Take precaution and keep all mortgage documentation

Tribune Content Agency

By Ilyce Glink and Samuel J. Tamkin, Tribune Content Agency

Q: You recently wrote an article titled "With the mortgage paid off, what's next?" I was wondering if the original promissory note and the trust deed are necessary and/or beneficial if a "certificate of release" was issued and recorded.

A: If you're "old school," the answer would be that you should absolutely receive the cancelled mortgage or trust deed and the cancelled promissory note back when you pay off your loan.

If you're "new school," you might say that, for practical purposes, you're fine knowing that your lender has sent a "certificate of release," "satisfaction of mortgage" or "release of lien" to the applicable office that handles the recording or registration of documents in your state.

Given that we tend to be more cautionary, we might prefer to know that we have received the original documents back from the lender showing that our loan documents have been cancelled or stamped "paid in full." As we witnessed during the Great Recession, lenders don't have a great track record at keeping, retaining or producing documents when you need them the most.

In the past we've written articles about lenders that have gone after former borrowers for loans that had previously been paid off. While it doesn't happen frequently, there are circumstances in which lenders fail to clear out the final loan balance on an account and then send that balance to a collection company. When the collection company calls and says that you owe money, you might show them the "certificate of release," but the collection company's response will be that the lien on the home was released but the debt still exists. But if you have the final statement from the bank showing your account at zero and your cancelled note and trust deed, you certainly have much more to protect yourself.

Having said all that, for the vast majority of people, the recording will be enough since the lender will have cancelled the debt on the lender's books. But for those unfortunate few, you're better off having all the documentation back than having to rely on the lender's bookkeeping.

Finally, just a little background: When you sit down at a loan closing and you are buying or refinancing, you will sign quite a number of documents. In terms of importance, the promissory note and the mortgage (sometimes called the trust deed) are about the most important.

The promissory note is the document that obligates you to repay the amount you are borrowing. In effect, it says that you "promise" to repay the amount you are borrowing. The mortgage or trust deed is the document that gives the lender the right to foreclose or sell the home to satisfy the debt you owe.

When a lender transfers your debt to another lender, your original lender will "assign" the promissory note from that itself to the second lender. The promissory note works sort of like a check. The first bank receives the check payable to the first bank and the first bank endorses that check to the second bank. If the bank no longer has the note, the first bank can't transfer the debt. If you have the cancelled note, you can show that the debt has been repaid.

If the lender still has your note in its files (for whatever odd reason) and it transfers the note to a different lender as part of many loans, you could get a call from that lender claiming that you owe the amount on the note.

In short, we're "old school," and would prefer to have the safety of having the documentation come back to us.

Thanks for your question.

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