

CLAIMS PREVENTION: Satisfaction of Revolving Lines of Credit

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One of the areas where we continue to experience a substantial number of claims is mortgages securing revolving credit line notes which do not get satisfied. The good news is that, in most cases, these types of claims can be avoided by following the instructions contained in the lender's payoff letter and some simple, but important, guidelines. Although we have addressed this issue in the past, since these claims are on the rise, we thought it was timely to remind you how to identify a revolving line of credit and, once identified, the procedures necessary to obtain a satisfaction.

Revolving lines of credit allow property owners to borrow against the equity in their real property. The borrower can pay it down from time to time, and then borrow against it, up to a maximum amount. So, even if the loan is paid off to a zero balance, it is not satisfied unless the intent is expressly understood and agreed to by both the borrower and the lender. Since the borrower can generally access the line of credit by making "draws" using checks, a credit card or an ATM card, the account must be closed prior to the final payoff. Most estoppel letters for revolving lines of credit instruct the closing agent to obtain a written authorization from the borrowers requesting the closing of the account prior to the payoff.

The most common claim with this type of mortgage occurs when the outstanding balance has been reduced to zero prior to the closing, or the funds collected and disbursed at closing will result in a zero balance. If the payoff letter received from the institutional lender shows a zero balance or states the amount necessary to bring it to a zero balance, the agent *incorrectly* assumes the mortgage will be satisfied once the payoff is received by the lender. The problem is that even though the balance is zero, the revolving line of credit is still open and, after the closing, the original borrower can still make additional draws and increase the balance. Another risk is that the borrower may have written checks prior to closing that the lender was not aware of when it provided the payoff information.

In an effort to reduce our liability caused by lenders refusing to satisfy revolving lines of credit, Old Republic requires the following procedures when such a mortgage is being paid off:

- (1) Obtain an original estoppel letter from the lender specifically stating that the revolving line of credit has been closed and that upon payoff of the sum in the letter, the lender will execute and record a satisfaction of the line of credit. It is important to read the credit line mortgage carefully as many of them contain specific requirements with regard to obtaining payoff information and satisfactions, which are different than traditional mortgages. For example, as stated, many lenders require a letter from the borrower requesting that the line be terminated and they won't accept a letter from the closing agent. Because the borrower can make draws against the line until closed, you should telephone the lender on the day of closing to verify the accuracy of the payoff figures. If the verbal payoff differs from the original estoppel letter, a revised estoppel letter must be obtained from the lender prior to disbursing the transaction.
- (2) Obtain a Borrowers Revolving Line of Credit Affidavit and fax it to the lender. (Attach the fax confirmation to your file copy of the Affidavit.) It is suggested that you obtain the Affidavit as soon as you are aware there is an outstanding revolving line of credit that will need to be satisfied. A sample Affidavit is shown on the reverse side.
- (3) Require the borrowers, either before or at closing, to surrender and return all unused checks, credit cards, vouchers or other means of accessing the credit line. If possible, verify with the lender the number of the last check that cleared the bank and compare it to the number of the first check the Borrowers surrender. Also verify with the lender that any missing checks or checks out of sequence have cleared the bank prior to closing.
- (4) Forward the payoff check via overnight mail. If the revolving line of credit is not already closed, the check must be accompanied by a cover letter instructing the lender to close the account and satisfy its lien. In addition, a copy of the signed Borrowers Revolving Line of Credit Affidavit, together with evidence of compliance of any other requirements made pursuant to the lender's instructions for payoff, must be enclosed. Then, follow up by obtaining the satisfaction.

Although we understand these requirements may create additional time and work, based on our claims history for these types of loans, unfortunately they are necessary to avoid future problems. Should you have any questions regarding any of the procedures, please do not hesitate to contact underwriting.