

Liability on a House Deed, Note and Mortgage

What are my liabilities if I am on the title to a real estate Deed?

Anyone listed on the Deed is liable for real estate taxes, premises liability if someone falls on or breaks into the property and then sues you, maintenance such as lawn mowing, assessments such as water or sewage, etc. Regardless of what happens with the Note or Mortgage, until there is a deed recorded at the office of the county recorder transferring interest, you are liable. You cannot file a bankruptcy and think that you are no longer liable as an owner of the property. You may even face a bill and eventually a citation from the local governmental agency if they have to maintain the real property. The prosecutor may foreclose upon the property if real estate taxes are not paid. If you did not receive a recorded copy of your quit claim deed to your ex-spouse who received the house in the property settlement of your divorce, then you had better call your divorce attorney. If you know that your house was sold in a foreclosure sale or in a short sale, keep checking the website of the county auditor where the real estate is located to verify when new ownership is established and relieving you of ownership liability.

What are my liabilities if I signed the Note?

The liability attached to a note is *in personem* meaning that it follows the person. If the person moves out of state or just disappears, she is still liable. In Ohio, the entity enforcing the note can sue that person for up to two years from the date of the sale or the confirmation of the foreclosure sale. If you receive a discharge in bankruptcy, then you generally are not liable for the Note unless you reaffirmed or said that you would be liable as though you never filed the bankruptcy. Even if your spouse holds you harmless for the Note in the divorce, the mortgage company

can ignore the divorce decree and still hold you liable as a co-signer of the Note until your spouse refinances or completes payments on the loan. Each signer is 100% liable. It's called joint and several liability. You then should talk to your divorce lawyer about a contempt action versus joining your ex-spouse into the lawsuit. Be careful if you are involved in a short sale or deed-in-lieu of foreclosure. You must obtain a waiver of any deficiency balance in writing. A deficiency balance is the amount owed on the note and the amount of the sale.

What are my liabilities if I am on the Mortgage?

The liability attached to a Mortgage is *in rem* meaning that it follows the land. The mortgage is the security for the Note. If, for example, anyone involved on the deed or mortgage disappears, the entity entitled to foreclose can foreclose based solely on the mortgage. If the entity entitled to foreclose upon you waits three years to foreclose, you then will be listed on the foreclosure and this lawsuit will be on your resume. Some experts believe that the foreclosure is worse than a bankruptcy for credit purposes. Unfortunately, the law requires that anyone who may have an interest in the property must be listed in a foreclosure action. If you were married at the time of the financing of the note secured by a mortgage, your spouse is awarded the property in the divorce, your spouse remarries, the mortgage company will still list you in the foreclosure because you are on the original mortgage from a decade ago.