



WHAT IS A DEED-IN-LIEU?

(208) 331-1200 | MARK D. PERISON, P.A. | info@markperison.com

You may have heard the term “Deed-in-Lieu” with respect to a bad loan on property. It’s actually short for “Deed in Lieu of Foreclosure.” The basic principal is simple: Rather than force a lender to go through the foreclosure process to get title to the property back, the borrower simply deeds it to the lender. Typically you see this when the value of the property and the debt are roughly equal.

So what concerns are raised when discussing a Deed-in-Lieu?

Title

The property must be free and clear of liens *junior* to the lender accepting the Deed-in-Lieu. A title report is required to make this determination.

Debt Forgiveness

Generally, the entirety of the debt is excused in exchange for the Deed-in-Lieu. In rare cases, the borrower can pay some amount to the lender or even vice-versa if there is a large difference between the debt and the fair market value.

What’s an “Estoppel Affidavit”?

Most title companies, certainly those in Idaho, require an Estoppel Affidavit to be executed along with the Deed-in-Lieu. This document is designed to protect the party accepting the

CHECKLIST:

- Is the property free of junior liens?
- What debt is being forgiven?
- Prepare an Estoppel Affidavit and Deed

Deed-in-Lieu from a future bankruptcy or claims from the borrower that they didn’t really mean to give back the property.

Who prepares the documents?

In Idaho, an attorney generally prepares both the Deed-in-Lieu and the Estoppel Affidavit. Once signed, they are recorded and a new title policy is typically issued to the party accepting the Deed-in-Lieu. Preparing documents without an attorney is very risky and may just create more problems.

Why do this?

The main reason is cost. A typical foreclosure costs about \$3,500.00 and takes five months. A Deed-in-Lieu generally runs about \$1,750.00 to \$2,000.00 and can take as little as two weeks. The lender saves time and money by avoiding the foreclosure, and the borrower doesn’t have to worry about being pursued for a deficiency following the foreclosure. It does require cooperation on the part of both the lender and the borrower.