TITLE TIPS: LOST NOTE & MISSING BENEFICIARY

Man any of you probably know that you can d o "the bond thing" if the preliminary report discloses an old deed of trust, and the seller tells you, "I paid this off many moons ago, but I do not have any of the original documents and the beneficiary cannot be reached. He was last seen ascending the Himalayas with the Dalai Lama long ago. I'm sure he's drifted into the great void by now." But do you really know about the ramifications of "the bond thing"?

In situations where both the beneficiary and the original note are missing, "the bond thing" is a multi-step process wherein obtaining the bond is just the first step. (See California Civil Code Section 2941.7)

To obtain a bond an insurance agent must be contacted, who in turn will work with a surety company that issues Lost Note Bonds. The   insurance agent will request that the applicant/seller provide copies of the note (if available) and copies of documentation that evidences payment of the note, such as cancelled checks, payment books, etc. Additionally, the applicant/seller will be asked to sign an indemnity agreement in favor of the surety company issuing the bond.   Occasionally, (typically when the bond is for a substantial amount of money), the insurance agent will request a financial statement from the applicant. Standard practices charged by bonding companies would be a premium paid for the bond ranging from 1.5 to 2%, double the original principal obligation of the deed of trust (the original principal will be increased to include any additional advance amounts disclosed by the official records).

The minimum requirements for all bonds are:

1. The bond shall be the greater of either (A) two times the amount of the original obligation secured by the mortgage and deed of trust and any additional principal amounts, including advances, shown in any recorded amendment thereto, or (B) one-half of the total amount computed pursuant to (A) and any accrued interest on such amount, and shall be conditioned for payment of any sum which the mortgagee or beneficiary may recover in an action on the obligation secured by the mortgage or deed of trust, with costs or of litigation and reasonable attorney's fees.

2. The obligee named in the bond can be:
a) The mortgagee or mortgagee's successor in interest
b)The trustee who executes a reconveyance and the beneficiary or beneficiary's successor in interest

Once the bond is in hand, is the deal all set to go? Can a reconveyance be obtained from the trustee? Unfortunately, the battle has just begun. Section 2941.7 sets forth that the bond and a declaration must be of record for at least 30 days before the trustee may issue the reconveyance. It is important to note that "prior" to the recording of the declaration, the code section requires that a notice of   recording of declaration and bond be mailed by certified mail, return receipt   requested to the last known address of the person to whom payments under the mortgage or deed of trust were made and to the last mortgagee or beneficiary of record at the address for such obligation shown on the instrument.

Lastly, it is recommended that the title officer, together with the owners, initiate personal contact with the trustee, who will be the person tasked with the job of reviewing the bond and declaration and who will ultimately be the one issuing the desired reconveyance. If the title officer and owners establish early contact with the trustee, the trustee will be in a position to review early drafts of the bond and declaration and thus provide the owner with helpful input. Such input will enhance the likelihood that the bond and declaration that was initially forwarded to them will be acceptable. Just as important, if the title officer has developed a rapport with the trustee, it is very likely that the trustee will deliver the reconveyance back to the owners in a very timely manner. Working together to solve title issues is how Progressive Title officers rise above the competition.

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