Ask the TITLEMAN™ #208

Q & A

John T. Lotardo, Attorney-at-Law

Q. I am soooo confused. I have a client who is in the middle of a domestic dispute and the attorney is asking me why I can't sell the property even though a lawsuit is filled against the property. My response is I am not able to sell a property, nor will they be able to give clear title due to the cloud on it! If you can give me your view from the "Titleman" so I can pass it on to support my statement I'd appreciate the help!

A. Although I wish I could clear the clouds away on this one, it sounds like you are right on the money on this one. Domestic relation matters are always a bit complicated especially with all the drama involved. They're one of the most difficult types of cases I see because of the very personal issues involved. I'm taking a stab here, but I'm guessing from your question that there's a divorce going on and that a lis pendens has been filed against the property. A lis pendens may sound like something wicked (and many people who are on the receiving end of one may think of it that way) but it merely gives the world notice that a lawsuit involving the property has been filed. That said, if you're trying to sell the property, the filing of one will throw a monkey-wrench in your plans. Whatever the dispute, the title company who would insure will most likely require a resolution of the issue, a release of the property from the dispute or at a minimum a very good reason to ignore it. If your client is trying to sell a piece of property and he is in the middle of a divorce, an order from the court or a review of the divorce decree may be in order. It's true, one way or another, clearing title will be necessary.

Q. We have a Beneficiary's Deed that I'm uncomfortable with. First off, the Grantor did not execute it. Her son did under power of attorney. The Grantee is her daughter alone. Secondly, I'm suspecting the Grantor was already dead when recorded. It was originally drafted to be signed a few years ago, but that date was crossed out and changed to a more recent one. I also question the notarization.

A. Changing dates, recording after death, questionable notarization, yikes. Sounds like one of those late-night cable crime shows. Where's Detective Nash Bridges when you need him. Kidding aside, I'm not surprised you are seeing more of these in general as the public embraces the concept of beneficiary deeds as an estate planning/probate avoidance tool. You should review the death certificate to determine time of death for use of the power of attorney and for the recording. Remember a beneficiary must record prior to the grantor's death in order to be valid. Plus, you have to review the power of attorney to determine if it could be used in such a way. A little more sleuthing on your part may confirm or relieve your fears. Good luck.

Q. Hey Titleman. I just moved into a rental house and I just found out that the house is in foreclosure. They posted a Notice of Sale on the door the other day. I know I don't have any rights since my lease was not recorded and was done after the Deed of Trust but is there anything I can do to assure I will not have to move? I'm currently pregnant. Assuming I'll have a few days to move once the sale is held, I will be moving in the middle of the summer. I cry just thinking about having to do that. Any advice would mean the world to me!! I think it's ridiculous that Tenants have no protection. We just moved in less than two months ago which means the owner knew he was defaulting. Ugh!

A. The middle of summer for mommy to move is certainly no picnic! There are times when the lease is not subordinate. Was the lease or a memo of lease recorded and was the loan entered into after your lease started? Sounds like from your email that it's a "no" on both fronts, which is the typical case in residential rentals. You could always contact the lender ahead of time to try to make arrangements that are agreeable to you both but that assumes that the lender will get the property back and not some 3rd party bidder at the foreclosure auction. That's always a wild card. Another option is perhaps contacting the homeowner and see if you can terminate the lease earlier. That way, you can move sooner on your schedule. I wonder if there is a term in your lease that permits termination if the trustor is in foreclosure. Not likely, but it's worth a shot. So get your magnifying glass and fine tooth comb to see if the lease has options for you...

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Ask the TITLEMAN™ #209

Q & A

John T. Lotardo, Attorney-at-Law

Q. My husband just purchased a property in Arizona and needs to take title in his name. As his wife, I am being told that I need to sign a disclaimer deed. I do not want to go on the title, nor do I want to relinquish all my rights. How can I accomplish this?

A. Ah, there's the rub. It's hard to have it both ways in Arizona. It is true here in Arizona that there is a presumption of Community Property between spouses. That is why either the lender or title insurer is asking you to disclaim your interest. They want to place in the County Records a document to make it clear of your intent to not have an interest in the property. Either the lender or the title insurer would require you to make a decision if you want to be on title or not since this helps clear up this presumption and permits the lender to not have to worry about your interest should they need to foreclose. Lenders do like to fight with the spouses of the borrowers they have just foreclosed on and a disclaimer deed helps to prevent that. From a title company perspective, the parties to be insured could also agree to another alternative. In lieu of you signing a disclaimer deed, we could show your potential interest as an exception to the title insurance coverage but have only seen a few willing to do this. You may want to discuss your desire to not "relinquish" all your rights with a real estate or possibly a domestic relations attorney to see what options you have before you move forward on this. Good luck!

Q. Is anyone doing wraps anymore? What are your thoughts on it? I just have been asked about one and am not sure if I want to get involved with this.

A. I'm seeing them starting to pop up again. As before some are okay and some aren't. A wrap is typically where an existing encumbrance is left on the property and the seller places another encumbrance on the property which in part or in whole includes the amount of the first existing encumbrance. In a way, the second encumbrance "wraps" up the first encumbrance with the second encumbrance. There are many ways to do this right and not cause grief for everyone involved but you need to review the terms of both the encumbrances so you understand what each parties (whether seller or buyer) obligations will continue to be.

Q. You helped me a while back. We have a lender refinancing their old loan, with no cash out to borrower. So, they net their payoff out at funding. As a result, the only money left at disbursement is to pay us, recordation fees, etc. There will be no payoffs to other lenders or borrower. Do we need to still employ an escrow company in Arizona to fund the loan (as I know there is a license requirement for escrow in Arizona)?

A. Good question. You would need to be licensed by the Arizona Department of Financial Institutions (http://azdfi.gov/) to act as an Escrow Company for closings transactions in Arizona. I know of many fine escrow companies (one in particular comes to mind) licensed in Arizona that can act as escrow agent for you. I have heard that an isolated case which is deminimus to the overall operations of a company may or may not be challenged but doing so runs the risk of you bearing the burden of proving that you fall within some exception. I wish I could be more informative but the licensing entities are rather adamant in this regard.

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Ask the TITLEMAN™ #210

Q & A

John T. Lotardo, Attorney-at-Law

Q. We are working on a matter and the wife quit-claimed to the husband the property as his "sole and separate" property. Will this work or should a Disclaimer Deed have been done and recorded?

A. I know I have seen it both ways but since you're asking me I'll tell you that a quit claim is preferred if the use of the deed is some time after acquiring the property as opposed to using a disclaimer deed at the same time the other spouse acquires the property.

Q. I have a title question and of course I thought of you! I have a good friend (an employment attorney) who was told that she needed to put her real property in the name of the trustee of her revocable trust. Does that make any sense to you?

A. If I understand your question- I think the question is whether or not property being placed into a trust should be held in the name of the trustee? The answer is yes. Trusts are not capable of holding title here except in the name of its trustee(s). For example it should read, John Lotardo, Trustee of the TTITLEMAN Trust dated May 1, 2008. There are people who vest directly into the trust and it is quite problematic since it does not comply with Arizona Law. I know this is different than what can be done in perhaps another type of governmental. For some bonus point - don't forget to disclose the names and addresses of the beneficiaries of the trust as required by ARS 33-404.

Q. A Trustee's Sale was recently held. I received the Trustee's Deed. But the borrowing couple filed a Chapter 7 Bankruptcy a few days after the day of the sale. I did some snooping online but couldn't seem to find anything out about this property in the bankruptcy. Does it in any way affect the Trustee's Sale?

A. Recording a Trustee's Deed is considered a ministerial act. If the successful bid price was paid to the Trustee prior to the Bankruptcy filing, then it should be okay. If not, then it would be subject to the automatic stay imposed by the court. Timing is important so a little more "snooping" is in order.

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Ask the TITLEMAN™ #211

Q & A

John T. Lotardo, Attorney-at-Law

Q. Will you tell me if a court order quieting title against a deceased spouse to get title either into the estate of the now deceased remaining spouse or to the child of that first deceased parent seems right to you? The issue is we have a son from out of state who was appointed the personal representative on his mom's estate. She was still in title with dad but not as joint tenants with rights of survivorship. The son replied that everything of his dad's automatically went to his mom. Found out he passed away in the 1970's they did not address the dad's interest in the property. His attorney is getting a motion approved to quiet title for the dad's portion to the mom and the son is doing the rest of the paper work himself. I don't get it! They're driving me crazy. Help!

A. Fear not, please step away from the ledge. It was the 70's and things seemed a lot less urgent back then. Since they held the property without a right of survivorship clause, they do have to address the dad's interest since it did not automatically pass to the mom. When someone dies, it's okay to quiet the title – a fancy way of saying that they filed a lawsuit for the judge to decide who owns the property. It sounds like the attorney is using this somewhat traditional approach to clearing up a title on real property rather than using either a statutory approved affidavit or some other form of probate proceeding. In the case of this court action, he would still have to comply with due process issues like any other court action.

Q. I have an attorney in CA questioning why Letters of Appointment of Personal Representative need to be certified within 60 days of closing. Can you explain that one to me?

A. Although this certification may not be technically required for them to be used, Arizona statutes allow us to rely upon letters certified within 60 days presuming them to be valid (not revoked, permitted, etc). The 60-day time period just gives us more comfort and you know how we love to be made comfortable.

Q. I'm searching some real estate records in Maricopa County of a man and saw that his ex-wife quit-claimed to the husband the property as his "sole and separate". They are divorced. Will that work?

A. A quit claim is preferred if it is after the purchase as opposed to using a disclaimer deed at the same time the other spouse bought the property. Unless you are aware otherwise by actual knowledge from the parties or by public record, I don't think you need anything further since she divested herself of any interest when she executed the quit claim deed.

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Ask the TITLEMAN™ #212

Q & A

John T. Lotardo, Attorney-at-Law

Q. I am buying a home but I'm still technically married. You see, we have been separated for over 8 years. Do I would still need a Disclaimer Deed from my wife?

A. From the sound of it, this is an informal arrangement with no formal court order. If so, sorry to say, you still have ties that bind. Sometimes you can acquire in your sole and separate capacity but it is a bit of work. If you are willing to except the title to the home with an exception to your title insurance to the rights of your wife and convince a title company to do that, it may work out for you. But if you are getting a loan, a lender will probably be reluctant to agree to it. But beware: if you try to sell or refinance then the issue will rear its ugly head again.

Q. If someone holds a "General Power of Attorney" does it give them authorization to sell or lend against the property? Do they need a Specific Power of Attorney?

A. How's this for an attorney answer- It depends upon the language of the power of attorney give. Get your spectacles out and take a look. It should spell out what the attorney in fact can and cannot do.

Q. If the beneficiary under a deed of trust dies and the Personal Representative is appointed in California in order to get paid and release the to release the DT, do the letters need to be filed in an Ancillary proceeding in Arizona? The decedent has no fee title - only money interest.

A. Although it seems they only have a money interest it is still important enough to need to file in the appropriate court in Arizona to have jurisdiction. The interest held by the deceased beneficiary under a DOT is an interest in real property. They will have to file their appointment documents from California here in an AZ probate court to "domesticate" the rights of the foreign Personal Representative (assuming the foreign PR is not a corporation since corporations are not permitted as foreign PR's).

Q. I have an executor of an estate telling me that they don't need to go through probate and appoint a personal representative. I have a copy of a will. I don't think it's sufficient.

A. I believe the will helps to identify the parties involved but it is not enough on its own. A probate is needed to obtain letters of appointment of the executor/personal representative for a probate estate. Think of it as a Map for driving but the driver still needs a license to drive, in this case, court appointment. There are various forms of probate available depending upon the situation. Formal, Informal, Affidavit, etc.

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Ask the TITLEMAN™ #213

Q & A

John T. Lotardo, Attorney-at-Law

Q. Do you know if Arizona is a "recourse" state? We're flat broke and now we're losing our home to foreclosure. Can the bank come back after us for a deficiency? It really stinks that we have to lose our home, move and then they can come after us for more. Talk about kicking you while you're down!

A. Most of the time, you're okay. Purchase money single family residential loans on 2 1/2 acres or less are non-recourse per the anti deficiency statute. That means once they foreclose on your home, they should not be able to go after you for the difference between the value they get for your home and the amount you owe under the mortgage. But the loan and collateral have to qualify under the statute. Watch out if you took out a loan for something other than that- say if you opened a credit line to buy that new Mustang GT sitting in the driveway or for that dream trip to Maui. If the property is subject to a deficiency action, the lender would still need to comply with the requirements regarding giving proper notice, timing to assert the claim against you, etc.

Q. I have just received a Purchase Contract (AAR) that has been signed digitally by the Seller. Is that okay?

A. Ah, the electronic age. Texting, IM, and e-commerce across the globe have impacted how we do business. There are many laws in place dealing with the electronic signing of documents. The AAR purchase contract does permit the signing to be done electronically.

Q. I was in escrow to sell my house and it fell out due to the buyers not being able to fund. Three weeks after escrow was cancelled, the escrow company recorded the deed of trust to the buyers by accident. (No payment was made.) They stated they inadvertently transposed some numbers and recorded the wrong deed of trust. Is the escrow company liable for all this mess?

A. I'm not sure what has transpired since your mail, but I'm sure to say these things happen does not bring you any solace. I get the impression you believe that the escrow company is not going to work on this. Have they refused get a release or record an affidavit of its erroneous recording? I'm not sure what mess has occurred in the way of damages to you since clearly the lender wouldn't/couldn't/shouldn't foreclose on your home since it was a mistake just as you say. I would give the escrow company an opportunity to work on it. Over the nearly 20 years being a part of this industry, I have come to expect that my comrades usually help out where they can and do the right thing.

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Ask the TITLEMAN™ #214

Q & A

John T. Lotardo, Attorney-at-Law

Q. In 2007, we entered into a one-year lease-purchase agreement with an owner. He then deeded the property to us, but kept the mortgage in his name. We tried to obtain a loan for the mortgage amount, however, with property values dipping the home did not appraise for the amount stated in the agreement. I spoke with the owner and the owner is unwilling to lower the purchase price, and we could not come up with the difference. We moved out of the property, however, title still remains in our name. How can we remove our names from title back to the original owner who still has a mortgage against the property? A Notice of Trustee sale was filed against the property and original owner already. How will this affect us who are on title currently? The HOA dues were never paid by the original owner. The HOA has sent a letter via attorney to us stating we owe the full amount, around $4k. Does the HOA have rights to collect the full amount from us if technically we only lived in the property 4 months, and owned via title for that short amount of time?

A. Whew! You bring up several issues and most of them cannot be addressed in this short column. You may not have much worry about the original lender coming after you directly after the trustee sale, but I would suggest you contact your own counsel on this ASAP. You need to not only address possible liability to the HOA but also the possible credit risk caused by the delinquency/trustee sale. Removing your name from title could be easily accomplished by deeding the property back to the owners but that does not answer all the other issues brought up by your questions.

Q. I have a question about building permit coverage on the homeowner's policy. I assume this applies to converted garages, old or new additions and other changes that require a permit – where a permit was not obtained from the city. You have stated in the past that this covered risk is subject to a deductible and maximum dollar limit and I would like to know what those are. Also, I have never heard of the city discovering an un-permitted change or addition and demanding it be dismantled or changed or whatever. Does this ever happen and how and what are the likely damages?

A. Sad to say but yes- the forced removal by the city can and does happen. On occasion, the city requires new permits, revisions done or perhaps a rebuild of a non-permitted addition. The deductibles vary upon title insurer but are typically 1% or 2% of the policy limit up to a maximum deductible around $5000, and subject to a maximum amount of coverage for the defect up to say $25,000. The policy itself would outline which specific deductible/maximum amounts apply. I hope this helps.

Q. I have an escrow where a buyer changed his mind on purchasing a certain property. This was before the close of escrow date on the contract. He indicated he had seen another property he liked better and decided to purchase this new one instead. The seller on the first escrow said that's fine, I will sign the cancellation and keep the earnest deposit. The buyer placed a stop payment on the earnest money check and said that he would not lose his deposit. The real estate agents already know that there was a stop payment on the check. Does the seller need to proceed with a cure notice or what? The seller is actually taking this borrower to court Ugh!

A. First off, you said that the parties have been notified about the stopped payment matter. That's good they know so the seller could include this as part of his cure notice to the buyer. There's no direct term for this in the 2005 contract. For example, the 2005 Arizona Association of Realtors Residential Resale Purchase Contract removed the automatic cancellation for an insufficient check. Sounds like the parties are not agreeing to do a mutual cancellation. The seller would wait the cure period after sending the notice and then if there's non-compliance then make a demand for cancellation.

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Ask the TITLEMAN™ #215

Q & A

John T. Lotardo, Attorney-at-Law

Q. A real estate friend of mine has a question that I cannot answer. She has a Superior Court judgment against a person that she loaned money to but did not record a deed of trust at the time. Her judgment is recorded. The borrower has since bought a house in another County and is currently in foreclosure. She wants to know if she could record her judgment in Maricopa County, bring the first (the one in foreclosure) and second deeds of trust current and then start foreclosure on her own judgment.

A. Well, first off you have to record the judgment in the County in which you are interested in having the judgment lien attach to the property of the debtor. She could have standing to reinstate the first as part of a foreclosure but may not be able to recover all those amounts as part of the judicial execution of a properly recorded judgment. But this all is bit tricky which is why she should be in touch with an attorney now so all this is done correctly and to ensure the property is not protected by a homestead, proper recording the judgment, etc.

Q. Some investors took their beneficial interest in a deed of trust as husband and wife with no designation of rights of survivorship. The husband died and they were hoping that the wife now owns all of the beneficial interest. Is there any way to handle this other than by probate?

A. Sometimes there are other evidence of the right of survivorship. Without it, they are out of luck making some form of probate is necessary – whether by an affidavit of transfer, or other informal or formal probate proceedings.

Q. A customer of mine owns a building in which they have leased some space to a local company. Well, like others, the business has filed Chapter 11 bankruptcy. Do they still have to continue paying their monthly lease payment? Or are they protected from making that payment?

A. Unless directed otherwise by the Bankruptcy Court, Chapter 11 debtors that are in possession typically continue to make payments otherwise they risk losing the space. But they may be able to cancel the lease in the court as part of a plan of reorganization. If so, the landlord should be notified. Also, they should take a look at their lease agreement as well since some consider the filing of a Bankruptcy to be a default under the lease- necessitating the need of an attorney to advise them on their next step.

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Ask the TITLEMAN™ #216

Q & A

John T. Lotardo, Attorney-at-Law

Q. We have a situation in Arizona where a developer is conveying its property into a trust and designating the title company as its trustee. The title company is signing documents on the developer's behalf and then insuring the loan. Is this typical?

A. Although many developers have been using limited liability companies to hold title to property for investment and development, they sometimes opt for a trust instead. Now this is not the same trust that you and I would use when we are doing our estate planning but it does create the role of a trustee. It is common to have the title company act as trustee of such a trust in Arizona. When they are named trustee, the title company is sometimes asked to sign documents in its trustee capacity for the particular trust as compared to signing in their own corporate capacity.

Q. I have a question about Arizona law. We have a loan and both husband and wife are in title. Mrs. is deceased. What has to be done to remove the wife from title? Can they provide us with a copy of the death certificate, or will Mr. Widow have to go through probate?

A. Depending on the way they held title, it could be easy, sort-of easy, or complicated. If they held the property as joint tenant with rights of survivorship or (since they are married) community property with rights of survivorship, the transfer is automatic. They would typically record a death certificate to suffice. If they merely held the title as husband and wife, they would have to do some form of probate whether formal, informal, or by affidavit depending upon which one is appropriate. A local probate atty should be able to help them with this.

Q. I have a property that we're refinancing. The title company found a lien recorded against it that is not ours. They explained it to me that this other lender recorded a lien that should be on another lot in our subdivision, but they recorded it against our property by mistake. The title company wants it released. What am I supposed to do about it? Can't they just ignore it?

A. Good idea about refinancing. This is a great time to refinance to take advantage of lower rates. Sometimes this type of mistake is ignored but many times it isn't. It all depends on the type of lien recorded, what you're doing with the property, etc. Sounds like they are just trying to correct the title to prevent some grief down the road. I would try to corporate with the title company to see if they can get this corrected now while you are working through this refinance.

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Ask the TITLEMAN™ #217

Q & A

John T. Lotardo, Attorney-at-Law

Q. I have some clients who have are interested in getting into buying properties after foreclosure and short sales too. I have not been so eager to do that type of business, but it seems that is all there is out there nowadays. Any ideas on what they should be looking at?

A. Ah yes, these are the majority of transactions lately. I have friends who, like yourself, were not interested at first either, but then recognized their anxiety could be overcome by becoming acquainted with the processes of both types of transactions. A little homework has now made them part of the group working in this area. If you have some sound and savvy business sense, you and your clients can thrive in this market. These types of transactions can seem daunting but you and your clients will want do your homework before buying randomly.

First off, the real estate owned properties after foreclosure by a lender (an REO) or a short sale transaction help you evaluate the market value of the property you are now purchasing. You want to ensure there are no lingering problems with the property for example, the Protecting Tenants at Foreclosure o*f 2009* grants certain protections to tenants on residential properties. That's why checking out a property is helpful to better evaluate what you are buying. There are also concerns about the foreclosure itself and if it was handled appropriately. In addition, people could be filing liens against the property for work done but not paid for. These are some example why you should always consider obtaining title insurance on these types of transactions (just like in all your real estate transactions). Talking through these types of issues will help you decide what your next purchase will be.

Q. I have an agent who has a client purchasing a new home and wants to cancel their purchase contract because of a revised Public Report. The Buyers agreed to and signed the initial Public Report but a few months later they (the Builder) had revised the Public Report and there is some language in the report that the Buyers do not agree to. Therefore, they requested cancellation to the purchase contract and requested their earnest money back but the Sales Manager is keeping their funds. My questions is do they (the Buyers) have any legal rights to their earnest money back or does the Builder have the right to keep this?

A. The answer depends on why they are cancelling. There are times when an amended public report does not justify the cancellation of the transaction by the buyer. The change is required to be "material" to the purchase of the home. As a result, there could be a legitimate reason for holding them to the contract. We would not be sure unless we review what it is that they are bothered about in the change. If the buyer likes, he could also contact the Arizona Dept of Real Estate for further guidance. http://www.re.state.az.us/

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Ask the TITLEMAN™ #218

Q & A

John T. Lotardo, Attorney-at-Law

Q. Two owners hold title to a property as Tenants in Common. Can one of them encumber their interest in the property, without affecting the free and clear status of the other? Can that ever be done?

A. That's a good question. A tenant in common generally does have the ability to encumber property they own with another but just their portion of the interest in real estate. That said, many don't since most lenders would not want to lend in this circumstance (i.e. married persons). Why? Because if the lender has to foreclose on the borrower's interest, the lender becomes the co-owner with the other owner. And that is not something easily sold.

Q. Someone would like to pursue purchasing some land that belongs to the State of Arizona. Is that even possible? If I remember correctly, you have to wait for the state to place the property up for sale via some long drawn out process that includes a vote. The politicians can't just accept an offer to purchase a piece of state land, can they?

A. You are correct the state does not do private sales contracts for the real estate they own. After following a noticing process, they conduct an auction for property and it takes quite a long time from the decision to sell to the actual auction time- many many months.

Q. Anyway, here goes…nutshell version of the story…a friend of mine's father passed away a while ago. His wife, my friend's stepmom, was personal representative of his estate and handled the sale of his house in Maricopa County. The house sold and the proceeds went somewhere unknown to my friend and his brother due to their estrangement from the stepmom. Anyway, the brothers have been successful in legally removing the stepmom and replacing her as personal representatives of the estate. She refuses to tell them where the proceeds from the sale of the house went. Do you think they would be able to get information on the closing of the house? Their attorney basically says that they need to call all of the banks in the valley and see if an account has been opened in their father's estate's name. What a workout!

A. As the PR of the estate, the new personal representative (PR) should be entitled to the same info that the original PR would be entitled to. That said, due to privacy issues they may need to subpoena the companies they're inquiring with for certain information and documents. But at least they should be able to obtain the basic information. The new PR would need to prove entitlement to the docs and will most likely have to provide the court papers showing the removal of the stepmom as the old PR and the appointment of them as the new PR(s)

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Ask the TITLEMAN™ #219

Q & A

John T. Lotardo, Attorney-at-Law

Q. We would like to pursue purchasing some land that belongs to the State of Arizona. Is that even possible? If I remember correctly, you have to wait for the state to place the property up for sale via some long drawn out process that includes a vote. The politicians can't just accept an offer to purchase a piece of state land, can they? Let me know. We're very serious about this.

A. You are correct on several points. Yes, the state does not do private sales contracts on the land they own. They conduct an auction for property after a series of valuation and noticing processes, which takes quite a long time from the point of deciding to sell the land to the point of actual auction time- many many months in fact. That said, proper investigation into the process will prepare you for this endeavor should you choose to pursue bidding for the property.

Q I'm a real estate agent call on some REOs. The REO companies are signing the contracts with a stamp. Is this acceptable? Apparently the lender, per FHA guidelines I am being told, is requiring a live signature not just a stamp on the contracts before closing. I was surprised that AAR or Dept of RE would accept a stamp in lieu of a signature on contracts. What is your take on this?

A. The typical contract from the Arizona Association of Realtors® (AAR) contract permits stamps to be used. That said, the lender for the buyer on your REO is requiring original signatures prior to funding. If the new lender makes this a condition or it will not fund the buyer's loan, sounds like original signatures will be necessary prior to closing. (REO is short for Real Estate Owned properties –typically property taken back by the lender as part of their foreclosure.)

Q. I recognize you were identified, at one time, as a member of the Arizona Electronic Recording Commission. Please educate me. What precautions are they having you title agencies take in relying on electronically recorded deeds of releases? The releases are generally recorded independent of the title company that caused the lien to be paid.

A. I think it is more typical that the company who paid a lien off is the same one recording the release, but sometimes the lien holder or another company records the release as well. E-recordings, which are the recording of a document with the local county recorder's office by electronic means rather than recording a traditional paper copy, have been considered by many to be less of a fraud risk than traditional recording. Why? E-recordings require special software and signing up with the respective county recorder to record in this manner under a memorandum of understanding. I know, it may seem quite different than what you are sued to, but this is the trend- to get away from paper and record by a variety of electronic means.

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