



# WHAT'S IN A TITLE SEARCH?

You've decided to purchase a home and hope to take possession as soon as possible. The terms have been agreed upon and all the financial arrangements have been made. But there's one important detail remaining. Before the transaction can close, a title search must be completed.

The most accurate description of "title" is a bundle of rights in real property. A title search is the process of determining from the public records just what those rights are and who owns them.

A title search is a means of determining that the person who is selling the property really has the right to sell it, and the buyer is getting all the rights to the property (title) that he or she is paying for.

The process can be undertaken by the title company in those areas where the company maintains direct offices. In some areas, however, searches are made only by agents and practicing attorneys. In most real estate transactions today, a title insurance policy is purchased to assure the buyer that he or she has purchased a valid title.

In those transactions where title insurance is involved, the title company must determine insurability of the title as part of the search process. This leads to the issuance of a title policy.

The title insurance company will, at its own expense, defend the title and will pay losses within the coverage of the policy if they occur.

But what, exactly, is involved in a title search? The following is a step-by-step review:

## **CHAIN OF TITLE:**

This is simply a history of the ownership of a particular piece of property, telling who bought it and sold it, and when. The information may be derived from public records -- usually a County Clerk's or Recorder's Office -- or obtained from title plants privately owned and maintained by title companies. There are great varieties of such plants -- index cards, punch cards, tract books, even sophisticated computerized plants. However, they all contain essentially the same information from which the history of the title may be secured. Most companies will review (search) this ownership history starting with the current owner of record and extending back either 42 or 60 years. In addition to determining who owned the property during this time, the title company is also looking for any liens or encumbrances that may have been filed against the property during the respective ownership periods. And, if in fact, any liens or encumbrances were filed, were they legally and officially satisfied and removed from the public records, thereby no longer creating a limitation or objection to the title.

## **TAX SEARCH:**

This is a search to determine the present status of general real estate taxes against the property. The tax search will reveal if taxes are current or whether any taxes are past due and unpaid from previous years. In addition, the tax search will indicate the existence of any special assessments against the land and, if so, whether or not these assessments are current or past due.

A due and unpaid tax or special assessment is a prior lien or claim on the property above all others. If a buyer purchases property with unpaid and past due taxes or assessments against it, he or she is likely to find out that the taxing authority has placed the property up for sale to pay those taxes or assessments. A tax search reveals the status of the taxes. Title insurance protects the buyer against loss from unpaid and past due taxes and assessments.



# WHAT'S IN A TITLE SEARCH?

Continued

## **JUDGMENT AND NAME SEARCH:**

One of the most important parts of the title search is to determine if there are any unsatisfied judgments against the seller or previous owners which were in existence while they owned the real estate. A judgment is a general lien against the debtor's real estate and constitutes security for any money owed under the judgment. The real estate can be sold to satisfy the judgment.

It is extremely important to be sure that a title is not subject to judgments against the seller or previous owners. Title Insurance provides this protection. A judgment against a person named Smith may affect the title of a seller named Smith, depending on whether or not they are the same person. So, all possible variations of the name must be examined.

For example, the name Nichols can be spelled 73 different ways, from Nachols to Nychals. The task is to determine which of these spellings applies to the owner in question. First names have to be checked, too. There are 25 foreign forms of John, including Johann, Jehan, Hans, Shaun, Gudi and Efom.

Rights established by judgment decrees, unpaid federal income taxes and mechanics' liens all may be prior claims on the property, ahead of the buyer's or lender's rights. If a judgment is discovered that constitutes a defect in the title, it is pointed out, and the seller must then eliminate it before the title of the new buyer can be insured free and clear of that judgment.

## **COMMITMENT:**

When these searches have been completed, the title company issues a commitment to insure, stating the conditions under which it will insure the title. The buyer, seller and the mortgage lender can then proceed with the closing of the transaction after clearing up any defects in the title which may have been uncovered by the title search and examination.

The mortgage lender is as concerned as the buyer about the quality of the title because the property is to be security for the new mortgage loan. The lender requires assurance that it has a valid first (or other acceptable priority) mortgage lien on the property. This is not only common sense, but generally is a legal requirement of regulated mortgage lenders.

The lender's title insurance, however, does not protect the new buyer of the property. Although the land is the same, the interest of the buyer and the interest of the lender are very different. The provisions of a lender's title insurance policy are very different from those of an owner's policy, so the buyer should obtain their own title coverage.