

BASICS OF PROPERTY TRANSACTIONS

TITLE COMPANIES – DEEDS - CLOSINGS

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WHAT ISSUES WILL BE ADDRESSED TODAY

- What are the basics of real property transactions
- What should be in your “to do” checklist before signing a real estate purchase contract
- What should be in your “to do” checklist before closing

BASICS OF REAL PROPERTY

- When referring to a Real Property or Real Estate transaction, we are basically referring to Land. (Something Immovable - Fixed – Permanent)

BASICS OF REAL PROPERTY

- There are 3 Basic Steps involved in a Real Property Transaction:
 - An agreement or contract between the Seller and the Buyer (must be in writing and contain certain elements in order to be enforceable)
 - Closing – Seller conveys property interest through a Deed, Buyer pays the purchase price
 - Deed must be recorded in the land records office of the jurisdiction where the property is located

BASICS OF REAL PROPERTY

- Properly executed contracts are enforceable if:
 - 1) parties are identified, 2) property is identified, 3) price & 4) terms of payment disclosed
 - Buyer entitled to Specific Performance – Seller entitled to Damages. (liquidated damages – Seller keeps the deposit)
- Fundamental principal of real property law – You can only receive (buyer) or convey (seller) what you actually own by law. In other words, close enough is not good enough!
- Property interest must be recorded to gain the full benefit and protection of the law.
- Intended use of the property must match the zoning provisions of the area.

CHECKLIST FOR A REAL PROPERTY PURCHASE TRANSACTION BEFORE SIGNING THE CONTRACT

- Retain an experienced **real estate lawyer** who knows the laws of the local jurisdiction before signing the contract
- Make sure you have properly addressed all the material provisions, contingencies, or options in the agreement (study period, inspection, buyers contribution, financing)
- Ensure that if the Buyer or the Seller is an organization or an entity, the signor of the contract is the authorized agent (signor must have actual authority to bind the organization or entity)
- Identify an independent title company or select your own title company
- Ensure that you understand the vested interests of the various parties (Broker-Real Estate Agent/Seller/Attorney/Title Company)

CHECKLIST FOR A REAL PROPERTY PURCHASE TRANSACTION RIGHT AFTER SIGNING THE CONTRACT

- START WORKING IMMEDIATELY ON THE DUE DILIGENCE MATTERS
 - CONTINGENCIES GENERALLY HAVE A SHORT TIMELINE
 - NEED TO ENSURE THAT YOU ARE WELL INFORMED ABOUT THE CONDITION, VALUE, HISTORY, TITLE, TAXES, ZONING, AND LIENS, AND/OR 3RD PARTY INTEREST IN THE PROPERTY,
 - NEED TO CONFIRM THE PAYOFFS OF ANY TAXES OR DEBT ATTACHED TO THE PROPERTY.

THE ROLE OF A TITLE COMPANY – USUALLY ACTS AS THE ESCROW AGENT AS WELL

- Abstract - Brief history of instruments appearing in county record that affect title to property
- Taxes & Lien Payoffs – Should work on identifying the payoffs or getting releases of property taxes, liens, judgments, mortgages, that are on title, prorating certain debts and obligations
- Title Insurance - Issued by a title insurance company after it reviews recorded instruments. Contract by which a title insurance company agrees, subject to terms of the policy, to indemnify the insured against loss sustained as a result of defects in title other than specific title exceptions listed on policy.
- Owner's Policy: If a Purchaser wishes to obtain a title insurance policy to protect his or her ownership in land, he applies to title insurance company and agrees to pay a fee.
- Mortgage Policy: Only protects lender for amount of mortgage loan and risks that affect security interest or lender.

THE ROLE OF THE TITLE COMPANY – IN PREPARING THE TITLE POLICY

- Initially provides the buyer and the lender with a Commitment or a Binder to issue an insurance policy
- Commitment informs the policyholder of the following:
 - Standard Coverage - Generally insures against defects in public records, plus things such as forged documents, documents of incompetent grantors, incorrect marital statements.
 - Extended Coverage - Everything covered in the standard policy, plus additional risks which could be discovered
 - Exceptions – What the policy does not cover (some can be waived by title ins. companies if presented with appropriate documentation or by paying higher premium for an Endorsement such as Zoning, Environmental, Comprehensive)
 - Exclusions - What the policy cannot cover (a lost based on government regulation or taking, an unpaid property tax lien, etc.)

CLOSING OR SETTLEMENT ON THE PROPERTY

- Closing or Settlement is the formal process of transferring the ownership of the property in exchange for payment of the agreed upon price
- Buyer – Ensure that all contingencies are addressed
- Buyer – Should review the fees that are being charged and funds needed to close at least 24 hours prior to closing
- Buyer - If buyer is financing the purchase, make sure the terms of the loan that you expected are reflected in the loan documents.

CLOSING OR SETTLEMENT ON THE PROPERTY

- Seller - That the purchase price is correct
- Seller – That the fees, charges, and costs that are allocated to the Seller are correct
- Seller – That the authorized agent is aware of the date of closing and will sign the deed or has signed the deed and it is being held in escrow
- Seller – That all contingencies are resolved