



CHICAGO BULL

HUD LOANS, DEEDS OF TRUST & MODIFICATIONS

POTENTIAL HIDDEN LIENS

(5-1-2019)

Prepared By: _____
After Recording Return To: _____

FHA Case No. _____

SUBORDINATE DEED OF TRUST

THIS SUBORDINATE DEED OF TRUST ("Security Instrument") is given on _____ The Borrowers are _____ whose address is _____. The Security Instrument is given to the Secretary of Housing and Urban Development, whose address is Washington, D.C. 20410 ("Lender").

The "Primary Note" is the note given by Mortgage Electronic Registration Systems, Inc., nominee for _____ dated _____ in the principal amount of: _____ which note and the Security Deed securing the note are insured by Lender.

Borrowers owe Lender the principal sum of _____ secured by this Subordinate Security Deed. This debt is evidenced by Borrowers' subordinate note dated the same date as this Security Instrument ("Note"), which provides for the payment of the full debt, if not paid earlier, on _____. This Security Instrument secures to Lender: (1) the repayment of the debt evidenced by the Note, and all renewals, extensions and modifications of the Note; (2) the payment of all other sums, with interest, advanced by Lender to protect the security of this Security Instrument, including appearing in Court, paying reasonable attorneys' fees and entering on the property to make repairs; and (3) the performance of Borrowers' covenants and agreements under this Security Instrument and the Note.

For this purpose, Borrowers do hereby mortgage, warrant, grant and convey to the Lender, with power of sale property located in _____ North Carolina which has the address of _____

LEGAL DESCRIPTION

See attached for Legal Description

Return to: _____ Prepared by: _____

[Space Above This Line For Recording Data] _____ Data ID: _____

Loan No: _____
Borrower: _____

FHA Case No. _____

PARTIAL CLAIM DEED OF TRUST

MIN: _____
MERS Phone: 1-888-679-6377

THIS SUBORDINATE DEED OF TRUST ("Security Instrument") is given on _____ The Mortgagor is _____, whose address is _____, NORTH CAROLINA ("Borrower"). This Security Instrument is given to the Secretary of Housing and Urban Development and whose address is 451 Seventh Street, SW, Washington, DC 20410 (Lender), with Mortgage Electronic Registration Systems, Inc., organized and existing under the laws of Delaware, with an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS ("MERS") acting solely as a nominee for Lender and Lender's successors and assigns. **FOR PURPOSES OF RECORDING THIS SECURITY INSTRUMENT, MERS IS THE MORTGAGEE OF RECORD.** Borrower owes Lender the principal sum of _____ This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for the full debt, if not paid earlier, due and payable on _____

This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, advanced under Paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with the power of sale the following described property located in the County of _____ North Carolina: _____ LYING AND BEING IN _____ COUNTY, NORTH CAROLINA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS: ALL

BEWARE!!

"Subordinate" or "Partial Claim" Deeds of Trust to HUD and Modifications of Related First Mortgages

THESE ARE NEW & SEPARATE LIENS

Be cautious not to assume that a "modification" to one mortgage is only about that one – whether it's a commercial transaction *or a residential workout* with FHA, VA, or a standard residential mortgage loan.

The latest LARGE CLAIM EXAMPLE: As part of the HAMP and HARP workouts during the Great Recession, many troubled borrowers were able to obtain loans from HUD to get current on their first mortgages. **THESE ARE SEPARATE SECOND OR SUBORDINATE MORTGAGES PAYABLE DIRECTLY TO HUD!** They are NOT part of the payoff of the pre-existing first mortgage, which typically also had a modification agreement as well. (Though they may reflect the same FHA or loan number.)

As the mortgages that were modified by HAMP or HARP legislation are starting to be paid off, we are seeing an increase in claims that relate to the insufficiency of payoff letters/procedures. Under the different homeowner assistance programs, the agencies have the right to recoup amounts advanced to reduce the principal.

These claims fall into a number of basic fact patterns:

1. UNRECORDED LIENS DISCLOSED IN THE MODIFICATION:

A Government Sponsored Enterprise (GSE) such as the Federal Housing Administration (FHA) submits a separate demand for payoff of a mortgage/deed of trust described in a Loan Modification Agreement of an existing institutional lender's mortgage/deed of trust. The payoff demand is based upon language contained in the modification agreement disclosing an unrecorded subordinate lien mortgage/deed of trust, a new obligation. The servicer of the existing loan being modified **may or may not have recorded** the subordinate lien mortgage/deed of trust.

An example of the language found in a FHA-HAMP Loan Modification:

Acknowledgement and Preconditions to Modification. I understand, acknowledge and agree: As a precondition to receiving this proposed modification of the Loan Documents, I must accept and fully execute the FHA's required subordinate mortgage (also called a Partial Claim Note and Security instrument).

And later in that modification instrument, it *adds a condition* for a NEW subordinate lien that must also be addressed as a *condition for any release of the original modified Insured Mortgage*, -- even though that subordinate lien is recorded later (maybe immediately, maybe days or weeks later), such as a reference in the *modification* to:

The FHA's subordinate lien will require balloon payment when I pay off, sell, or refinance the Property, which may make these things more difficult to do. The FHA's subordinate Lien may make it more difficult to get additional subordinate financing.

The first page of this instrument, entitled "LOAN MODIFICATION AGREEMENT", identifies the Borrower, and Lender/Servicer and only includes recording information for the original mortgage; there is no mention of the subordinate lien.

2. DOCUMENTS INCORRECTLY IDENTIFIED ON THE DOCUMENT COVER PAGE:

A subordinate mortgage/deed of trust recorded with a cover page that describes the instrument as a modification (presumably because it came in a package for recording with the modification transaction). The first page of the actual instrument discloses clearly that it is a mortgage/deed of trust between HUD and the borrower. It may have the same loan number and servicer as the original loan. Notwithstanding, the subordinate instrument requires a separate payoff statement, payment and release.

3. "SUBORDINATE" OR "PARTIAL CLAIM" DEEDS OF TRUST ARE CORRECTLY LABELED, BUT NO SEPARATE PAYOFF REQUESTED: Make sure you treat each separate recorded lien properly. These liens are for funds that are owed *directly to the GSE, and are NOT part of the payoff to the original lender*. They typically do not require payment until the property is sold or refinanced and are not part of the original loan servicer's responsibility. The existing lender will not include the amounts due to pay off and release the subordinate lien mortgage/deed of trust in their payoff statement even though the subordinated mortgage/deed of trust has the same loan number as the first loan. Closing attorneys will have to order a separate payoff statement directly from the GSE.

If the holder of the subordinate instrument is HUD, payoffs should be ordered through HUD's National Servicing Center in Oklahoma. Payoff requests for all Secretary Held mortgages/deeds of trust: payoffs@novadconsulting.com
https://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/nsc/fmaddr

The contact information is as follows:

U.S. Department of Housing and Urban
Development FHA National Servicing Center
C/O Novad Management Consulting
Shepard's Mall
2401 NW 23rd Street, Suite 1A1
Oklahoma City, OK 73107
Toll-Free: (877) 622-8525
Fax: (800) 489-1733

The request must include a copy of the mortgage and borrower's authorization. HUD will not release their lien without receiving payment in full. Failure to order a separate payoff statement for the additional amounts owed may result in a loss.

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