Attorney’s Corner-Legal Tip of the Month

**WHAT YOU NEED TO KNOW ABOUT TITLE CLEARANCE**

No title is perfect.  There will always be something that restricts the “bundle of rights” a property owner holds.  However some issues may be a mere blemish while others can be fatal to a closing.  This is what you need to know about title clearance.

            Let’s say Joe Smith calls you to list his Fulton County house.  According to the never wrong Google, there are currently 984,293 residents in Fulton County.  How many do you think are named Joe Smith?  When we search Smith, Joe in the Fulton County lien records, how many hits do you think we will get?  Plenty.  But we are only concerned with liens against our particular Joe Smith.  We have ways to determine whether or not Joe Smith who owes State Farm $35,000.00 based on a judgment lien is our seller.  If it is not, we will have the seller sign a document saying that this particular lien against Joe Smith is not his.  Even if a lien is against our person, it can be resolved by paying it off similar to how a mortgage is paid off.  Granted, if the seller does not have the proceeds or money to cover it, that’s an issue.

            Frequently there are Security Deeds in the title records that have not been cancelled.  Lenders that have been paid off are required by law (O.C.G.A. § 44-14-3) to cancel a security deed but the penalty for not doing so is only $500.00.  Because the penalty does not have teeth, and because of the sheer volume of cancellations being processed, some cancellations slip through the cracks.  To resolve this, we first approach that lender or its successors to get a cancellation. We may also ask the seller for a copy of their owner’s title insurance policy or any other information they might have pertaining to the payoff of that mortgage.  We will also approach the closing attorney that paid off that security deed to get copies of checks, wire confirmations, FedEx labels and anything of the sort that shows proof of the payoff.

            While standard, run-of-the-mill security deeds present a slight (and common) issue, security deeds evidencing a home equity loan are a different story.  We absolutely must have concrete proof that the loan has been paid off and closed. When the equity line has been closed, there should be a cancellation for the security deed.  Equity lines worry title attorneys because they are revolving accounts.  For instance if a seller sells a property that secures a home equity loan and that loan was paid off at closing, if the line of credit is not closed as evidenced by cancellation of the security deed, that seller can still draw from that account even after they have sold the property and the lien on the property still exists.  An open home equity loan security deed is something that requires extra leg work.

            Let’s say that the legal description on the seller’s deed has errors.  If they are minor, we would probably approach the law firm that prepared the deed to do a scrivener’s affidavit.  That document is the attorney saying we messed up and the correct legal should read xyz.  If the legal description is so erroneous that it cannot be determined what property is being conveyed, then we will move to Plan B.  If the seller has their original warranty deed, we can correct the error on the original and re-record it.  If not, we can try, with collaboration from the seller, previous closing attorneys and agents, to get a corrective deed from the person who signed the original deed.  The former is much easier than the latter since it involves parties in our transaction.

Here are some things that could turn into major issues if not solved by all parties: missing title owners, landlocked property, plat revision revising our property, major encroachments, and private roads to name a few.

Bottom line is that most title “issues” are common and easy to handle for which there is no need to sound the alarm.  However, and thankfully rarely, there are major issues that may turn into an “all hands on deck situation.”  Here at Campbell and Brannon we are here to keep you out of the storm or, if called for, guide you to safer waters.

Author: Ben Clary

**Housing Market Continues Slow Climb Toward Stable Levels**

*Source: Dsnews.com*

The latest Multi-Indicator Market Index (MiMi) from Freddie Mac, released Wednesday, showed that the U.S. housing market showed continued stabilization for the fourth straight month in December.   [Read more >>](http://dsnews.com/news/02-25-2015/housing-market-continues-slow-climb-toward-stable-levels)

**Q4 2014 Commercial Real Estate Cycles from Dividend Capital**

*Source: Ted C. Jones*

There is one blog topic that I write about quarterly that is preceded by several calls and emails as to when it is scheduled to be available – The Cycle Monitor – Real Estate Market Cycles from Dividend Capital, prepared by Dr. Glenn Mueller from the University of Denver.  [Read more >>](http://blog.stewart.com/stewart/2015/02/25/q4-2014-commercial-real-estate-cycles-from-dividend-capital/)

**FHA launches historic homebuyer ‘care package’ for 2015**

*Source: Inman.com*

After several years of lackluster participation in the housing market, first-time homebuyers are getting a boost from the Federal Housing Administration (FHA) this year.  [Read more >>](http://www.inman.com/2015/02/19/fha-launches-historic-homebuyer-care-package-for-2015/)