

# Avoid Delays

## The Art of Uneventful Mortgage Payoffs

[by Joshua Stein]

**W**hen any borrower closes a new mortgage loan, many small problems can arise. Sometimes, they can delay or even derail the transaction.

Of all the possible problems, perhaps one of the most common, yet the most surprising, is the process of paying off the borrower's existing mortgage loan. Time and again, a major closing will be delayed a day or two at the last minute because of unexpected problems dealing with the existing lender, who isn't ready to close.

These problems are particularly remarkable because they are avoidable. Unlike many other problems with the loan-closing process, paying off the existing

of these problems go away because the escrow handles the process automatically.)

### Prevent Problems

As step one in preventing problems with mortgage payoffs, a borrower and its counsel should identify the payoff of the existing lender as just another step they need to coordinate as part of the overall closing. It's not hard. Someone just needs to remember, early in the process, that it needs to be coordinated and figure out who will do it.

Dealing with the existing lender is easy if he or she is down the street and a good personal relationship exists. If the existing lender is a third-party servicer located in some distant city, paid a minuscule fee to

the borrower change its mind? If not, is the borrower concerned about this risk? What can the borrower do about it? Will the borrower want to ask the existing lender to waive any of these requirements?

If the borrower plans to make any payment on the existing loan just before the closing, the borrower should determine whether the existing lender can correctly process and credit that payment in time to reflect it in the payoff letter. Would it make more sense to postpone that last payment until the closing itself or prepay it?

How will the existing lender want to handle tax escrows? These can represent substantial sums. If the existing lender can't move quickly enough to release them or credit them against the payoff, the borrower may find it needs to go out-of-pocket to fund the same tax escrows a second time for the new lender. If a borrower is tight for cash, that requirement may be burdensome. It can easily be avoided by planning ahead.

### Questions to Answer

As step two, the borrower should collect the information that the existing lender will need in order to be paid off. When will the new loan close? Who is the new lender (if it matters)? Who is handling the closing? What will the existing lender need to deliver at the payoff? Will the new lender or the title company want to see the original note and mortgage documents at the closing? Or will a payoff letter suffice?

If the new lender wants to see the existing lender's original note and mortgage documents at the closing (a problem that often arises in New York closings because of the gratuitous complexities required by New York's mortgage recording tax), then the borrower should communicate this requirement to the existing lender.

The original documents will often be difficult to find, or even lost completely.

## PAYING OFF AN EXISTING MORTGAGE LOAN IS SO EASY THAT BORROWERS DON'T EVEN THINK ABOUT IT.

lender is almost entirely within the control of the borrower. Unlike some other third parties, existing lenders are typically quite willing to cooperate. So why do mortgage payoffs cause so many last-minute problems at closings?

Answer: paying off an existing mortgage loan is so easy that borrowers and their counsel often don't even think about it until the last minute. And when they finally do think of it, they don't leave the existing mortgage lender with enough time to handle the process gracefully and undramatically. Or, perhaps the lawyers think the business people will handle the payoff, but the business people think the lawyers or the accounting department will handle the payoff. (If the parties close through a professional, third-party escrow with a reasonable closing schedule, many

service thousands of mortgages, then the process of coordinating a payoff may be harder and take longer. Under these circumstances, it's all the more important for the borrower to start the process early and identify lines of communication.

If the new borrower is acquiring the real estate simultaneously with the loan closing, the purchaser (new borrower) can't take charge of the payoff process, but should make sure the seller thinks about the suggestions in this article.

As soon as any borrower sees a refinancing or a sale on the horizon, the borrower should see what the existing loan documents say about paying off the existing loan. How much notice does the lender require? Must the payoff occur on a regular monthly payment date? If the borrower gives notice of prepayment, can

Although the parties can usually solve this problem without great effort, it can cause extra drama and wasted time if the parties learn of it only at the closing table.

The borrower should get the existing lender's payoff letter a few days before the closing to identify and resolve any misunderstandings with the old lender. Did the existing lender calculate its numbers right? Does the payoff documentation establish an unrealistic deadline for the payoff? Does the existing lender require anything unusual or difficult for the borrower to deliver? If the existing loan is secured by a portfolio, has the lender properly calculated the release price for this particular property? Did the lender remember to include wire transfer instructions? Is the payoff letter signed? Will it satisfy the title company or whoever else is handling the closing?

Once the existing lender has its numbers right and the payoff letter looks good, the borrower should then focus on the

documents necessary to release (or in New York assign to the new lender) the existing lender's mortgage documents. Who will prepare those documents? And when?

Outside New York, these documents usually can be handled after the closing, thus are unlikely to create a crisis at the closing table. Even so, the parties will usually save time and effort if the existing lender signs the release documents in advance, along with the payoff documents, and delivers everything to its own attorneys, a title company or, sometimes, the borrower's attorneys, perhaps in each case with an appropriate escrow letter.

The existing lender may want to prepare its own release documents. The borrower will, however, often save time and perhaps some money by having someone already actively involved in the refinancing prepare the release documents instead.

That person will already have a current title report and all the recording informa-

tion needed to prepare the release documents quickly and easily. Once the release documents are prepared, the existing lender can simply check them — an easier process than collecting all the information to prepare them — and then sign them. Whoever prepares the release documents, those documents must refer to the mortgage and to any other security documents.

If the borrower or its counsel follows the steps described above, the process of paying off an existing lender should be easy and uneventful. It's a process that requires almost no effort, and even less intellectual energy and legal time, as long as the borrower starts it early and takes it seriously. In contrast, if the borrower postpones it until the last minute, then the borrower invites last-minute crises, problems and avoidable expense. ■

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