

## Title issues the Seller and Buyer should be aware of prior to the sale of real estate

When you sell or buy real estate, most agreements of sale require that it be sold with a "good and marketable title free of any liens or defects." The only way to determine whether the title meets this requirement is by conducting a thorough title search of your property. While a reputable title company can help you in the search to discover title defects, an experienced real estate attorney will be able to help you resolve most of these issues or to provide legal advice to the Seller or Buyer to protect them if clear title cannot be obtained.

Some common issues that may "cloud the title" and should be addressed prior to the sale.:

### 1. Errors in public records

Clerical or filing errors could affect the deed or survey of your property. Many times names may have been misspelled or the wrong numbers transposed which can be resolved by reviewing other public records and earlier deeds. A corrective deed can be prepared and recorded to address any problems in the deed itself.

### 2. Liens/litigation affecting the Real Estate

Prior owners of your property may not have paid taxes/ bills or a debt could have been paid but a satisfaction never recorded. Your attorney can locate the creditor and get them to record a satisfaction piece if the bill was paid. If the debt is older than five years and the creditor has not executed on the lien and/or filed an action to revive the lien, the attorney can have it removed due to legal theories of lapsing. The attorney can also go after the prior owners to get the liens paid or negotiate with the creditors to have them removed.

### 3. Restrictive Covenants/Easements

There may be restrictive covenants and/or easements in earlier deeds that are discovered during a title search that were not included in the Seller's deed. The Seller may not have even been aware of them if his title company did not discover them in their title search. The Buyer may not want to go forward with the purchase of the property if the covenants/easements are not removed. An attorney can help both the Buyer and Seller in addressing these covenants/easements including determining the impact they have on the property and if they can be removed and providing advice to the Seller/Buyer if they cannot be removed.

#### 4. Boundary/survey disputes

Surveys may exist that show boundaries for the real estate that is different than what the Seller represented he owned. Therefore, a neighbor or other party may be able to claim ownership to a portion of the Real Estate. A knowledgeable real estate attorney can address these issues prior to the sale to determine what the correct boundaries are and to resolve conflicts and disputes with neighbors.

While title insurance will protect a Seller and Buyer after the sale is completed on these and other issues, an experienced real estate attorney can assist the Seller or Buyer prior to the sale to prevent these issues to haunt either after the sale has been completed.