



Ask the TITLEMAN™ #220

Q & A

John T. Lotardo, Attorney-at-Law

Q. I am working on several deeds-in-lieu transactions (big surprise!). Right now they are just in the negotiation stage. What are some of the title endorsements used in such transactions? Also, I am thinking of leaving the deed of trust in place. Your thoughts?

A. I have found that lenders are considered just the same things as you are in what to do in this market. Some are foreclosing, some are accepting the property back from the borrowers under a deed-in-lieu and some are even having the borrowers deed into another related entity (known as a deed-in-aid transaction). The typical endorsements vary depending upon what the transaction ultimately becomes and what the concerns are for the lender/grantee. Some endorsements you could consider is one of the non-merger endorsements if you in fact are concerned about a merger of title between the lender's deed of trust and the grantee under the deed in lieu/in aid. Another possible endorsement is a creditor's rights endorsement. That said, this endorsement is typically heavily underwritten before it will be issued. For these endorsements the title company may require additional documentation, special provisions included in the documents, etc.

Q. Many years ago, "Old Guy" records a Beneficiary Deed for his "Old Girlfriend". A few years later, Old Guy executes a deed from himself into himself and "New Girlfriend", as joint tenants with right of survivorship. Then, Old Guy dies. Does the "Old Girlfriend" have any right to the property, or does the "New Girlfriend" get it? Old Girlfriend has now started a lawsuit arguing a bunch of stuff. Do you think any claim by the "Old Girlfriend" would be legit or affect the title?

A. This sounds familiar. Normally the "Old Guy" could transfer without the Old Girlfriend/ Beneficiary needing to consent. The statute does not require her consent. I am unsure about the assertions found in the lawsuit which may have something else for us to consider and many companies would not want to incur defense costs. A little information should help decipher what is going on here.

Q. I was wondering if you had dealt with the issue of a lender's policy on short sales. At least one lender has sent an approval letter which says if they find anything false or fraudulent, they will rescind their approval even after the transaction closes! What is up with that?

A. I have seen this a few times. I find that many will not insure with this type of short sale approval letter from a lender since this conditional approval purports to give the lender a right to rescind a short sale. I don't know about you, but I would like a transaction to be over and done with once the transaction closes. I was told that this provision was making its way into town from other locations and I am not sure how it has fared there either. It would be best to get the lender to complete their investigation, remove the provision and resend a new approval letter.

The information supplied is of a general nature and should not be relied upon as legal advice. You should consult with your own legal counsel. To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing, or recommending to another party any transaction or matter addressed herein. Copyright © 2010 John T. Lotardo, All rights reserved.

John T. Lotardo aka the TITLEMAN™ is Senior Vice-President/General Counsel for Stewart Title & Trust of Phoenix, Inc, State Counsel for Stewart Title Guaranty Company and is a regularly featured columnist. In addition, he is a frequent speaker and presenter on real estate-related topics. Have any questions for him? Send it to him at titleman@askthetitleman.com.