



FORBEARANCE

By Lisa A. Tyler
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Myrna Espinoza, A.V.P. and Branch Manager with Alamo Title, worked on a sale transaction. The sellers had fallen on hard times. They had defaulted on their mortgage payments and foreclosure was looming. The commitment for title insurance revealed a federal tax lien and another deed of trust with a private beneficiary. The sellers enlisted the assistance of a third party to negotiate a discharge of the tax lien which was attached to their property. The third party promised he could get it discharged for them so they could sell their property. Read "FRAUDULENT discharge of federal tax lien" for more details.

The new buzzword in the industry is forbearance, which occurs when the borrower's loan servicer allows the borrower to pause

or reduce their payments for a limited time period. Forbearance is different than a loan modification, which is what borrowers were offered during the last downturn in the economy. In a loan modification, the lender typically lowers the monthly payment and brings the loan up to date by adding any past-due amounts to the balance of the debt. Read "FORBEARANCE" to discover why forbearance is important to the title insurance industry.

Lenders are realizing the advantages of eClosings. In addition, Fannie Mae and Freddie Mac accept eClosings on the secondary mortgage market. So what exactly is an eClosing, eMortgage and eNote — and where are they stored? In the cloud? The **cyber buzz** article entitled "ECLOSINGS and emortgages or enotes" will define these terms and describe what does or does not qualify as an eClosing.

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FRAUDULENT discharge of federal tax lien

A couple fell on hard times and needed to sell their home. They listed it for sale and a buyer agreed to pay \$690,000 for the house. The commitment for title insurance revealed three clouds on title. In first position was their mortgage deed of trust, then a federal tax lien and another deed of trust secured against the property.

The sellers explained that the mortgage was in default. In order to sell the property, the seller would have to bring in funds to close in order to pay off both the first mortgage and the federal tax lien, funds they clearly did not have.

At about that time, the sellers heard they may be able to obtain a discharge of the federal tax lien from the Internal Revenue Service (IRS), but they were not sure how it could be done. A discharge of a federal tax lien from the IRS removes the lien from a specific piece of property.

In order to obtain the discharge, taxpayers have to apply for a discharge. Once they file the appropriate IRS form and supporting documentation, the IRS reviews the application and either issues the Certificate of Discharge or denies the request. Without the lien discharge, the lien has to be paid through closing or the buyer would have to agree to take title subject to said lien.

Because the sellers were inexperienced in this kind of issue, the sellers hired a third party to assist them with the process. In lieu of receiving payment up-front for services, the third party had the sellers execute a lien against the property for payment at closing. He made himself the beneficiary of the deed of trust in third position disclosed in the commitment for title insurance.

As the closing got closer, the third party deposited a conditional commitment to discharge certain property from Federal Tax Lien with Myrna Espinoza, A.V.P. and Branch Manager with Alamo Title. Myrna called the IRS agent named on the discharge to confirm the conditions to obtain the release.

The IRS agent was a little confused. He asked Myrna why she was calling. She explained she was preparing to close a sale of real estate and wanted to make sure the IRS lien would be released. He did not understand, since he had a HUD-1 Settlement Statement and deed from what he believed to be a sale that had already closed. Myrna asked him to send her what he had.

The IRS agent faxed over a HUD-1 — yes, a HUD-1 — which named Alamo Title as the settlement agent and indicated the property already sold. He also sent a copy of a deed indicating the taxpayers had sold the property.

Both documents were fabricated by the third party the sellers had hired to assist them. Myrna explained a HUD-1 Settlement Statement is now obsolete for this type transaction. The IRS agent revoked the discharge and referred the seller's advisor to his criminal division.

Myrna reviewed the deed since it contained recording information. She realized it was the current deed of record, but it had been altered. The grantor and grantee names had been changed before it was sent to the IRS. Since the sellers did not have funds to pay the tax lien, the transaction could not move forward. The first mortgage lender subsequently foreclosed and the property was sold at auction.

Unfortunately, the sellers who were trying to do the right thing were harmed by the "expert" company they hired to help them. Fortunately, Myrna's practices protected the Company from also being harmed. To reward her best practices she has received \$1,500. Keep up the good work.

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FORBEARANCE

At the time of writing this article, 4.1 million homeowners had requested a forbearance plan from their mortgage loan servicer. Under the Coronavirus Aid, Relief, and Economic Security Act, also known as the CARES Act, homeowners can suspend their mortgage payments if they have a federally backed mortgage.

Forbearance does not erase what the borrower owes. The borrower will have to repay any missed or reduced payments in the future. Borrowers able to keep up with their payments should continue to make payments. The types of forbearance available varies by loan type.

At the end of the forbearance, the borrower's options can include paying their missed payments:

- » At one time
- » Spread out over a period of months
- » Added as additional payments, or
- » Added as a lump sum at the end of their mortgage

The CARES Act requires servicers to grant forbearance up to 180 days, with a one-time extension of 180 days for borrowers experiencing a hardship due to COVID-19 issues, such as, loss of income, unemployment, illness or caring for a sick relative.

The CARES Act also provides protection against derogatory marks against the borrower's credit. However, the servicer can report notes to the credit bureau that can be seen by any future creditor that could prevent the borrower from obtaining any type of new financing for a 12-month period.

When the Federal Housing Finance Agency reports servicers who collect payments on mortgages backed by Fannie Mae and Freddie Mac, they will only be required to cover four months of missed payments on loans in forbearance.

The big question is what happens when that four-month period is over? As it turns out, the Government Sponsored Entities (GSEs) themselves are preparing to cover any remaining advances for as long as those loans remain in forbearance.

What does this mean to the title industry? To prevent payoff losses due to deferred payments, settlement agents should:

- » Ask borrowers if they have entered into a forbearance or loan modification agreement with their lender at the opening of the transaction
- » Review the preliminary report or commitment for title insurance for junior liens, securing the deferred payments
- » Ensure the payoff request includes the following language:

Please furnish to us a statement of the amount necessary to pay in full including any amounts deferred due to a forbearance or modification agreement.

If the borrower entered into a forbearance agreement and you are not the entity servicing any deferred amounts, please provide the contact information for the entity who is.

- » **Review the payout statement for deferred principal balance amounts**

The last item is important. If the deferred amounts are not contained in the payoff statements, it is likely the amounts are being serviced by another loan servicer and a separate payoff statement will need to be requested.

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ECLOSINGS and *emortgages or enotes*

An eClosing is the act of closing a mortgage loan electronically. This occurs through a secure electronic environment where some of the closing documents are accessed and then executed online. This is often a hybrid process in which certain key documents, such as the deed of trust or mortgage and the note, are still printed to paper and then wet-signed, while other documents are signed electronically.

An eClosing requires use of a specialized software platform, generally referred to as an eClosing System. The security instruments are scanned into the recording package and then sent to the recorder electronically, where available.

The unwillingness of a recorder to accept electronic instruments is an underlying obstacle to complete an eClosing. The recorders' offices often reject either type of electronic documents:

- » Digital Form: Documents are created and remain in electronic form
- » Digitized Form: Documents are created on paper and made digital by scanning

Despite the obstacles, this hybrid process is being successfully utilized in many areas of the country.

eMortgage

An eMortgage is a mortgage loan where the critical loan documentation — specifically the promissory note — is created, executed, transferred and ultimately stored all electronically. An eClosing produces an eMortgage if the promissory note is signed electronically. An eMortgage may still include a traditional wet-ink signed security instrument.

Many lenders are already participating in at least one phase of an eMortgage transaction. Here is a list of items which make up an eMortgage:

- » Loan Applications
- » Delivery of disclosures, such as the Loan Estimate and/or Closing Disclosure
- » Signing of the loan documents (all or some of the documents)
- » Secondary market sale and custody of the eDocuments

eVault

The borrower's eMortgage payments and other mortgage services are managed by approved loan servicers with full eVault capabilities. The eVault system integrates with the Mortgage Electronic Registration Systems (MERS) to identify and track individual mortgages and related information electronically.

An eVault provider's software must be built based on legal best practices for maintaining ownership, control and enforceability of transferable records for the storage of any electronic contract and contract-related documents.

eClosings Improve Risk Management

eClosings reduce operational errors and improve document execution. The systems utilized do not let a borrower miss a signature or initial, which otherwise can cause delays at closing.



eClosings can also improve compliance by providing automated audit trails.

Enabling Process Efficiency

eClosings reduce costs and origination cycle time, and automate the post-closing process. They improve the borrower's experience by increasing their awareness of the closing process. This results in educating borrowers in the entire loan process.

The process serves as a competitive edge and enables lenders to pass cost savings on to their customers. For example, the Mortgage Bankers Association states an average of 15 to 25 overnight deliveries and/or couriers are used on a single paper loan. eClosing helps to significantly reduce that number. This reduces cost and prevents frustrating and costly issues such as carrier delays, weather delays, packages sent to the wrong address or lost packages.

To successfully initiate an eClosing process, a lender must consider the following:

- » How the borrower's consent will be obtained to use electronic records and signatures at closing.
- » Creating and executing an eNote and/or electronic security instrument.
- » Ensuring the eVault can enable a transfer of control of the eNote as required under the ESIGN Act and UETA, and investors such as Fannie Mae and Freddie Mac.

Loan servicers servicing eMortgages have to keep accurate records of the eNote and paper notes they service. Although the movement towards eClosings is exciting there are many different vendors, which results in settlement agents having to learn each lender's program. The software providers are private companies who work closely with lenders such as Fannie Mae and Freddie Mac to ensure their systems meet each party's interests and needs.

Note: Think your password is up to par? Many of us use simple tricks to create a memorable password that also meets security requirements. However, many of these tricks add no real strength or security. Read next month's **cyber buzz** article "PASSWORD1?" as we review some password best practices.

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