

PENN ATTORNEYS

TITLE ALERT

DATE: 06/17/05

RE: Purchase Money Mortgage Lien Priority

Approximately one-third of all purchase closings today have two mortgages. The second mortgage is usually utilized to avoid having to pay purchase mortgage insurance (PMI). The second mortgage covers the twenty percent down payment required to avoid PMI. However, the important thing to remember is that ***purchase money mortgages (PMM) enjoy special protections regarding lien priority*** not afforded other types of mortgages. In order to protect the benefits associated with purchase money mortgages they must be recorded within ten days of delivery. If purchase money mortgages are not recorded within ten days, the benefits associated with them can be lost and the likelihood of a claim increases.

A traditional purchase money mortgage is one taken back by the seller. Other mortgages may also qualify for the status of PMM if the proceeds of the mortgage loan are used to acquire the subject real estate **AND** if the term "purchase money mortgage" is stated in or on the document.

A standard Fannie Mae/Freddie Mac Uniform Mortgage Instrument has purchase money language in it (paragraph 26). If you are not using a standard Fannie Mae/Freddie Mac form, some purchase money language must be in the instrument in order for it to qualify as a purchase money mortgage. If no such language exists the instrument cannot be viewed as a purchase money mortgage.

Penn Attorneys Title Insurance Co.

State Headquarters
900 State Street, Ste 320
Erie, PA 16501
814-454-8278 * 800-352-2216

erie@pennattorneys.com

Eastern Pennsylvania Office
New Bridge Center, Ste 317
480 Pierce Street
Kingston, PA 18704
570-288-1108 * 800-929-4024
epro@pennattorneys.com

Title 42 Pa C.S.A. Section 8141 provides the roadmap that must be followed in order to determine lien priority. When focusing on purchase money mortgages, the statute states:

Liens against real property shall have priority over each other on the following basis:

Purchase money mortgages¹, from the time they are delivered to the mortgagee, if they are recorded within 10 days after their date; otherwise, from the time they are left for record. A mortgage is a purchase money mortgage to the extent that it is:

- (a) taken by the seller of the mortgaged property to secure the payment of all or part of the purchase price; or
- (b) taken by a mortgagee other than the seller to secure the repayment of money actually advanced by such person to or on behalf of the mortgagor at the time the mortgagor acquires title to the property and used by the mortgagor at that time to pay all or part of the purchase price, ***except that a mortgage other than to the seller of the property shall not be a purchase money mortgage within the meaning of this section unless expressly stated so to be.***

Hence, if you have a purchase money mortgage and it is not recorded within ten days after it is delivered (typically the day dated and acknowledged) you lose the lien priority that it would have had *vis-à-vis* any other liens that would arise during the gap period from settlement to recording. Moreover, if you are in a situation where you have two mortgages at a purchase closing and only one of the mortgages has purchase money language in it, that is the only mortgage that will enjoy purchase money mortgage status, unless taken back by the seller.

Please also refer to our prior Title Alert **PA 2004-14: Insuring Multiple Mortgage Transactions**, available at www.pennattorneys.com .

This information is being provided to explain a nuance in the law with regard to purchase money mortgages. If you have any questions please contact your servicing Penn Attorneys office.

PLEASE INSERT INTO YOUR FORMS, POLICIES & PROCEDURES BINDER

¹ Purchase Money mortgages also have priority over any judgment entered against a purchaser after the agreement of sale is executed but before the deed is delivered. **Cake's Appeal**, 23 Pa. 186 (1854).