

Fraudulent and Dangling Deeds of Trust

In a perfect title insurance world, title issues and fraud would not exist. In California, many cases of fraud already exist and more are on the horizon. How do today's owners and buyers protect themselves?

Trust Deeds

A trust deed, also known as a deed of trust, is a written arrangement among three parties: the borrower, the lender and an impartial trustee. In exchange for a loan of money from the lender, the borrower, who must own the real property, places legal title to real property in the hands of the trustee (although the owner retains actual physical ownership of the property), who holds it for the benefit of the lender until the loan is paid.

Deed of Reconveyance:

Payment of the loan is evidenced by a deed of reconveyance, commonly called a "recon". The recon extinguishes the lien of the deed of trust and reconveys the title to the owner/borrower. The trustee of the deed of trust is the only party that can execute a deed of reconveyance.

Fraud:

Fraud occurs when a loan is not paid in its entirety, but a reconveyance records purporting payment in full. The fraudulent reconveyance can be identified by some of the following red flags including:

- Non-Standardized Forms—e.g., quirky forms that resemble online or stationery store forms
- Not executed by the trustee
- Signer is not identified
- Typographical or grammatical errors

When these issues arise, your title company will ask for more information or show "the effect" of the documents that recorded and explain what the issue is. Once it is thoroughly investigated, it often becomes clear whether the recon is valid or invalid.

Fraud can be intentional or unintentional. At times there are parties that are not institutional lenders that loan money on real estate and do not know the rules for properly reconveying the loan. The uninformed lender may unwittingly execute the reconveyance, but only the trustee can execute that document. When in doubt, call your Pacific Coast Title Company representative!

Occasionally deeds of trust are paid off, but the reconveyance is not recorded, or there are errors (e.g., wrong loan number, wrong recording reference, etc.) in the deed of reconveyance. When this happens the result is a dangling deed of trust, which simply means that there is no reliable evidence recorded that shows the loan was paid off. This can be a significant issue that stalls a closing, especially if the lender and/or trustee are no longer in business. Cleaning up dangling deeds of trust can be tricky and difficult, and that is when Pacific Coast Title Company can help. We will look at the situation, evaluate the evidence and help the process by giving suggestions or options that other title companies may not consider.



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