



Ask the TITLEMAN™ #229

Q & A

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Q. I am a home owner in El Mirage, Arizona. Right now, the person I own the home with is unwilling to pay their portion of the house payment. I contacted the lender about this and they stated that I should look into a Quick Claim Deed or a transfer of some sort into my name. I want to keep the home but am unable to make the mortgage payments alone. Is there anything that you can let me know of that I can do to keep the home or just any information about the deed transfer? I do not want to foreclose on this property, but at the same time cannot afford the payments. If there is nothing I can do, then I wouldn't have any control over the house being foreclosed on.

A. You are in a tough predicament. I assume you both are on title as well as being on the mortgage- here in Arizona most people have what is called a Deed of Trust, which secures the loan with the bank who lent you the money to buy the house. You sound like you want to keep the property and not have it foreclosed upon by the lender. If your co-owner won't pay their share, you could try to force the issue. Is there any agreement between the two of you? If there was some agreement about this, written is best, you could try to enforce your agreement in court for this person to reimburse you. You could also contact a local attorney for some low-cost help. The Arizona State Bar and County Bar has some resources in the regard. I would suggest giving them a call. You should also try to contact the foreclosure consumer hotline of the Attorney General. One of these groups could talk through more of your options. Good luck! (By the way, the deed you are referring to, although could a quick way to transfer title, is really called a Quit Claim Deed and it deeds over any interest without any warranty from one party to another.)

Q. We have a situation wherein the Judgment is made junior in priority due to the original loan we're foreclosing on being a purchase money loan. They were not listed in the original mailings provided in the title work from the title company. The question is do we need to add mailings for the Judgment creditor? How would NOT noticing the Judgment creditor affect our foreclosure?

A. You should notice the junior judgment creditor. They should have gotten notice. I understand that sometimes they do not get noticed but would be preferable to get this handled sooner rather than later so you do not have to argue with them after the foreclosure that they were wiped out by the foreclosure. If necessary, you may need to either postpone or cancel your pending foreclosure sale. More details should be discussed with the title company involved about what they would want in order to title insure in the future.

Q. I am currently married in the state of Arizona and I'm in the process of purchasing a home and working with the lender. I am purchasing this home as Sole and Separate and my husband will not be on the loan. Just confirming he will need to sign a Disclaimer Deed and I can continue this loan on my own, correct?

A. I think the better person you should be asking is your lender as to whether or not they will allow you to qualify for the loan on your own. If so, some lenders even require the non-titled spouse to acknowledge the loan though they are not on the loan. After you have worked that all out with your lender, your spouse would normally sign a disclaimer deed to confirm that you are acquiring the property as your sole and separate property. Good luck on your new purchase!

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