



Utilizing independent release-tracking as an integral part of the real estate closing process

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One of the few bright-spots in today's tenuous residential real estate market is the emergence of independent release-tracking (RT) as an integral part of the closing process. RT is not a new phenomenon, having been performed as a matter of practice since the first time a release was not available at a closing table. In its infancy it was a simple task - follow up and make sure that the mortgage release was properly recorded on the land records. Over time came the complications. Mortgages began to be assigned as a matter of course; servicing was separated from ownership; bundled up mortgages were sold so many times that it became difficult to find the party authorized to issue releases. This led to the demise of the lenders' interest and capacity to deliver timely releases. Law firms found themselves overwhelmed in trying to track down releases and became less and less competent at the task. As a result, ominous clouds on titles spread throughout the land records. Add a refinance boom that seemed to last forever, and it was the perfect storm for disaster in the land records. All of this helped to create a gaping title defect vacuum. Enter independent RT companies such as Connecticut's homegrown Final Trac, LLC that offered the service free of charge to lawyers, and at an incredibly reasonable pass-through fee of \$35 per release to the borrower.

While the benefits of independent RT are numerous, two of the largest stand out: (1) the pressure RT places on mortgagees (lenders) to provide proper and timely releases and therefore results in the improvement of the land records; and (2) the value RT holds in addressing the problem of attorney defalcations. First, the problems that a changing secondary mortgage market created did not go unnoticed. New laws appeared, and existing laws were given more teeth to punish deficient mortgagees. See C.G.S. Â§49-8; ME Title 33: Ch. 9: Subch. 2: Â§551; M.G.L. Ch. 183: Â§55; NH RSA 479:8; RI Section 34-26-5; and VT Stat. Ann. Tit. 27, Â§ 464. These laws could be a powerful incentive for lender compliance, but only if utilized. Unfortunately, aside from threatening statutory language appearing at the bottom of payoff letters, the laws went unused.

Independent RT companies not only had the time and resources to pursue missing assignments and releases, but this was their very mission statement. By bringing independent RT companies into the process, law firms no longer had to be concerned with the time-consuming contest. In turn, with RT companies following up with mortgagees for releases that were late, the lenders were forced to improve their procedures for producing releases. This generated the intended result of helping to cure title defects and cleaning up the land records.

Secondly, with RT companies tracking and following up on files where releases have not been delivered, it makes it all the more difficult, if not impossible, for attorneys to perpetrate a fraud by not paying off the loans mandated by the HUD-1 Settlement Statement. With RT companies acting as the watch dog over the settlement agents, defalcations should no longer proliferate. See Stephen B. Goddard, Complainant vs. Ronald L. Lepine, Respondent, Connecticut Grievance Complaint

#03-0364. With RT acceptance increasing, evidenced by RT showing up on more and more HUDs, and even on some lender's GFE's, real estate lawyers would be well-served to embrace the future, give much needed relief to their staff, and greatly improve the entire process. Additionally, with the obvious oversight benefits, state bars, organizations, and associations should consider mandating independent RT on all closings in order to control attorney fraud and defalcations.

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