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Lenders Don't Have Standing to Bring Quiet Title Actions?

By Magnus R. Andersson

It is not unusual for lenders to bring quiet title actions to protect their interest in their collateral. A recent decision out of the Washington Court of Appeals has put this practice into some doubt. The decision suggests that lenders lack standing to bring quiet title actions because they don't have the right to possession of their collateral.

That appears to be consistent with Washington's quiet title statute. The very first words of that statute are: "Any person having a valid subsisting interest in real property, ***and a right to the possession thereof*** …" can bring a quiet title action. However, in practice it seems the right to possession has been overlooked more often than not, allowing lenders to bring quiet title actions against other parties who may claim an interest in their collateral.

Not so in *GMAC Mortgage, LLC v. City of Spokane*. The lender in the case (GMAC) brought a quiet title action against another lender (the city) claiming that the city's deed of trust, which was recorded before GMAC's deed of trust, was no longer enforceable. The court of appeals dismissed the case because the lender could not prove that it had a right to possession of its collateral—the lender had not foreclosed by the time it started its quiet title action. The court also rejected several other arguments by the lender, and ultimately entered a decision confirming that the city's deed of trust was in the first lien position, ahead of GMAC.

So what can a lender do?

Fortunately, lenders have other options to accomplish what the lender tried to accomplish in the *GMAC* case.

(1) One option may be to foreclose first and then bring the quiet title action. Assuming the lender is the successful bidder, it would then have the right to possession and with it the right to bring a quiet title action.

(2) Another option may be to move to restrain the trustee's sale if the other lender starts a nonjudicial foreclosure. This option is not limited to only those who have a right to possession, but is available to "any person who has an interest in … the property", which would include lenders.

Even though the *GMAC* case is unpublished (at this point) and therefore not precedential, lenders and title insurance companies should be aware of this decision since it illustrates some limitations on remedies long thought available to lenders.

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