

Title

FREQUENTLY ASKED ^ QUESTIONS

September 2010

The first mortgage on the title under examination is being foreclosed. What exactly should we require with regard to paying off this mortgage?

Assuming the foreclosure has not yet gone to final judgment, it will generally be necessary to obtain the following:

1. Proof of payment in full in accordance with current written payoff instructions which include both attorneys' fees and costs, as applicable;
2. Proof of dismissal of the underlying mortgage foreclosure action (typically accomplished by the filing of an appropriate stipulation of dismissal);
3. Discharge of the notice of lis pendens;
4. Discharge of the mortgage being paid off;

If the mortgage is being paid off after entry of the final judgment of foreclosure, vacation of the foreclosure judgment must also be provided.

Foreclosure counsel often resist providing these proofs where the payoff occurs after a final judgment of foreclosure is entered. They take the position that the mortgage technically has merged into the final judgment (thus it no longer exists) and procedurally they are only required to provide a warrant of satisfaction of judgment. Unfortunately, a final judgment of foreclosure and subsequent warrant of satisfaction of judgment typically do not appear in the county land records and will not be picked up in a standard search. By obtaining the required proofs, a file will contain clear evidence that the underlying litigation has been adequately concluded and establishes an official means by which we can search the county land record to determine that the mortgage has been appropriately discharged.

Litigation and mortgage foreclosure proceedings can be complicated and expensive. It is thus critical that any mortgage payoff statements obtained involving foreclosures are current and include attorneys' fees and sheriff's costs, as appropriate.

Please contact a member of our underwriting staff with any questions you may have.