

## **Lack of Title Insurance can Wreak Havoc for Buyers**

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As a matter of common practice, most buyers of real property, whether the properties are vacant, residential, or commercial, are required by a lender to obtain title insurance or are simply wise enough to seek it on their own. Further, upon obtaining a title-insurance commitment from a title company, most buyers also are savvy enough either to thoroughly investigate the title requirements and exceptions listed in the commitment or to seek legal counsel to perform such a review.

Unfortunately, experience has demonstrated that sometimes, buyers of real property, due to ignorance, misplaced trust, overconfidence, or some other reason, will either proceed without title insurance or fail to carefully review the contents of the title commitment. This lack of due diligence can have very painful results for an unsuspecting buyer. Almost always, such painful results can be avoided through acquisition of title insurance and careful review of the contents of the title commitment.

The title commitment is helpful because, among other things, it identifies the current owner of the property, it lists various requirements that the seller of the property must meet before the seller can pass insurable and marketable title along to the buyer, and it lists a wide variety of encumbrances on the property and other exceptions to the seller's clean title that impact the subject property. Buyers who either fail to obtain a title-insurance commitment or fail to read it when one is prepared by the title company do themselves a great disservice.

There are many items affecting title to real property that a title commitment may reveal: outstanding deeds of trust securing a bank's mortgage loan; judgment liens against the property of a seller who is subject to a court judgment; mechanic's liens filed by persons who weren't paid for work done to benefit the property; easements burdening the property for the benefit of adjacent property owners or others, such as access easements for use of driveways, pipeline easements, and other utility easements; rights of way such as those for roads, railroads, or ditches; farm and pasture leases; surface use agreements; municipal development agreements; recorded declarations of covenants, conditions and restrictions related to owner associations; and leases for the development of wind energy, oil and gas resources, or other minerals.

There are a wide variety of pitfalls that buyers can encounter if they don't obtain or review a title commitment before buying a property, and unaware buyers often need legal help to fix problems they encounter. People have purchased property and taken deeds from sellers who didn't actually have title to the property they purported to sell, leading to litigation. People have acquired property, only to find out later that there was an error regarding the legal description of the land, requiring a great deal of curative work to correct title errors. People have been contacted by banks after acquiring property that served as security for an unpaid mortgage loan, and been threatened with foreclosures. People have been unaware of existing oil and gas leases, and been surprised when an oil and gas producer gives them notice of planned mineral-development activities on some portion of their land.

While buyers or sellers of real property often don't want to spend extra money, the relatively small cost of a title-insurance policy is almost nothing compared with the thousands, or tens of thousands, of dollars that could be required to recover from a title problem that could have been discovered and avoided with proper due diligence. When buying real property, good practice clearly dictates that buyers should obtain title insurance and carefully review the information that can be gleaned from a title commitment that comes with it.