

## The Law of Mortgage Payoff Letters

Mortgage payoff letters create many uncertainties for title company closers. Recent lawsuits from across the country teach these lessons:

- **Avoid relying on oral payoff figures.** In *Jim Carpenter Co. v. Potts*, 495 S.E.2d 828 (Va. 1998), the lender was not obligated to honor an oral payoff amount. However, the Minnesota Supreme Court has recently said that a lender in that state must honor its oral payoff figure. *Smith v. Woodwind Homes, Inc.*, 605 N.W.2d 418 (Minn. 2000). This case is also very useful when the lender balks at honoring an oral modification to a payoff letter.
- **Get firm figures for partial releases of blanket subdivision or condominium loans.** These loans sometimes have complicated payoff formulae. In the *Jim Carpenter* case, the lender and borrower disagreed about what the payoff amount should be, and the closer was stuck in the middle of the dispute.
- **Pay off the correct loan.** When the borrower has more than one loan with the lender, match the loan number for the secured loan to the payoff letter issued by the lender. In a great recent case, the borrower had two loans with the same bank. The closer gave the payoff information for the mortgage loan, but the lender issued the payoff on the personal loan. The court said the lender had a duty to satisfy the mortgage, because people relied on the payoff letter. *Stewart Title Guar. Co. v. F.D.I.C.*, 936 S.W.2d 266 (Ct.App.Tenn. 1996).
- **Put the property address and loan number on the payoff check or cover letter.** In the F.D.I.C. case, the court said an important reason why the lender should honor the incorrect payoff was because the check gave the property address on the reference line. That indicated that the intent was to pay off the mortgage loan, not the unsecured personal loan.
- **Get proof of authority for loan servicers.** Ask a loan servicer before closing for evidence that it can sign a satisfaction. If a loan servicing agent has the power to sign a satisfaction, a closer can rely on that authority until the lender advises the closer that the servicer has been fired. *Banco Santander Puerto Rico v. Select Title Service Inc.*, 692 So.2d 950 (Fla.Ct.App. 1997).
- **Close the equity loan account before the payoff is issued.** When asking for a payoff letter on a revolving credit equity loans, include a letter from the

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borrower(s) telling the lender to close the account. Send a second letter from the borrower(s) with the payoff check confirming that the account is closed and ordering the lender to satisfy the mortgage. When you ask the borrowers to sign the letters, explain to them that this loan is now closed, they cannot borrow against it, they must destroy any credit card or checks attached to the account, and the lien of the mortgage does not move with them to their new house. If you use these letters, the lender should have to satisfy the mortgage even if it mistakenly makes advances under the loan after the loan termination letter is received. See *First American Title Ins. Co. v. TCF Bank*, F.A., 676 N.E.2d 1003 (Ill.App. 1997). When the closer did not send a loan termination letter, the title company had to pay the additional advances in order to get a satisfaction. *Chemical Bank of N.J. v. Bailey*, 687 A.2d 316 (N.J.Super.A.D. 1997).

- **Update payoff letters before closing.** Call before closing to verify that the payoff figure is still accurate. This also gives the lender a chance to discover any error on the letter. A very good new Virginia case says that the lender has a duty to promptly tell the closer that its payoff letter is wrong. *Sovereign Title Co. v. First Union Nat'l Bank*, 4/20/00, 2000 WL 511798 (Va.Cir.Ct.). The court noted that the closer called before closing to confirm, but the lender did not correct its error. The case result was based in part on the Virginia law making lenders bound by their loan payoff letters, so the same result cannot be guaranteed in our state.
- **Foreclosure payoffs.** When the loan is in foreclosure, get the payoff letter from the lender but also get an accurate statement of attorney's fees owed for the foreclosure. The attorney is the person best able to give that accurate amount. However, avoid taking a payoff letter only from the attorney, because he or she may not include late fees, penalties and other charges that the lender believes are owed. The lender may not be bound by a payoff letter issued by the lawyer. See *Bacich v. Uzzell*, 2000 WL 760440 (Minn.App.) (unpublished).
- **"Hostage" payoff amounts.** Colorado has held that a lender cannot condition its satisfaction on the payment of a "penalty" amount on top of the debt. Anticipated attorney fees in foreclosure or other litigation can be used as a penalty. In *Crown Bank v. Crowder Mortgage Corp.*, 2000 WL 674923 (Colo.App.), the court said that the lender could not condition the satisfaction on payment of attorney fees for a possible future dispute with the borrowers. The court said: "a lender cannot place conditions on its release of a deed of trust [mortgage] other than the satisfaction of the indebtedness secured by that deed of trust. ...If a lien holder were permitted further to condition the release



of the lien, it could use that ability to coerce settlement of other disputes or accounts a result which the statute clearly intended to prevent." In Colorado, there is a statute regulating payoff letters, unlike Wisconsin, but this case may be useful in dealing with a lender that places undue conditions on satisfaction of the mortgage.

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