

WFG NATIONAL TITLE INSURANCE COMPANY PRESENTS

Basically Title Webinar Series:

Releases, Payoffs and Demands
Getting the Job Done Right



WFG National Title Insurance Company®
a Williston Financial Group company

Presented by:

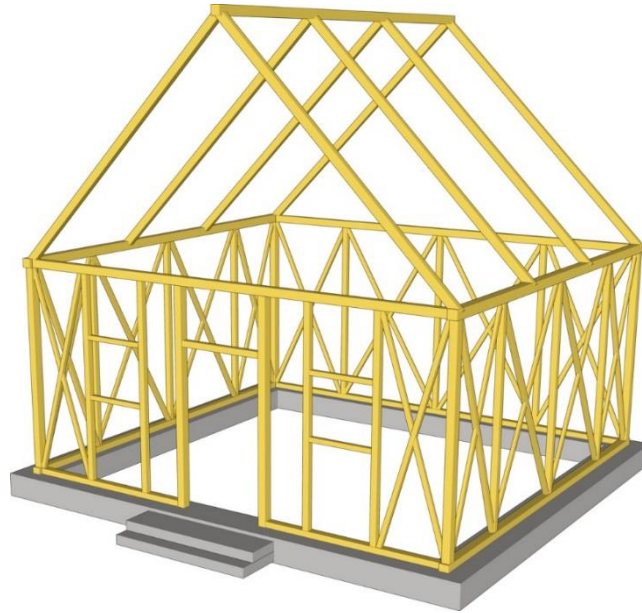
Randy Williams

Senior Vice President

WFG National Title Insurance Company

BACK TO THE BASICS

Let's start with a good foundation...



...with some Preliminaries and Definitions

THE ULTIMATE GOALS AT WFG



We provide settlement services with some common goals:

- Sell a title insurance policy
- Comply with the instructions of the proposed insured
- Don't cloud the title to the subject property.

To do that we must:

- Clear existing liens and encumbrances
- Accurately transfer ownership
- Establish insurable liens.

TITLE INSURANCE CURATIVE PROCESS



The process of bridging the gap between matters of record and what the insured will accept in their title policy.

It true; any title can be insured...as long as there is no limitation on policy exceptions.

PUBLIC RECORDS

- Records established under state codes
- Recorded as of Date of Policy
- That Impart Constructive Notice relating to Real Estate
- To Purchasers for Value and Without knowledge
- (“Purchasers” includes Encumbrancers)

- These records can be found in the local County Recorder’s office and sometimes in the U.S. District Court

OFF-RECORD MATTERS



Those matters covered in the insuring provisions of a title policy, which are beyond determining by referring solely to the Public Records.

PROMISSORY NOTES



A contract, in which a pledge to pay back borrowed money is formalized by establishing the terms of payment, including original amount borrowed, the interest rate, and the duration of the loan.

Although Promissory Notes can be established through an oral agreement, for our purposes, they need to be in writing.

MORTGAGES & DEEDS OF TRUST



MORTGAGE



DEED OF TRUST

The terms “Mortgage” and “Deed of Trust” are often used synonymous in the state codes or statutes, but one or the other may have been adopted as the primarily security instrument in your local real estate transactions.

MORTGAGE



MORTGAGE

A Mortgage is a two-party agreement, often without a power of sale.



A mortgage is a contract by which specific property, including an estate for years in real property, is hypothecated for the performance of an act, without the necessity of a change of possession.

MORTGAGE

Parties to a Mortgage

Mortgagor-
Borrower or
Homeowner



Mortgagee-
Lender
Lending
Institutional or
Individual

DEED OF TRUST



Deed of Trust

A Deed of Trust is a three-party agreement, which includes a power of sale.



A Deed of Trust is a three party security instrument conveying title to land, in trust, as security for the performance of an obligation, usually a Promissory Note, which includes a power of sale.

DEED OF TRUST

Parties to a Deed of Trust



Trustor-
Borrower
Homeowner



Trustee-
Holder of
Property,
in Trust



Beneficiary-
Lender
Institutional
or Individual

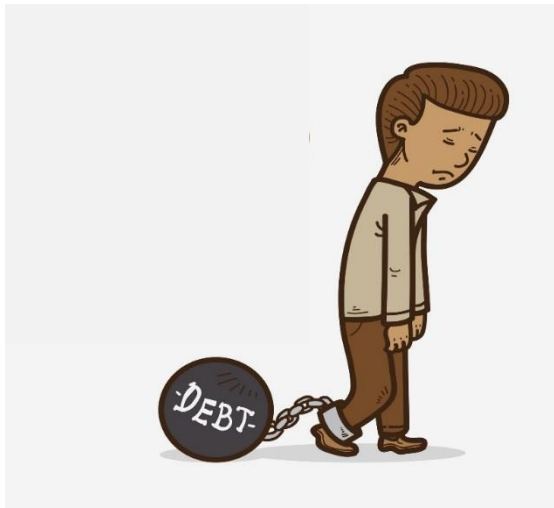
WHAT IS A LIEN?



A lien is a claim against property made by someone in order to secure payment of a debt.

LIENS

Debt vs. Lien



A DEBT is the state of being under obligation to pay money or repay a charge



A LIEN is a claim against property made by someone in order to secure payment of a debt.



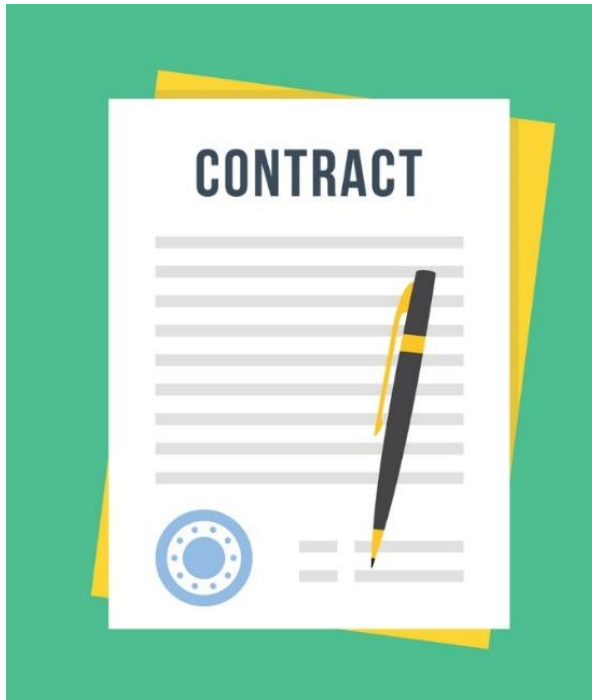
WHAT A LIEN IS NOT



A lien is not a transfer of title to the property. It is not a charge upon real or personal property that can ripen into a property interest without court or administrative proceedings. For title insurance purposes, a lien, is considered a covered matter and must be properly dealt with

LIENS

They are created by:

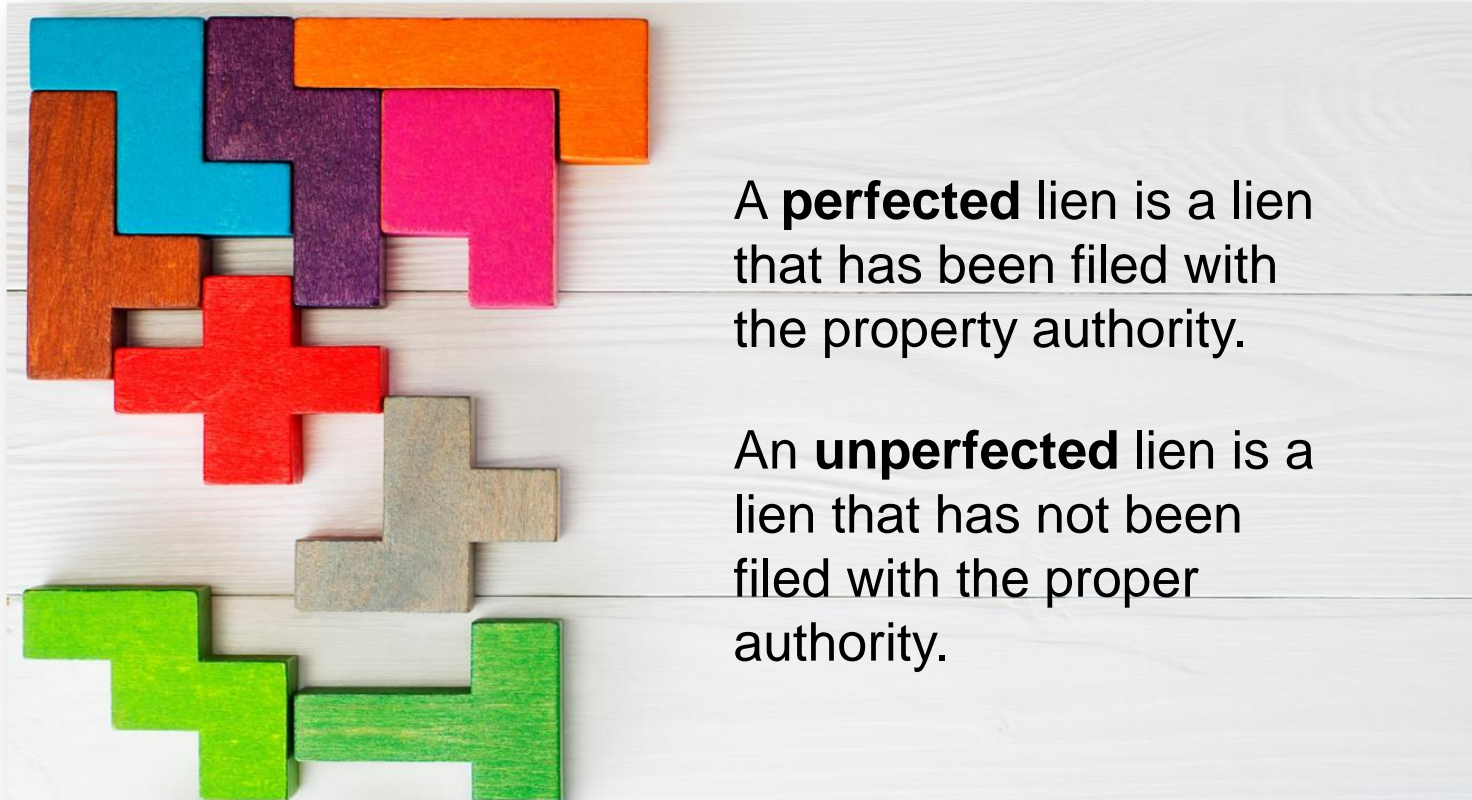


Lien – By Contract



Lien – By Operation of Law

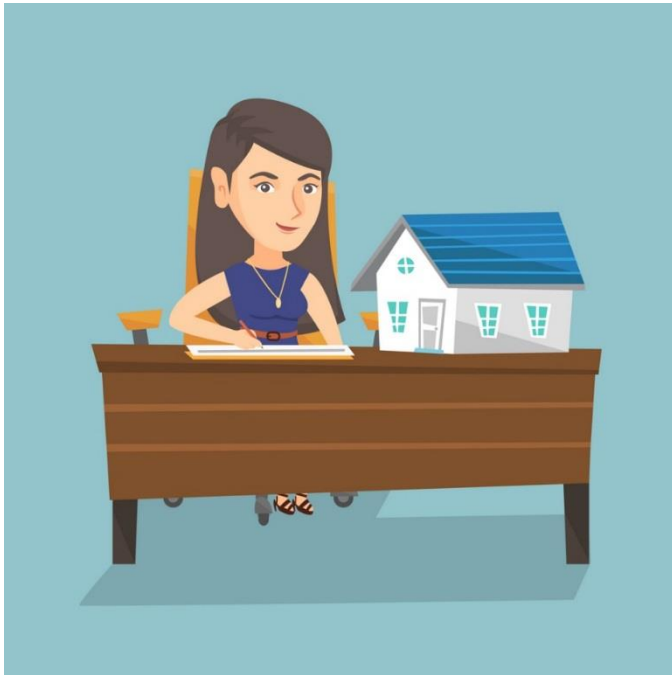
LIENS – PERFECTLY IMPERFECT



A **perfected** lien is a lien that has been filed with the property authority.

An **unperfected** lien is a lien that has not been filed with the proper authority.

VOLUNTARY LIENS

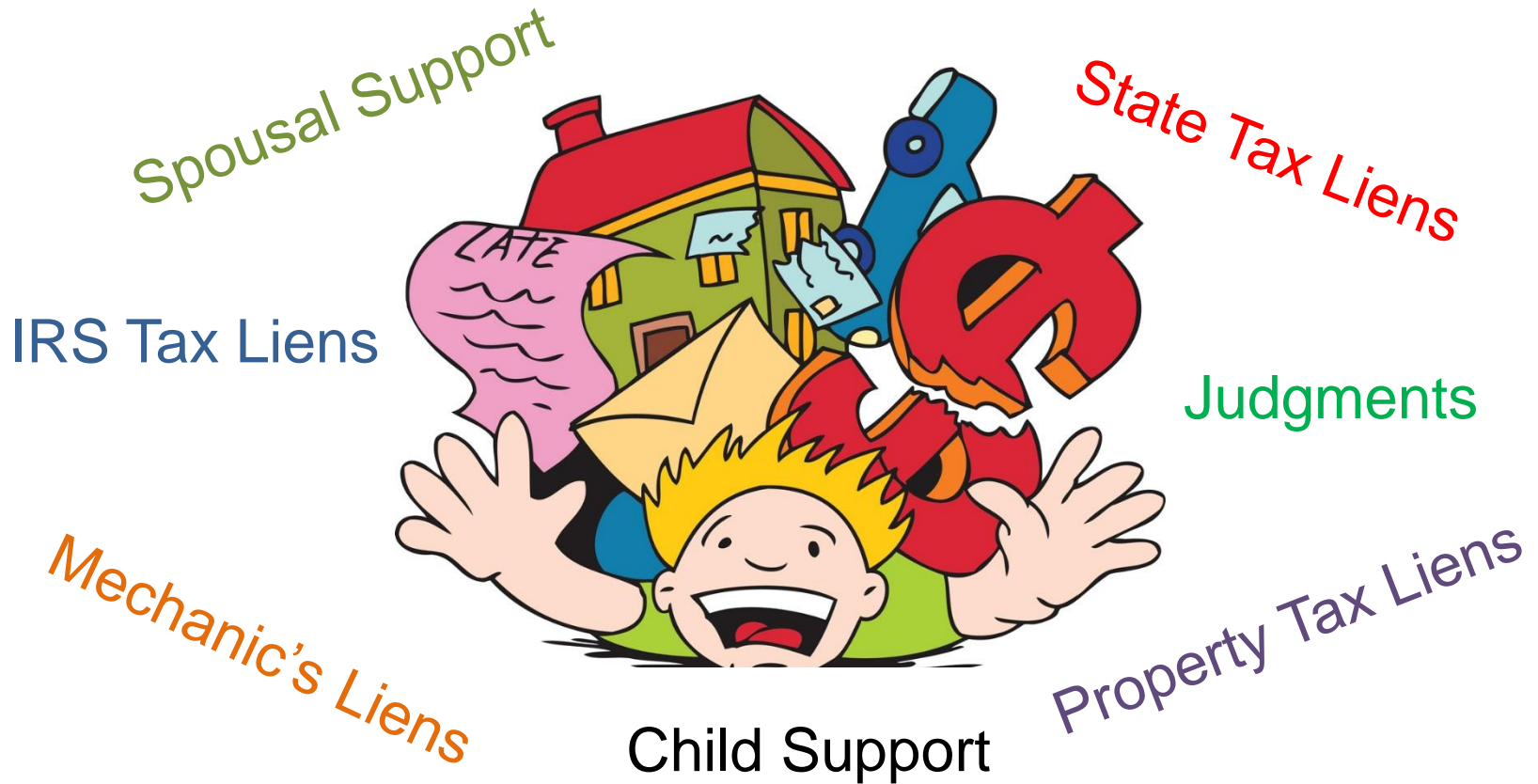


A type of lien that exists because of an action taken by a debtor.

Mortgage/Deed of Trust

Home Equity Line of Credit

INVOLUNTARY LIENS



JUDGMENTS



Judgment – is the final determination of the rights of the parties to an action or proceeding. The judgment may impose a debt or obligation on the judgment debtor in favor of the judgment creditor. Enforcement of a judgment is accomplished through a separate proceeding.

JUDGMENTS



A judgment debt becomes a judgment lien when it is docketed in the Court Clerk's records or when an Abstract of Judgment or certified copy of the Court Order gets recorded in the County Recorder's office.

RECONVEYANCES AND RELEASES

TITLE CURATIVE process requires clearing the liens from a real property's title by recording proper reconveyances, releases and satisfactions.

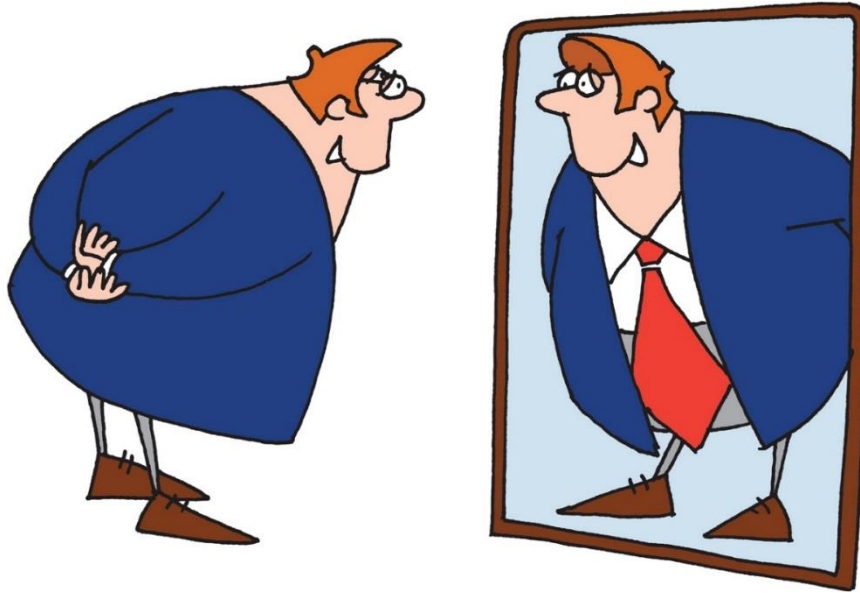


RECONVEYANCES

A written instrument that:

- Is evidence that the security interest held in trust by the Trustee has been conveyed back to the property owner.
- Evidences that the debt has been paid
- Is prepared in response to a Request for Reconveyance from the Beneficiary
- Is prepared and executed by the Trustee
- Is delivered back to the Beneficiary for recordation
- Must be recorded in the County Recorder's office

RECONVEYANCES



Trustee and Beneficiary may be the same.

A Helpful Reminder:

The Trustee that prepares the Reconveyance may be the Beneficiary that receives the final payoff. If the beneficiary cannot produce the Note, they may substitute themselves in place of the Trustee and take responsibility for issuing the reconveyance. Confirmation of ownership of the Note is still needed.

RELEASE OF A LIEN

In order to release a lien:

- The lien Creditor must execute a written instrument that identifies the parties to the lien, the property the lien affects and the lien's recording information
- The lien creditor is responsible for executing and recording the Release of Lien in the County Record's office.

NOTE: Caution must be take to ascertain if the lien release is a full release, a partial release, or an installment release.

SATISFACTION OF A JUDGMENT

To Satisfy a Judgment Lien:

- Upon payment of the amounts due, the Judgment Creditor prepares an Acknowledgement of Satisfaction of Judgment
- The Acknowledgement of Satisfaction of Judgment is filed with the Court Clerk
- A Certified Copy of the Acknowledgment of Satisfaction of Judgment is then recorded in the County Recorder's office

The Acknowledgment of Satisfaction form must meet the state or local jurisdiction requirements, as set forth in state statutes or codes and local civil procedural rules.

(Note: The actual name of the Satisfaction form may be different in different jurisdictions)

DEMANDS



A payoff statement from a party that holds a lien against a property, will state the terms under which the lien may be released.

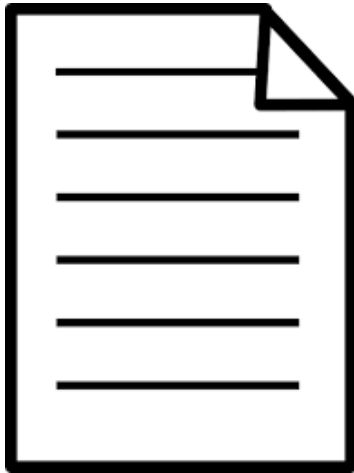
DEMANDS

REQUEST FOR DEMAND

This is a written request for a formal demand:

- Sent to the Beneficiary, his agent or successor
- Is prepared and presented by an authorized requestor or “Entitled person”
 - Trustor, Mortgagor, their successor in interest, junior lien holder or licensed Escrow-holder
- May be limited to submittal within months or days before a recorded Notice of Default and/or a specific number of days before entry of a Decree of Foreclosure
- May be subject to the Beneficiary’s requirement for reasonable proof that the person making the demand is an “Entitled person”
- Should contain a reminder that statutory fees, payable to the Trustee, will be charged, together with appropriate recording fees

DEMANDS



STATEMENT



DEMAND

Some states allow both a **Beneficiary's Statement** and a **Payoff Demand Statement**?
So what's the difference?

DEMANDS

BENEFICIARY STATEMENT

A typical Beneficiary Statement will include the following:

- A written statement showing:
- The amount of unpaid balance of the Mortgage/Deed of Trust
- Including the Interest Rate, Total Amount Due of all overdue installments of Principal and Interest
- The amount of Periodic payments
- The Date the obligation is due in whole or in part
- The date real estate taxes and assessments have been paid to
- The amount of hazard insurance in effect, its premium and term
- The amount, of any impound accounts for taxes or insurance
- The nature of any additional charges, costs or expenses paid
- Whether the obligation secured can or may be transferred

NOTE: In most jurisdiction, the Beneficiary Demand Statement is a statutory form that must conform to state laws.

DEMANDS



WARNING:
Do not attempt to make a payoff using a Beneficiary Statement. It does not include sufficient information to calculate the payoff.

DEMANDS

BENEFICIARY DEMAND STATEMENT

A Beneficiary Demand Statement typically includes the following:

- A written statement showing:
- Prepared in response to a written Request for Demand
- Prepared by the Beneficiary or their verified representative
- Sets forth the amounts required at the date prepared
to satisfy the amount of all obligations secured by the loan
- Include information necessary to calculate a per diem (daily) interest
- Will only be applicable for a limited period of time
- States the terms of the note won't change the per diem during the stated time frame
- That the Beneficiary may charge for each statement required (State Statute)

NOTE: In many jurisdiction, the Beneficiary Demand Statement is a statutory form that must conform to state laws.

DEMANDS

PROCEDURE FOR REVIEW OF ALL DEMANDS

- Confirm names and addresses shown in demand match the recorded documents (including assignments) and is from the recipient of the Request for Demand
- Confirm demand has not expired (*Over 30 days –BEWARE!*)
- Confirm there are no changes since demand was ordered
- If the demand is illegible, confusing or ambiguous, request a written revision and/or clarification – ***Don't guess what it means!***
- If demand is altered by amendment, telephone confirmation with original demand provider is required

NOTE: See *WFG Standard Operating Procedure for Payoffs for CA Escrow dated September 1, 2017* as a guideline for proper payoff procedures.

DEMANDS

AMENDED

WRITTEN PAYOFF DEMAND STATEMENT AND LETTER OF INSTRUCTIONS

TO: _____ DATE: September 10, 2018

NOTE: THIS PAYOFF DEMAND SUPERCEDES ALL PREVIOUSLY SUBMITTED TO ESCROW

_____ Address:	Title company]	Escrow No. _____ Property Address: 22 Martini Place, Walnut Creek, CA
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In reference to the Deed of Trust recorded January 20, 2015 as Instrument number 2015-0008851-00 of Official Records, we will provide a FULL reconveyance upon receipt of your CLEARED FUNDS in the total amount as stated below:

In reference to the Deed of Trust dated November 5, 2014 and recorded September 18, 2014 as Instrument number 2014-0191310-00 of Official Records, we will provide a FULL reconveyance upon receipt of your CLEARED FUNDS in the total amount as stated below:

A partial payment of \$395,000.00 will be accepted to reconvey both of the Deeds of Trust.

This is a partial payment and there are additional sums owed on each of the outstanding obligations.

Any payment made and accepted is expressly accepted without waiver of any additional sums owed on the obligations secured by the above referenced Deeds of Trust, and such other and further claims as may exist.

Norad Financial, LLC reserves the right to pursue the balance owed on its Note.

Foothills Financial Group EPSP 401(k) reserves the right to pursue the balance owed on its Note.

The original notes will not be surrendered at this time.

Sample:

As previously stated, if anything in the Demand is confusing, unclear, ambiguous or just plain “strange”,

**DON'T GUESS
WHAT IT MEANS!**

Get written
Clarification

DEMANDS/PAYOFFS

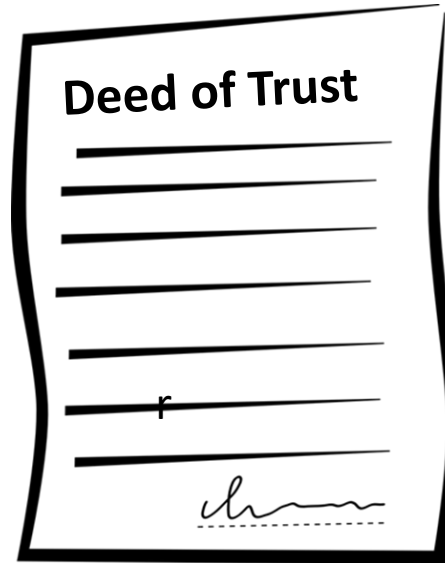


Here's a WARNING from the WFG Claim's Department:

A current claim tells the story of an eleventh-hour change in a Demand that was not properly verified. Upon further investigation, it was determined that after the proper Demand was received, an email was received that purported to amend the earlier Demand and that "corrected" the payoff account and address.

The payoff was sent to the amended account and the deal was closed. After close, the actual prior lender inquired about the payoff, which never arrived. It was determined that the amendment was a fraud. When the amended account was investigated, it was determined that the funds were immediately re-transmitted out of the country. The funds were lost and the new insured was still subject to the prior loan, which was not paid off through the closing. **YOU MUST VERIFY BY PHONE ALL LATE AMENDMENTS TO YOUR PAYOFF DEMANDS!**

DEMANDS



Beware! Some demands are intended to clear two Deed of Trust – Make sure they do!

DEMANDS

INTERNATIONAL PAYOFFS



In the unlikely event you have an international payoff, special routing information and instructions will be required. The payoff will need a SWIFT routing code. If you determine that you are involved in a file with an international payoff, contact your State Underwriter, who will provide the guidance needed.

DEMANDS

Loan Servicer – The Middle Persons



When a Loan Servicer provides the Demand on behalf of the Beneficiary, it is imperative that a copy of the Loan Servicing Agreement be obtained and reviewed. The appointment must authorize the Servicer to provide the demand, receive the payoff and provide the appropriate release documents. **ALL** Beneficiaries must execute the Loan Servicing Agreement.

WFG TITLE REQUIREMENTS

Institutional Lenders



- Evidence of the Note is not required
- If appropriate, MERS confirmation that Note has not been sold is required
- Statutory Trustee's Fees should be included in the demand
- Recording Fees, including any state imposed extraordinary fees, need to be included in the demand, if WFG or the Agent will receive the Reconveyance for recordation.

WFG TITLE REQUIREMENTS

Non-Institutional Lenders



- The original Note and Deed of Trust are required
- The payoff demand statement must come from the record Beneficiary (watch for assignments and check with MERS)
- The payoff must be made to the named Beneficiary, unless an Assignment is provided
- An original full reconveyance, signed by the Trustee of record or a Request for Reconveyance addressed to the Trustee from the Beneficiary must be acquired.
- The demand must allow for collection of recording fees, including any exceptional recording fees, if WFG is expected to record the Reconveyance

- ❖ If the Note or Deed of Trust are unavailable, a properly executed Substitution of Trustee and Full Reconveyance, together with a Missing Note Affidavit, is acceptable.



Additional Questions?

Email Randy at:
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