



# Vested Title Topics



February 2011

## Is a pending foreclosure making a mess of your closing?

### Let's face it; we do not live in simple times.

Whether you are shopping for a new car or representing a real estate buyer, your transaction is no longer a deal — it's an ordeal.

How aggravating can things get? Let's assume the first mortgage on the title under examination is being foreclosed. What exactly should we require with regard to paying off this mortgage?

Assuming the foreclosure has not yet gone to final judgment, it will generally be necessary to obtain the following:

1. Proof of payment in full in accordance with current written payoff instructions which include both attorneys' fees and costs, as applicable;
2. Proof of dismissal of the underlying mortgage foreclosure action (typically accomplished by the filing of an appropriate stipulation of dismissal);
3. Discharge of the notice of *lis pendens*; and,
4. Discharge of the mortgage being paid off.

If the mortgage is being paid off after entry of the final judgment of foreclosure, vacation of the foreclosure judgment must also be provided.

Foreclosure counsel often resists providing these proofs where the payoff occurs after a final judgment of foreclosure is entered. They take the position that the mortgage technically has merged into the final judgment (thus it no longer exists) and procedurally they are only required to provide a warrant of satisfaction of judgment. This creates a problem because a final judgment of foreclosure and subsequent warrant of satisfaction of judgment typically do not appear in the county land records and will not be picked up in a standard search.

By obtaining the required proofs, a file will contain clear evidence that the underlying litigation has been adequately concluded and establishes an official means by which we can search the county land record to determine that the mortgage has been appropriately discharged.

Litigation and mortgage foreclosure proceedings can be complicated and expensive. It is thus critical that any mortgage payoff statements obtained involving foreclosures are current and include attorneys' fees and sheriff's costs, as appropriate.



## Homestead rebate redesigned

**If there ever** was a sacred cow in New Jersey, the Homestead Rebate program was it. Once thought to be untouchable, the rebate program came under attack as the state's financial situation worsened and, as a result, the rebate program has been redesigned.

Back in better days, after completing an application, eligible homeowners received rebate checks from the state government which were intended to offset (in part) the burden of real estate taxes.

In response to the current fiscal crisis, rebate checks will no longer be issued. In their place, eligible homeowners will receive a **credit** against payment of **second quarter 2011** real estate taxes in lieu of a rebate check for taxes paid in **2009**. For that reason, the program is now called the **Homestead Benefit**.

The Homestead Benefit Program does not *directly* affect title insurers and their agents, as it does not affect the lien of real estate taxes; rather, it has a potential impact only on the amount of tax which may be due in certain cases.

However, since anyone conducting settlements is often asked to see that real estate taxes are properly adjusted, the program *indirectly* affects the title industry.

As Larry Fineberg of the Fidelity National Title Group points out, "It is important to bear in mind that the title insurance policy does not insure that taxes will be properly adjusted at closing, or against *overpayment* of real estate taxes; rather, it insures against loss in the event a lien results from an *underpayment* of real estate taxes.

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(Homestead Benefit, continued)

Furthermore, the party allegedly entitled to the homestead benefit tax credit will usually be a seller or a refinancing borrower, neither of whom is the insured.

Accordingly, title companies will not be able to provide insurance coverage with respect to the applicability or non-applicability of the program in connection with specific transactions.

More information can be found on the FAQs web page of the Department of the Treasury.

Have a topic you would like to see discussed in Title Topics? Drop a line to [sflatow@vested.com](mailto:sflatow@vested.com) and we'll see what we can do.

Check out our blog, [www.vestedtitle.blogspot.com](http://www.vestedtitle.blogspot.com) for current news and information affecting your practice and property owners in New Jersey.

## Federal Estate Tax back in action

The Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (H.R. 4853) was signed into law by President Obama on December 17, 2010. The new law extends and amends The Economic Growth and Tax Relief Reconciliation Act of 2001 for two years. Among other things, the Act reestablishes the federal estate tax and sets the exemption thresholds for the next two years.

Under 26 U.S.C. § 6018, a federal estate tax does not apply and an estate tax return is not required if the value of the decedent's gross estate does not exceed a specified exemption threshold. That exemption threshold is established by 26 U.S.C. § 2010.

For estates of decedents who died in 1999, 2000 and 2001, the exemption was \$650,000.00. For estates of decedents dying in 2002 or later years the exemptions are as follows:

DATE OF DEATH	GROSS ESTATE DOES NOT EXCEED
2002 and 2003	\$1,000,000.00
2004 and 2005	\$1,500,000.00
2006 through 2008	\$2,000,000.00
2009	\$3,500,000.00
2010	N/A (repealed for deaths in 2010)
2011	\$5,000,000.00
2012	\$5,000,000.00

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