

TAKE JUDICIAL NOTICE

New Developments: Foreclosures and Short Sales

November 23, 2010

It is a daily occurrence that title companies are issuing guidelines on how to deal with new foreclosure legislation and unique short sale situations.

Don't be surprised at some of the following:

- Before insuring REO (bank owned property) an indemnification from the bank may be required to cover "the submission of incompetent or erroneous affidavit testimony or documentation prepared in connection with the underlying foreclosure action". This practice has become known as "robo signing".
- The State has answered the challenge of the avalanche of foreclosure actions with the passage of the omnibus bill known as the Sub Prime Residential Land and Foreclosure Laws. While these laws attempt to achieve a worthwhile social purpose they create a quagmire of procedural problems for attorneys representing foreclosing lenders, and consequently give rise to greater scrutiny by title companies. Exceptions will be raised as to any irregularity in the proceeding.
- The Office of Court Administration now requires an affirmation by foreclosing counsel in all residential (1 to 4 family) foreclosure actions stating that the attorney has communicated with the lender and received notice of the accuracy of all allegations in the complaint and supporting documents. This is required for new and pending actions.
- Short sale payoff letters must be complied with in every detail. If the letter has expired, or a second mortgage payoff is not provided for, the closing will be adjourned. Banks are withholding mortgage satisfactions because of a single line item on the HUD-1.
- If any short sale payoff letter contains the following, or similar language, closing will be adjourned: *"If Chase finds full disclosure was not made at the time of approval, the approval becomes null and void"*.

Don't sit for hours at a closing only to have it adjourned. Read and dispose of any foreclosure exceptions raised in the title report. Closely read and comply with all short sale payoff letters, and submit them to the title company well in advance of closing.