

# UNDERWRITING BULLETIN

Stewart Title Insurance Company, 300 East 42<sup>nd</sup> Street, 10<sup>th</sup> Floor -New York, New York 10017  
(212) 922-0050 – (800) 433-0014 – FAX (212) 983-1133

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**Date: May 22, 2006**

**To: All New York State Office Counsel, Managers and Agents**

**From: Harold Boxer, Vice President and Senior Agency Counsel**

**Re: Mortgage payoffs**

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Periodically, a review of closing procedures is helpful. With foreclosures on the rise, and a contracting real estate market, the possibility of a fraud being perpetrated increases.

The following requirements must be followed:

1. **The payoff funds must go to the lender of record, or upon sufficient proof the legal owner of the mortgage.**
  - a. If a payoff letter is presented on the letterhead of a mortgagee/servicer other than the record holder, scrutinize it **CAREFULLY**. Unrecorded assignments or servicing arrangements must be verified. Make the appropriate calls to make sure you are not dealing with a bogus company doing a mortgage payoff scam but the legitimate holder/servicer of the mortgage.
2. **If the loan is in foreclosure**, the closer must deal **DIRECTLY WITH THE PLAINTIFF'S ATTORNEY AND NOT THE LENDING INSTITUTION**. In addition, a payoff letter must be obtained from lender's counsel stating :
  - a. All legal fees and any other miscellaneous fees are included in the payoff.
  - b. The lis pendens will be cancelled.
  - c. The action will be discontinued.

This procedure will avoid foreclosure sales and checks to the lender crossing paths and resulting in claims.

**3. To payoff a private mortgage:**

- a. The payoff letter must come from an attorney representing the private lender and should be confirmed with him by telephone.
- b. The canceled note marked paid must be presented with the payoff letter at closing.
- c. Be wary of satisfactions brought to the table or recorded reasonably close to the date of closing in cases where there has not been sufficient time to pay off the loan and there has been no refinancing of record to do so (i.e. where did they get the money to satisfy the private mortgage?).

**4. Satisfactions of a recent mortgage (whether private or institutional) in the chain of title:**

- a. **BE WARY.** A satisfaction with no new contemporaneous mortgage is a flag. From where did the money for the payoff come. Ask to see the note. Call lender of satisfied mortgage to verify payoff.

**PAYOFF CHECKS MUST BE SENT BY OVERNIGHT DELIVERY BY THE CLOSER NOT THE ATTORNEY FOR THE LENDER OR THE MORTGAGE BROKER**

**References:**

Bulletins Replaced:	None.
Related Bulletins:	None
Underwriting Manual:	None
Exceptions Manual:	None
Forms:	None
Attachments:	None