

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 on and all financial arrangements have been made. But one important detail remains. Before the transaction can close, a title search must be made.

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 record just what these 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 that the buyer is getting all the rights to the property (title) that he or she is paying for.

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, which insures the existence or non-existence of rights to the property.

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 exactly what is involved in a title search? Ticor Title Company provides the following step-by-step review as follows: Chain of Title, Judgment and Name Search, Tax Search, Commitment, and Report on Possession.

CHAIN OF TITLE

This is simply a history of the ownership for a particular piece of property, telling who bought and sold it, and when. The information may be derived from public records — usually a County Clerk 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. They all contain essentially the same information from which the history of the title may be secured.

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 a government body — the city, county or state — placing 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.

REPORT ON POSSESSION

In many places where it operates, Ticor Title Company may send inspectors to look at the property to verify the lot size, check the location of improvements, and look for evidence of easements that are not shown on the record.

The purpose of this is to supplement the information learned from the title search. In the eyes of the law, any buyer of real estate is assumed to have notice of all matters properly shown in the public records for that real estate, as well as any information that an actual inspection may reveal.

If the inspector detects an unrecorded easement or other evidence of outstanding rights that could affect the owner's title and possibly the value and intended use, the company will disclose these matters before the closing of the purchase. Those matters must then either be disposed of or shown as exceptions in the title insurance policy. Sometimes when an acceptable survey and appropriate affidavits are received, an inspection will not be made.

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 title. 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. All possible variations of the name must be examined.

For example, the name Smith might be spelled Schmidt, Schmid, Schmidtt, Schmidz, Schmied, Schmiedt, Smid, Smythe, and so on. The name Nichols can be spelled 73 different ways, from Nachols to Nychals. The task is to determine which of these 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 mechanic's 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. 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 mortgage lender can proceed with the closing of the transaction after clearing up any defects in the title which may have been uncovered by the 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 mortgage lender requires assurance that it has a valid first (or another acceptable priority) mortgage lien on the property. This is not only common sense, but generally 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 a buyer's policy. The buyer should obtain his own policy, often issued simultaneously with the lender's policy.

