ARTU Spring 2023

Description

Question:

1. In 2010, ABC Development acquired 50 acres and encumbered the acreage with a $600,000.00 deed of trust to Middlesex Bank.
2. In 2012, ABC conveyed 5 acres to Russell Brinker, who obtained an ownerâ??s title insurance policy. Brinkerâ??s settlement agent sent the necessary funds to Middlesex Bank to obtain a certificate of partial satisfaction of the deed of trust.
3. In April 2017, ABC defaulted on its obligation and John Smith, Esq., Trustee, properly sold all 50 acres to Middlesex Bank at the foreclosure sale.
4. In May of 2017, Brinker applied for a construction loan and discovered that his 5 acre tract was included in the foreclosure sale.
5. The Bank has agreed that they should have recorded a certificate of satisfaction on the 5 acres, and Smart has prepared a corrective foreclosure deed conveying the 50 acres less and except the 5 acre parcel sold to Brinker. You are title insurance company underwriting counsel and are asked to review the deed. How do you opine?

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a. The deed is sufficient because Middlesex Bank has been paid the necessary funds to release the 5 acre parcel.
b. The deed is sufficient because Smart was vested with legal title and has corrected the erroneous instrument.
c. Both a and b.
d. The deed is not sufficient because Middlesex Bank is vested in title.

Answer:

d. The best answer is that the deed is not sufficient because Middlesex Bank is vested in title, and the best way to cure is to have the Bank join in the deed or convey its interest to Brinker. This is a classic example of making a clean fix when you can, so the matter does not become an expensive problem to correct in the future.

Category

1. Uncategorized
2. Underwriting

Date Created
2023/03/22
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