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The NCCBOR INSIGHT

Your information source for ALL buyers and sellers.

The NCCBOR is organized to maintain and promote a high standard of ethics, to protect property rights and promote the ownership of real property as it assists its members to achieve financial success. The NCCBOR looks to exert a beneficial influence upon the real estate industry in New Castle County and serve the public by advocating the extension and preservation of the right to own, advancing professionalism and promoting quality of life.

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TITLE ISSUES IN TOUGH ECONOMIC TIMES

During these difficult economic times, there are several title issues which arise and can interfere with a smooth settlement. While clearing title issues is not the primary responsibility of the realtor, being aware of potential problems can help to maintain a smooth process through to settlement.

Mortgage Foreclosures:

Unfortunately, we have all heard the phrase "mortgage foreclosure" too often during the past year or so. In Delaware, foreclosures are judicial proceedings, most often in the Superior Court. One issue to be aware of in a mortgage foreclosure action is whether proper notice has been given to junior lienholders and tenants. Written notice of the foreclosure action is required to be given immediately after the filing of the action. A second written notice is required to be given immediately prior to the sheriff's sale. If either of these notices is not given in a timely manner, or if either notice is not given to all of the proper parties, the foreclosure action and subsequent sheriff's sale of the property can be overturned later on by an aggrieved party.

A second issue to be aware of is whether the seller has obtained the deed from the sheriff and recorded it at the appropriate Recorder of Deeds office. Absent doing so, the foreclosure is not complete, the seller is without authority to properly convey the property to the buyer, and junior liens against the property are not necessarily cleared. One of the major benefits of buying a property after it has gone through a foreclosure sale is that the sale will result in the removal of junior liens from the property. As is often the case, when a homeowner defaults on his or her mortgage, they also have defaulted on other financial obligations. The result may be that certain other liens attach to the property, including possible state or federal tax liens or judgment liens of other creditors. In having a mortgage foreclosure action proceed through to conclu-

sion, these junior liens will be removed from the property and good, clear title can be conveyed. Without the sheriff's deed being recorded, the foreclosure action is not really complete and these other liens are not necessarily released.

The state of title is also of vital importance to anyone considering buying a property at sheriff's sale. A foreclosure sale might seem like an ideal way of picking up a property for much less than its current value. However, a purchaser at a foreclosure sale needs to fully investigate title to the property prior to submitting a bid. It is not always the case that the foreclosure is being pursued by the holder of a first mortgage lien. A prospective purchaser should not rely on any announcements that might be made at the sheriff's sale. Review title to verify the lien status of the property, know which lien is being foreclosed and which liens might survive the foreclosure. There may be a foreclosure on a home equity loan on a property, which is typically a second mortgage lien, and that sale would then be subject to the first mortgage lien against the property.

Deed In Lieu Of Foreclosure:

In addition to the mortgage foreclosure process, often times homeowners will reach agreement with their lender to simply walk away from their property and transfer title directly to their lender, without making the lender go through the foreclosure process. While this can save the lender both time and money, it can also result in some title issues for the unwary. A deed in lieu of foreclosure does not necessarily wipe out junior liens and encumbrances the way a sheriff's sale does. Without anything else, a deed in lieu from the homeowner to the lender will cause a merger of the two estates (mortgage and fee) thus rendering the title to be free of the mortgage lien. However, lenders typically provide in their deed in lieu that the mortgage will not "merge" into the fee title and thus the mortgage will remain a lien. When the lender sells the property, it is vital that a mortgage satisfaction be obtained from the lender. Otherwise that mortgage lien will survive and come back to haunt the property owner later on when they go to sell their property.



Short Sales:

While the short sale in and of itself doesn't raise any title issues, it is important for anyone involved in a short sale to promptly obtain a title search of the property because the lender will need to approve the financial terms of the sale. Any junior liens against the property may interfere with a short sale and by obtaining a title search, the parties would be aware of how many liens there are against the property in order to know who else besides the lender might need to agree to the short sale and how much money may be available to pay to each creditor in order to get the sale accomplished.

The contents of this article do not constitute legal advice. It is recommended that you seek professional advice with respect to the particulars of your situation.

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