



Ask the TITLEMAN™ #223

Q & A

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Q. I have a question that I hope you can answer. Can a 2nd lien holder, (line of credit) pursue a deficiency judgment against a borrower for a property in AZ? The 1st lien holder has agreed to a short sale and 2nd lien holder will only approve the short sale if the borrower will permit a deficiency judgment. I thought AZ was a non deficiency state and could not pursue the borrower. Is this correct?

A. Good question. You are correct that Arizona has an anti-deficiency statute here. However the rule has limitations. If it does apply, I do not think the borrower can waive it. I assume that we are talking about residential property of 2 ½ acres or less that is limited to and utilized for either a single 1 or 2 family dwelling. The question still remains is whether or not the 2nd was part of the purchase money at the time of acquisition or replaced part of a purchase money. If not, then there's a chance that the anti-deficiency statute does not apply. This is why a borrower should confirm that are no longer responsible for the 2nd prior to closing. This is something many borrowers do not contemplate when they take a non-purchase money line of credit for example to be used for other things such as trips, cars, etc.

Q. I had some property quit claim deeded to me from my dad. It's free of liens and I'm the only sole heir. He didn't have a living will, wasn't married, and it never went through probate. How do I convert the quit claim deed into a warranty deed? In my home state, I would have to do a heirship affidavit and record it in the county where the property is located, and disregard the quit claim and the title would pass to me through intestate succession. I'm not sure in Arizona.

A. I am presuming that the quit claim deed from your father to you was recorded in the proper County Records. If so, the property transferred to you at the time of recording. If not, there could be a question concerning validity due to an issue of delivery. Not sure why you want "to convert" the deed to a warranty deed. I am guessing from your question, that your father has died so there is no way, absent probate proceedings, to convert the deed from a quit claim deed to a warranty deed. Unless there is some other reason that the deed is invalid, the title would have passed to you- albeit without any warranties. Any questions concerning this transfer of title as a gift or otherwise should be addressed with your accountant or other financial advisor.

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