

PENN ATTORNEYS

TITLE ALERT

DATE: 1/29/09

RE: Title Alert 2009-01

Mortgage Payoffs and Lines of Credit

Our Company continues to suffer losses because of mortgages that secure lines of credit not being satisfied or released, despite having been paid through a disbursement in accordance with a payoff letter. The nationwide concern with this problem can be seen in the attached special bulletin from First American's Home Office Underwriting Group, Bulletin HONA 232 dated 10-05-2007. A home equity line of credit (HELOC) provides an open ended source of borrowed funds that the borrower can access by writing checks on the specified account, or even by the equivalent of a credit or ATM card. **The problem for the title insurer is the condition of the line of credit that provides that the borrower can continue to draw on the account even if it has been "paid" in full.**

It is essential that any line of credit secured by a mortgage being paid off as part of a title insurance transaction be closed --shut down --obliterated -- to prevent the lien of the mortgage debt from continuing, even growing larger.

Does the mortgage secure a line of credit?

1. Examine the mortgage in question for indicators, such as the terms "line of credit", "open ended", "maximum amount".
2. Ask the borrower, "Can you write checks on this account or use a special credit or debit card?"
3. If the mortgage in question is a second (or 3rd or 4th) mortgage it is likely to be a HELOC.
4. Even a first mortgage could secure a line of credit – for example every reverse annuity mortgage is a line of credit mortgage.

If you are not sure, treat every mortgage as if it were a line of credit. There is no disadvantage in doing so for either the borrower or settlement service provider.

Title Alerts from 1997 to present are available on our website at: <http://www.pennattorneys.com>

Penn Attorneys Title Insurance Co.

900 State Street, Ste 320 Erie, PA 16501

Tel 814-454-8278 or 800-352-2216

FAX 814-453-5983 or 1-800-234-2352

erie@pennattorneys.com

As a result of recent losses, Penn Attorneys has made the following changes:

- Commitment & Instant Policy Requirements –these requirements will be added to **ALL** commitments and instant policies:

“Certification by Approved Attorney concerning open mortgages on the subject premises, identifying and disclosing those mortgages that secure a line of credit (HELOC).”

and

“If any of the mortgages certified hereon secure a line of credit, the line of credit account must be closed and no further draw or disbursement made. The borrower will be required to execute a letter to the lender requiring the account be closed that will accompany a payoff of the mortgage.”

- Addition to Affidavits: this statement will be added to the Mortgagor/Owner and Seller Affidavits:

“Any line of credit associated with the property has been closed, and no further draws, checks or other withdrawals have been or will be made.”

Effective immediately, our Approved Attorneys should institute the following practices:

- Examination and Certification – Approved Attorneys should carefully examine (request from the searcher a copy of) each open mortgage to determine if it secures a line of credit. Use the attached certification form to comply with the new requirement.
- Payoff Request – use the attached form of payoff request when requesting the payoff amount of **ANY** mortgage (*see attachment* Payoff Form No. 1).
- Borrowers’ Authorization to close account – if there is any indication that the loan being paid off is a line of credit, have the borrowers execute the attached authorization, addressed to the lender, and forward it to the lender with or at the time of any payoff (*see attachment* Payoff Form No. 2).
- Borrowers’ Acknowledgement -if there is any indication that the loan being paid off is a line of credit, have the borrowers execute the attached acknowledgement that among other things is an agreement to destroy any outstanding checks or cards so as to prevent future withdrawals (*see attachment* Payoff Form No. 3).
- Follow-up - Monitor the satisfaction or release of the HELOC Mortgage.

As always, please contact us with any questions.

See Attachments:

- Home Office National Underwriting Bulletin HONA 232 dated 10-05-2007.
- Payoff Form No. 1 – Payoff Request
- Payoff Form No. 2 – Borrowers’ Authorization to close account
- Payoff Form No. 3 - Borrowers’ Acknowledgement
- Approved Attorney Certification—HELOC

**First American**

CORPORATE UNDERWRITING

Home Office National Bulletins

Case No: HONA 232
Name: Company Payoff Policies
Written By: Stephen G. Dean
Filed: 10-05-2007

One of the areas in which we are experiencing a high number of claims, nationwide, is in the area of improper payoffs. Whether the claim stems from the failure to pay off a home equity line of credit (HELOC) and properly close the account, paying off the wrong loan on the wrong property, or making a payoff based upon an expired payoff demand/ letter, these three areas, among others, have led to significant and unjustifiable losses for the company.

This bulletin will set out the company's policies relating to payoffs in these three areas for direct operations, as well as agency operations when the agent is acting in its capacity as a policy issuing agent of First American. Procedures must be established in all operations to promote compliance with these policies.

HELOCs

A full pay down of a HELOC does not extinguish the lien securing the repayment obligation, nor does it prevent a borrower from drawing additional funds from the credit line, unless the account is properly closed and the lien is released. If a borrower draws on an open HELOC after a full pay down has been made, the lender's interest in the property will continue to be senior to our insured lender or insured owner. Thus, proper closure of the account is of utmost importance.

When a lender's preferred method for requesting a payoff demand/ letter is by fax, use of the attached ITI Payoff Request form is required. Moreover, even if a lender's payoff demand/ letter includes a statement and signature line for the borrower to close the account, use of the attached HELOC - Authorization to Close form is required, in addition to the lender's provided form. These documents are now available for use within the Corporate Region of FAST. Existing forms employed in other FAST regions should be deactivated. In those instances where there are specific state requirements that must be addressed, your forms must be updated to include the language of the two attached documents. In agency operations, forms that mirror the language of the attached forms must be created and implemented.

Additionally, lenders must be contacted on the day of a scheduled payoff to obtain the most recent account balance and ensure that it comports with the amount reflected in the demand/ letter. If a discrepancy exists, it must be verified and resolved with the borrower. In instances where the discrepancy cannot be resolved, the transaction cannot be closed unless the borrower authorizes payment to the lender based upon the lender's most recent records.

If the timing of the transaction permits, payoff on a HELOC must be made via check, not by wire, and sent overnight through Federal Express (or another reputable courier) to the lender or its servicer. Payoff checks MAY NOT be given to the borrower for delivery. A fax transmittal of the HELOC - Authorization to Close form must be sent to the lender the same day as the payoff and a hard copy must accompany the check when distributed. All payoff checks must be stamped with the following language: "Negotiation of this check constitutes full payment and agreement by the payee to release all security instruments." When a wire is absolutely necessary, a fax transmittal and hard copy of the HELOC - Authorization to Close form should be sent overnight through Federal Express (or another reputable courier) to the lender or its servicer the same day as the wire. Proof of all transmissions and their receipt must be documented in the file, as this

can prove invaluable when handling a claim made under the policy.

PAYING OFF THE CORRECT LOAN

Although it may seem self evident, payoff demands/ letters should be carefully reviewed to determine whether they pertain to the correct loan, especially if it is known that a borrower has more than one loan with the same lender. If the demand/ letter does not sufficiently identify the subject property (e.g. no street address provided) and loan, the lender must be contacted to confirm the demand/ letter pertains to the correct property. First American's National Production Services (NPS) Division has a system of checks and balances in place to properly match the payoff demand/ letter to the subject property. Therefore, it is recommended that NPS be used whenever possible.

EXPIRED DEMANDS/ LETTERS

Lastly, payoffs should never be made based on expired demands/ letters. Regardless of whether or not per diem interest can be calculated beyond the expiration date of the demand/ letter, valid demands/ letters must always be used to make a payoff.

PAYOFF REQUEST

DATE:

Lender:
Address:

Phone/FAX:

RE: Loan No.:
Property:
Borrower:

**Please FAX the Payoff Demand to _____
Please make the payoff figure good until _____**

In a transaction opened with this office, we have been instructed to pay the above-referenced loan IN FULL upon closing. To enable us to comply with this instruction, we hereby request that you send your demand/letter/statement to the address and FAX number indicated above.

IF THIS IS AN EQUITY LINE OF CREDIT MORTGAGE, PLEASE FREEZE AND CLOSE OUT THE LINE OF CREDIT. YOU MUST CONTACT US WITH ANY AND ALL INCREASES AS THEY OCCUR. PLEASE ADVISE BY TELEPHONE (____-____-____) AND FOLLOW UP WITH WRITTEN CONFIRMATION.

PLEASE BE ADVISED THAT, PURSUANT TO APPLICABLE LAW, WE WILL RELY UPON YOUR WRITTEN DEMAND/LETTER/STATEMENT TO ESTABLISH THE AMOUNT NECESSARY TO PAY THE OBLIGATION IN FULL, AND AS YOUR COMMITMENT TO DELIVER A FULL RELEASE OR SATISFACTION OF THE MORTGAGE.

Thank you for your prompt attention.

BORROWER'S ACKNOWLEDGMENT

DATE:

Lender:
Borrower:
Property:
Loan No.:
Payment in Full Amount:

_____ is the closing agent for the sale or
refinance of the referenced property. Accordingly, I hereby:

1. Authorize and direct _____ to pay off the obligation in full.
2. Represent that the above payment amount represents the full balance due on the account.
3. Agree that upon receipt of payment the account holder is directed to CLOSE THE ACCOUNT.
4. Represent that if this account is a line of credit that permits advances by means of a credit or debit card, checks or other orders to pay, I have not exercised any of these privileges in the last 30 days.
5. Acknowledge that all cards or checks that may be used for advances have been destroyed.
6. Covenant and agree that if the payment above is insufficient to pay the obligation in full I will be responsible for payment of the balance due and will save _____ (Approved Attorney) and Penn Attorneys Title Insurance Co. harmless from any liability with respect to any further amount due.

The forwarding address for the return of any escrow balance and cancelled documents is:

Borrower:

Borrower:

BORROWER'S AUTHORIZATION TO CLOSE ACCOUNT

DATE:

Lender:
Address:

Phone/FAX:

RE: Loan No.:
Property:
Borrower:

Enclosed please find check no. _____ in the amount of \$ _____

- Or -

On _____ a wire transfer of funds was transmitted to your account:

Bank Name:
ABA no.:
Account No.:
Account Name:
\$ _____

You have as of this date received funds to pay the referenced line of credit in full. These funds are intended to pay the undersigned's line of credit **AND CLOSE IT.** As such, you are hereby instructed to close this line of credit.

Please execute and record your Satisfaction of Mortgage.

Thank you for your prompt attention.

Borrower: _____
(Signature) (Signature)

Borrower: _____

HELOC CERTIFICATION

(Attorney Certification regarding mortgages securing home equity lines of credit)

To: PENN ATTORNEYS TITLE INSURANCE CO.
900 State Street, Suite 320
Erie, PA 16501-1427

From: _____

Penn Attorneys' File No: _____

I hereby certify that I have examined the open mortgages reported as liens in the above-referenced file and have determined the following:

- NONE are identified as securing a line of credit.

OR

- There are open mortgages that secure a line of credit (HELOC), and these mortgages are identified as follows:

Instrument/RB # _____ Page # _____

Instrument/RB # _____ Page # _____

Instrument/RB # _____ Page # _____

Instrument/RB # _____ Page # _____

AND

- I understand and have followed the underwriting guidelines provided by Penn Attorneys Title Insurance Co. in the handling of these mortgages.

I attach copies of the executed PAYOFF REQUEST, BORROWER'S ACKNOWLEDGEMENT and the BORROWER'S AUTHORIZATION TO CLOSE ACCOUNT for the above-referenced HELOC mortgages.

Dated: _____

Approved Attorney

(02/01/09)