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# The Quill – January 2022



THE QUILL ARTICLE:

# Beware of Second Mortgages under HAMP

Many Settlement Providers across the Country have fallen into a trap related to second mortgages. To understand why, let me provide some context. During the Great Recession (from 2007 to 2010), many U.S. homeowners found themselves unable to make their mortgage payments. Rather than foreclose, many Lenders gave those borrowers mortgage debt relief pursuant to several federal programs, including the Home Affordable Modification Program (HAMP). The relief provided through HAMP, and related programs, often allowed the borrowers to take off a chunk of the principle on their home mortgages. By having a smaller principle balance, the borrowers could reduce their monthly payments. Simple enough, right? So, where did that chunk of principle go? Was it forgiven? In short. . .No!!! The chunk of principle was taken off the primary mortgage and turned into a second mortgage. That secondary lien did not have a payment associated with it, but by the terms of the agreement between the lender and the borrower, it would be paid off when the primary mortgage was satisfied, either by refinance or because the property was sold. Since there was no payment associated with these Relief Liens (and because many of these borrowers were not represented by attorneys who could properly explain to them what was happening) many of the borrowers did not understand that there was a second mortgage against their property.

So. . .fast forward ten plus years later, these borrowers are selling their properties or refinancing their first mortgages. You see this second deed of trust on the title search abstract of the property, but it looks different. It looks weird. You ask the borrower about it and they tell you they don't have a second mortgage against their property. This is a trap. Many Settlement Providers around the Country have assumed that the second lien was forgivable or forgiven. Or alternatively, they believed that the funds owed on this second lien would be part of the payoff on the first mortgage. Others still reached a mistaken conclusion that the mortgage to be satisfied was a reverse mortgage (a/k/a HECM or Home Equity Conversion Mortgage) and that no separate pay-off information was necessary in order to secure release of the second mortgage. The result is that several national Title Carriers have experienced claims due to the failure of Settlement Providers to satisfy and discharge both mortgage liens on the properties being refinanced or sold.

In a case where there is a second lien on the property pursuant to a Federal program like HAMP, as part of the sale or refinance of these homes, closing attorneys must obtain payoff information for both the original mortgage as well as the second lien or Relief Mortgage and follow-through after the closing to ensure that both are satisfied and discharged of record. Very often, the Relief Mortgage will show HUD as the lender, and will involve NOVAD Management Consulting (NOVAD) as the servicer. However, it is possible for a Relief Mortgage to be administered by the senior lender or its servicer. If that is the case, the closing attorney must still obtain two distinct payoffs – one for the senior mortgage and one for the Relief Mortgage. You may need to send the senior lender or its servicer a description of both mortgages in order to secure a valid payoff and release. This is the only way to be certain you are securing both loan payoffs in advance of the closing.

As indicated above, not only are the Sellers or Borrowers confused about these liens, they may supply you with information that throws you off the scent. It appears that the Banks in many cases did not do a good job explaining the intricacies of these transactions. In some cases, even the Servicer is confused about the nature of these Relief Mortgages and, consequently, have given the Settlement Provider the wrong guidance. Just understand, that despite what you may be told, these liens are valid second liens. Don't fall into this trap. You cannot take what the sellers or borrowers are telling you at face value. Not because they are lying to you, but because they are confused or uncertain about the details concerning these liens. Be sure to get a payoff or a cancellation in hand before closing.

sb



## MEET THE FAMILY:

Natasha Branch,  
Branch Manager &  
Title Counsel

Greetings and Happy New Year all!

I hope the new year is off to a fantastic start for you! As Sal mentioned in his note sent out before the new year, I have been tasked with combining the Barristers Title Services and the Fidelity Direct Office in Charlotte and leading the resulting combined operation. I am humbled and excited about this opportunity and am eager to serve you.

For those of you who don't know me, I started my career with Fidelity in 2007 in Raleigh, NC as the Raleigh Branch Office's Residential Title Counsel. Since joining Fidelity in 2007, I have held 5 different positions, including Commercial Title Counsel, State Claims Manager, Assistant State Counsel and Branch Manager/Title Counsel – Charlotte. In each of those roles, I learned and gained a broader knowledge of the title industry. The experiences and knowledge gained in my previous roles have prepared me for my new role as the Operation Manager and Title Counsel of Barristers Title.

If you would like to learn more about my background, please feel free to read my brief bio on Fidelity's website by clicking [HERE](#).

As with all mergers, it will take some time to completely combine the two offices into one. Our goal is for this transition to be as seamless as possible for our customers. With that in mind, please continue to communicate with our office through the same email address and/or telephone numbers you have grown accustomed to using. Our contact information has not changed.

As I mentioned above, I am eager to serve you and be a resource for you and your customers! To that end, if I can be of any assistance to you, please do not hesitate to reach out to me via my contact information listed below:

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## NEWBORN



## ANNOUNCEMENT

Meet Lauren Lockwood

Our very own Christine (Bruns) Lockwood and family welcomed their new addition, Lauren Lockwood, on December 23rd 2021. Weighing in at 7 lbs., 6 oz. and 20 inches long, this tiny bundle of joy was the best Christmas present ever! Mom and babe are healthy and well and the whole family is in love.



## #BTSHOWYOURSWAG

### Vanessa visits Mexico!

Vanessa Nabors, BTS underwriter, and her husband, John, got some much needed R&R on their trip to Conrad Punta de Mita in Mexico in December, with their BTS canvas pouch in tow.

"It was absolutely a beautiful place! We were able to relax at the beach and pools, got to know some of the locals, and enjoyed some adult time. Wish I was still there."

~Vanessa Nabors, Underwriter

Show us where your BTS swag travels and we'll share it here or on our Facebook page. Email pictures to [summer@barristerstitle.com](mailto:summer@barristerstitle.com).

The moment you realize 2022 is pronounced "2020 too"



## THE QUILL RIDDLE?

Q: Where can you find comedians at a New Year's Eve party?





A: In the punchline.

E-mail Summer with your guess! The first to get the correct answer will win a prize.

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Barristers Title Services underwrites for Fidelity National Title and First American Title.

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