

WFG Underwriting Bulletin



To: All WFG Policy Issuing Agents; All WFG Title Examiners and Officers
From: Underwriting Department
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Subject: Claims Warning – Absolute Assignment or Collateral Assignment

Practice Tip: A collateral assignment of mortgage must be released by BOTH the assignee and the assignor. Not having both can turn into a claim.

There is a significant difference between an absolute “Assignment of Mortgage” and a “Collateral Assignment of Mortgage.” From a claims standpoint, the assignee of a Collateral Assignment ALSO has an interest in the underlying mortgage, but can’t (usually) unilaterally give a satisfaction of it.

The explanation and the cases get confusing because the parties “change roles” depending on which part of the transaction is being discussed. Phrased differently, the “assignee” may become the “assignor”, a “lender” may become a “borrower” and the “borrower” may be described as the “account debtor.” To simplify this, we are going to name the parties: “Harriet Homeowner,” “Marty Mortgage” and “Bob Bank”

Scenario One – Absolute Assignment

This is what we see most often. Harriet Homeowner takes out a mortgage loan, and gives a promissory note and mortgage to Marty Mortgage. Marty Mortgage sells Harriet’s note and mortgage to Bob Bank under an absolute assignment. Bob Bank accumulates a bunch of notes and mortgages and sells them all to a bigger bank, and Harriet’s mortgage and note eventually wind up at Fannie Mae or Freddie Mac and get assigned into the trustee of a securitized mortgage pool.

This is the path followed by 75-80% of all residential mortgages in America.

At each stage, the assignee under an absolute Assignment of Mortgage, “Owns” the mortgage and mortgage note and can enforce or release them. So a payoff statement from the assignee of record (or their servicer) followed by a satisfaction or reconveyance is the proper title clearing solution.

Scenario Two – The Collateral Assignment.

This scenario starts the same way. Harriet Homeowner takes out a mortgage loan, and gives a promissory note and mortgage to Marty Mortgage. But this time Marty Mortgage is not a large mortgage company, but a neighbor who makes a few loans. When Marty needs some extra cash, he goes to Bob Bank and says “I need a loan, and I’ve got a Note and Mortgage from Harriet that I’ll pledge as collateral for the loan. She owes me twice as much as I want to borrow.”

Marty signs a Marty Note (thereby becoming the “Borrower” in the second transaction) and gives a Collateral Assignment of the Harriet Note and Mortgage in favor of Bob Bank. There can be a lot of variations in the language and rights given in a Collateral Assignment – including sometimes whether Harriet is to make future payments to Bob or Marty. Not all of the agreements between Bob and Marty may be part of the land records, so additional documents may be required, and distinguishing between an absolute assignment and one given as collateral takes careful reading and often requests for more documents.

However, from a title standpoint, the important lesson is that both Bob and Marty have some interest in Harriet’s Note and Mortgage. Regardless of whether Bob or Marty have the technical legal authority to accept payment and issue a release under their collateral assignment documents, both should be contacted and giving you instructions as to the payoff, who is to be paid and how much to each.

Occasionally Bob and Marty will not be in agreement or give conflicting instructions or even claim that Bob has “foreclosed” on Marty’s loan and now owns Harriet’s Note and mortgage. In those cases, contact your WFG Underwriter.

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