

Ticor



THE DEFENDER OF HOMEOWNERSHIP

During a refinance transaction, a home equity line of credit was paid off, but it was not closed. Later the refinance lender foreclosed and sold the REO (bank owned) property to a new owner. A Fidelity National Financial (FNF) underwriter insured the refinance, issued the trustee's sale guarantee and insured the new owner on the subsequent sale out. The former property owner then ran up \$172,622 in debt against his home equity line of credit, which was secured by a house he didn't own any longer. He made no payments, and the home equity lender started foreclosure!

As part of a refinance transaction the settlement agent paid, in full, a home equity line of credit (HELOC) in the amount of \$149,392.71. The lender's payoff statement required the borrower, Mr. Doe, to check either box:

- Payoff Only**
- Payoff, Terminate and Satisfy/Discharge Mortgage**

The payoff statement also provided:

If neither box is checked, the account will remain open and no satisfaction of mortgage will be filed.

The payoff statement further provided:

Notice to Borrower and Closing Agent: A Request to terminate/close your home equity line of credit account to satisfy the mortgage will be processed if (1) the second block is checked; (2) all amounts owed are paid in full; and (3) at least one borrower on the account signs this payoff request.

Mr. Doe signed the payoff request, but due to an oversight on the settlement agent's part, neither box was checked off! As a result, the payoff check and request were sent, but the HELOC was not frozen, and no reconveyance of the deed of trust securing the loan was ever recorded.

Fast forward two years later: Mr. Doe fell behind on his payments, and the refinance lender foreclosed, obtaining a Trustee's Deed upon sale. Subsequently the lender re-sold the property to a new buyer. The sale transaction was handled by one of our offices. The preliminary report showed the HELOC still of record in first lien position as well as a recorded Notice of Default. A claims attorney allowed the title office to insure around the outstanding HELOC, since Our Company had insured the previous transactions involving the refinance lender, the trustee sale guarantee to the refinance lender, and now the ultimate re-sale to the new owner. An endorsement was issued to the final policy of title insurance deleting the exception of the HELOC loan. [Read More →](#)



IS IT FRAUD OR IGNORANCE?

Mr. Doe signed the payoff request, but due to an oversight on the settlement agent's part, neither box was checked off! As a result, the payoff check and request were sent, but the HELOC was not frozen, and no reconveyance of the deed of trust securing the loan was ever recorded.

Fast forward two years later: Mr. Doe fell behind on his payments, and the refinance lender foreclosed, obtaining a Trustee's Deed upon sale. Subsequently the lender re-sold the property to a new buyer. The sale transaction was handled by one of our offices. The preliminary report showed the HELOC still of record in first lien position as well as a recorded Notice of Default. A claims attorney allowed the title office to insure around the outstanding HELOC, since Our Company had insured the previous transactions involving the refinance lender, the trustee sale guarantee to the refinance lender, and now the ultimate re-sale to the new owner. An endorsement was issued to the final policy of title insurance deleting the exception of the HELOC loan.

The HELOC lender moved forward with its Notice of Default and set a date for Trustee's Sale. When the new owner received the notices of an impending foreclosure, she opened a claim with Our Company, as she was about to lose her home. The claims department contacted the HELOC lender for a new payoff statement. When the payoff statement was received, the claims attorney noticed Mr. Doe (the former owner) had run up \$172,622 against his line of credit!

In order to protect the insured's interest in the property, the Company paid the HELOC lender off again and this time demanded the HELOC be closed and the lien released.

In an attempt to recoup our losses, the claims attorney sent a written demand to Mr. Doe for letter and was friendly, but confused about what was happening. The claims attorney explained to him that Our Company expected full reimbursement for our losses. Mr. Doe made it clear that he did not have the resources to pay back the Company. He stated he would retain an attorney.

"The Moral of The Story"

Does Mr. Doe's decision to run up the HELOC after he lost the property to foreclosure constitute fraud? Yes! Mr. Doe intentionally charged \$172,622 against a mortgage on a property he no longer owned.

It can be argued that many borrowers are oblivious and don't understand that they can't continue to draw on a line of credit after he/she has paid it off and/or no longer live at the property. The issue is that the bank continues to solicit the borrower to spend against the line of credit by providing debit cards and checks that enable more spending!

It is imperative that settlement agents ensure the HELOC closure letter is signed and, more importantly, delivered to the payoff lender. There are plenty of instances where the payoff funds are transmitted via wire transfer and the payoff closure letter is not sent to the payoff lender at all, but rather left in the file. There are also plenty of instances where the HELOC payoff statement reflects a zero balance and, subsequently, the signed closure letter is not sent to the payoff lender.

When either instance happens, one of two things eventually occurs later – the lender never closes the line of credit and continues to solicit the borrower to charge against the available balance, (which many borrowers do); or the lender continues to accrue annual fees. Either way, once the property is further conveyed, encumbered or foreclosed upon, the HELOC lender is contacted to release its lien and it insists on payment in full AGAIN! Settlement agents need to do their part to protect themselves and the Company from these types of losses by sending the closure letter.

Source: "FNF Fraud Insight" - Lisa A. Tyler

Our motto is:

"A more discerning and accurate process the old fashioned way, by experienced, dedicated and courteous professionals".

Consequently, what is good for Ticor Title becomes good for our clients.

