

Date: April 11, 2018

To: All Arizona Agents

From: Chris Phillips, President & CEO, David Hays and Ari Ramras, Underwriting Counsel

RE: Judicial Foreclosures, Treasurers Deeds, and HOA Lien Foreclosures

In underwriting following judicial foreclosures, treasurer's deeds, including tax lien CP foreclosures and HOA lien foreclosures, we would recommend the following procedures and considerations:

1. Preferably an agent will have previously performed a litigation guarantee. Otherwise, a back chain of title and GI search should be recreated as of the date of filing of the lawsuit to determine who should have been named. In the event of a deed of trust to MERS as nominee for a lender, both MERS and the lender should have been named in the absence of a recorded assignment from MERS in the chain of title.
2. The above list should be cross-referenced with the judgment to ensure that a non-appealable final judgment was entered with regard to each named defendant. If a quit claim deed was obtained from a defendant, the notary's qualified status should be confirmed and a notary journal and/or copy of satisfactory evidence of identity from the notary should be reviewed.
3. A notice of lis pendens should have been recorded at the time that the lawsuit was filed. If this was not done, a second back chain of title and GI search would need to be recreated as of the date of entry of judgment to ensure that there were no intervening interests, which would not be preferable but could be considered on a case by case basis.
4. The court file should be reviewed to determine how each of the defendants was served. To avoid the risk of a judgment being set aside for lack of proper service, **it should be confirmed that any individual defendant was personally served, not by publication or substitute or other alternative service.** For any entity defendants (corporations or limited liability companies), it should be confirmed that they were served by personal service on a statutory agent, and that the entity was in good standing and not dissolved and that the statutory agent's status was current. An entity which was served by personal service on a manager, member, partner, officer, or managing or general agent could be considered on a case by case basis.
5. It should be confirmed that any redemption period has expired.
6. To avoid the risk of a foreclosure being set aside for grossly inadequate price, a BPO or appraisal should be reviewed to confirm that the winning bid price is unquestionably more than 20 percent of fair market value. Alternatively, an exception could be made for this risk.
7. Exceptions should be made for interests which cannot lawfully be foreclosed, even if purportedly foreclosed by a judgment, e.g. for HOA lien foreclosures, first deeds of trust and governmental assessments and charges.

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