

BASICS OF PROPERTY TRANSACTIONS

TITLE COMPANIES – DEEDS - CLOSINGS
BY JOSH PIERRE, ASSOC. GENERAL COUNSEL
301-680-4319
PIERREJ@GC.ADVENTIST.ORG

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)
- Buildings or permanent structures are referred to as Improvements

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

SAFEGUARDING DATA NEW BOARD OVERSIGHT OBLIGATION

- Cybersecurity Breaches
 - Obligations imposed on organizations
 - Obligations of the Board
 - How to prepare for and manage an incident

CYBERSECURITY OBLIGATIONS

- Safeguarding "Personal Data" (definition is evolving)
 - First & Last Name in combination with any of the following
 - Soc. Sec. No., Drivers Lic No. or CA ID no., Acct or Credit/Debit Card No., password or security code, medical info, health insurance info, etc.
- EU Def – includes Phone No., emails, cookies, IP address, photos, social media persona

CYBERSECURITY OBLIGATIONS

- The new principle and paradigm requires each organization should be able at any given time to identify the 5Ws (who/where/what/when/why) of the treatment of personal data under the organizations control. [3rd Party Providers]
- Must Report Data Breaches to authorities and individuals affected without undue delay (No later than 72 hours.)

CYBERSECURITY OBLIGATIONS


- Board Members and Officers are Expected to:
 - Understand the cyber risks facing the organization and how they may affect the business/operations
 - Challenge the effectiveness of the cybersecurity risk management program, and supporting the continued evolution of the program (e.g., ensure a risk aware culture and a risk management strategy)
 - Understand the IT assets that connect to the organization's network
 - Monitor the effectiveness of the organization's vendor risk management program
 - Determine how well the monitoring and incident response programs work

PRACTICAL STEPS WHEN A DATA BREACH INCIDENT OCCURS

- 1. Do No Harm**
 - ✓ Act quickly to prevent the spread of damage (ransomware, unauthorized access, etc.)
 - 2. Assessing The Risk**
 - ✓ What kind of incident is it?
 - ✓ What systems or data has been compromised?
 - ✓ Can you isolate that system from the network?
 - 3. Who Needs To Be Called?**
 - ✓ Exec Officers? Board? Other Leadership?
 - ✓ In-House Legal Department
 - ✓ Outside Vendor(s)
 - 4. How Will They Be Reached?**
 - ✓ Have emails accounts been compromised?
 - 5. Outside Vendor Support**
 - ✓ Outside Counsel?
 - ✓ Forensics Experts?
 - ✓ Public Relations?
 - 6. Regulatory Response**
 - ✓ Some States Have Open-ended Deadlines
 - ✓ Others Have Rigid Deadlines
 - Florida & Puerto Rico
 - ✓ Sectoral Laws Have Rigid Deadlines
 - HIPAA
- Think About Attorney-Client Privilege Early And Often**

POST INCIDENT DEBRIEF

- 1. What precipitated the event?**
 - ✓ Hacker?
 - ✓ Disgruntled Employee?
 - ✓ Human Error?
 - ✓ Malware
- 2. Has any kind of information been compromised?**
 - ✓ Personally Identifiable Information?
 - ✓ Protected Health Information?
 - ✓ Confidential Business Information
- 3. Who Did You Engage?**
 - ✓ Leadership?
 - ✓ Outside Vendor(s)
- 4. What Costs Were Incurred?**
 - ✓ Notification?
 - ✓ ID Theft Remediation
 - ✓ Regulatory
 - ✓ Corporate Brand
 - ✓ 3rd Party Litigation



INCIDENT RESPONSE PLAN CHECKLIST

- 1. Review, Prepare, and Commit**
 - ✓ Evaluate Security
 - ✓ Understand Exposures
 - ✓ Regulatory Realm
 - ✓ Improve Security
 - ✓ Train
 - ✓ Management Commitment
- 2. When A Breach Occurs – What Will Happen?**
 - ✓ Report & Confirm
 - ✓ Discovery
 - ✓ Engagement
 - ✓ Investigation
 - ✓ Notification
 - ✓ Evaluation
- 3. Incident Response Plan**
 - ✓ Build A Team
 - ✓ Implement A Process
 - ✓ Communicate The Plan
 - ✓ Readiness
 - ✓ Simulate
 - ✓ Improve

