

DEPOSITION OF JACK COHEN

Mr. Cohen makes a very good witness. He has several decades of experience as a private-money mortgage lender. He also has substantial experience acting as an expert witness on private-money mortgage lending issues. As a consequence, he knows how to “play the game”, so to speak, when testifying in litigation. In addition to being an experienced and effective witness, he presents himself very well. He has a healthy and professional appearance and a good speaking voice. He was as familiar with the subject matter of the deposition as he is with the technical tricks for being a good litigation witness. We are lucky to have Mr. Cohen for a witness in this case.

Mr. Cohen’s position on the substantive issues is that as a private-money mortgage lender, his priority is evaluation of the loan-to-value ratio. He generally wants his loans to be no more than 60% of the appraised value of the property that will secure the loan. He relies on his loan escrow instructions which provide, generally, and specifically in the present case, that his loan transaction cannot close unless the escrow agent can obtain a lender’s policy of title insurance showing, among other things, that the borrower is vested with title, and that his trust deed security is in a first-priority position. The escrow instructions for our transaction in this case were made an exhibit to the deposition and clearly do contain those provisions.

Plaintiff’s attorney questioned Mr. Cohen about whether he makes any effort to determine if the borrower can afford to make the loan payments. Mr. Cohen’s position is that he gets a credit report for that purpose, but his primary focus is on whether there is sufficient equity to secure the loan. I understood Mr. Cohen’s testimony to be that he does not believe he has any legal obligation to analyze the borrower’s ability to repay the loan, and the legal authorities I have seen on that issue are consistent with that view.

William R. Larr
Of Counsel
Anderson McPharlin & Conners, LLP
707 Wilshire Blvd., Suite 4000
Los Angeles CA 90017-3623
wrl@amclaw.com
(213) 688-0080 Main
(213) 236-1616 Direct
(213) 622-7594 Fax