

PENN ATTORNEYS

TITLE ALERT

DATE: 04/08/09

RE: Title Alert 2009-04 SHORT SALE APPROVAL LETTER: UNACCEPTABLE CONDITIONS

We have been alerted that some lenders' short sale approval/estoppel letters contain provisions in which the lender now attempts to retain the right to invalidate a transaction for events which may have occurred at the loan's inception or in our transaction. One letter provided the following condition:

"If the property was acquired by any means of fraud, [lender's name] reserves the right to pursue any and all actions available to it to pursue any and all actions available to it to offset its losses. If it is determined that Sellers and/or Buyers participated in any way to the fraud, this short sale will be void, and the Note and Security Instrument will remain in full force and effect."

If a similar provision or other conditional language appears in a payoff/estoppel letter from your short sale lender, you are NOT authorized to close the transaction unless the letter is amended in writing to remove the offending provision.

In other words, **Penn Attorneys cannot insure the new purchaser or the lender, if the short sale lender purports to reserve the right to void a conveyance and maintain its lien after closing and disbursement.**

While few provisions have been so blatant as to purport to void the transaction, it serves as a reminder of the importance of carefully reviewing not only short sale letters but also all lender's closing instructions, as these traps are sometimes buried in vague language deep in the body of the letter.

We have also been advised of IRS payoff/estoppel letters in short sale transactions which state they will refuse to satisfy an IRS lien if it is determined **after** closing that the value of the property to the IRS was greater than they thought.

All of this is yet another reminder that all short sale approval letters have conditions for the lender's agreement to take a short payoff to be effective. If there is ANY provision which purports to allow the lender or the IRS the right to refuse to satisfy or to void a conveyance **after** closing, do not complete your closing without contacting us.

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

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