

AVOIDING COSTLY MISTAKES WHEN PURCHASING PROPERTY IN TODAY'S MARKET

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It is commonly known that a buyer should perform due diligence before purchasing property. If the buyer fails to perform due diligence (obtaining a building inspection, phase I environmental report, mold inspection, Chinese Drywall inspection, survey, etc.) the buyer may incur significant unanticipated post-closing costs and liabilities.

When purchasing property at a foreclosure sale or a property that has recently been foreclosed, a buyer must be even more diligent in his or her inspection of the property and title to the property since the buyer, in most cases, is purchasing the property "as is."

In any type of purchase, a buyer must be concerned with the title to the property. This is especially important in today's market since so many properties are in foreclosure. What if the foreclosure suit named the wrong lender as the plaintiff? What if a junior lien holder was not named in the foreclosure suit? These situations and many other situations can leave a buyer with title to a property that is not insurable and can cost the buyer thousands and sometimes tens of thousands of dollars to correct.

Most title companies do not understand the complexity of legal matters involved in a foreclosure suit. Further, a title company does not represent either the buyer or the seller in a real estate transaction and cannot provide legal advice to either party. A title company's sole role is to close the transaction. It is imperative to remember that although there are many reputable title companies in existence, it is the responsibility of the buyer or seller to hire an attorney to advise them and represent their interest in any real estate transaction.

The following is a list of some of the multitude of possible legal issues that can impact title to property that has been foreclosed or is being foreclosed

- If there is an Internal Revenue Service Lien against the borrowers, the Internal Revenue Service has 120 days from the date the final judgment in foreclosure is entered to redeem the property. If the buyer of the foreclosed property wishes to perform major improvements to the property or sell the property prior to expiration of this 120 day period, the buyer may find himself or herself in a very unpleasant

situation should the I.R.S. exercise its right of redemption.

- When property has been foreclosed, it is not uncommon for the lender or immediate successor in interest to the lender to convey the property using a Quit Claim Deed. A Quit Claim deed in the chain of title can create a problem with being able to obtain an owner's title insurance policy on the property. In turn, this can prevent a buyer in the future from obtaining financing to purchase the property.
- If a junior lien holder is not included in the foreclosure lawsuit, the buyer of the property will be faced with attorneys' fees and costs to correct the title problem, which may include re-foreclosing on the property.
- If a tax certificate holder applies for a tax deed, the tax deed holder can claim title to the property, leaving the buyer of the foreclosed property in an unpleasant financial situation. Recourse, if any, will require the buyer of the foreclosed property to incur substantial attorneys' fees.
- A vacant parcel of land may have easements burdening the property that are not discovered until the buyer applies for a building permit. Depending upon the location of the easement, building on the property may not be possible.
- A property with an existing building may either have building permits that were not properly

closed by the appropriate governmental agency or worse, building and related permits may not have been applied for when required. Upon re-sale of the property, the current owner may face attorneys' fees and governmental fines to correct the error before being able to sell the property.

- If the property does not have "insurable" access to the property, the owner may not be able to sell the property until the access matter is resolved, which usually takes a great deal of time and cost. Many people believe that if there is a road to the property, access is not a concern. Actual access to the property is much different than insurable access to the property. Generally insurable access is a problem for property that has not been platted or properly subdivided.
- If the foreclosure suit named the improper lender as the plaintiff, title to the property will not be insurable. This happens more frequently than it should due to the large volume of loans that are sold and re-sold prior to the foreclosure suit.
- Another possible mine field for buyers involves code enforcement liens. Some code enforcement liens have what is referred to as "super priority," meaning the liens survive a foreclosure suit and are not terminated by said foreclosure lawsuit. Also, some liens may attach to all property owned by

that property owner and is not limited to the property that is in violation of the code. This is referred to as "cross attaching". If a lender owns property with a cross attaching super priority code enforcement lien against one parcel and the buyers purchase another parcel from the lender, it is possible the property purchased is subject to the lien.

- In today's market, buyers are frequently surprised by unpaid municipal liens for such things as water, electricity, sewer or gas. Some municipal liens are not required to be recorded in the official records of the County so even though there is no lien recorded against the property in the official records, the previous owner or tenant may be delinquent in payment for these services. When a buyer attempts to obtain the utility services, it is usually at that time that he or she discovers they must pay the past due amounts incurred by the previous owner or tenant before the municipality will provide the services to the new owner. A search for unrecorded municipal liens is separate from a title search and is an additional step in a buyer's due diligence.

The above list are just a few of the situations that a buyer may encounter if proper due diligence is not performed before purchasing a property.

Most title problems can be cured but curative action usually results in large legal fees and is time consuming. If the title problem cannot be cured, the buyer

now holds title to a piece of property he or she cannot convey, without either full disclosure or conveying using a Quit Claim Deed. As stated above, the use of a Quit Claim Deed in the chain of title can create future title and re-sale problems. It is also important to point out that most title problems are not discovered until years after the purchase, when the owner attempts to sell the property, the owner passes away and the heirs probate the estate or an owner is denied a building permit.

Evaluating the status of a property's title is essential to avoiding costly mistakes, which may not be discovered for years. Although most title matters can be remedied, such curative action will require time and cost to the property owner. Regardless if the buyer is purchasing property by a contract for sale, bidding at a foreclosure sale or auction or purchasing an already foreclosed property, it is imperative that buyers hire an experienced real estate attorney to evaluate the title of any property they are considering purchasing.

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