

Are You Buying Stolen Property When You Buy Your Next Home?

If the title of this article sounds a little harsh, it's not and every homeowner and investor faces this problem more often than you know. If you buy a stolen car where the vehicle identification numbers (VIN) have been carefully fixed and the seller has a new title to the car, you wouldn't know any better. That's until you were pulled over and the officer checked and found you were driving a stolen vehicle. You will likely lose your money and certainly your car.

In real estate investing, every buyer of a property faces a challenge that he is unaware of when buying a property. This is the issue of the chain of title and whether it is free of defects when the buyer closes on it. Not every purchase is done by getting a new title policy issued by a closing agent. Many are done with quitclaim deeds or with a disclosure to the buyer that there are defects in the property or title that make the title "unmarketable". Unfortunately, unmarketable doesn't mean unsalable.

The seller using a quitclaim deed, essentially "quits" all responsibility to the property and to any and all title issues that exist. The buyer takes on these responsibilities including possible personal judgments attached to the property from the previous seller. These liabilities would have been cured at the closing if the buyer had requested a title review and a title policy. They would have been cured or the buyer would have to renege on the closing.

One incident that was impactful to me was where three children had their elderly parents sign a quitclaim deed to all three children as equal owners of their home. The parents passed and the fourth sibling came along and filed the parent's will which left the property to the fourth sibling and not the other three children. The three tried to sell the home at a distressed price and had it under contract in no time. They wanted the buyer to close for cash in 5 days and the buyer had to accept a quitclaim deed. Sounds suspicious from the start, but a buyer agreed.

Luckily, the first buyer had his title company do a title search and he found the problem of the "open probate" and the quitclaim deed in the chain of title. This buyer decided not to close but another investor did and he found out later that his and the former quitclaim deed was rescinded by the court so his deed was invalid. He didn't bother to get title insurance, so he lost all his money. Last I heard he is going after the three children on the grounds of fraudulent transfer with a known deficiency that should have been disclosed to the buyer.

Recently, a number of courts have ruled against national lenders that the foreclosures they pursued and the titles they received are invalid. This also means that the buyer has no right to the property and the title insurance will have to cover the losses – if the title policy contains the correct language. Most of the foreclosure closings are done by the same lawyers who did the original foreclosures on the lenders' properties. They know what language to put in the "Exceptions Section" in the title policy to indemnify the tile insurers against liability.

I must have gotten a dozen emails on the last court ruling with cryptic comments like "Now what?", "What do you think?" and, of course, "What do I think about it?" Answer is simple, "It is a non-event in my opinion." Instead of going into a huge essay on why it doesn't matter, let's get straight to the point – if you don't want to do REOs (bank-owned foreclosures) don't do them. There are 50 other ways to find motivated sellers who have a "legitimate" title to their homes.

Stop finding ways not to do deals and start focusing on how to do deals. Over-analyzing and procrastination does you no good because other investors move right past your decaying bones on the battle field as they just keep moving on to victory. To resolve any hidden fears you have of getting a legal title to your next purchase, get title insurance at the closing, don't accept a quitclaim deed for any reason, and if the seller is using his title company, have your title company "shadow" your entire transaction!

To your limitless success,
Dave Dinkel