



Ask the TITLEMAN™ #185

Q & A

**John T. Lotardo
Attorney-at-Law**

Q. I have a client that asked me why sometimes the mineral rights are included with the transfer of title and sometimes they are excepted out of the transfer (except any and all minerals, etc.) and remain with the original owner... Why is that? Does it depend on if the property is somewhere that might find oil, or gas or even Uranium? The lady has land in Oklahoma and wants to sell it but, wants to keep the mineral rights in case there's oil. I don't know how to answer her question....

A. First of all, since neither of us is from the great state of Oklahoma, I would not begin to advise her about such a specialized field as mineral rights there. That said, for Arizona, it is like you said-sometimes they are conveyed and sometimes not. This is in part due to the fact that either it is reserved by a prior owner (an owner with the same idea as your customer) or many times it is even Uncle Sam who wants to continue to hold the right.

Q. I attended a recent conference of yours and enjoyed your very informative presentation concerning title insurance. I work for an estate planning/elder law/probate attorney, and have a couple of questions I hope you will be able to answer for us. You mentioned in your presentation that a Quit Claim Deed conveying title to a trust subsequent to the issuance of a title insurance policy would terminate the policy. Does that also apply to a Special Warranty Deed, which is the form we use when conveying title to our clients' real property to their living trust? We often suggest that our clients obtain an updated report of title after conveying real property to their trust. Is that something you would recommend, and, if so, what is the approximate cost of such a report? Can any title company provide such a report or is it more efficient for the property owner to contact the title company that issued his/her title insurance policy?

A. Thank you for your questions. The reason that title coverage lapses when you deed by quit claim deed is that you no longer have a title interest in the property. Since in a special warranty deed the insured is still giving warranties, the policy should not lapse. With that said, make sure the policy covers such transfers, as many new title policies cover the transfer into a personal trust. If you are not sure, have the title company who issued the original title policy issue an additional insured endorsement adding the trustee of the trust to the policy. As far as getting a title search done, I would think this is good for not only your client but also for you, in order to verify that the property is vested as the client is telling you. Getting an update from the same company will probably be cheaper as well.

Q. Quick question...if a file is cancelled because the buyer could not get financing and it is past the 10 day inspection period as stated in the contract, does the money still get returned to the buyer?

A. The contract says the buyer is to provide notice of a failed loan contingency to the seller prior to any cancellation- you need the to do this to ensure the seller does not dispute the loan denial (i.e. quit job, bought a Ferrari, did not supply info to lender, etc.)

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Ask the TITLEMAN™ #186

Q & A

**John T. Lotardo
Attorney-at-Law**

Q. Thank you for taking my question regarding an issue that we are having. I have several deeds that are giving us trouble. There is a Beneficiary Deed that gives the property to it looks like all family members but not until the father passes away. Can you please just let me know if the Spouses have to sign the new deed? I would really appreciate it. It is also a non-owner occupied. I just need clarification from you since you are the "TITLEMAN". Once again thank you so very much for helping me out.

A. Assuming that the father is now deceased, the four children would acquire the property through the Beneficiary Deed as their sole and separate property. Meaning, no deeds are necessary since they acquired the property by devise and should take it as their respective sole and separate property without a community property interest in the property.

Q. I need you to settle an argument among a few seasoned Escrow Officers. We are getting an escrow where the owner of record is deceased but he/she deeded over the property to her son 34 years ago, the deed has never been recorded. Is this deed still valid to record and convey title to her son? We understand that there may be a probate issue but the argument seems to be in the validity of the deed.

A. Yes and No (how's that for an attorney answer). In Arizona, the critical fact here is whether the deed was ever "delivered" to the son prior to her death. The deed is required to be delivered to the grantee whether physically by handing it over or say delivered to and recorded by an escrow company as in a typically real estate transaction. It is a proof issue as well as the concern about other third parties not obtaining constructive notice of the transfer. After you delve into it a bit more, the facts may show that the transfer is valid between the mother and son, but given the time elapsing, the underwriting risk involved may require a quiet title action to put to rest any concerns of your title insurer.

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Ask the TITLEMAN™ #187

Q & A

**John T. Lotardo
Attorney-at-Law**

Q. I received in the mail last week an Arizona Preliminary Twenty Day Lien Notice from an Electrical Supply Company, who is a subcontractor for a builder, who is doing work on this development of mine. Is this typical and is there anything that I need to do in response to the notice? I am not familiar with the Arizona Mechanic's Lien laws, but I am assuming that this is standard - please advise. Thanks for your help.

A. Fear not. This is rather typical since sending the 20-day notice is generally required for a contractor/materialman to later enforce a lien. If, after your careful review of the notice, there is something that is not accurate- a different amount not in the contract, different property, etc. then you should dispute the accuracy at this time. I hope this helps explain it better.

Q. We have a client with a question. She wants to do a Beneficiary Deed to her daughter (owner is unmarried and owns the property alone). The daughter is married. The owner does not want the daughter and son-in-law to know about the deed so she doesn't want to have the son-in-law sign a Disclaimer -- but she also doesn't want the son-in-law to inherit. With a Beneficiary Deed, in this state, is a Disclaimer still necessary?

A. A transfer of real property by way of devise through a Beneficiary Deed does not require a Disclaimer Deed. They can delineate in the vesting on the Beneficiary Deed how the Grantee is taking title - In this case, a married woman as her sole and separate property. Please let your client know that they should consult with their Accountant and/or a licensed Attorney to ensure this is the best course of action for her since there may be other matters unknown to you at this time that requires more assistance. Although it is true that the daughter does need to know about the deed, I have handled at least one case wherein the Beneficiary didn't know about it and they started probate for the deceased mother. Only to find out later that there was a beneficiary deed recorded. Knowing up front would have saved them a lot of time and money in the matter. With that said, it is up to the client how they want to handle the matter.

Q. I received a phone call from a potential client whose mother passed away in the fall. She has two siblings and all three are named in the will to divide the property equally. This person has also been appointed by her mother to be the executrix of her estate. An attorney informed her that as long as the equity is \$50,000 or less, they can avoid probate and deal with the property. It doesn't make sense to me. Am I missing something? The sales price, if they decide to sell, would be approximately \$250,000.00. Could this be a case for some sort of short form probate? Her mother purchased the property as an unmarried woman and did not remarry.

A. The short form probate that you refer to is the use of the statutory prescribed - "affidavit of succession of title to real property". This is used when the interest in real estate owned in Arizona by the mother is less than \$75,000 (this amount increased sometime ago). The sales price is not the focus but the equity she had in the property. Let's assume the mother did not own or hold any other interest in other property in Arizona. The affidavit together with a certified copy of the death certificate and the original will would be filed with the Probate Court and thereafter a certified copy of the court-filed Affidavit would be recorded in the County where the property is located. The important issue here is time. You cannot use this form of affidavit within 6 months of the death of the mother. After that time, they can consider the use of the Affidavit.

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Ask the TITLEMAN™ #188

Q & A

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Attorney-at-Law**

Q. One of our title examinations has a seller who filed Bankruptcy in another state. We asked for proper proceedings because we didn't have the details of the bankruptcy. What we got was an instruction that the Bankruptcy Trustee must convey from this Chapter 7 case. They need all documents, including escrow and deeds to name the bankruptcy trustee for the benefit of the title holder with the bankruptcy case number and district as the seller. So, I have to ask, does this make sense to you?

A. Yes it does make sense to me. If the trustee will be the entity that will actually be transferring the property, then it makes sense to vest the title in the Bankruptcy trustee. That said, you still need proper documentation that establishes this- maybe even an order from the court. By the way, don't be surprised when the Bankruptcy Trustee insists on signing only a Special Warranty Deed. That is not unusual since they typically want to limit their liability under the deed.

Q. Our Escrow Company just requested an updated title commitment. The original title order request came in with the purchase price and loan amount of equal value. The purchase price is now 15,000.00 lower than the loan amount. I suppose it is possible that the loan fees are going to be this high, considering who this lender is, but is there any additional liability that the title officer should be addressing in the title commitment?

A. Have you inquired into the reason for this change? You've heard of 100% financing, but this is for even more. There are some lenders, especially in an appreciating market, to loan 110% of the value to the borrower. As you say, the loan fees could be high since there is added risk for the lender- they like to have security for the loan. But this extra amount could be a partial construction loan for say repairs or even a new pool. (You know how we Arizonians love our pools.) But we don't know, do we? If so, you have to consider whether there is any ongoing repairs/construction occurring that may cause a break in the priority of the chain of title. A few more questions may be in order. And it will be a lot easier to get answers and cooperation now - before the transaction closes- than after.

Q. I am working on a refinance for a non-institutional lender. The property has been bounced back and forth between a mother and daughter through the use of quit claim deeds. I am having to call for identity statements to clear up possible marital status questions on those deeds. The last Deed shows that the mother was apparently trying to gift the property to her daughter. I have found out that it was not until right before this last deed that the daughter had gotten married. In this last deed, the mother did manage to get the words "for love and affection" on the deed. Does this qualify as a Gift deed?

A. I am assuming you are asking whether or not it is a gift to prevent the need to inquire into the spouse of the daughter considering that property acquired by gift is intended to be the sole and separate property of a married person. Did they state on the affidavit of value that it was a gift? Do they have any other evidence to establish the intent of the deed was a gift? How about a will of the mother? Does her will refer to the daughter and the property at all? Some of this information will help to decipher the gift status of the deed. Good luck!

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Ask the TITLEMAN™ #189

Q & A

**John T. Lotardo
Attorney-at-Law**

Q. I hope you can help confirm something for me. Somebody asked me a question and want to make sure I answered them right. They asked if on a Beneficiary Deed where somebody is taking title as sole and separate, they asked whether or not we still need a Disclaimer Deed from the spouse. My understanding is no, as it is an inheritance issue. At least that's what I think. But please confirm that I was correct on this response.

A. Your answer has been my position all along. I assume we are talking about the grantee (beneficiary of the property open the death of the grantor) is married and we are trying to see if a disclaimer is normally required. The answer is no. I always consider this, as you noted, as an inheritance, which the Arizona Statutes consider a sole and separate asset of a married person.

Q. Can you think of any reason a title company would care where an 'all-cash' buyer's funds are coming from? Perhaps some Patriot Act reason? I had a real estate agent ask me about this but I could not think of any off the top of my head. He said a Title Company had asked for a sort of verification and he had wondered why. Thank you for your time.

A. Escrow Companies care because it's the law when receiving significant cash. Uncle Sam is always concerned about money laundering and other improper things people do with cash. Generally Escrow Companies have to do special reporting for any cash transfers that are more than \$10,000. Check in with your accounting department for the details and forms necessary.

Q. I wanted to run something past you. My company is working on a refinance. The spouse of the grantor did not sign the deed to the current owners. The grantor/seller is listed just as "a married man". He was put into title with his mother as "a married man". On the quit claim deed to him and his mother, it does state that "their intention to acquire said premises as joint tenants with right of survivorship and not as community property or as tenants in common". The mother has died and the death certificate is filed. We are thinking the deed was a gift deed to avoid probate with the property. My question is, do we need to require a new deed to our borrowers with the spouse of the grantor signing?

A. To rely upon the assumption that the deed was gift and therefore considered a sole and separate interest of the seller, would be a stretch at this point. At least for me. Perhaps you have more details or some evidence of that. Although I could see where you are coming from, there is not enough here- yet. If you can establish the sole and separate status of the seller by reason of the circumstances of how/why he received the property with his mother, then that's great. Otherwise, have his spouse deed out her interest.

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Ask the TITLEMAN™ #190

Q & A

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Q I have a guy calling about getting an additional insured endorsement for his policy as he has deeded into his trust. My company issued to him an ALTA Homeowner's Policy. When I looked the policy it states under the continuation of coverages section includes "the trustee or successor trustee of a Trust to whom You transfer Your Title after the Policy Date; or"... So, I don't think he needs to have the endorsement, correct? If he still insists, should I go ahead and sell him one?

A. I agree with you that it is unnecessary. The Homeowners Policy of Title Insurance just like the 2006 policies allows for the coverage to continue if the individual deeds the property into his personal trust. In prior types of title policies the title insurance could conceivably terminate when deeding into a trust. That's because the old policies did not recognize that transfer as an exception to the termination clause of the policy that says the policy stays in effect so long as you hold an interesting the property or give warranties to another. With that said, if he wants one, I would acquiesce since the endorsement is relatively easy (and inexpensive) and if it makes the insured happy, that's a good thing. I have had many who request this endorsement knowing it is unnecessary from a title insurance perspective but want it anyway. But if he wants the effective date of the title policy brought to the current date, then that would be another story as that is much more expensive.

Q. I have a file that is a refinance. The vesting deed was deeded as Mary, wife of John to John, husband of Mary. The deed does not state anything about sole and separate property. Guess what? They're now divorced. Are we needing to file another deed from Mary to remove her spousal interest or can record the divorce decree to take care of it?

A. The answer to your question depends upon what is in the divorce decree. Perhaps the decree will explain this issue away. Obtain a copy of it and take a look to see what it says. It may say that the property is intended to be the husband's. If it does, so long as there are no other adverse things in the decree (judgments/liens, etc.) and has the correct language describing the property, recording may do the trick for you. Keep in mind, if you record it, make sure there is no non-public information like social security or credit card numbers in it as the Recorder's office will most likely reject it for privacy reasons.

Q. Could I get your opinion on something? We did an exhaustive search to get a deed of trust released but were unable to find anyone to release it. The lender no longer exists and the gentleman who ran it is nowhere to be found. The Secretary of State lists an attorney as the agent for the company but when he was reached he said he had no idea where he was. He would not do a release himself. We also contacted the trustee named in the deed of trust, but they also would not do a release without direction from the lender. The loan was part of a down payment assistance program where an incidental loan is put on the property. The borrower quickly paid back, so quickly that he says he no longer has any documentation on it. We have told our borrower to go to court to get this released, but I'm sure that will be time consuming and naturally they are trying to close quickly. Do you have any other suggestions? Can we insure over this deed of trust since we exhausted all avenues to get a release and are kind of at a dead end? The loan amount was only for a few thousand dollars. Any ideas?

A. He'll have to come up with some proof that it was paid. Perhaps cancelled checks on microfilm with his bank perhaps. Sometimes an underwriter will insure over the enforcement or attempted enforcement over such a matter if there is adequate proof of payoff together with some evidence and indemnifications from the borrower. Without anything at all, I would say no. Have him try harder to find the evidence you need.

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Ask the TITLEMAN™ #191

Q & A

**John T. Lotardo
Attorney-at-Law**

Q. I recorded a Quitclaim Deed to place my property into a Living Trust. I have discovered that the surveyor's legal description contained a significant error which the surveyor has corrected by giving me a new legal description. The error: "...a distance of 275 feet more or less to the TRUE POINT OF BEGINNING." had to be changed to "...a distance of 266 feet more or less to the TRUE POINT OF BEGINNING." Can this be considered a simple typo or to the real question how do I get this correction recorded?

A. If you are the trustee of your own living trust, generally you can re-record the deed to correct the legal description. Are you in control of the trust? Make the required changes and request the County Recorder's office to re-record the document noting the reason on the document. Check with the County Recorder to see if they will require anything else from you. Although it may seem simple now, it may become quite difficult later should there be other trustees, other parties, other owners, etc. I sometimes even see parties use a corrective deed to correct the prior recorded deed. This includes the preparation of a new deed, language explaining why you are doing what you are doing along with references to the prior recording information of the prior deed. With that said, you bring up a good point. What type of title policy do you have for this piece of property? Transferring via a quit claim deed typically would terminate your title insurance policy on many types of title policies. That, you generally don't want to do. Pull out a copy of the title policy that you received from the title company when you bought the property. If you are unsure what kind of coverage there is for this type of transfer, then contact the title company to ensure you, as trustee of the trust is now covered. You may even request an endorsement (for a small fee) to the title policy from the title company adding you as trustee of the trustee as additional insured. Some of the newer policies have a built-in coverage for when you place the property into a trust. Your Title Company may be a good place to start.

Q. I, as an attorney, would really appreciate your reply to these questions. In this situation, real property is purchased by single person (A) w/ Persons B & C with title being held as Tenants in Common. A gets married to Person D. Then A, B, & C transfer the real property to a living trust. As per Arizona statutes, the real property was A's separate property from D, but do any transmutation theories create a title problem down the road if trustees try to sell and D is dead/not available to disclaim any interest via transmutation theory? Would a disclaimer deed from D now be wise? Thanks so much for your great website on a subject that affects property owners in so many different ways.

A. Thank you for your email. In response to your scenario, the risk of transmutation is low and truly based upon an exception rather than the rule. But if D's spouse is willing to sign a disclaimer now confirming no interest, I would say get it. It just removes the argument from the equation. The idea of transmutation from separate to community asset is rare but is keen of you to consider the issue now while people are being cooperative. You can help your client avoid a certain amount of frustration in the future. I have found however that most of these arguments are not affecting title directly but mostly are in divorce proceedings between the spouses. Typically a transmutation argument does not come into play with such title but it could be an issue you help to remove from the divorce proceedings.

Q. One of my friends needs to have a will and medical power of attorney prepared. Can she obtain these documents from the courthouse? Someone told me there is a kit you can get, but no one knows where to get it. Do you know of anything like that? Please let me know if there is something out there.

A. Like many Courts around, the Maricopa County Courthouse tries make such documents available for its citizens. There is a self service site on the Maricopa Courthouse website. I am not sure how current their documents are but they strive to keep it up. The main link for the Court is the following address:

<http://www.superiorcourt.maricopa.gov/ssc/sschome.html>

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Ask the TITLEMAN™ #192

Q & A

**John T. Lotardo
Attorney-at-Law**

Q. I have a question for you regarding the proper way to list a trustee in the acknowledgment on a deed of trust. We have a property owned by a Trust from 1994. The front page of our deed of trust shows someone as Trustee of the Trust. Under her signature line it also refers to her signing as Trustee of the Trust. In the acknowledgment, though, the notary only listed her name, nothing about the trust or her being a trustee. We tend to use the rule of thumb that the acknowledgment should mirror the front of the deed of trust. By this logic our policy department wants our deed of trust to be re-recorded with the proper language in the acknowledgment. My feeling is that the acknowledgment could just list the person's name because the purpose of that section is merely for the notary to acknowledge who signed in front of them. Maybe we are completely over-thinking this but I'd like to get your thoughts on this.

A. Good question. I believe that the notary should have completed the acknowledgment for the trustee in the capacity in which she signed- meaning the notary should have acknowledged her as trustee of the Trust. Some acknowledgments do just that- the party is being acknowledged in the capacity in which he or she signed rather than specifically detailing the capacity. Perhaps it's not fatal but I think the call for a correction of the acknowledgment makes sense especially if there is room for confusion. By the way, make sure they have disclosed the names and addresses of the beneficiaries of the trust per ARS section 33-404.

Q. Do you know if Arizona has the same withholding law as in California? Meaning in Ca., there's the 3.33% withholding on non-owner occupied property. You may not have the same law in AZ and that is my question.

A. I am unaware of a withholding of this nature in AZ. The withholding we do here is for foreign sellers occasionally. With that said, I would check with a local tax professional for any specific tax questions affecting Arizona property.

Q. I have a question regarding the non-titled spouse. If a person takes title as a single person and then gets married and the spouse has never joined in on a Deed of Trust, do we need a Disclaimer Deed from the non-titled spouse?

A. You are correct. I am assuming that the titled spouse is either selling or refinancing the property. Normally we don't ask for a deed from the non-titled spouse. Sometimes, in divorce settings, the non-titled spouse makes a claim in the proceedings for a piece of the property based upon some transmutation theory (converting from sole and separate to community property). But unless they create a lien of sorts on the property, we normally don't get involved in the divorce. In a refinance setting, sometimes lenders will have the non-title spouse sign on the deed of trust not as a title holder but merely for him or her to acknowledge the loan. Other times, the lenders want both spouses on title. If this is the case, then your vesting should comply with the lender's documents.

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Ask the TITLEMAN™ #193

Q & A

John T. Lotardo

Attorney-at-Law

Q. Are beneficiary deeds supposed to be shown as exceptions on title polices when the grantor of the beneficiary deed is the seller? Some think so and say it's because that person will have an interest in the property upon the death of the Grantor - but at the point of sale- doesn't their interest fall anyway? How about in a loan for the grantor? I can't wrap my mind around it. I mean if you work with that logic then we would be excepting out Joint Tenancy Deeds too because they are effective upon death. Help!

A beneficiary Deed isn't usually shown as an exception to title on a sale since the grantor can sell or otherwise deal with the property without the consent (or knowledge for that matter) of the beneficiary. I probably would not show it on a loan transaction either for the same reason but may want to disclose it as part of a 24-month chain of title if it so applies. In a Trustee Sale situation, you may want to show the beneficiary as someone who should be noticed if you are unsure whether the borrower is alive since they may be entitled to notice under a trustee sale notice provision if they are now the title holder of the property.

Q. What is the difference in using at Quitclaim and Warranty Deed to Transfer title from husband and wife to their trust?

A. depending upon their title policy, a quit-claim deed risks terminating their coverage- that's why I always encourage them to do a warranty deed or a special warranty into their own trust (and request get that the trustee of the trust be named as additional insured on the title policy- if there is no automatic coverage provision, that is)

Q. Do you remember what date real estate agents started using the current contract?

A. The latest Arizona Association of Realtors® was created in May 2005 and became available shortly thereafter for use. Keep in mind though, that just because it became available does not mean it is in use in your transaction. Its implementation did not prevent the use of other versions of the contract. So double check when you are reviewing a contract to see which version is being used.

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Ask the TITLEMAN™ #194

Q & A

**John T. Lotardo
Attorney-at-Law**

Q. This Receiver opened an escrow. He doesn't know why the Escrow Officer asked him to file in our County and then record a filed copy of an order here. He isn't very cooperative with her. I believe information is going to be hard to come by, and there are conflicting messages in what little we do have. For instance, the Receiver said that the couple he was appointed for has been married for 30 years, yet the Husband took title as a single man in 2000. This property is of little value. So, here's my question. Is it appropriate that this property be sold by the Receiver without any contact from the owner? The commitment was written without any knowledge of a marriage or Receiver in a divorce action, so no requirements were made. I don't believe I've ever dealt with a Receiver in a divorce. What do I need to know?

A. The mere recording of the order from an out of state court is not the appropriate way to appoint a Receiver here. Perhaps they are looking to have the Receiver act as agent for the seller. Some time divorces are messy. So messy, in fact, that they need to hire a third party to act on behalf of the parties. That is the case here. Hopefully the order should have been entered after appropriate notices were given. But the Receiver needs to be authorized to deal with Arizona Property. You would need the receiver confirmed in an Arizona court before he can sell.

Q. As I understand it, there's this daughter who bought a house from her mom with a seller carry back deed of trust. Mom is trying to take the house back from daughter. There's even litigation! A Lis Pendens has been recorded. The daughter may decide to just stop making the monthly payments to mom and let the property go into foreclosure. Mom's questions: What would happen? Do outside parties usually pick up properties at Trustee's Sales that have litigation against them? And what happens to the Lis Pendens if someone bought the property at sale? Can a property even go the foreclosure route with a Lis Pendens hanging out there? I'm so glad my family is "not like this". What a drag! Thanks for any words of wisdom.

A. You bring up several good problems - not to mention the problems that could happen between family members when they have real estate involved. (Litigation-Yikes!) If the daughter stops making payments, then the mother as the beneficiary under the seller Carryback deed of trust could foreclose. That foreclosure, could be conducted either through the non-judicial process, usually called a trustee sale, or the judicial foreclosure, which is much more complicated. As part of the process the property is put up for sale via a public auction and third parties could bid on the property. That said, I am curious what the lis pendens is for. A lis pendens is recorded to give notice that there a litigation involving the real estate. Perhaps the mother had started the foreclosure process through a judicial means already and the lis pendens is the notice of that along with other issues. If the lis pendens is for other issues regarding the real estate, a third party bidder would want to assure themselves that the matter would go away when they were the successful bidder. I would want more assurances before I started bidding on such a property.

Q. I have a private lender that does a lot of loans for owners who are also the builder. Frequently, the borrower needs additional monies over and above the amount of the original Deed of Trust amount. Can the lender have the borrower execute a modification of deed of trust showing the increased loan amount? I assume they would execute a new note for the amount of the advance. We're wondering about title questions especially if a subsequent deed of trust has been recorded.

A. You bring up a good question. The private lender would do a modification increasing the amount of the loan to secure this additional monies advanced. It is a concern if there has been an interim deed of trust or other adverse items recorded especially if the original deed of trust does not address an increase in the loan amount. In your scenario, I would get a subordination from the intervening lienholders to protect the private lender's additional money given to the borrower.

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Ask the TITLEMAN™ #195

Q & A

**John T. Lotardo
Attorney-at-Law**

Q. Have you ever heard of this? I have not and disagree with the title company's attorney. I have advised our agent not to sign. As I read the court order, we were appointed to sell the home, not sign the documents. I think they are worried big time and now are putting up a smoke screen. I am just asking your two cents if you care to give it.

A. I understand the title company's eagerness to get the deed signed. Getting the records straightened out at the Assessors office is sometimes a hefty task. With that said, I am familiar with the situation wherein the real estate agent is appointed to sell the residence due to some dispute of the owners, especially in divorce case. Depending on the case and proceedings, this could entail merely marketing for sale the property or it could include the actual execution of the deed to convey the property. In a divorce proceeding I have seen wherein the court is very clear that if the uncooperative spouse refuses to sign then the special commissioner would sign. Here, I have only limited information to determine what her role was. A little more investigation can determine her authority to sign. Assuming that she did have that right, I would also verify that, given the length of time since the transaction closed, that she still can act in that capacity. I hope that amounts to two cents worth.

Q. We're trying to remove a deed of trust from our borrower to his Grandmother that was taken out when he bought the property from her when they put her in a nursing home. She has since died and one of her heirs agrees that it has been paid. The Grandmother died without a will and without any assets or money whatsoever so her estate was never probated. Normally we would have her executor sign the reconveyance document but there is no executor. This is a small deed of trust from 2000 which secured a 5-year note. The Grandmother had 4 children; one died, one is a homeless crack addict, one is very helpful (the one referred to above) and one would "look at this as a chance to make some money." Would we be ok to have the helpful daughter sign the reconveyance? If so, how would we list her, as a surviving heir?

A. Ah family drama. Isn't it grand? Normally you would have to have a probate initiated to have the executor sign the release if he or she is authorized by reason of the letters of appointment of personal representative. Perhaps they can use an affidavit of transfer of title to real property. In that case, the children and the heirs of that deceased child would have to participate. Keep in mind that per the Arizona statute, this would need to be filed with the probate court. There are many issues to consider. Did the statute of limitations run out, which is 6 years, from the time of the last payment made? Was this period tolled in any way by the Grandmother's condition? Since you have too little to go on just yet, I would say some form of probate, whether informal or the affidavit, would have to be filed with the court.

Q. I was hoping you could perhaps assist me with an issue I am having with a client. You may or may not remember but we had some extended discussions a few years back regarding a client of mine. In addition, I heard you speak at the Scottsdale Bar Association after that. At any rate, with an email address of "titleman" perhaps you receive a good number of inquiries! I was hoping that you could provide me with some information about how a title co might interpret the following: Husband and Wife several years ago they took title to 2 pieces of real estate as CPWROS. Two years ago, they each jointly executed Beneficiary Deeds, that is, one per property, providing that the beneficiary was their Trust. Now, Husband has ALS, marriage is not good. He will likely pass first. Husband wants his 1/2 to go to his kids (which are also Wife's kids) rather than the Trust and ultimately, of course, his wife. He doesn't want wife to know what he wants to do; he thinks even if she did, she would not sign a revocation of the Bene Deeds.

A. I am conflicted in responding somewhat since it appears that the Husband is truly trying to work behind his wife's back. That said, I don't think what you suggest will work. Remember, we are in a community property state. Although a termination of the CPWROS would work to remove the right of survivorship, you would still have the property held Community Property. Also, the children are the children of the Wife as well as the Husband. Therefore, upon the death of the Husband his interest in the property would go to the Wife since his children are also her children. He can try to avoid the automatic transfer into the trust but I am not sure he is making it any easier for his children. If they were divorced then the circumstances would change significantly, but I am not sure encouraging a divorce is something I would encourage with so many family dynamics at play. Perhaps some frank discussions with the parties could accomplish what he is after.

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