



Ask the TITLEMAN™ #222

Q & A

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Q. A home's owner passed away and now the personal representatives, (both son and daughter) have entered into contract to sell the home. I received a phone call from the personal representative's probate attorney the other day and he advised me that he was reviewing the documents and cannot approve the transaction until after his review. The daughter already signed her set of the documents (deed, etc) but the son who is required to sign on everything with his sister has postponed due to the attorney's phone call. They have not gotten back to anyone about their decision. Questions for you: 1. Can the probate attorney hold up this transaction? 2. The buyer is ready and eager to close on the transaction. What is necessary to move forward?

A. As you know, there are times when a seller causes a delay in closing. With the son postponing to sign the needed documents, it doesn't look like you have all that is needed to close. It appears that none of them are sure about closing. You should make a demand on them to explain what's going on and their intentions. Obviously, your buyer has rights under the purchase contract, which they may want to review at this time to determine their next move as well.

Q. Upon proper foreclosure proceedings of a deed of trust on a house, the past Homeowners Association dues cannot be collected by the HOA, correct? They can only collect dues from the date of foreclosure to current date, correct?

A. That is usually the case. I have seen some trying to collect nonetheless. Some just do not want to give up the fight for the monies against the property and just go after the borrower who has lost the property. Convincing them the error of their ways now does save a lot of work later on.

Q. I recently attended one of your seminars where you discussed various title issues. You mentioned a deed in aid as opposed to a deed in lieu, and you mentioned that several lenders are doing this. I understand that a deed in aid is where the lender can have the property conveyed typically to a single purpose entity as opposed to the lender directly. I represent a hard money lender and we have done several deeds in lieu, but your seminar was the first time I have heard of a deed in aid. Does the lender assign its interest as the beneficiary under the Deed of Trust before the deed is recorded, or is there just a consent that the lender executes saying that the lender consents to the conveyance of the property from the trustee to the new single purposes entity? If you would let me know, I would appreciate it.

A. I have seen lenders do it a variety of ways depending upon various factors such as the state of the property, the status of the loan, the type of property, the nature of borrowers involved, etc. Many times, there is a new agreement executed by the parties outlining what they are intending to do, who takes title to what, when, clarifying the issue of non-merger, who is released from guaranties, etc. That said, the terms are negotiated between the parties so the ultimate agreement is particular to their transaction.

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