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Was it a Marketable Title or Not?

A marketable title is an insurance policy on a property that has.....

We recently closed on an REO with a very not very adept title company located in the central part of Florida. The trouble started early when we asked for a title commitment and we told we couldn't have it until the day of closing. They finally agreed to provide us with one five days before closing.

When we saw the lien letter they received from the city they had sent it to, the letter clearly stated that the subject property was not in the city and was in a non-incorporated area. The letter even has a sentence that said "this area is subject to high incidents of code infractions". This was the lien letter they were using to support their title research.

We had our attorneys "shadow" the title work, meaning that they reviewed the original closing agent's title work. Our attorney found minor discrepancies which the seller was required to fix before closing. However, the glaring problem that we learned the day of closing was that there was a water bill against the property for over \$2,000. We confronted the closing agent and they said it was an "exception to the title policy" and not the problem of the seller!

In fact, the title policy usually does have an exception for any attachments to the property that are not recorded in the public record. The water bill was not yet a lien, but it would have become a lien in time. The seller finally agreed to pay it before we closed. Besides the usual issues with getting the new deed recorded timely since the closing agent was out of our area, everything seemed to have been OK.

We had closed with our buyer before the title got recorded in the public record – this is an advanced technique which I don't suggest you try. We transferred the land trust to the end-buyer by an assignment of the trust's beneficial interest and changed the trustee, both something we had done hundreds of times before. The end-buyer received the original title commitment with the B-1's deleted at the closing so all seemed well. We were given clear, insurable and marketable title as far as we and the original title company were concerned.

It wasn't until about two months later that an employee of the end-buyer called us and said, "We need a new deed from the former Trustee that she guarantees the title as trustee and personally also". That's not the purpose of having a trustee, by that I mean a personal guarantee. Come to find out, the end-buyer decided to finance the property and the lender's attorney doing the closing did a more thorough title search and discovered that the original owner that deeded the property to the lender by a "deed in Lieu of Foreclosure" signed, but his wife had to also and she had died. This becomes a cloud on title if not remedied.

The remedy in this case was to get a death certificate for the deceased wife and record it in the public record. This could have been a larger problem if the property was sold at a profit and then an estate – a probate problem could have reared its ugly head. This problem is also an opening for a title policy claim because the lender's title company didn't go back and do the proper research on the title.

The outcome was that the title issue was cleared by getting the death certificate, but don't expect the seller will cooperate with you in the future, especially if he knows you are making money on his personal problem that caused the sale.

In summary, always get title insurance and get it from reputable firms who you can trust to do the work properly.

To your limitless success,

Dave Dinkel