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### Title Insurance in Real Estate Purchases, Part II

This is Part II of my article on title insurance in real estate purchases. In re-reading Part I, I got the distinct impression that the subject is a bit advanced for a general newsletter. I'm sorry for that. I promised you Part II, though, so here it is.

In Part I, I discussed the basic concept of a title policy and how to review a preliminary title report. In this Part II, I explain how to handle title exceptions to the policy. I also talk a little about the title policy itself.

#### **Handling Title Exceptions.**

If you'll remember from Part I, you review the title exceptions in the preliminary report. Your job is to determine which exceptions you must clear (that is, have removed from the title policy) and which you can ignore.

First, in the purchase agreement you should require the seller to remove all monetary liens by payoff prior to closing, except: (i) financing that you will assume; (ii) current taxes constituting a lien not yet due and payable at the closing; and (iii) bonds or assessments to be allocated between the buyer and seller as of closing. Second, negotiate with the seller for the removal, if possible, of problematic non-monetary exceptions (e.g. easements). Consider also having the title company remove all boilerplate exceptions that have no basis in reality.

A few minor title exceptions show up in all prelims. Ordinarily you don't need to worry too much about these exceptions, namely: (i) General and special city and/or county taxes which are liens not yet payable; (ii) Lien of supplemental taxes assessed pursuant to Division 1, Chapter 3.5 of the Revenue & Taxation Code; (iii) Utility easements, but depending on their location and whether you intend to build over the easements; (iv) CC&Rs, unless they affect or prevent your intended use of the property.

Remember that buying insurance coverage for a defect in title does not fix the defect. Although insured for, the defect remains on your property. If the defect is serious, consider walking away

from the purchase no matter that you can get title insurance. I cannot overstate this point: If you cannot remove a serious defect, don't buy the property no matter what coverage is available.

### **The Title Policy.**

My last topic is the title policy itself. I will discuss only the CLTA Standard Coverage Policy, because that is the policy that buyers commonly purchase.

The CLTA Policy is very well drafted; it is a model of brevity. It has four parts: the title page, the Conditions and Stipulations which start on the back of the title page, then Schedule A and Schedule B. All parts are important, but usually people only focus on Schedules A and B, which contain data specific to the deal and the property. The title page and Conditions and Stipulations are very important, but they are boilerplate and do not change.

Remember from Part I the key to the CLTA policy: CLTA title insurance insures title as shown in the public records. You get no coverage for unrecorded liens and no coverage for all recorded liens as listed in the policy. Hence you, the insured, are buying peace of mind that the disclosed lien situation is correct and complete, and there are no other liens of public record out there.

Given that you get no insurance for unrecorded liens, you should inspect the property for encroachments, third-party possessory rights (e.g. tenants, adverse possession), boundary line problems and anything else of interest that would not appear on the record.

### **Conclusion.**

Title insurance is complex. Don't worry if you always have to remind yourself of the basic concept. I'm no different – whenever I review title, I always go back to the basics. As always, remember there is a lot more to title than I discuss here. Please get competent legal counsel for your real estate transactions.

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## **Ideas**     On brevity:

A fool's voice is known by a multitude of words. – *Ecclesiastes*.

The less we know, the longer our explanations. – *Ezra Pound*.

If any man will draw up his case, and put his name at the foot of the first page, I will give him an immediate reply. Where he compels me to turn over the sheet, he must wait my leisure. – *Lord Sandwich*.

The most valuable of all talents is that of never using two words when one will do.  
– *Thomas Jefferson*.

## **Funny Papers**

