

CHAIN OF TITLE ASSESSMENT (COTA) CHECKLIST

IMPORTANT! Please read this entire document **BEFORE** proceeding with your COTA! **NOTE:** An explanation into each category follows each enumerated item in this checklist!

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What is needed to complete a chain of title assessment (COTA):

I. COURTHOUSE RECORDS

The following must be obtained from courthouse land records in **BOTH** Certified and regular copies (one of each; certified copy for evidence and regular copy for office use). If you obtain Certified Copies, **DO NOT SEPARATE THEM** (by removing the staple (they will become “uncertified” because of tampering):

___ **DEED**

(This can also be known as “Warranty Deed”; “General Warranty Deed”; “Special Warranty Deed”; “Grant Deed”; “Substitute Trustee’s Deed”; “Quit Claim Deed”; “Tax Deed”; “Interspousal Deed” or “Abstract Deed”.

This “deed” represents itself as the *title instrument* that conveys the property to you by the former owner. The former owner would be the “Grantor”; you (and your spouse, if married) are the “Grantee”. This generally starts your chain of title.)

___ **DEEDS OF TRUST**

(These are also referred to in judicial states as a “Mortgage”. Also known as a “Security Deed” or “Installment Contract” in some states.

Either of these *title documents* could represent an equitable lien (security interest) on your title. Copies of these items from the paperwork in your closing file will not work here unless they contain the proper recording stamps from the Clerk, Recorder or Register of Deeds office. **All pages of the document are necessary** for review to ascertain the type of contract and obligations you agreed to.

___ **HOME EQUITY LINES OF CREDIT** (also known as a “HELOC”; may also be referred to as a “Future Line of Credit” or “Open-End(ed) Line of Credit”).

Many consumers do not realize that HELOC’s are mortgage liens too and they operate as a “secured interest” within your chain of title, if recorded.

___ **SECOND MORTGAGE LIEN** (also known as a “Deed of Trust-Second Lien).

This type of a lien is generally subordinate to a first lien, by permission, in writing.

___ **CONVEYANCES (ASSIGNMENTS)** (also known as “Assignment of Mortgage”; “Assignment of Deed of Trust”; “Corporate Assignment of Mortgage”; “Corporate Assignment of Deed of Trust”; “Corrective Assignment of Mortgage”; “Corrective Assignment of Deed of Trust”).

These documents generally follow a first or second mortgage lien in the chain of title to an encumbered property. From roughly 2003 to the present, all assignments (in any form shown above) are “suspect” for false and misrepresentative statements which may be found to be in violation of most if not all state statutes.

___ **RECONVEYANCES** (also known as a “Deed of Reconveyance” in deed of trust States; in mortgage States, these are known as “Release of Lien” or as a “Satisfaction of Mortgage”. These can also be identified solely as “Release” or “Satisfaction”, in full or in partial form).

In the chain of title, the foregoing represent where the lender or trustee conveys the property back to the owner, free of the encumbrance of the mortgage loan. The procedures for such conveyances are described in detail in the Mortgage or Deed of Trust paperwork.

___ **APPOINTMENT OF SUCCESSOR TRUSTEE NOTICES** (also referred to as “Substitution of Trustee” in the real property land records indexes).

These “appointments” and/or “substitutions are found in non-judicial, Deed of Trust States only! They generally FOLLOW the “Assignments of Deed of Trust” in the property’s chain of title.

___ **NOTICE OF DEFAULT AND SALE; NOTICE OF INTENT TO FORECLOSE; or NOTICES OF TRUSTEE’S SALE**

In deed of trust (non-judicial states), these documents (when recorded) serve as constructive notice that the subject property is either in default and at risk of sale or will be sold on a prescribed date as shown in the notice. They may be preceded by the borrower receiving a certified mail letter entitled, “Notice of Intent to Accelerate” or “Notice of Acceleration of Loan”. These notices **MUST** be recorded in the land records where the subject property is located in order to be valid.

___ **OTHER LIENS** (also known in “notice form”, by operation of law, as: “Notice of Federal Tax Lien”; “Notice of State Tax Lien”; “Notice of County Tax Lien”; “Notice of Child Support Lien”; “Materialmen’s Lien”; “Lien”; “Mechanic’s Lien”; “Homeowners Association Lien”; “Condominium Owners Association Lien”).

These types of liens, when satisfied, can result in the recording of a “Release” of any of the foregoing liens. Whether a lien is subordinate to the Mortgage or Deed of Trust depends on current statutes and case law in the State you live in.

___ **DEBTOR JUDGMENTS** (also simply known as a “Judgment”).

These types of liens can arise from a judicial proceeding, whether in a court of law or equity (or even small claims court) and can take priority depending on what is mandated by current State statutes and case law in the State you live in. Personal injury judgments based on willful violation of the law and judgments on student loans are more than likely not dischargeable in bankruptcy. These judgments, when recorded, can (if applicable law allows) also operate as liens on real property.

___ **NOTICES OF BANKRUPTCY AND DISCHARGE OF BANKRUPTCY**

While these types of “notices” normally affect the borrower’s (consumer’s) credit rating, they serve as “constructive notice” to creditors and debt collectors of the borrower’s participation in a bankruptcy proceeding and thus, represent a life-changing, significant act within the chain of title to the property.

___ **SUBORDINATION AGREEMENT** (shown as stated here).

This type of recorded notice involves a written agreement by a second lender to allow its mortgage encumbrance to be moved to a junior position.

___ **NOTICE OF LIS PENDENS** (also known similarly as “Lis Pendens”, a legal phrase meaning “suit pending”).

These notices represent that a law suit against real property has been filed in a judicial proceeding and serve as constructive notice to the world of the right of potential claimants to the property to seek out the lawsuit in the venue it was filed in and file an answer within a certain time frame, or face rejection of any claims filed in the future, as untimely (see *Doctrine of Laches*; *Statute of Limitations*). There are specific Rules of Civil Procedure and case law that dictate HOW and WHEN these Notices should be filed with the Court and then recorded in the county record where the subject property is located.

Why these “recorded” documents are necessary ...

It is first very important to understand that the checklist that is being utilized nationally was developed by DK Consultants LLC... and for good reason. An education about the subject content of real property records is essential before spending thousands of dollars on audits and attorney’s fees in litigating a case. The preceding list of documents is generally found in virtually every real property record in every county or township jurisdiction in the United States. When visiting the recorder’s office to obtain your documents, please seek the deputy recorder’s assistance if you are having difficulty locating any of your documents.

*If you cannot find a specific document, it could be because a party that may claim an interest in your chain of title **did not record it**. This applies particularly to assignments, appointments of substitute trustee and reconveyances or releases of mortgage liens. In many states, not properly and/or timely recording a deed, an assignment or a release of mortgage can be a violation of statute.*

Your **DEED** (in whatever form it may be in as shown herein) is your proof of ownership. Your title consultant has to view this document in its entirety to determine whether the Property in question contains issues as to whether the Property was lawfully conveyed to you. You should be able to locate your deed by your last name and first name in the “Grantee Index”. After you take title to Property, should you wish to take out a mortgage against it (to buy or build a house on this property for example), you then become the “Grantor”. All of the liens interests you’ve granted should be found in the “Grantor Index”. All Property Records are listed by a Grantor-Grantee Index. Again, if you run into trouble, ask for help for your county recorder, clerk or register (or their deputy).

When you take out a mortgage loan, the Lender you “borrow the money” from becomes a lien holder against your Property until your mortgage is paid in full. You are then known as the Mortgagor, Grantor or Trustor, depending on what State your Property is located in. The Lender will file what is known as a Security Instrument against the Property in the land records to protect its lien interest. These instruments come in many forms ... Mortgage ... Deed of Trust ... HELOC ... Second Mortgage ... these are ALL liens against your Property. The title consultant needs to see EACH ENTIRE DOCUMENT!

You cannot simply send in just the cover sheet and last page. Send in THE ENTIRE DOCUMENT (no skimping allowed here)!

Your Lender may decide to sell its interest in your Property to another party (or multiple parties). In order for each party to have a recorded interest in the chain of title, an ***ASSIGNMENT*** must be recorded in the county real property records. Many times, these assignments are not recorded, which means that *unknown intervening assignees* may have an unrecorded interest in your chain of title. This can be legally dangerous because it could expose you or a future purchaser of your Property to *double liability*; in other words, you may think your Property’s lien is satisfied in full, when in fact, the wrong party may have been paid off! This is why in this day and age assignments (or the lack thereof) are systemically problematic in the chain of title.

Any recorded ***notices*** placed in the land records by a lienholder may be required by State statute. It is important that the Title Consultant see each of these notices, as it reflects a claim of lien against the Property. On many occasions, there may be evidence of lack of standing by a lien claimant. All lender-generated notices that are filed in the land records can be used to determine whether the lender (or its law firm) is acting with proper authority.

Copies of all ***JUDGMENTS*** and other ***LIENS*** (tax liens, mechanic’s liens, child support liens, etc. as shown above) are also important because these liens and judgments may be superior to the mortgage lien of record. The title consultant needs to see these documents in their entirety to determine whether there are conflicting issues with these liens in the chain of title.

Again, make sure to obtain EACH APPLICABLE ENTIRE DOCUMENT *in its recorded form* for the title consultant to review!

II. COURT FILINGS AND ANCILLARY JUDICIAL DOCUMENTS

The following must be obtained from courthouse court records in BOTH Certified and regular copies (one of each; certified copy for evidence and regular copy for office use). If you obtain Certified Copies, **DO NOT SEPARATE THEM** (by removing the staple (they will become “uncertified” because of tampering):

___ **ORIGINAL PETITION TO FORECLOSE** (if in a judicial state; these are also known as “Complaint”; “Complaint to Foreclose”; “Foreclosure Complaint”).

In judicial states (or Mortgage states) where a mortgage is recorded, the Complaint should have a copy of the mortgage and promissory note attached, or should state that the originals will be presented to the Court at a point in time during the proceeding. Non-judicial state courts can also entertain judicial proceedings that govern real property, depending on statute.

___ **FINAL JUDGMENT** (also known as “Final Judgment of Foreclosure”; “Foreclosure Judgment”; “Judgment to Foreclose” or “Consent Judgment”).

In judicial proceedings, a court must issue one of these, which is generally recorded in the public record in the county where the subject property is located, in order for a sale of the property to be commenced. These judgments generally contain a sum certain, which has been certified by the court to be valid, along with attorney’s fees and costs of suit) and generally serve as a minimum bid at foreclosure sales. *NOTE: Certain states only sell interest in the lien, not the property itself!*

___ **FORCIBLE DETAINER and/or EVICTION NOTICE**

These types of documents may show up in the land record following a foreclosure sale and generally involve a judicial proceeding where the borrower or current tenant has not vacated the property voluntarily.

___ **FINAL or ORAL TRANSCRIPTS** (from court proceedings, if applicable, which may include statements made during oral arguments)

In order to obtain these types of transcripts, you have to retain a court reporter, who will sit in court on the day of your hearing and take down all of the statements made by any party in open court. They become a necessary part of your evidence!

___ **THE PROMISSORY NOTE** (also shown as “Note”)

In judicial (or mortgage) states, a lender or lien holder is required to file a formal complaint against the property and its current owners, which are generally the borrowers on the mortgage loan, for non-payment. Generally, they must have the original of the promissory note (“Note”) to show that they are in possession of it and thus, have the right to enforce the terms of the Security Instrument (Mortgage).

If you have a copy of the *NOTE*, please be sure to include the *ENTIRE NOTE* for the title consultant’s review, along with any foreclosure complaints you may have been served with in which the Note has been attached as a exhibit thereto.

Sadly, in non-judicial (deed of trust) states, the foreclosure is conducted by notice, publication and sale), which should involve notices you may have received in the mail or by process server. All foreclosures in non-judicial states are deemed to be legal, regardless of any “suspect” documents recorded in your property’s chain of title. The only way to stop a foreclosure sale in a deed of trust state is to file suit.

It is important to note here that the Note (in a deed of trust state) may only become pertinent if a judicial proceeding has been commenced and the Note is demanded by the Plaintiff borrower to be brought forward in its current form. On many an occasion (as described below), the Borrower may be fortunate enough to obtain a copy of the Note (NOT THE ORIGINAL) from the mortgage loan servicer, through a Qualified Written Request (promulgated under RESPA § 6). Any response, including a copy of the Note provided, should be copied and turned over to the title consultant for review to see how the Note compares to what is in the chain of title (or isn’t). If there are stamps (endorsements) on the back side of any page of the NOTE document, then copy **BOTH SIDES of the Note (ALL PAGES)** and attach them together in the order they were copied.

III. SECONDARY UNRECORDED DOCUMENTS**

The following must be obtained from sources outside of courthouse court or land records and may be submitted in either affidavit and/or verified form. These also may only be available as a regular copy received by mail [please include the envelope it came in]. A verified copy is a copy signed before a notary. The original copy is for evidence and the regular copy for office use). If you obtain Certified Copies, **DO NOT SEPARATE THEM** (by removing the staple (they will become “uncertified” because of tampering):

COMMUNICATION FROM ANY LENDER OR SERVICER

Due to the uptick in FDCPA-related litigation, some of the most important information is found within the “initial communication” from the “lender” (or in the alternative, the “debt collector”), especially if a sale or transfer of the Note has occurred AFTER an alleged default has occurred. This will help ascertain whether the party coming after the Borrower is a creditor or debt collector as identified by the Fair Debt Collection Practices Act (or its applicable corollary state statutes).

DOCUMENTS OBTAINED FROM SEC-TYPE SEARCH ENGINES

If your loan has been securitized, there may be a document known as a “424(b)(5) Prospectus” contained within a search of websites such as “sec.gov” or “secinfo.com”. These types of documents can be searched by the title consultant as well as the parties involved in the litigation. This document identifies the cut-off date, the closing date, the distribution date, transfer of loans into the trust, assignment of the mortgage loans into the trust and other pertinent information necessary to assist counsel’s efforts in a successful litigation attempt.

MERS “MIN” SEARCHES (also known as “Servicer ID” searches).

These types of searches are taken from the MERSCORP Holdings, Inc.-owned website known as “mersinc.org”. The actual search link is shown as follows:

<https://www.mers-servicerid.org/sis/>

Search results obtained from this database are disclaimed by MERSCORP for accuracy, which means the results may have been manipulated by the user of the MERS® System and thus, may not be reliable or dependable as evidence in a lawsuit.

GSE-RELATED SEARCHES (from their respective Internet websites).

While these sites (Fannie Mae or Freddie Mac) may disclaim any information revealed as the result of a search of their databases, any result may be used to make legal determinations on litigation strategy. Their links are shown here:

<https://www.knowyouroptions.com/loanlookup> (Fannie Mae)

<https://ww3.freddiemac.com/loanlookup/> (Freddie Mac)

NOTIFICATION FROM ANY LAW FIRM REGARDING FORECLOSURE

Any communication from the law firm may be useful to determine whether the foreclosure mill has stepped “outside of the law” in attempting to collect a debt versus enforcing a security instrument. These should be included (save the outside envelopes and include them as part of the evidence package). The envelopes show the use of the United States Mails (in a potential attempt of suspect mail fraud).

MERS DISCLOSURE NOTICE

This type of a single-page notice might be found in your closing documents that you signed when you executed the mortgage documents at closing. These notices demonstrate that Mortgage Electronic Registration Systems, Inc. (and its parent, MERSCORP Holdings, Inc., who was not present within the documents you signed) was utilized to securitize your mortgage loan on Wall Street. Any time that “MERS” is used, it indicates an intent to securitize a mortgage loan in the secondary warehouse markets involving REMIC trusts and their investors.

It is uncommon to find these notices as MERS is NOT responsible for issuing them to you (the originating Lender is). Many times, the originating Lender has sold your loan into the *secondary mortgage market* (through a process called *securitization*) **BEFORE** you signed your documents at the closing table! Many of these originating Lenders may be what are known as “table-funded lenders” which means they are NOT the party that actually loaned you the money even though it may say this on your Security Instrument. Many of these originating Lenders may also be out of business! This too is systemically problematic throughout the United States, especially post-2008 financial collapse on Wall Street!

IV. TITLE COMPANY DOCUMENTS

COPY OF HOMEOWNER’S INDEMNITY POLICY (if purchased)

While many attorneys may say these policies aren’t worth the paper they’re printed on, title companies make a fortune selling these policies to homeowners. These are NOT the same as the “Lender’s Policy”, which generally is never available for the borrowers to see, yet is issued by the title company underwriting the closing of the mortgage loan. In the event of default, especially if the loan is securitized, the lender will make an attempt to “cash in” on the “Lender’s Policy” because the chain of title has been compromised. This too is “suspect” in this day and age!

___ **COPIES OF ANY TITLE SEARCHES DONE** (where a report was issued).

These types of documents may be referenced as a “Title Report” and are generally necessary for certain litigation, like quiet title actions and cancellation and expungement actions (a “C & E”).

___ **COMMUNICATION FROM ANY ESCROW AGENT OR INSURANCE COMPANY**

The title company that closed your loan may also be out of business (post-2008)! If you can locate your owner’s title policy or copies of any title searches that were conducted as part of your loan closing process, the Title Consultant will be able to review them for potential issues. Copies of your promissory note (*these will only be copies, not the originals*) may be available from the title company; however, this outlet should not be your sole source of document procurement. This is why we have real property records in most every jurisdiction of the country that have been statutorily mandated to keep track of property ownership and lien claims against each property.

V. OTHER AUDITS**

___ **SECURITIZATION AUDIT**

___ **FORENSIC LOAN AUDIT**

** Since the subject of this assessment is not a mortgage loan or securitization audit, closing documents (HUD-1 Settlement Statements, etc.) and related paperwork are not necessary and generally are boilerplate type of documents. They are related to the subject Note more than they are relative to the chain of title. Upon recognition of the presence of a REMIC Trust in the chain of title, the title consultant has the ability to research the necessary data from the government’s own websites, as well as other SEC-related, subscription search engines.

NOTE: The Title Consultant will generally set these types of audits aside and NOT review them prior to conducting a COTA because these reports were prepared by other specialists and constitute their personal opinions and viewpoints and NOT those of the Consultant. These reports would have a tendency to bias the Consultant’s opinion and thus are reviewed post-assessment issuance.