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Insights

March Hoosier Banker: Compliance Connection with Partner Brett Ashton

March 7, 2016

By: Brett J. Ashton

As seen in the March 2016 issue of the Indiana Banker Association's Hoosier Banker.

Question: When a customer pays off a home equity line of credit, how quickly do we have to release the mortgage? Can we require the customer to provide written notice of intent to close the account before releasing the mortgage?

Answer: The requirements under Indiana law for releasing a mortgage associated with a home equity line of credit (HELOC) will depend upon what is contained in your loan documents, whether the customer submits a written request for release, and if that request complies with the lender's requirements to close the account. Ind. Code § 32-28-1-1(b) provides, "When a debt or obligation and the interest on the debt or obligation that the mortgage, mechanics lien, judgment or other lien secures has been fully paid, lawfully tendered, and discharged, the owner, holder, or custodian shall release, discharge and satisfy of record the mortgage, mechanics lien, judgment or other lien." The very nature of a HELOC is to allow the customer the flexibility to access as much or as little home equity as required, including paying all of the outstanding line at any time. While some lenders have specific language in their loan documents requiring the customer to provide written notice of termination in a specific manner in their agreements, others do not, leading to the potential for losses in the event of subsequent draws.

Indiana courts have held that, absent specific language requiring written termination of the HELOC, dependent upon other provisions in the loan documents, the lender may still have a duty to release the lender's lien interest when the borrower pays its loan balance down to zero. The court in In re Tennant, 2012 WL 3778863 (Bankr. S. D. Ind., Aug. 30, 2012), addressed this issue in a bankruptcy case involving a HELOC that contained language providing, "Lender shall discharge the mortgage upon full payment of the indebtedness." While the bank in that case argued that the customer was required to provide written notice to terminate the HELOC, the court held that, in spite of the fact that the borrower obtained multiple advances after his initial payment in full of the outstanding indebtedness, because the loan documents did not require a written demand to release the mortgage, the bank was required to release the mortgage following the initial payment of outstanding balances, and no subsequent advances would be covered by the mortgage.

For those loan documents requiring that a written release must be provided before closing a HELOC, refinancing lenders should ensure that a mortgagee's process for closing an account is closely followed to protect against unexpected exposure to future advances on still-open HELOCs. Indiana courts also have addressed this issue in Dreibelbiss Title Co. v. Fifth Third Bank, 806 N.E.2d 345 (Ind. Ct. App. 2004), trans. Denied, where a customer paid off a HELOC, but failed to satisfy the lender's required process to close the account.

In Dreibelbiss, the customer paid off a HELOC with a check and the instruction that, if the amount tendered was insufficient to satisfy the existing mortgage, the customer would send additional funds to ensure the existing mortgagee could issue a discharge or satisfaction of the mortgage. Because the customer did not submit a signed letter authorizing the bank to close the HELOC and release the mortgage, the court held the underlying mortgage remained valid.

If your bank receives a written demand to release a paid-off mortgage via registered or certified mail with return receipt requested, Indiana law* requires you to do so no later than 15 days after receipt. Failure to comply with this requirement could expose the bank to a civil penalty of up to $500 for the failure to release, discharge and satisfy the mortgage, in addition to costs and reasonable attorney's fees incurred by the borrowers in enforcing the release. In addition to these penalties, a court also may then appoint a commissioner to release and satisfy the mortgage, mechanic's lien, judgment or other lien.

* **Ind. Code § 32-28-1-2**

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