



*Triaging Title:*

**A Behind-the-Scenes Look into Title Curative Litigation**

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The term “Triage” is said to have arisen during World War I by French doctors treating the battlefield wounded at aid stations behind the front. In title litigation, we meticulously triage referrals behind-the-scenes of the foreclosure front to reform, establish, or judicially cure numerous title issues that could otherwise halt a potential foreclosure. Right now, we are seeing a large number of referrals for the following common title issues:

**Unrecorded/Lost/Misplaced Security Deed**

When a Security Deed is not recorded, it fails to provide notice of the secured interest to third parties. Thus, when we receive a referral for an unrecorded Security Deed or a Security Deed with a patent defect, our first priority is to get a document of record to provide constructive notice of the Security Deed. Ideally, we would have the Affidavit/Corrective Deed recorded a few months prior to serving our civil action, to protect our client’s security interest in a potential bankruptcy. We would then proceed with filing a civil action to establish the Security Deed, as well as record a Lis Pendens referencing the property to give notice of our action.

**Improper Execution of Deeds**

This issue is most predominant in Georgia, as Georgia has more stringent requirements for execution than other states in which we practice. In Georgia, a deed is not authorized to be recorded unless it is signed by a grantor and two witnesses, and attested to or acknowledged by an authorized officer (most commonly a notary public). If a notary witnesses the execution and signs their name under an attestation clause (stating the deed was “Signed, Sealed and delivered in the presence of...”), only *one* unofficial witness is needed. However, if a notary uses an Acknowledgment (stating for example, “I, notary public, do certify that on this day, Borrower personally appeared and did acknowledge that he signed the...”), the deed must be witnessed & attested by *two* unofficial witnesses.

**Prior Open Lien**

The first step to clearing a prior open loan is to determine the intentions of the parties, the intended lien priority, and whether the prior lien was paid at a subsequent closing.

Proof of pay-off can be used to request a Release or Cancellation from the prior open lien-holder. This information is normally found in a HUD-1 Settlement Statement or other closing documents.

If a civil action has to be filed, evidence that a payment was made to become the first priority lien would be needed to support either subrogation or cancellation of the prior lien.

**Probate/Heirship Issue**

The probate records and the deed records of a county are typically in separate Clerks' offices. Many times, the deed records do not reflect a judgment or intention that may have arisen in the probate records (or civil records). As a result, when there are missing heirship interests in the chain of title, the probate records of the applicable counties must be searched to obtain necessary probate documents for the deceased owners (if they exist).

Additionally, when there is a death in the chain of title, attention must be paid to the ownership interest of the deceased owner (e.g. sole owner, joint tenants by the entirety, joint tenants with right of survivorship, etc.), and assuming said interest did not automatically vest in a co-owner, whether the heirs or beneficiaries of the deceased owner conveyed their interest in the property in accordance with the title standards of the specified state.

**Missing Spousal Interest/Break in the Chain of Title**

Generally speaking, when spouses co-own property, both spouses need to sign deeds to properly convey their interests in the property. If a deed purporting to convey the property is signed by only one spouse, there would be a missing ½ interest as to the other spouse. Depending on the state, when spouses are co-owners of real property, there could also be issues with homestead interests and Divorce Decrees, which can divest one spouse of title and/or order the spouse to quitclaim their interest in the property. A missing interest can be resolved with a Quitclaim Deed from the missing grantor, or through a civil action and Order entered by a Judge, which is then recorded in the deed records.

Triaging title involves a working knowledge of what issues are major defects, as well as the most efficient and cost-effective ways to cure the issues. We work to discern the intentions of the parties and reform the deed records to reflect those intentions. At Rubin Lublin, our number one priority in all cases is to protect our client's lien position, gain marketable title to the intended collateral, and minimize potential costs and liabilities.