



## **Best Practices to Remedy Title Defects**

After years of experience handling a diverse number of claims arising under title insurance policies, Goldman & Pease LLC has developed a streamlined process aimed at resolving the particular title defects in a most efficient and cost-effective manner. What follows is Goldman & Pease's "Best Practices" to resolve a title dispute, from the initial claim through the final resolution of the particular defect.

At the outset, a claim arising under a title insurance policy will generally be made by either the Lender/Mortgagee or the Owner/Mortgagor. Claims in this area are diverse, ranging from the simple failure to record a mortgage, to the complex title defect, implicating bankruptcy proceedings, fraudulent conduct, and a succession of defective mortgage assignments and mortgage holders. Whatever the claim, Goldman and Pease is unique in that it promptly assesses the title claim and makes strategic decisions, setting a path for an effective and successful resolution of the title defect.

**Step One:** Upon receiving notice of the claim/defect, Goldman & Pease promptly contacts and fosters a good working relationship with the initial closing counsel, and/or his paralegal staff regarding the relevant closing. Such a relationship can be of the utmost importance as many times the particular defect is due to an error or omission made by closing counsel at the time of the execution or recording of the mortgage. In these cases, Goldman & Pease works closely with prior closing counsel in drafting a scrivener's affidavit, in recordable form, relative to the particular error or omission that has occurred. A properly worded scrivener's affidavit is particularly important, as a Court will often rely upon such an affidavit in making its findings and issuing a specific order to remedy the alleged defect.

**Step Two:** In conjunction with obtaining closing counsel's file on the mortgage in question and drafting any necessary affidavits, Goldman & Pease conducts a thorough review of any bankruptcy proceedings that may involve the Owner/Mortgagor and makes an assessment of the current status of the title, ordering title updates where necessary. The purpose of the title update is to establish current ownership of the property and of the mortgage. We attempt to identify early whether the claimant has

actual legal ownership of the mortgage. On many occasions, where the mortgagor has filed for bankruptcy, Goldman & Pease will file for relief from stay in the bankruptcy court to allow the Lender's case to proceed in the Land Court or Superior Court. Accurate information about record title to the premises and the mortgage is critical in the bankruptcy court. Failure to have effective and knowledgeable representation in the bankruptcy proceedings can prevent the title defect from being resolved. Goldman & Pease has the experience to handle these claims in all necessary forums.

**Step Three:** Following receipt of closing counsel's file and a review of any applicable bankruptcy court proceedings and title updates, the next step is to draft a comprehensive assessment of the case. This written assessment allows analysis on avenues available to best resolve the title defect. Often, communications to the underlying borrowers or relevant heirs, or adjoining property owners, may lead to an amicable resolution.

As a last resort we draft a Complaint to address the alleged title defect, and to file the claim in the appropriate Court within the Commonwealth. The vast majority of title defect claims Goldman & Pease handles are filed directly with the Land Court in Boston, Massachusetts. The Land Court is a relatively new Court, and known as one of the most prompt and well-run Courts in the State. The Land Court schedules status conferences promptly upon the filing of a new Complaint, which allows the parties to focus precisely on the relevant issues, and further allows the Land Court Judge to get a complete understanding of what needs to be done to correct the title defect.

**Step Four:** Upon filing the Complaint and participation in the status conference, Goldman & Pease assesses whether a Motion for Lis Pendens is necessary to place any bona fide purchaser for value on notice of a title defect and existing encumbrances. The lis pendens provides notice that a lawsuit has been commenced concerning title to the underlying real estate. Recording a lis pendens against the subject property alerts a potential purchaser or lender that the property's title is in question, which makes the property unattractive to prospective buyers or lenders. Having a lis pendens in place for the duration of the litigation allows the Lender to effectively maintain the status quo while the title defect is remedied. After the case is concluded, and title defect solved, the lis pendens is removed from the property, thereby rendering it fully marketable.

**Step Five:** Throughout the course of the litigation, Goldman & Pease continues to make strategic decisions to ensure as quick a resolution to the title defect as possible. After each discovery or litigation related event, Goldman & Pease promptly provides the client and all other necessary parties with a complete update on the status of the file, as well an assessment as to the next course of action needed to expedite the case to its conclusion.

Ultimately, through close contact with closing counsel, the client, and all other necessary parties, active and ongoing review of relevant information, and comprehensive assessment and plan implementation to restore marketable title, Goldman & Pease has established itself as in an efficient and cost effective problem solver in this field.