

Ex-husband taps into HELOC and attempts to refinance

Q: Can my ex-husband refinance our home equity line of credit (HELOC) without my consent?

I have a signed quitclaim deed on the house. When we bought our house, we had an existing HELOC on our rental property. That loan was somehow transferred to the new house during the loan process. We divorced a year or so after that loan process. Our separation agreement states that I keep the house but my ex-husband's remains responsible for my mortgage payments including the HELOC.

We are both on the mortgage to my home. He is still on the mortgage because I was told he has to be if he is making the payments. Is this true? The HELOC is in his name only because my credit at the time of the original HELOC loan on the old property was not good enough for a joint loan.

I am now in the process of applying for my own HELOC and discovered that the old HELOC is still open and the balance on it has doubled. I asked my ex-husband about it and he denied using the HELOC, but obviously I don't believe him. I asked him to send me a current statement, and he did. But the account numbers are different and information on the statement is different.

Also during the divorce, he signed the quitclaim deed and it was filed with the county. So, my only thought for the increase in amount owed on the HELOC is that he used my equity for his own uses. But it also appears that he may have refinanced the original loan since the account numbers and interest are different.

How can he refinance the loan if I have a quitclaim deed signed by him? I called the bank, and they will not give me any information about the accounts since my name is not on them.

A: Let's first start with the HELOC. With a HELOC, you can borrow, pay down and re-borrow money. You are using your home's equity as collateral for a line of credit.

Some banks will give you checks or a credit card you can use to draw on the line of credit. If you use the checks or the credit card, the amount you owe to the bank goes up.

If you don't have access to the checks or credit card and only your husband has that access, then it's likely he has been taking money from you (by tapping into your home equity) without your authorization. You should know that the HELOC lender won't care whether he's authorized by you or not or what the divorce decree or separation document says. The bank's arrangement is between the person that signed the HELOC and the bank. Unless the bank received a court order that they needed to follow, the bank could allow your ex-husband to continue to use the line of credit.

Your mistake was not having the line of credit frozen at the time the divorce was finalized. As we said, the credit line remained active while you were married and it stayed active after your divorce. The real question for us is whether your husband took what was rightfully yours, whether he broke any laws and whether he broke the terms of your divorce agreement.

If he continued to draw money from your equity, you will have to talk to your divorce attorney and see what you need to do get that equity back, cut off the line of credit and get any other remedy to which the court might find you are entitled.

When it comes to owning a home and any debt you have on the property, the lender will require that all owners sign the mortgage or lien to the lender. If the lender ever wants to enforce the loan terms and foreclose on the home, the lender will need to have all owners at the time

the loan was taken out sign the mortgage, trust deed or other document that creates a lien on the home.

You should go back and determine when the loans were taken out and make sure you were either on title or off title. Sometimes when one borrower's credit is bad, a lender will recommend that the name of one of the borrowers be taken off title -- using a quitclaim deed -- and once the loan closes, the parties put the that person back on title.

We can't tell what's going on from your letter regarding the account numbers. Account numbers sometimes change when loans are transferred from one bank to another. You'll need to figure that one out with your divorce attorney. If your divorce attorney can't help you, you might need to find a real estate attorney that also handles litigation to force your ex-husband to return the equity he's taken from the home and force him to close or freeze the home equity line of credit.

(Ilyce Glink is the author of "100 Questions Every First-Time Home Buyer Should Ask" (4th Edition). She is also the CEO of Best Money Moves, an app that employers provide to employees to measure and dial down financial stress. Samuel J. Tamkin is a Chicago-based real estate attorney. Contact Ilyce and Sam through her website, ThinkGlink.com.)

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