tax sale certificate foreclosure is uninsurable for a full year from the date of the entry of the Final Judgment.

Escrows for tax sale certificate payoffs are almost impossible to establish due to certificate holders paying subsequent municipal taxes and other lien items resulting in the total amount required to redeem being multiple times greater than the face amount of the certificate.

Failure to recognize questionable transactions may expose all of us to participation in a 'scheme to defraud' however unwitting that participation may be. So, let's all be vigilant and stay alert when addressing transactions involving homeowners going through hard times.

Thanks to Lawrence C. Bell, Esq. of Stewart Title Guaranty Company who provided the basis of this article

Coming Next Month — Part II of our Review of the Affidavit of Title.

A Reminder— legal forms may be found on the Vested Title website. Just click on the red **FORMS** tab.

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