

Do You Really Need Title Insurance When Buying a Property?

Title insurance is not available in all parts of the world and in those countries title disputes are settled through court action or a mediation board. Unfortunately, those court and mediation actions can take a long time and the outcomes are never guaranteed. In the United States, title insurance is a mainstay of transferring a property, but is it really necessary?

In the countries where title insurance doesn't exist, very few properties have mortgages. The buyers have to buy with cash or collateral far in excess of the values of the property. In some foreign countries where buyers can get property loans, they must be cross-collateralized with 2 – 3 additional real properties. In the United States conventional lenders (banks) will not loan on a property unless it has what is referred to as marketable title that comes with a title insurance policy.

Ironically, REO (bank-owned) properties are often sold with an insurable title which differs from a marketable title in that there can be title defects or deficiencies that must be assumed by the buyer. These attachments that cloud a clear title are handled in the title policy as exceptions or exemptions, and they will still exist after the title transfer and until they have been cured sometime in the future by the buyer or before the closing by the seller.

What this means to a buyer of an REO is that he may get an insurable title, but not necessarily a marketable title. A non-marketable title means that somewhere in the future ownership of that property, a conventional lender will likely not finance the property. The prospective lender will need to see that the title deficiency or attachment has been cured before they will close and finance the property. These deficiencies can be as simple as old code violations or liens, open permits that weren't closed, or as major as the seller in previous title transfers didn't own the property.

For the average investor it is safe to say that as a buyer he should always require a marketable title on a purchase. This insures he will have no problem selling the property to another buyer who is getting conventional financing in the future. A property owner can get a title policy issued, with deficiencies cured, at any time after he owns a property so buying a property with an insurable title only is not a deal killer in most situations. However, the actual cost to cure the deficiency can be the deal killer.

In our tri-county area there is one REO broker who has his own disclaimer that the buyer will only be able to get an insurable title, no marketable title under any condition. The seller's (REO) addendum doesn't say this for most properties this broker lists and sells. It is in his documentation solely to protect himself against title issues that crop up later and where the buyer goes back to complain or sue the broker. The net effect of this disclaimer is that the seller (REO Asset

Manager) is likely getting lower prices as many investors are shying away from these properties. There will always be those investors who are initially paying more because they don't understand the ramifications of insurable versus marketable title, but they don't have unlimited funds and will find out in the near future.

There are instances when a marketable title transfer is not possible. The most common example is at public auctions where foreclosed properties are sold. These can be sheriff sales, county auctions, Federal agencies' sales, or any authorized governmental authority that has legal power to sell confiscated or foreclosed properties. These properties will always have title "gaps" as the original owners did not voluntarily transfer their properties. A deed in lieu of foreclosure is a voluntary transfer by the seller and will not be sold at auction but immediately taken in as an REO.

Often foreclosure properties are boarded, abandoned or have owners who will not allow anyone inside. The investor has to assume the condition of the property but he can do title research to determine possible title defects. There services are available online and they are used by attorneys to research the chain of title, the property transfers in the public record, and very importantly, recorded liens against the property. What they may not show is pending code violations that could become liens. Because of this lack of recorded public information, all title policies have exceptions for information not contained in the public record. Lien letters sent directly to the municipalities where the property is located is critical in determining the full extent of defects that can potentially affect the title.

An investor can do the title inspection from the public records and get a general idea about the problems and issues with his perspective purchase. However, it is suggested that the property's value be discounted for title issues as a bargaining tool with the seller. It is not uncommon for a title to be clouded by the simple action of improper service by a lender in a foreclosure action, in a worst case that we have seen, a foreclosure taking place where the plaintiff wasn't entitled to foreclose on the property. Any title issue can ultimately be corrected through the courts by what is known as a Quiet Title Action.

In summary, title insurance is a very inexpensive form of insurance to prevent having the inability to sell a property after the buyer paid for the property and the seller moved on. While an investor can do much of the title research himself with access to online services, it is highly advised to have a competent attorney do the research and issue a title policy. If there is a problem after the title has been transferred to the buyer, the buyer-investor may be able to make a claim against the issuing title company and get his insured amount back. This insured amount is usually the purchase price or more if the policy was written for an amount in excess of the purchase price.

To your limitless success,

Dave Dinkel

PS – We will be having another “Foreclosure Defense and Asset Protection” Seminar on Saturday, August 14th. **If you know anyone who is facing foreclosure, in foreclosure, or contemplating foreclosure, this seminar could be the answer to their dreams.**

Every homeowner has legal rights and is entitled to defend himself against a foreclosure action and the possible ramifications of deficiency judgments. Please stand up for your rights by discovering what they are and what actions you have to take. Our local “Attorney X” has been called an industry crusader for the rights of homeowners and investors, come and see for yourself.

Besides the sample documents, audio recording and text, our fabled “Attorney X” will be disclosing how homeowners and investors can possibly stay in their properties for years while fighting for their rights. His information has been called by industry sources, “The only self-help material that has any real value” and “An extraordinary insight into foreclosure defenses and asset protection”.

The feedback we got from the last seminar was extraordinarily positive.

We were sold out within two days of advertising it so we are starting early this time and increasing the seating capacity because we had standing room only last time. Don't miss this opportunity to get all your personal questions answered by an attorney who practices what he preaches and find out what rights you have to stay in your home, or possibly even have your mortgage rescinded if there are legal grounds.

The problems and issues of loan modifications and short sales will be covered for homeowners. For investors, the fabled Land Trusts will be covered as part of the asset protection portion of the seminar. Land trusts are the asset protection vehicle that most attorneys won't talk about because they don't understand them. The time to do asset protection is BEFORE you need to do it – but regardless of your situation, the right time is ASAP.

The date is Saturday, **August 14th from 9:00am to 12:00pm for the first session.** You will be signing up for the first session or for the second session with **the second session going from 2:00pm to 5:00pm.** Again, you will be attending one or the other session for the \$97 entrance fee.

All sample forms, text materials and an audio recording are included at the entrance fee including a ½ hour, no cost no-obligation; personal consultation with Attorney “X”. For the **FIRST** 20 paid attendees, you will have the opportunity of having your ½ hour personal consultation the following day, Sunday, August 15!

There are currently over 200,000 homes in Broward, Miami-Dade and Palm Beach Counties which are upside down, not in foreclosure and not yet for sale, or where the lis pendens has already been delivered! These homeowners must take action to preserve their rights and assets immediately. Please don't procrastinate! Call 954-318-6042 ASAP and make your reservation.

If you can't attend, send a family member or friend to get the material, ask your questions and get your personal consultation time scheduled.