



Hershorin & Henry, LLP

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Legal Update Concerning CFPB

The CFPB amendments to the TILA-RESPA Integrated Disclosure will become effective on August 1, 2015. Under the new CFPB Rules, "the devil is in the details." A sampling of some of the changes includes:

- * Allowing a revision to the Loan Estimate within three business days after an interest rate lock.
- * Requiring that the Loan Estimate and Closing Disclosure state the name and license number of the loan originator organization, as well as the individual loan originator.
- * Allowing an addendum for the required addresses for the real estate securing the loan that must be on the Closing Disclosure.

In an effort to help you comply with all the new rules, Hershorin & Henry is offering assistance to its lender, broker and escrow clients. One of the many ways we can assist is through a Policies and Procedures Manual tailored to your needs. Call Lori Hershorin to discuss the details at (949) 916-8047.

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Litigation to Watch: Transfer on Death Deeds Legislation Introduced

Assembly Bill 139 (Gatto) will create a revocable transfer on death deed (revocable TOD deed), which would transfer the owner's real property on his death without a probate proceeding. The proposed new law would automatically void a revocable TOD deed if, at the time of the owner's death, the property is held in joint tenancy or as community property with right of survivorship. The bill also establishes priorities for creditor claims against the owner and the beneficiary of the deed in connection with the property transferred and limits on the liability of the beneficiary. The proposed legislature would end on January 1, 2021.

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Recent Decision Confirms Lender Can Maintain Lien Priority After Accepting Deed In Lieu of Foreclosure

By Jean C. Wilcox, Esq.

Lenders are often faced with choosing to either accept a Deed in Lieu of Foreclosure or proceeding with a trustee's foreclosure sale with the added delay and expense associated with that process. The lender wants to obtain the real property that secures the loan, but will refuse a Deed in Lieu of Foreclosure out of concern for the rights of junior lienholder's claims of priority.

A recent decision from the Court of Appeal in *Decon Group, Inc. vs. Prudential Mortgage Capital Company, LLC* (June 30, 2014) ("Decon") confirms that a lender may maintain its lien priority after accepting a Deed in Lieu of Foreclosure. The borrower defaulted on a purchase money loan secured by a first deed of trust held by Prudential ("Lender"). The Lender commenced foreclosure proceedings by recording

a notice of default, but not before a mechanic's lien claimant filed a lien for \$400,000. The contractor then filed a lawsuit to foreclose and quiet title. The Lender thereafter agreed to accept a Deed In Lieu of Foreclosure and recorded the instrument. The Lender also proceeded with its foreclosure sale and sold the property to a third party. The mechanic's lien claimant continued with his lawsuit, and added the Lender and the new owner of the property as defendants. It argued that by accepting the Deed In Lieu of Foreclosure the Lender had "merged the title" and the Lender had taken title subject to the mechanic's lien. Although the trial court found in favor of the mechanic's lien claimant, the Court of Appeal reversed on the grounds that there was no evidence the Lender intended to "merge" its lien into the title when it accepted the Deed in Lieu. The Appellate Court was assisted by the language in the Deed in Lieu that stated: "[t]he indebtedness shall remain in full force and effect after the date hereof. The interest of Grantee in the Property... shall not merge with the interest of Lender... but shall be and remain at all times separate and distinct." Quoting a Supreme Court decision from 1897 (*Davis v. Randall*, 117 Cal. 12), the Decon court held that, "Merger is always a question of intent when the question is as to whether a mortgage lien is merged in the fee, upon both being united in the same person." The message of Decon is clear: A lender can feel confident that its interest in the property will remain senior if it carefully drafts the Deed in Lieu of Foreclosure. Call Jean Wilcox to discuss the details at (949) 916-8097.

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