

RIGHT-OF-WAY ACQUISITION: PARTIAL RELEASE OF A PORTION OF PROPERTY FROM A MORTGAGE

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During right-of-way property acquisition, mortgages often are overlooked. However, mortgages often present special concerns during right-of-way property acquisition, particularly regarding obtaining partial releases on mortgaged properties. Since most agencies will not purchase property encumbered by a lien, when a partial taking of a property is required, the acquired portion of the property must be released from the mortgage to clear it of any liens or other encumbrances. Not all lenders permit partial releases on properties under mortgage.

Some agencies may require that an escrow agent contact the bank to handle the partial release, while many other agencies require that the right-of-way agent deal directly with the bank. This article addresses the latter.

Determining Mortgage on a Property: The first step in obtaining a partial release on a mortgaged property is completing the title report to determine if a property owner has a mortgage on the property. If there is a mortgage on the property, a partial release may be required. If there are multiple mortgages on the property, each institution must be notified of the project to obtain a partial release. Some agencies do not require title report completion for offers below a certain amount. However, by not completing the title report, the agency risks not discovering a mortgage on a property. Therefore, it is prudent to examine a property's title report regardless of offer amount.

Presenting Offer: The second step in obtaining a partial release is presenting the offer to the property owner. With a mortgage on the property, it is important to notify the property owner that their lender potentially may request a portion of the settlement funds for a paydown (reduction of the principal balance; without penalty) of the mortgage, primarily to maintain the current loan-to-value ratio. During the offer meeting, the agent should present an "Authorization to Release Lien Information" form to the property owner, who will complete the form to provide loan information, such as the borrower name, property address, account number, and phone number for the bank. The property owner should then sign the form, authorizing the acquisition agent to contact the bank and discuss the property owner's loan with the lender on behalf of the property owner. In some cases, the property owner may not feel comfortable revealing this information to the agent. Further, some lending institutions will not release borrower's personal information to others. If the property owner prefers, he / she may handle the release independently, without agent assistance. In these cases, as lenders prefer to work with their borrower directly rather than a third-party agency, a proactive property owner helps expedite the process. However, to ensure the property owner is coordinating with the lender, the agent should consistently monitor the process.

Contacting the Lender: The third step in obtaining a partial release, after receiving the signed authorization form from the property owner, is to contact the lender. If the lender agrees to release mortgage information, typically they will provide a fax number and/or an email address for the agency to submit the form. Once the agency sends the form, the lender will ask for items that typically include an appraisal, the signed deed conveying the property to the agency, an exhibit or legal description, a

inspiring confidence in progress...

survey with the improvement shown, and the partial release document for lender execution. Further, lenders also often will request a processing fee, which may be paid by the agency acquiring the property or the right-of-way firm.

Lender Waiving Requirements: The lender may waive some of these requirements. For example, some states require only a written legal description be recorded with the deed, rather than a plat or exhibit that shows the acquisition area as well as improvement location in relation to the acquisition area. In these cases, a lender may accept a plan sheet copy in place of a plat or exhibit. If the plan sheet does not show the improvement location in relation to the acquisition area, a previously recorded plat at the register of deeds may show the improvement location. In this case, the lender often can compare the plat to the plan sheet and verify that the acquisition does not damage the improvement. In short, often agents can work with lenders regarding specific requirements to obtain partial release.

Lender Fund Portion Request: The lender may request a portion of the funds for a paydown of the mortgage. If the acquisition involves a cost-to-cure for damages to improvements, the lender may not be entitled to compensation for these items. Though the lender may have documentation stating their entitlement to any and all compensation regarding the sale of any portion of the property, the agent must receive the property owner's signature on any agreements regarding the disbursement of funds. If the property owner and the lender are unable to agree on the distribution of funds, the acquisition may move into condemnation.

Executing Partial Release Document: If the lender and property owner agree on the distribution of funds, the lender will execute the partial release document. In some cases, the lender may require adding specific language to the document. Provided that this additional language does not alter the legal description or some other pertinent document information in the document, the agent will communicate with the project manager to incorporate additional language into the document. Upon the document's signing and notarization, the lender will send it to the right-of way agent. With local banks, this process typically completes within several weeks, while with larger banks, can take up to six months. Regardless of process expected time frame, the agent should monitor the process to ensure its appropriate progression. Once the agent receives the partial release document, it is recorded with the executed deed, with proper parties paid according to their agreement. ■ ■ ■

