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Mortgage Payoff Pitfalls

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1

**Mortgage Payoff Pitfalls
aka
Payoffs Gone Wrong
aka
When Payoffs Attack!**

A black and white illustration of a T-Rex roaring with its mouth open, showing sharp teeth. The T-Rex is positioned as if it is attacking or emerging from a city skyline, with several skyscrapers visible at its base. The background behind the T-Rex is a dark, circular shape with radiating lines, suggesting a bright light or a powerful force.

2

FUTURE ADVANCE MORTGAGES

Known issues, but still problematic

This type of Mortgage contains a revolving feature. Much like a credit card, as the Borrower pays down the balance, the available funds increase. It can be referred to as a HELOC, Equity Line, Future Advance, Credit Line, Revolver... whatever the words chosen, it all implies the same thing... paying the balance off is insufficient, the account must also be closed. If it is not closed, the Borrower can run it back up and the Mortgage never gets Discharged, staying in a superior lien position to the Mortgage you just insured first position to. And if the Future Advance Lender has to foreclose, your newly insured Lender might have a claim for total loss.

The reminder to have the Borrower sign a form to close the account is included on many Commitments these days, but not all companies include the language and sometimes it can get missed by those who do. If you're obtaining a payoff, you have to know whether the Mortgage payoff you are requesting is for a loan that requires an account closing request. And keep in mind that the account can be run up while awaiting closing. Know your company's procedure for handling Future Advance/HELOC payoffs.

3

HUD PARTIAL CLAIM MORTGAGE

What is it?

An FHA Mortgage is a loan insured by the Federal Housing Administration, which is an agency within the U.S. Department of Housing and Urban Development (HUD). FHA's primary function is to provide insurance to Lenders. In the event a property owner defaults on their FHA Mortgage, FHA compensates the Lender for the outstanding principal balance.

FHA/HUD would like Homeowners to stay in their homes. It's a benefit to the economy, and they would like to NOT pay out for default every time a Homeowner falls behind on payments.

The Partial Claim Mortgage is one homeowner assistance option that allows Borrowers to "move" the full amount that is past due (principal, interest, and late fees) to a zero-interest subordinate lien.

4

HUD PARTIAL CLAIM MORTGAGE

How does it work?

The Partial Claim Mortgage amount does not require repayment until the last mortgage payment is made OR the loan is refinanced OR the property is sold.

The process is supposed to be relatively simple for Homeowners- the current Lender usually coordinates the FHA/HUD requirements, prepares the paperwork, and generally micro-manages the process from beginning to end.

The end result is that a portion of the amount owing on the original Loan has now been “moved” to a second recorded lien in favor of HUD for the amount HUD paid the Lender to bring the loan current. The balance due for the original loan is now reduced and a second payoff likely exists.

The term “Partial Claim” refers to the Lender making a PARTIAL CLAIM on the insurance FHA provided to them in the event of default: the Lender isn’t cashing in on a full loss of the Loan, they just took part of it from HUD. So HUD gets to lien the property too because they partially paid on the insurance they provided.

5

HUD PARTIAL CLAIM MORTGAGE

Why does it cause us so many problems?

Lack of consistency and understanding seem to be the most common culprits

-Forms are prepared by Lenders, not by HUD - no uniform Document is used

-Document name headers vary leading to variances in postings and in interpretations of what these docs do

-HUD uncovered a failure in properly tracking their own information internally

-Inconsistent payoff information- some payoff information may include the PCM amount, but not all.

-Our reliance on inaccurate information

6

SUBORDINATE MORTGAGE

Recording Requested By:
Freedom Mortgage Corporation
951 Yamato Road
Boca Raton, FL 33431

After Recording Return To:
Freedom Mortgage Corporation C/O:
Mortgage Connect, LP
Attn: Loan Mod Processing Team
600 Clubhouse Drive
Moon Township, PA 15108
APN/Tax ID: 41-13-23-301-003
Recording Number: 3359151

This document was drafted by: Freedom Mortgage Corporation, Michele Rice, 11988 Exit 5 Pkwy
Bldg 4, Fishers, IN 46037-7939, 855-690-5900

_____ **Space Above This Line For Recording Data** _____

FHA Case No. 263-6508223-702

7

Title: PARTIAL CLAIMS MORTGAGE

This Document Prepared By:
**MADHAN MMM
PLANET HOME LENDING, LLC
321 RESEARCH PARKWAY, SUITE 303
MERIDEN, CT 06450
(855) 884-2250
NMLS# 17022**

When Recorded Mail To:
**PLANET HOME LENDING, LLC
321 RESEARCH PARKWAY, SUITE 303
MERIDEN, CT 06450**

Tax/Parcel #: 410925255021

_____ [Space Above This Line for Recording Data] _____

**FHA Case No.: 263-6940909
Loan No: 9102285579**

PARTIAL CLAIM MORTGAGE

8

MORTGAGE
SPACE ABOVE FOR RECORDER USE

WHEN RECORDED MAIL TO:
Bank of America, N.A.
11802 Ridge Parkway, Suite 100
Broomfield, CO 80021
Prepared by: *LEASE GARCIA-B*
Bank of America, N.A.
11802 RIDGE PARKWAY, SUITE 100, BROOMFIELD, CO 80021
FHAVA Case No. 2633945761703
Doc ID 065759329457105B
See Exhibit B for assignments of record if applicable
525637-8888

MORTGAGE

MARITAL: HUSBAND AND WIFE.
THIS MORTGAGE ("Security Instrument"), is given on December 9, 2013. The ...

MICHIGAN - SUBORDINATE MORTGAGE - 9/98 - HUD INSTRUMENT
FHA- PARTIAL CLAIM Page 1 of 6

9

HUD PARTIAL CLAIM MORTGAGE

How do we avoid these pitfalls?

- A better understanding of the known errors in the existing processes:
 - a. Lenders do the heavy lifting at making this program work for homeowners
 - b. Homeowners often don't really realize this is a Mortgage. They don't receive monthly statements, the package for the program arrives with instructions and postage paid return envelope, the Lender is responsible for recording the Mortgage.
 - c. ROD's might mispost as an associated document to the original Mortgage.
 - d. Commitments might incorrectly reference the document.
 - e. Lender payoff inquiries might be insufficient.
 - f. Reliance on insufficient payoff info obtained in split transactions.

Keep in mind that in a split transaction, both Policy types insure that this Mortgage has been satisfied unless it is excepted from coverage. You are responsible for the Policy you are issuing.

10

HUD PARTIAL CLAIM MORTGAGE

How else can we avoid these pitfalls?

-HUD is also implementing changes. In January 2025, HUD shared a draft letter intended to establish some new procedures for Mortgagees regarding Partial Claim Mortgages. In part, the revised guidance to Mortgagees are in hopes of providing clarity and improving the accuracy and response time for payoff requests ... this will also reduce confusion and help Borrowers understand the total debt associated with their FHA insured Mortgage.

<https://www.alta.org/news-and-publications/news/20250116-HUD-to-Modify-Procedures-for-Partial-Claim-Payoffs-Extend-Recording-Time>

If there are any outstanding Partial Claims associated with a mortgage when a Mortgagee receives a payoff request for an FHA mortgage, the Mortgagee will need to: include a letter with the payoff statement for the FHA mortgage that indicates the borrower has one or more outstanding Partial Claim(s) and information about how to obtain a payoff statement from HUD; Where Partial Claims have not been legally recorded and delivered to HUD or a claim has not been filed, Mortgagees must produce and provide a payoff statement for any Partial Claims to the requestor.

11

SHERIFF'S DEED REDEMPTIONS

When Mortgage payments are delinquent long enough, the Lender can foreclose the property by having the County Sheriff sell the property to the highest bidder - this is the Grantee on the Sheriff's Deed. This might be the Lender or it could be a Third Party Bidder - someone with no existing interest in the property. The Grantee will own the property when the Sheriff's Deed becomes operative, usually upon expiration of the redemption period without redemption being made [often six months], but there are other ways to move this "last day". Your Mortgage payoff for this Mortgage is actually going to be a Redemption. The Mortgage that has gone to foreclosure will not have a payoff.

Recorded Sheriff's Deeds are to include an Affidavit detailing how redemption is to be made. This attached Affidavit should outline the amount required to redeem, including a per diem amount (the last day to redeem being found in the same Sheriff's Deed) and contact information of a designee that will calculate redemption amounts and the Fee they will charge to do so.

12

SHERIFF'S DEED REDEMPTIONS

What could possibly go wrong in this so very straight forward approach to redeeming a Sheriff's Deed?

You might not even know there's a Sheriff's Deed until the payoff request to the Lender is rejected and you are redirected to their foreclosure department or a law firm. Sheriff's Deeds don't always get recorded right away.

The redemption info could be coming from the Third Party Bidder at the sale and maybe they're not returning calls/emails.

Mortgage foreclosures are governed by statute. Lenders and Homeowners can't make deals that change the laws. Third Party Bidders can't just avoid attempts made to redeem in hopes of flipping a hot deal of a house.

Some company procedures or certain transactions might rely on an internal calculation based on the Affidavit information while some might request an external calculation of the payoff from the Designee as provided for in the Affidavit.

13

SHERIFF'S DEED REDEMPTIONS

A particularly painful "gone wrong" went like this:

The redemption period is also governed by statute. If there is a contradiction in the Sheriff's Deed as to the last day to redeem, the statute controls. Lacking additional context, one might say the earlier of the two dates has some safety attached to it.

Sheriff's Sale held February 1 with a six month redemption period, set to become operative August 1.

Redemption instructions in the Affidavit attached to the Sheriff's Deed were followed and the Grantee's designee was contacted for a payoff. Designee provides a payoff with a per diem amount good through August 10. The closing takes place August 3 and redemption funds are wired. Guess what happens next...

The funds were sent back because the redemption period had expired and the Grantee in the Sheriff's Deed owned Fee effective August 1.

Just because the payoff is good through August 10 doesn't mean the redemption period ran that long. It could've been a purposeful trick or an honest mistake or a designee who had more experience with traditional Mortgage payoffs.

In any event, the insured Buyer suffered a total failure of title.

14

ASSIGNMENT AS COLLATERAL

Hard money/private capital Mortgages are on the rise and we are seeing more Assignments as Collateral in residential and investment properties.

John Doe purchases a house for \$115k and his same day PMM for the full amount is in favor of two LLC's: JDK LLC and JVAN LLC.

About one month later, JDK and JVAN pledge their Mortgagee interest in John Doe's Mortgage to borrow money from a State Bank. The resulting Lien recorded is a 'Collateral Assignment of Note and Mortgage'. The body of this Lien references the John Doe Mortgage. The Lien gets posted at the ROD as an Assignment of the John Doe Mortgage. Which it technically is. But not in the traditional sense. Cross-reference posting like this makes it an easy mistake to disregard this Lien if the John Doe Mortgage is Discharged before the Collateral Assignment is.

And then the payoff letter of the John Doe Mortgage arrives. It identifies THREE entities that the payoff should be split among: 68k to JDK, 33k to JVAN, 34k to DKK LLC - who had no recorded interest in the John Doe Mortgage.

The Agent chose not to accept this payoff at face value and requested a Mortgagee Assignment of the John Doe Mortgage to include DKK or a revised Letter directing proceeds to JDK and JVAN only, forcing the two LLCs to disburse to DKK how they see fit.

15



Thanks for attending!

16