



CHICAGO TITLE
INSURANCE COMPANY



CommonwealthTM
LAND TITLE INSURANCE COMPANY

TITLE TALK By: Katie Button

RESIDENTIAL FAULTY DISCHARGES



Call or email
anytime with
questions!

Katie Button
NH State Counsel
Katie.Button@fnf.com

Lori Routhier,
Sr. Title Officer
Lori.Routhier@fnf.com

Check out our website for
additional information:
Nationalagency.fnf.com/NH

Missing or faulty discharges can become the bane of our existence in the real estate closing world, but there are a few different options available to get you to the closing table.

If the issue is with a current owner mortgage, your options are limited and the seller should be obtaining the discharge since they are the customer of the Lender who needs to issue the curative documents. The lender is technically required to record the discharge within 60 days of payoff (RSA 479:7 II) and penalties for failing to discharge are in the statute (RSA 479:8) but I'm not aware of any aggrieved property owner actually pursuing these penalties.

If the issue is related to a prior owner mortgage the path to the closing table has more options.

INDEMNITY LETTERS - Indemnities are utilized for a prior owner mortgage when the current owner has an owner policy. The current insurer may provide an indemnity with undertaking language to our Company. Undertaking means the company will try to fix the problem. If you request the letter yourself, please keep a copy in your file, confirm undertaking language is in the letter, and send our office a copy so we can approve it. If our Company is the current insurer contact us and we generally authorize re-insurance and submit the matter to our claims department for title clearance/undertaking. Indemnity letters or authorization to re-insure are provided to keep transactions moving forward and maintains the coverage obligation with the insurer who issued the existing owner policy but does not guarantee the issue will be fixed.

CURATIVE SERVICES - When the Indemnity letter option isn't available due to a current owner mortgage issue, no owner policy, or a buyer who wants the issue fixed the next option is curative services.

A guaranteed cure is part of the ClearTitle program and more information can be found at Cleartitlefnf.com. If your transaction is a purchase that meets all the criteria listed on the website and is accepted into the ClearTitle program you can close before the discharge is obtained and ClearTitle guarantees they will cure the defect. Of course not every issue is accepted into the program such as mortgages that aren't paid in full, equity or credit lines without proof of payment and closure, private mortgages, commercial mortgages, and current owner mortgages without proof of payment.

If you don't qualify for ClearTitle, the next option is a regular curative such as Require - Gorequire.com. Since there is no guarantee with this type of curative service, you need to wait until the cure is complete or we may authorize closing with a hold back of funds in case a quiet title petition is needed to remove the mortgage from the title. Contact your underwriter for approval prior to closing.

ALTA 34 IDENTIFIED RISK ENDORSEMENT — If Indemnity and Curative aren't available, contact your underwriter and we may authorize issuing a policy with an ALTA 34 endorsement that provides limited coverage if the mortgage is actually enforced by a court. This option does not fix the issue but there are some undischarged mortgages out there that just cannot be discharged short of a petition to quiet title and the ALTA 34 is an option to consider in those circumstances.

Whatever the discharge issue is, give us a call or send an email and we will try to find a solution and get you to the closing table.

Also, you can always check out our website, Nationalagency.fnf.com/NH, which may have the answers or forms you need.

What's your title question? Send us information on what you want answered in our future editions.

We have started a commercial endorsement presentation series. If your firm or title company is interested in having us join you for an hour to review commercial endorsements, contact us and we can work with you to schedule a convenient date and time to come into your office.