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CHAIN OF TITLE ASSESSMENT (COTA) CHECKLIST

IMPORTANT! Please read this entire document **BEFORE** proceeding with your COTA!

NOTE: An explanation into each category follows each enumerated item in this checklist!

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What we need to complete a chain of title assessment (COTA):

I. COURTHOUSE RECORDS

The following must be obtained from courthouse land records - regular copies are fine to start the assessment (your attorney will determine if and when and what certified copies are needed for court as evidence):

___ **DEED** (This can also be known as “Warranty Deed”; “General Warranty Deed”; “Special Warranty Deed”; “Grant Deed”; “Security Deed”; “Substitute Trustee’s Deed”; “Quit Claim Deed”; “Tax Deed”; or “Abstract Deed”. This “deed” represents itself as the Instrument that conveys the property to you by the former owner. The former owner would be the “Grantor”; you (and your spouse, if married) are the “Grantee”. This generally starts your chain of title.)

___ **DEEDS OF TRUST** (Promissory Note, if recorded)
(This can also be referred to in judicial states as a “Mortgage”. Also known as “Security Deed” or “Installment Contract” in some states. Either of these documents could represent an equitable lien on your title.)

___ **HOME EQUITY LINES OF CREDIT** (“HELOC”; Promissory Note, if recorded; HELOC’s are mortgage liens too!)

___ **SECOND MORTGAGE LIEN** (Promissory note, if recorded)
(This may also be known as a “Deed of Trust-Second Lien”).)

___ **APPOINTMENT OF SUCCESSOR TRUSTEE NOTICES**

(These are found in Deed of Trust States only!)

___ **CONVEYANCES (ASSIGNMENTS)**

(These could be represented as “Release of Lien”; “Satisfaction of Mortgage”; “Deed of Reconveyance”; “Full (or Partial Reconveyance”; “(Corporate) Assignment of Mortgage or Deed of Trust”.)

___ **NOTICES OF DEFAULT AND SALE; NOTICES OF INTENT TO FORECLOSE; or NOTICES OF TRUSTEE’S SALE**

___ **TAX LIENS or DEEDS, COUNTY STATE OR FEDERAL; TAX LIEN RELEASES**

___ **MATERIALMEN’S LIENS; MECHANIC’S LIENS; HOMEOWNERS OR CONDOMINIUM ASSOCIATION LIENS OR DEEDS; RELEASES OF SAID LIENS; NOTICE OF CHILD SUPPORT LIENS**

___ **DEBTOR JUDGMENTS** (These might operate as a lien against the property!)

___ **NOTICES OF BANKRUPTCY AND DISCHARGE OF BANKRUPTCY**
(These may become more important to prevent lift of automatic stay!)

___ **SUBORDINATION AGREEMENTS** (moves a lien to a junior position)

Why these documents are necessary ...

It is first very important to understand that the checklist that is being utilized nationally was developed by DK Consultants LLC ... and for good reason. An education about the subject content of real property records is essential before spending thousands of dollars on audits and attorney’s fees in litigating a case. The preceding list of documents is generally found in virtually every real property record in every county or township jurisdiction in the United States. When visiting the recorder’s office to obtain your documents, please seek the deputy recorder’s assistance if you are having difficulty locating any of your documents. *If you cannot find a specific document, it could be because a party that may claim an interest in your chain of title did not record it. This applies particularly to assignments, appointments of substitute trustee and reconveyances or releases of mortgage liens.*

Your **DEED** (in whatever form it may be in as shown above) is your proof of ownership. Your Title Consultant has to view this document in its entirety to determine whether the Property in question contains issues as to whether the Property was lawfully conveyed to you. You should be able to locate your deed by your last name and first name in the “Grantee Index”.

After you take title to Property, should you wish to take out a mortgage against it (to buy or build a house on this property for example), you then become the “Grantor”. All of the liens interests you’ve granted should be found in the “Grantor Index”. All Property Records are listed by a Grantor-Grantee Index. Again, if you run into trouble, ask for help for your county recorder.

When you take out a mortgage loan, the Lender you “borrow the money” from becomes a lien holder against your Property until your mortgage is paid in full. You are then known as the Mortgagor, Grantor or Trustor, depending on what State your Property is located in. The Lender will file what is known as a Security Instrument against the Property in the land records to protect its lien interest. These instruments come in many forms ... Mortgage ... Deed of Trust ... HELOC ... Second Mortgage ... these are ALL liens against your Property. The Title Consultant needs to see EACH ENTIRE DOCUMENT! ***You cannot simply send in just the cover sheet and last page. Send in THE ENTIRE DOCUMENT (no skimping allowed here)!***

Your Lender may decide to sell its interest in your Property to another party (or multiple parties). In order for each party to have a recorded interest in the chain of title, an **ASSIGNMENT** must be recorded in the county real property records. Many times, these assignments are not recorded, which means that *unknown intervening assignees* may have an unrecorded interest in your chain of title. This can be legally dangerous because it could expose you or a future purchaser of your Property to *double liability*; in other words, you may think your Property’s lien is satisfied in full, when in fact, the wrong party may have been paid off! This is why in this day and age assignments (or the lack thereof) are systemically problematic in the chain of title.

Any recorded **notices** placed in the land records by a lienholder may be required by State statute. It is important that the Title Consultant see each of these notices, as it reflects a claim of lien against the Property. On many occasions, there may be evidence of lack of standing by a lien claimant. All lender-generated notices that are filed in the land records can be used to determine whether the lender (or its law firm) is acting with proper authority.

Copies of all **JUDGMENTS** and other **LIENS** (tax liens, mechanic’s liens, child support liens, etc. as shown above) are also important because these liens and judgments may be superior to the mortgage lien of record. The Title Consultant needs to see these documents in their entirety to determine whether there are conflicting issues with these liens in the chain of title.

Again, make sure to obtain the ENTIRE DOCUMENT for the Title Consultant to review!

II. COURT FILINGS AND ANCILLARY JUDICIAL DOCUMENTS

The following must be obtained from courthouse court records in BOTH Certified and regular copies (one of each; certified copy for evidence and regular copy for office use):

___ **ORIGINAL PETITION TO FORECLOSE** (if in a judicial state)

___ **FINAL JUDGMENT** (affecting foreclosure)

___ **DETAINER and/or EVICTION NOTICES / PETITION**

___ **FINAL TRANSCRIPTS** (from court proceedings, if applicable)

On many an occasion, judicial foreclosure proceedings (in mortgage states) may have already been commenced against the Property. The Lender or lien claimant is attempting to exercise its rights in the Security Instrument by foreclosing on the unpaid (and generally defaulted) promissory note the Borrower signed at closing. If you have a copy of the **NOTE**, please be sure to include the **ENTIRE NOTE** for the Title Consultant's Review, along with any foreclosure complaints you may have been served with (in deed of trust states, foreclosure is conducted by publication and sale); or notices you may have received in the mail or by process server.

III. SECONDARY UNRECORDED DOCUMENTS**

The following must be obtained from sources outside of courthouse court or land records and may be submitted in either affidavit and/or verified form. These also may only be available as a regular copy received by mail [please include the envelope it came in]. A verified copy is a copy signed before a notary. The original copy is for evidence and the regular copy for office use):

___ **COMMUNICATION FROM ANY LENDER OR SERVICER**

(Most important if the document purports to be "communication from a Debt Collector"; or purports to notify you of change in the lender or servicer.)

___ **ANY KNOWN S.E.C. DOCUMENTS+ OBTAINED FROM GENERAL SEARCHES (INCLUDING MERS MIN ID SEARCHES)**

___ **NOTIFICATION FROM ANY LAW FIRM REGARDING FORECLOSURE**

___ **MERS DISCLOSURE NOTICES FROM CLOSING PAPERWORK FILE**

(Particularly notices affecting transfer of your loan after sale and MERS!)

These documents are subject to review by the Title Consultant depending on their content. Payment stubs and coupons and closing documents are generally *forensic* in nature and are not considered as part of the chain of title; thus, they are not reviewed as part of the COTA. All other written communication however, is fundamental to establishing a time line as to when the sequence of events are unfolding or have already occurred. Notices of transfer of servicing rights are also important because on many occasions, assignments may be filed in the land records to reflect such changes in servicers. ***All of these notices MUST BE PROVIDED IN THEIR ENTIRETY to the Title Consultant for review!***

MERS DISCLOSURE NOTICES should also be sent to the Title Consultant if you find them in your closing documents. It is uncommon to find these notices as MERS is NOT responsible for issuing them to you (the originating Lender is). Many times, the originating Lender has sold your loan into the *secondary mortgage market* (through a process called *securitization*) **BEFORE** you signed your documents at the closing table! Many of these originating Lenders may be what are known as "table-funded lenders" which means they are NOT the party that actually loaned you the money even though it may say this on your Security Instrument. Many of these originating Lenders may also be out of business! This too is systemically problematic throughout the United States, especially post-2008 financial collapse on Wall Street!

IV. . TITLE COMPANY DOCUMENTS

___ **COPY OF HOMEOWNER’S INDEMNITY POLICY** (if purchased)

___ **COPY OF LENDER’S POLICY** (if available)

___ **COPIES OF ANY TITLE SEARCHES DONE** (where a report was issued)

___ **COMMUNICATION FROM ANY TITLE AGENT OR INSURANCE COMPANY**

The title company that closed your loan may also be out of business (post-2008)! If you can locate your owner’s title policy or copies of any title searches that were conducted as part of your loan closing process, the Title Consultant will be able to review them for potential issues. Copies of your promissory note (*these will only be copies, not the originals*) may be available from the title company; however, this outlet should not be your sole source of document procurement. This is why we have real property records in most every jurisdiction of the country that have been statutorily mandated to keep track of property ownership and lien claims against each property.

V. OTHER AUDITS**

___ **COPY OF SECURITIZATION AUDIT+ OR FORENSIC LOAN AUDIT**

** Since the subject of this assessment is not a mortgage loan or securitization audit, closing documents (HUD-1 Settlement Statements, etc.) and related paperwork are not necessary.

+ Securities & Exchange Commission Documents that you might have could come in the form of a disclosure that you obtained through discovery that was not disclosed to you in the original petition (such as a Pooling & Servicing Agreement).

NOTE: The Title Consultant will generally set these types of audits aside and NOT review them prior to conducting a COTA because these reports were prepared by other specialists and constitute their personal opinions and viewpoints and NOT those of the Consultant. These reports would have a tendency to bias the Consultant’s opinion and thus are reviewed post-assessment issuance.

The following pages describe the process utilized to conduct a chain of title assessment ...

COTA Q & A – FAQ SHEET

What is a chain of title assessment?

This is a multiple-page report that defines potential problems and issues with the chain of title, beginning with your *deed* and moving “forward” through the chain of recorded documents in the land records found in the courthouse in the county in which your property is situated.

A chain of title assessment does **NOT** identify problems with your mortgage loan; TILA and RESPA or HOEPA issues; issues with the Fair Credit Reporting Act or the Fair Debt Collection Practices Act; securities’ violations or any other federal questions that have nothing to do with chain of title. It strictly identifies issues with chain of title. There may be ancillary comments included however for the attorney to consider.

What do I do with this chain of title assessment once it’s completed?

The chain of title assessment serves as a basic reference tool for an attorney; much like an x-ray does for a surgeon. Before operating, isn’t it nice to know where the “cancer” is? The assessment can also be used to define the parameters necessary for litigation as well as to brief in part any title company looking to provide the homeowner with an owner’s indemnity policy. Since the assessment cannot be construed as legal advice, it is best to get the attorney to review the assessment to see how much they agree with, which then can be used to formulate a letter to the title company, requesting a commitment letter with exclusions and conditions for which that title company can rely upon in case it must decline providing a policy to the homeowner because the chain of title is flawed and clouded. The COTA is not for use by pro se litigants as they have a tendency to abuse the report by misusing it as part of the evidentiary process.

What if the COTA shows suspect clouds on title?

If in fact the assessment shows potential for clouds on title, an attorney must identify with particularity and specificity the individual problems and must determine whether the problems were intentionally created (or created by a circumvention of the land records via MERS) or were just simple recordation flukes. More than likely, in today’s foreclosure climate, the attorney will find the information very handy in framing a cause of action and even moreso in determining damages and liability.

How much does it cost to get a chain of title assessment completed?

The average fees to get an assessment completed can be anywhere from \$850 and up, depending on the number of documents to be reviewed. Even though the only chain of title problems may result from the final two or three documents in the recorded chain, the entire chain must be accounted for. In order to prove superior title, you must “deraign” (prove) title for a certain period of time. Some states actually have those time periods specified in their statutes!

What if I've only owned my home for 3-5 years?

It would be advisable to extend your search and hone in on the former owner's Warranty Deed and his first mortgage (if he only has one of them) and/or any refinances of the property to see if MERS is on any of those documents. If MERS is involved, check to see if a release of lien was filed on his behalf after you closed your loan. It may be that a robo-signer signed his documents of reconveyance or release of lien, which would then put the former homeowner in a lurch because he may NOT have conveyed clear title to you!

Can I use the COTA as evidence at trial?

No. While in at least two (2) instances, attorneys have referenced the COTA and brought it to the attention of the Courts in the specific cases involving that COTA, the COTA itself is an analysis of the chain of title based on the information provided and constitutes the opinion of the Title Consultant and does not constitute the opinion of an expert witness.

Can the Title Consultant be considered an expert witness at trial?

No. The Title Consultant is a "consulting expert" to attorneys but is not specifically a recognized "expert witness" (there is a distinct difference in terms and meanings). The Title Consultant in most cases is protected by attorney work-product privilege but can be retained by counsel to consult on cases and attend hearings and trials specific to the case when and where it becomes necessary. All the Title Consultant could testify to is the facts contained within the COTA, which would not qualify as an expert opinion. There are title attorneys however that can serve as expert witnesses. They can examine the COTA and use it to render a decision of insurability and also as to impairment of vendibility (due to suspect clouds on title).

If you are initiating a title search or COTA, submit EVERY document in the chain of title, COMPLETELY! Do not just send the cover and signature pages alone. There is important information in the entire deed of trust or mortgage that must be reviewed as part of the COTA. Sending incomplete documents delays the completion.

Also, expect to sign a Paralegal or Title Consultant Retention Agreement prior to the work being commenced. The report will not be released until all fees are paid. Further, the report must be released to an attorney FIRST before the homeowner can receive a copy. Generally, the report is released in tandem to both counsel and homeowner once the Consultant is aware that counsel has been retained to represent the homeowner in the case.