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A buyer needs more than a deed to own property

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(This is the twelfth in a series of articles about issues that sellers and buyers face when negotiating a purchase-offer contract.)

A buyer needs to acquire full title to a property from the seller. This means that the seller needs to have full title for him to convey full title to the buyer.

In earlier articles, I've discussed the different types of deeds -- general warranty, special warranty, bargain-and-sale and quitclaim -- that are typically used. Each type gives the buyer a different level of confidence in the seller's ownership and his ability to convey the property fully.

Even with a General Warranty Deed, buyers need to understand that a deed's guarantees are not sufficient evidence to prove seller ownership. Deeds can contain errors, both of omission and commission. To confirm a seller's deed, buyers need to find evidence of title.

Ownership is proved through evidence of title, not a deed. When a buyer submits his purchase offer, he should include language that specifies that the seller will convey the property with a "marketable title." This phrase is interpreted a bit differently from state to state, but, in general, it means that the evidence shows that the title is "good" or "clean," and reasonably free of defects that would give rise to litigation.

It is the buyer's responsibility to find evidence of title, that is, to show that the seller can convey with marketable title. To do this, the buyer usually hires a real-estate lawyer once his contract has been accepted to do a title search, which traces the chain of title back through the public records to figure out if any defects exist. A defect might be a gap in the chain, or a piece of the property that has gotten legally lost. If the seller cannot provide marketable title, the buyer's contract should provide that his offer becomes void and his deposit returned without penalty.

A title search should look beyond recorded documents like deeds, utility easements, mineral leases and mortgages. Certain types of liens are not recorded, such as real-estate taxes and inheritance taxes. A title search will also not discover encumbrances on the seller's ownership that were not recorded, like a contract giving another party some right to use the property or cut its trees.

I advise clients to do a little bit of title searching on their own before submitting an offer. A full title search goes back to the property's origin; most, however, only go back 40

years or so as a matter of state law or custom. It's often better to go back farther than 40 years, especially if the property has not changed hands much.

The buyer can usually trace back the seller's deed on his own, at least three or four exchanges before it gets complicated. If the buyer finds something amiss, he will save time and money by showing his findings to his local lawyer and not submitting a contract to a seller with a problem title.

The chain of title goes back to the origin of the property. It shows ownership, encumbrances and liens. If the chain has a gap, it's often called a "cloud on the title." In that event, a suit to quiet title is brought. Everyone with a claim to ownership appears, and a court decides the matter.

The summary report of what is found in the public record is called an abstract of title. In most cases, an abstract is the basis for the issuance of a certificate of title, which is an opinion by the buyer's lawyer or other title researcher about the title's condition as of the date when the certificate is issued.

A certificate of title does not guarantee the seller's ownership. It will only cover things that are known from the public record. An attorney's title opinion is similar to a certificate. Generally speaking, a certificate that finds no defect in the public record is good enough for financing to be arranged and the purchase to go through. But I advise buyers to look beyond the public record.

It's usually advisable for a buyer to purchase title insurance to protect against losses that emerge during his ownership from title defects. Not all defects are insurable, however. Title insurance will not protect a buyer against a deed with discovered errors or defects that the title search has revealed. Other things will not be covered, because they fall under "exclusions," such as restrictive covenants, zoning ordinances and some easements.

Title insurance is offered in "standard coverage" and "extended coverage," the latter offering more protection than the former. The buyer should ask his local lawyer which type to buy. If the seller has title insurance, it signals a buyer that the title was good enough for insurance purposes when the seller bought the property. A buyer should get a quote from the insurer who has issued the seller's policy; it's often the cheapest premium.

Buyers should beware of sellers offering deeds with "title exceptions." An "exception" almost always means something isn't right with the title, and the seller wants to sell the property and transfer the problem to the new owner.

An alternative to the title-search approach is the state-sponsored Torrens system, which guarantees good (indefeasible) title to those titles registered in the system. Iowa uses Torrens, and these states have adopted it in part: Minnesota, Massachusetts, Colorado, Georgia, Hawaii, New York, North Carolina, Ohio and Washington.

Much of the time all of the buyer's worries about the warranties in a deed and the details of a title search amount to nothing, because the title is clean. But when a problem arises, a buyer needs to understand what a title search, certificate and title insurance do and do not mean.