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How to Meet the Challenging and Changing Regulatory Requirements of Lien Releases

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How to Meet the Challenging and Changing Regulatory Requirements of Lien Releases

Overview

For years, mortgage servicers have applied the same processes across varying types of document filings, foreclosure processes, and state and county recording requirements. This all-purpose, often manual, way of doing business has created significant problems in recent years and led to heightened regulatory oversight.

Lien release activity, which tends to track with refinance booms, also presents operational, staffing, and cost burdens for servicers; ironically, on assets that are leaving their books.

Due to the unique nature of each step of the mortgage servicing workflow, and the supervision and expertise each requires, managing the process of creating and recording documents can be challenging. And the stakes are high—with filings being rejected because of missing data, incorrect data, or improperly drafted documents resulting in fees being levied for non-compliance.

This white paper will examine the legal/regulatory risks associated with lien release filings and the operational challenges of anticipating and accommodating cyclical demand. The paper will also explore the logistical considerations of dealing with more than 3,000 county recorders and the need to rely on automation to drive compliance.

Finally, it will look at a new outsourced solution designed to keep pace with the rapidly changing regulatory environment and reduce the total costs of filing and recording lien releases and related documents.

Lien Releases: By the Numbers

Today, there are 3,640 recording offices in the United States. If you tallied all the county, state, Consumer Financial Protection Bureau (CFPB), and investor requirements that touch on lien releases, the total is estimated to be more than 1,138,320 unique recording requirements to track, manage, and maintain nationwide.

Despite these daunting statistics, lenders and servicers often still rely on in-house staff to manually process and record lien releases. This requires tracking and monitoring information from hundreds, even thousands, of sources to maintain templates that conform to all the varying recording requirements across the country.

The requirements can be quite precise, ranging from spacing, margins, and font sizes to what must be included, how it must be executed, who must prepare the documents, and who must file them.

In addition to the small details regarding forms and formatting, servicers need to stay abreast of all changes that occur at the state and county level. For example, does a specific county require:

- The full chain of assignments or just the last?
- A signature from a trustee or just the lender? And what about borrower or investor signatures?
- A copy to be sent to the borrower, and in what time frame?
- A signed power of attorney?

Besides the hours spent maintaining these templates, staff members must also create the individual lien releases for their daily payoffs. Typically, it takes an average of 15 to 30 minutes to enter the data and complete a lien release form.

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The people doing the day-to-day work often rely on cheat sheets to remind them of the specific requirements, such as the number of signers, number of witnesses, who can sign for this investor, whether this a merged loan, if we need to record a power of attorney, and how to calculate the recording fees.

It is unrealistic to think that these processes can be done manually and produce correct results every time. In fact, mistakes occur all too frequently, resulting in higher error rates, increased rejections, and lower compliance ratings—all potentially serious issues in a zero-tolerance regulatory environment.

Ramping Up and Laying Off

Because lien releases are closely tied to refinancing, refi booms tend to drive lien release activity. Lenders are forced to add staff—either permanent or temporary—to handle high refinance origination volumes to supplement their servicing operations. Getting this right can be tricky and can easily result in overstaffing, which has cost and morale implications as volumes recede and staff reductions occur.

From a cost perspective, many servicers tend to underestimate the all-in cost of preparing and filing lien releases. Typically, these calculations fail to take into account the costs for recruiting, onboarding, training, managing, and housing personnel. This is in addition to costs for collecting, managing, and updating compliance data and technology.

And remember, all of these are exit costs for a loan that's leaving their shop. By outsourcing lien release activity, servicers can change from a fixed to a variable cost; move the cost of technology and compliance management to a company like CoreLogic, which is set up to handle it; and shift the liability for last-minute errors to the vendor.

Compliance Risks

Currently, approximately 24 states consider some of the activities associated with lien release as the practice of law. What constitutes the practice of law relating to the preparation of lien releases is a moving target that can change by state but if non-attorneys complete these certain functions the state or courts could make an allegation of the unauthorized practice of law ("UPL") against the individual and/or entity. In some states, UPL is specifically defined in statutes; in others, by the state court rulings.

Examples of how state statutes define UPL in the lien release context include:

- Preparation of partial releases of mortgages by insertion or filling in of blanks
- Preparation, drafting, or filling in any other instruments creating or releasing burdens or encumbrances upon land
- Imposition of fee (valuable consideration)
- Selection of the proper form of instrument

In addition to these activities, state laws and court rulings have also stated:

- "The drafting of releases may be performed only by an independent, duly licensed attorney who is not a salaried employee of the corporation; it is unlawful for anyone who is not an active member of the North Carolina Bar to prepare legal documents." (N.C. Gen. Stat. §§ 84-4 and 84-5)
- "A Texas attorney – only – can charge a fee directly or indirectly for an instrument related to real estate…" (Texas Government Code, Section 83.001)
- "The completion of mortgage documents affecting the title to real estate is considered the practice of law and may only be performed by or under the supervision of a licensed attorney…" (The Federal Intermediate Credit Bank of Louisville vs. the Kentucky Bar Association)

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The Penalties for UPL

While the sanctions for UPL also vary by state, the range of penalties outlined in an Arizona case is fairly typical. They include:

- Injunction
- Civil contempt citation
- Cease-and-desist order

Although UPL is a civil violation in most states, there are at least six states in which UPL could also be a criminal violation. In South Carolina, for example, UPL is a felony that carries a fine of up to $5,000 or imprisonment for up to five years, or both. Granted, that is the most extreme case.

Some states say that an officer, trustee, director, agent, employee, and even a corporation that directly or indirectly engages in UPL or in performing the prohibited act can be held liable. So not only is the person preparing the document at risk of a possible criminal violation, company officers and directors are as well.

While criminal charges for UPL are admittedly rare, civil penalties and damages are more common. In New Jersey, for example, the damages for UPL are the greater of $1,000 or three times the cost incurred by the victim.

Texas sets the UPL penalty at three times the fee paid by the customer. Interestingly, the Texas attorney general has also provided an opinion on what constitutes a fee. When asked by a lender, "What if I want to prepare a mortgage document and I'm not going to charge the borrower for it?" the attorney general opined that charging interest on that mortgage loan was an indirect fee for the preparation of documents affecting real estate. So, even if there is no charge for the release, it could still be classified as UPL.

CFPB and Servicing Documents

UPL concerns are not the only pitfall that servicers must be aware of. In 2013, mortgages were the number one source of consumer complaints (37 percent) at the CFPB. So it is reasonable to believe that for the foreseeable future all mortgage industry participants will be under scrutiny by the CFPB.

The timely and accurate filing of lien releases and the prompt preparation of payoff statements are two areas where lenders and servicers' actions intersect with consumers. So, in all likelihood, lien release practices will be on the CFPB's radar.

Also, new servicing standards that went into effect in 2014 require payoff statements be provided no more than seven business days after a written request. Similarly, there are state requirements for when a lien release must be filed and recorded. South Dakota and Alaska require 10 calendar days for a lien release to be filed and recorded. Idaho requires that such action be taken immediately upon demand of the borrower.

Beyond specific servicer infractions, CFPB and other federal regulators are holding servicers accountable for vendor management. Regulators are on record requiring lenders to conduct thorough due diligence to verify that the service provider understands and is capable of complying with the federal consumer financial laws. They expect lenders to establish internal controls and ongoing monitoring to determine whether the service provider is complying with federal, state, and local requirements and to take prompt action to fully address any problems identified through the monitoring process.

This means that servicers must be able to demonstrate that their vendors are complying with lien, recording, and payment-statement requirements and that they are monitoring error rates, payment statement turn times, and penalties and fines incurred.

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The Threat of UDAAP

Under the Dodd-Frank Act, the CFPB has the authority to take any authorized enforcement action to prevent a lender from engaging in an unfair, deceptive or abusive act or practice in connection with offering a consumer financial product or service, or a transaction with that consumer for the product or service. Because there's no definition of "deceptive" in Dodd Frank, the CFPB can interpret this to mean an action that materially fails to protect the consumer's interests. It is certainly not a stretch to conclude that preparing legal and timely lien releases would fall under the definition of protecting the consumer's interest in his or her property.

Similarly, consumer complaint volumes, claims for UPL or consistently high error rates might be considered a pattern of unfair practices that are likely to cause substantial injury to consumers.

This could trigger a number of CFPB enforcement actions, including:

- Administrative proceedings or court actions
- Refund of money or return of real property
- Restitution
- Disgorgement or compensation for unjust enrichment
- Payment of damages or other monetary relief
- Limits on the activities or functions
- Civil money penalties

In addition to penalties and damages, the CFPB can also require public notification regarding the violation, creating reputational risk.

Automating Data Collection and Compliance

As we have seen, the process of monitoring and manually updating lien release requirements is fraught with risk. Realistically, technology—in the form of software designed to automate the lien release process—is the most practical way to track, store, and manage a list of requirements that exceeds one million different data points. Automated software is also the best way to organize a company's legal forms into a comprehensive database.

Technology allows integration between platforms so that data can be bidirectional with loan-level information going back and forth between lien-release software and the servicing system, capturing the events and activities, recording fees, and noting any other pertinent information. Technology reduces data entry time to seconds rather than minutes. With automation, employees are primarily reviewing data rather than entering it. Because requirements, forms, and rules are digitized, the software automatically selects the appropriate forms and prints only those. It also flashes warnings and exceptions, significantly reducing the potential for errors.

The software can systematically enforce key business policies, compliance timelines, service-level agreement turnaround times, investor requirements, and appropriate workflow. For example, if a state changed the recording due dates from 60 to 45 days, the software easily recalculates the workflow and then reroutes the workload to remain compliant with the new timeline.

Automation also provides a systematic way to log and track who did what and when, supporting centralized data aggregation that makes comprehensive reporting and vendor performance monitoring possible.

The Right Solution for the New Compliance Landscape

Recently, CoreLogic, a leader in post-closing document services, surveyed the compliance landscape and concluded that the way lien releases have been handled was no longer sufficient in the current zero-tolerance regulatory environment.

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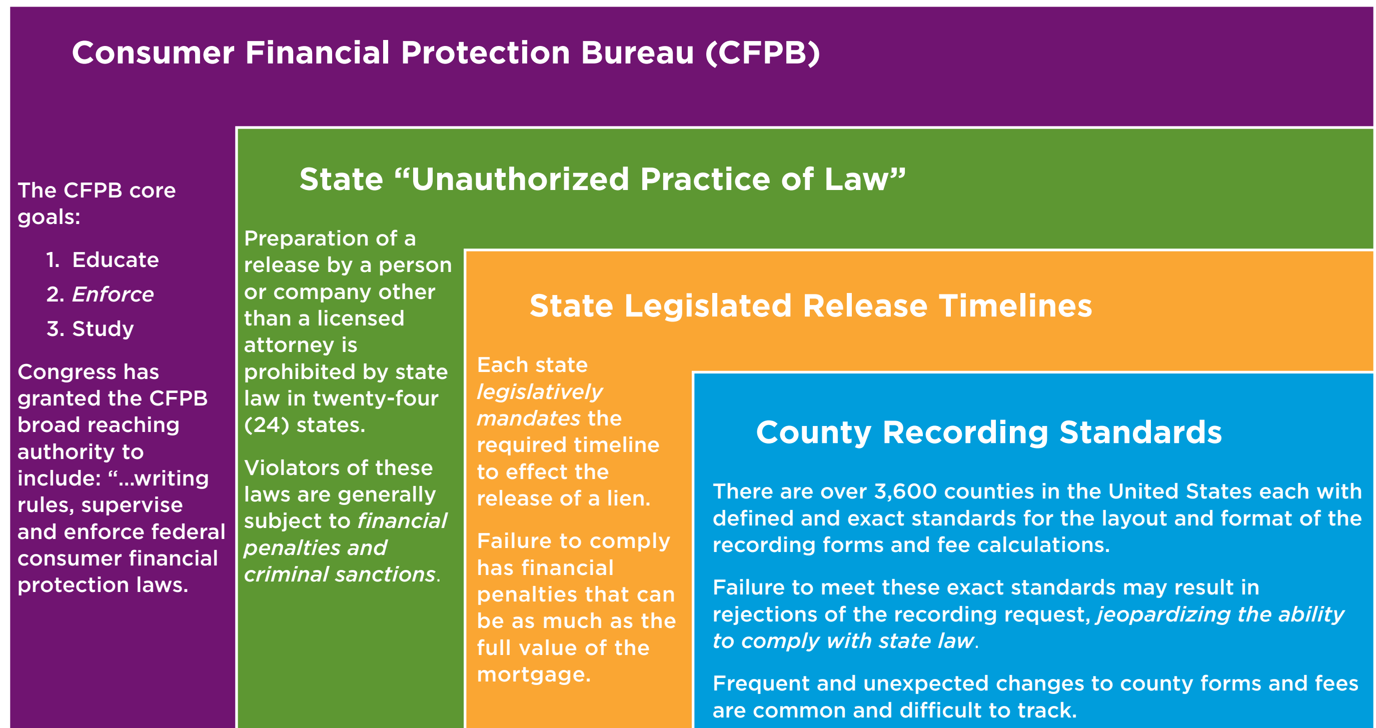
The company found that relying on manual, in-house processes to monitor and track the layers of compliance complexity exposed both servicers and vendors to monetary, regulatory, and reputational risk.



As a result, CoreLogic engaged with MRG Document Technologies, part of the Middleberg Riddle Group, one of the country's preeminent mortgage banking law firms, to create a compliant outsourcing solution for lien releases and related documents.

The CoreLogic lien release solution is the only outsource option that leverages MRG's compliance expertise and nationwide attorney relationships to address the legal challenges inherent in the lien release process. At the same time, the CoreLogic solution uses automated compliance software to track, monitor, and store compliance data and forms. From an operational perspective, this solution also solves part of the age-old problem of staffing up and downsizing to handle refinance boom-and-bust cycles. The solution enables servicers to change fixed internal costs into a predictable, per-lien cost and, at the same time, protect against penalties.

To recap, The CoreLogic solution:

- Addresses the layers of current and future compliance requirements
- Automates and streamlines processes to reduce costs and minimize errors
- Provides an audit trail, supports reporting, and enhances transparency
- Offers operational and cost efficiencies
- Protects consumers and client interests

This comprehensive offering delivers a robust and integrated solution that fully addresses compliance risk, improves customer satisfaction, and reduces costs.

For more information on this new compliance solution, go to corelogic.com/lienrelease or contact CoreLogic at 866.774.3282

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About CoreLogic

CoreLogic (NYSE: CLGX) is a leading global property information, analytics and data-enabled services provider. The company's combined data from public, contributory and proprietary sources includes over 4.5 billion records spanning more than 50 years, providing detailed coverage of property, mortgages and other encumbrances, consumer credit, tenancy, location, hazard risk and related performance information. The markets CoreLogic serves include real estate and mortgage finance, insurance, capital markets, and the public sector. CoreLogic delivers value to clients through unique data, analytics, workflow technology, advisory and managed services. Clients rely on CoreLogic to help identify and manage growth opportunities, improve performance and mitigate risk. Headquartered in Irvine, Calif., CoreLogic operates in North America, Western Europe and Asia Pacific. For more information, please visit corelogic.com.

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