

Missing, Defective Lien Releases are an 'Epidemic'



Lien release has always been a problematic area for mortgage lenders and title companies. With alarming frequency, lien releases are improperly recorded, are processed late or the information they contain is inaccurate. This is bad for the industry as a whole because unreleased liens can impact closing quality, borrower experience and secondary salability.

To learn more about the underlying causes of this nagging problem, and how it can be addressed, MortgageOrb recently interviewed Linda Aparo, national director of sales and business development of reQuire Real Estate Solutions, a Coviis company offering technology for lien release tracking, title curative services and document services.

Q: You are reported as saying that lien defects, specifically unreleased liens – have reached “epidemic” proportions? What do you mean by that? And what’s causing the problem?

Aparo: Today, we’re finding that 15% to 20% of all payoffs have either a missing release or a defective release. And this is not a new problem. In 2005, the American Land Title Association (ALTA) reported that more than a third of all residential real estate transactions had title problems. At that time, they said the most common curative action “was obtaining releases for discovered liens, such as prior or existing first or second mortgages...”

For years, there’s been a debate between lenders and the title industry as to whose responsibility it is to assure that a release is recorded on the land records. Statutorily, it is the lender’s obligation to record the release, but they aren’t 100% accurate, therefore it is imperative, not only to the consumer, but to the new lender and title underwriter to follow up on this task post-closing.

A title agent gets paid at the time of closing and once the file is closed, there is no more revenue to be gained. Post-closing follow-up is often overlooked and 80-85% of the time there’s no problem.

But fairly frequently, there is – and that problem can be a small one that takes an hour or so to correct or one that becomes a nightmare to all parties involved. Take HELOCs, for example. If a HELOC isn’t closed after it is paid, there is a risk that the borrower could unknowingly start

running up the line of credit again without any security on title. This could result in a costly title-claim situation.

Our job as an industry is to protect the consumer in all circumstances and by failing to follow up on the recording of the releases, we are not doing so.

Q: Obviously, undiscovered or unreleased liens can create serious issues for homeowners and claims for title underwriters. But these situations are relatively rare. What are some of the more common pain points associated with this problem?

Aparo: These issues aren't as rare as most people think. As an example, our company is currently working with a lender that purchased a pool of loans on the secondary market. Through due diligence discovery, we discovered that almost 20% of these loans are not in first lien position. The lender was shocked that the title agents haven't done their job following up on this task. And the consumers are seeing and feeling the problem as well.

Roughly 10% of all Consumer Financial Protection Bureau complaints are mortgage related issues and 36% of all residential real estate transactions have title problems.

If a release is not recorded for a paid off loan, the landowner will be unable to refinance or sell their property which leads to frustration and angst for the consumer. When the homeowner finds out that this should have been done at their previous closing, it can lead to a compliance issue (along with hardship and financial burden) and jeopardize the reputation of the title company that closed the loan initially.

We, as an industry, close loans all the time, but the average consumer buys and sells a house roughly five times in their entire life, so finding out days before the closing that their property has a title defect can be incredibly stressful. And that's before bad things happen, such as new buyers walking away, rate locks expiring, etc.

In addition, there's the regulatory risk that the new lender is not in first lien position, and therefore, unable to foreclose on the property if it goes into default. This can create a potential problem for the new lender since there is an assumption that it holds first lien position.

The Fannie Mae Selling Guide requires "clear and marketable title" as a rep and warranty under Life of Loan Exclusions. The guide states that "lenders continue to be responsible for all warranties related to title, marketability and lien position, regardless of whether included or

excluded by coverage under a mortgagee policy of title insurance.” By not confirming that the previous lien is released, the lender is at risk of violating this requirement.

Q: As you have noted, this isn’t a new problem. ALTA, for example, first called it out nearly 15 years ago. With all the new technology, due diligence and quality control that’s been added post-mortgage crisis, why is this still happening?

Aparo: Title agents either don’t feel it’s their responsibility or they don’t want to deal with the post-closing follow up. I can’t tell you how often I ask the question “What are you doing to follow up on releases of your payoffs?” The answer I get back: “Nothing.” What they don’t understand is that by doing “nothing”, they are putting parties at risk in the future.

Unlike many problems in the mortgage industry, there’s a simple solution to this one: lien tracking. We even have integrations with most of the settlement production systems making the follow up as simple as a few clicks of a button. It’s a simple solution that saves the consumer money in the long run by not having to pay for costly title clean up or worse, a Quiet Title Action.

Q: Are there best practices that participants in the origination process should be following to detect and cure title defects sooner?

Aparo: Absolutely. The ALTA Best Practice Pillar 4 states that it is the title agent’s responsibility to have settlement procedures in place. This means that the title agent must adopt standard real estate settlement policies and procedures. One of the many procedures that is overlooked has to do with post-closing follow-up. If the title agent isn’t following up on the releases of the payoffs they’ve made at closing, how can they issue a title policy with the new loan in first lien position if it isn’t 15% to 20% of the time?

Q: How does the industry stand on this issue? Are there any efforts underway to combat this “epidemic?”

Aparo: I feel as if I’ve worked most of my life trying to combat this epidemic. I have been in the industry for 32 years starting out working as a real estate processor, then selling title insurance and more recently founding a release tracking company. The idea for the lien tracking business grew out of my experience working for one of the major underwriters, where I was surprised how many claims were coming in for unreleased liens. These claims were absolutely preventable as long as there was consistent follow up.

I work every day to get this point across and there are many title agents who completely agree and understand. They are also frustrated because their competitors who don't take this seriously cause issues on closings they're working on today.

We need to get the title agents and lenders on the same page so they can work together in resolving this longstanding epidemic that has a very simple solution.

Our firm is currently working with several lenders who are aware there is a gap in the understanding between the title agents and the secondary market. We are working to educate all parties to better understand how all the parts should work together in order to have a better experience and reputation for the lending industry as a whole.