

Title Tips - "Subordination of Existing Second Mortgage"

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Question: We have been asked to insure a refinance. The new lender is willing to have the existing second mortgage remain as long as it is subordinated to the new mortgage. Is it acceptable to close without actually having the subordination document in hand?

Answer: No.

As you know, in order for a mortgage to enjoy first lien priority, all existing mortgages and liens must either be discharged/cancelled/released of record or subordinated to the lien of the new first lien priority mortgage.

While most second mortgage and home equity lenders were formerly willing to subordinate to refinance mortgages, in today's declining market they are less inclined to be so accommodating. In fact, recent articles published in several financial journals report that lenders are becoming increasingly unwilling to subordinate their home equity mortgages or second mortgages when requested to do so by a borrower desiring to refinance the first mortgage. We are finding that since many second lien position mortgages are in jeopardy of becoming under-secured due to declining property values, the lender may view a borrower's refinance as a welcome opportunity to have its lien paid off and thereby avoid a potential loss.

It is therefore extremely important when insuring first mortgage lien priority that all existing mortgages be satisfied in full at closing or, if an existing mortgage is going to be allowed by the new lender to remain open of record provided it is subordinated to the new first mortgage, that **you have an original, recordable Mortgage Subordination Agreement in your possession prior to or at closing. In the current climate, relying upon a promise that the Subordination Agreement will be produced post closing is no longer acceptable.**

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