



# RELIABLE TRUST DEED NEWS

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## Special Points Of Interest

- Maximum \$ 30.00 charge for each beneficiary statement.
- Starting July 1, 2002 regulated fees and interest rates on loans of \$250,000 or less on residential owner occupied property, one to four units.
- Reconveyance fee is dropped from \$65.00 to \$45.00.
- Borrower may not be required to pay interest on a principal obligation under a promissory note secured by a trust deed on property improved with one to four residential dwelling units for a period of more than one day prior to recording the deed of trust.

## THE CAGNEY AND LACEY OF TRUSTEES

*This is a true story. The names of the lenders and borrowers have been changed to protect us from getting sued.*

It was 11:00 AM.. Lynn Wolcott, President of Reliable Trust Deed Services, began conducting the trustee sales scheduled for the day. Norma Sandoval, Vice President, was acting as the witness.

The final sale, TS # 1234, was completed. No bidders. The property reverted to the beneficiary. Norma came back into the office and discovered a fax. It was a bankruptcy by the beneficiary of a recently recorded junior trust deed. The BK filing was stamped 10:59 AM, 1 minute before the auction began. This apparently invalidated the foreclosure sale. Something however was not kosher.

Norma in her own methodical way, started studying the junior trust

deed, a copy of which had been faxed along with the bankruptcy filing. There was definitely something wrong with the notary page. The name of the person being notarized was where the notary's name belonged, not an error that most notaries make. This alone might not have been sufficient to invalidate the deed; however, it certainly made Norma cu-

rious.

Norma and Lynn went into a huddle. Lynn decided to pull a copy of the recorded T.D. under the suspicion that the document in hand might not match with the recorded document. Within minutes the title officer, "Randall the Flash" at United Title, faxed the actual recorded document. Lo and behold, it was a release of lien, not a trust deed after all. Their suspicions proved to be correct. Once again the foreclosure sale appeared valid.

Next, Lynn decided to check the bankruptcy filing more carefully. The name of the alleged junior trust deed beneficiary who "filed the bankruptcy", did not match the name on the "recorded" trust deed

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What did the document really mean?

## Owner Occupied Home Loans—July 1, 2002

Have you ever made a loan to a borrower who has credit problems, perhaps was in foreclosure and needed a bail out? The rules on these loans are about to change. A new designation for certain consumer loans, with regulations to control your interest rate and fees, will become effective on July 1, 2002. This

type of loan will be called a "covered loan". A "covered loan" is a "consumer loan" with an original principal balance that does not exceed \$250,000.00 which either (1) has an annual percentage rate that exceeds by more than 8 points the yield on Treasury securities of comparable peri-

ods of maturity on the 15th day of the month in which the application for the loan is received by the creditor; or, (2) the total points and fees payable by the consumer at or before the close of the loan will exceed 6 points of the total loan amount.

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# RECONVEYANCE— WHAT ARE YOUR RESPONSIBILITIES UNDER THE LAW

**The recorded Reconveyance must be mailed to the Trustor, or his successor, from the County Recorder in which the Reconveyance is recorded.**

As of January 1, 2002, there are a few changes to the California Civil Code regarding Reconveyance. You may wish to look up Civil Code Section 2941 for the complete text. Alternatively we will be happy to email or fax it to you. These are the highlights:

\* **Within 30 days after the obligation secured by a deed of trust has been satisfied the Beneficiary must execute and deliver to the trustee the original note, deed of trust, request for full Reconveyance, and other documents necessary to reconvey or cause the deed of trust to be reconveyed.**

\* **After receipt of the original note, deed of trust, request for a full Reconveyance, the Reconveyance fee, recorder fees and other documents necessary to reconvey, the trustee has 21 calendar days to reconvey or cause the deed of trust to be reconveyed.**

\* **The Reconveyance must specify the Trustor as the person to whom the recorder will deliver the recorded instrument.**

\* **Upon written request of the**

**Trustor or his successor, the trustee shall deliver the original note and deed of trust to the person making the request.**

\* **A violator of these new laws, may have to pay actual damages plus a civil penalty of \$ 500.00 per viola-**



Reconvey in a timely manner !

**tion.**

\* **The Reconveyance Fee is lowered from \$65.00 to \$45.00. The fee cannot be made payable any earlier than 60 days prior to the full satisfaction of the obligation. The fee may not be charged unless it is included in the lender's payoff demand.**

\* **In the past if you gave an escrow your note, trust deed and demand for pay off and**

**told them to request the reconveyance of the trustee, you were off the hook—no longer. Make sure escrow has specific written instructions regarding this matter as the liability flows back to the Lender if a violation occurs.**

\* **No other fee may be imposed upon the Trustor except for those expressly authorized in Civil Code Section 2941 .**

\* **And one more change which saddens me greatly to report—Payoff Demand/Beneficiary Statement Fees are reduced from \$60.00 to \$30.00.**

This is not meant to be an exhaustive list of the requirements regarding Reconveyance. As the area is now fraught with liability it would be wise to designate a professional trustee, like Reliable Trust Deed Services, (hey, we had to pitch the company at some point you know) at loan inception to protect yourself from potential liability.

## ACCRUAL OF INTEREST ON LOANS PRIOR TO THE CLOSE OF ESCROW

The provisions of Civil Code Section 2948.5 effective January 1, 2001 regarding deeds of trust and the accrual of interest on residential loans have been changed.

Essentially the code says the borrower may not be required to pay interest on the loan for more than one day prior to the trust deed recording, if an escrow is used. If no escrow is used, the borrower may not be required to pay interest for more than one day prior to the date the loan funds are available for withdrawal.

If funding will occur more than one day prior to recording, Interest may begin to accrue on the

business day immediately preceding the date of recording only if the borrower asks, and the lender agrees that the recording will be on a Monday or a day immediately following a bank holiday.

In this case the lender must disclose, and the borrower sign a disclosure saying something like the following: (A) The amount of additional per diem interest charged to facilitate a recording on Monday or the



If you would like the actual text of any Civil Code mentioned call us!

date following a holiday, as the case may be, and (B) that it may be possible to avoid the additional per diem interest charge by not recording the deed of trust on that day but to wait until there are two consecutive business days and fund on the first day, close the next day.

# Owner Occupied Home Loans—more rules and regs

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The effect of these changes on lending will be significant. Necessitous borrowers may not be able to finance small second trust deeds. They may be obliged to refinance their first trust deed and end up with a higher interest rate than the one they had. They will also have to pay new loan fees, in order to draw out a small part of their equity in what is usually their largest asset. Another example might be of someone who has paid off their home and only wants to borrow say \$30,000.00 to fix it up, or take a trip around the world. There may not be a lender and/or broker willing to offer the loan due to the caps on interest rate, and low costs and fees which can be realized.

The law is a mine field of provisions and seeming contradictions which regulate the interest rate, fees, costs, required disclosures, timing of disclosures, and other complex issues. Some of the Prohibited Acts for Covered loans are:

**Prepayment Penalty:** May include a prepayment penalty for up to 36 months of the loan as long as the originator of the loan offers the consumer a choice of another loan product with no prepayment penalty. The loan product offered without prepayment penalty must be disclosed in writing 3-business days prior to consummation and include the rates, points, and fees which would be available for this type of loan.

**Amortized Payments:** If the loan is less than five years it must be fully amortized.

**Default Interest Rate:** The loan may not have a default rate of interest.

**Equity Loan Prohibited:** No purely equity loans are allowed. A lender “shall not make or arrange a covered loan unless at the time the loan is consummated, the person reasonably believes, the consumers will be able to make the scheduled payments to repay the obligation upon a consideration of their current and expected income, current obligations, employment status and other financial re-



No prepaid monthly payments are allowed on covered loans.

sources, other than consumer’s equity in the dwelling that secures the repayment of the loan.”

**Ability to Pay:** “The consumer shall be presumed to be able to make the scheduled payments to repay the obligation if, at the time the loan is consummated, the consumer’s total monthly debts, including amounts owed under the

loan, do not exceed 55 percent of the consumer’s monthly gross income, as verified by the credit application, the consumer’s financial statement, a credit report, financial information provided to the person originating the loan by or on behalf of the consumer, or any other “reasonable means.” No presumption of inability to make the scheduled payments to repay the obligation shall arise solely from the fact that at the time the loan is consummated, the consumer’s total monthly debts, including the amounts owed under the loan, exceed 55 percent of the consumer’s monthly gross income.”

**There are other important rules and prohibitions when making these loans. This short article is not meant to be a complete review of the new law. You are strongly advised to check with competent legal counsel prior to making covered loans.**

**To have a balloon payment, a covered loan must be for more than 5-years, i.e., even one day. Resist the temptation to do a five year loan when the term can be longer.**

## CAGNEY AND LACEY

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There was a blatant misspelling!

Norma called the Notary who notarized the release of lien. He did not notarize the fraudulent trust deed.

Someone had copied the notary page, from another recorded document, altered it, and attached it to the fraudulent Trust Deed. Voila! The foreclosure sale was valid after

all.

This was obviously a fraudulent bankruptcy, and a fraudulent third trust deed filing! Fraud will not stop a valid foreclosure sale. The title company agreed and the Trustee’s Deed Upon Sale was issued.

When you hire a trustee, their experience



**A fraudulent filing will not stop a foreclosure sale!**

can mean the difference between a successful foreclosure sale and a mess. Experience is the key to successful foreclosures, trust deed investing and management. Lynn and Norma are definitely the Cagney and Lacey of the foreclosure industry.

Reliable Trust Deed  
Services, Inc.

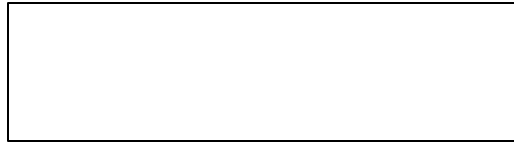
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**We're on the web:  
www.ReliableTD.  
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**Reliable Trust Deed Services is a full service trustee.  
We can help you with all of your foreclosure needs.**

## Ask Lynn – Recent foreclosure questions and answers from Lynn Wolcott, President and Senior Trustee Officer of Reliable Trust Deed Services

**Q: Once I decide to start a foreclosure, how long does it take before the Notice of Default is filed?**

**A:** In California we can file the Notice of Default within 24 hours. In some counties, Los Angeles for example, we can file the Notice of Default in about one hour.

**Q: Should I advance to the senior trust deed?**

**A:** There is a provision in most deeds of trust which provides for interest on any funds advanced to protect the security deed of trust. Each situation needs to be evaluated individually. In a case where there is quite a bit of equity it usually makes all the sense in the world to advance funds, including delinquent property taxes, delinquent senior lien payments, and trustee fees.

**Q: How long do you have to wait, after a Bankruptcy is dismissed, to proceed with a foreclosure sale if the sale date had been set prior to the Bankruptcy filing?**

**A:** You can proceed with the foreclosure sale 7 days from the "entered dismissal" date.

**Q: If I have a loan secured by two deeds of trust covering two different properties, can I foreclose on one property only, or do we have to foreclose on both?**

**A:** This a complex question which requires analysis of the underlying collateral as well as factoring in the goal of the Lender, however, you may foreclose on one

deed of trust only. The amount of the final bid at the foreclosure sale deter-

mines if the deed of trust remaining on the other property upon which you did not foreclose still retains any value. For example let's say your owed a total of \$100,000.00. The amount of the final bid at the foreclosure sale is \$ 50,000.00. Therefore, the remaining not foreclosed deed of trust is securing the balance owed of \$50,000.00.

However, should you bid, or should the bidding return the full \$100,000 it would be your duty to reconvey the other deed of trust. This applies even if the foreclosed property reverts to you if your bid was \$100,000.00.



In Los Angeles County we can file a Notice of Default in about 1 hour .