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BARBARA A. KENNEY  
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MARCH 7, 2011

UPDATE TO REFINANCE WITH THE SAME LENDER  
LETTER DATED FEBRUARY 25, 2011

Dear Land Records Patron:

I have received a number of phone calls, emails and letters concerning the new policy for refinance with the same lender exemption. I also spoke to a number of people attending the Property Records Industry Association conference in DC last week. Based upon the input of various people, I would like to update my letter of February 25, 2011.

First, in the interest of consistency, Federal Credit Unions will be treated the same as any other lender and documentation must be produced showing that they are the current note holder and also providing the refinancing loan.

Second, I received several questions asking what would be needed if the loan was not in the MERS, FANNIE MAE or FREDDIE MAC databases. A signed and notarized affidavit by an officer of the lender (not a loan officer) stating that they are the note holder (not servicer) of the existing loan and that they are providing the financing for the new loan, should suffice.

Third, one person pointed out that I used the term "owner" in my letter and the 1996 Opinion letter did not use the term "owner" but instead used the term "holder." The person went on to assert that the term holder could include a servicer. Good points, but I used the term "owner" to try to distinguish between a note holder/investor and a servicer of the loan. I specifically stated: "They are only entitled to the exemption if the current OWNER (actual note holder/investor) of their note is the same lender providing the new loan." The term "holder" as defined by Black's Law Dictionary means:

The holder of a bill of exchange, promissory note, check, or other commercial paper, is the person who has legally acquired possession of the same, by indorsement or delivery, and who is entitled to receive payment of the instrument. Person who is in possession of a document of title or an instrument or an investment security drawn, issued or endorsed to him or to his order, or to bearer or in blank.

As agent for the note holder, the servicer can collect the payoff for the note holder, but they are not the entity that is "entitled to receive payment of the instrument," nor are they the entity to whom the note has been endorsed. Ultimately, the servicer pays the money to the holder of the

note. Of course, there are instances where the note holder services their own loans. However, in the context of this discussion we are discussing third party servicers. As an analogy, in most cases, the property management company does not own the apartment complex.

Fourth, several people asked if I would postpone the implementation date. At first, I declined. However, the last person to ask for an extension, raised the issue of the 7 day waiting period under RESPA Regulation Z, as well as the impact on the Good Faith Estimate. Therefore, I will postpone implementation from Monday, March 14, 2011, until Monday, March 21, 2011.

I appreciate your input. If you have any other issues, please contact me.

Sincerely,



John T. Frey