

Title insurance prevents pig-in-a-poke syndrome

By Doug Funke
staff writer

Most home sales come off without a hitch and new owners enjoy an uneventful occupancy. But occasionally problems arise after the fact.

Maybe a check bounces and back taxes are owed putting the property at risk. A contractor puts a mechanic's lien on the property when a previous owner stops paying for improvement work. A long-lost heir materializes to challenge an estate sale. Or out-and-out fraud like misrepresentation or forgery occurs.

That's why title insurance exists — to protect buyers and mortgage

companies from challenges to ownership.

"It's imperative to have marketable title free and clear, of any claims," said Paul Cuschieri, owner and president of Minnesota Title Agency in Livonia. "It's a one-shot deal. The protection you're buying isn't for the future. It's protection from the past."

"We want to make certain the individual selling the property is — quote, unquote — the true owner," said Mark Tarrant, chief title examiner for Lawyers Title Insurance in Troy.

PEOPLE WOULD be foolish to

buy a house and expose themselves to tremendous monetary loss for back claims without title insurance, Cuschieri said. Financial institutions are reluctant to issue mortgages unless purchasers obtain a title policy indemnifying lenders for the amount borrowed.

So two policies generally are issued for a single sales transaction.

The seller usually pays for title insurance for the buyer's protection as part of a standard purchase agreement. The purchaser then buys a policy for the bank's protection. A real estate agent handling the transaction usually arranges for the insurance.

Title insurance costs are fairly standard due to the competitive nature of the industry and insurance laws in Michigan. Both Lawyers Title and Minnesota Title would charge the seller \$320 and the buyer \$128 for insurance on the sale of a \$50,000 house.

The title search, a historical review of property owners, goes back 40 years.

Previous owners are identified through the county register of deeds. All or some of those names are checked through courthouse records for involvement in legal entanglements that might affect the ownership of property — lawsuits, bankruptcies, divorces.

TAX RECORDS are checked for recent payments. Easements, which could limit property uses, also are identified.

"I want to know what I'm buying," Tarrant said. "I can't walk out and see a lien."

If necessary, the title company — at its expense — will defend the purchaser's title and ownership rights in court. If a claim proves valid, the title company will bear the cost of settling to protect the title and legal possession by the policyholder.

"I think title insurance is extremely important," Tarrant said. "The average person has no clues what competing interests can affect property. A title policy lets you know

what you're buying before it's too late. Should we be wrong, that's what we insure you for and against."

The lender's coverage usually decreases as the mortgage is paid down, but the purchaser's coverage stays the same for the one-time premium due at closing. The purchaser can buy extra coverage for increases in a property's value over time.

"The most frequent thing I see is tax problems," Tarrant said. "I pay for taxes resulting from erroneous information from treasurer's offices. Those are smaller amounts."

The next category of problems now affecting good title is construction liens, he added.

Heed wetlands laws before development

We are thinking about developing a campground condominium but are somewhat concerned about some of the liabilities that we may incur as a result of the improvements that we are making. Can you give us any ideas as to how to avoid these potential problems before they arise?

As is the case with any condominium, the developer should ensure that its construction procedures and design are properly approved by the local municipalities and the state of Michigan. Also a competent registered architect and engineer should be hired with respect to all phases of the condominium as well as an experienced site planner for the condominium subdivision plan and an experi-



condo queries
Robert M. Melsner

enced condominium lawyer to draft the documents.

In the case of a campground condominium, the experience of this writer is that electrical and sanitary sewer and water systems are often potential problems that were not adequately addressed by the condominium developer. I would be particularly concerned about these issues

and obtaining adequate approvals from the Army Corps of Engineers or the DNR in connection with any involvement with water or wetlands.

I am president of a management company and am hoping mad. In the middle of my management agreement with an association, another management company came along and low-balled my monthly stipend to the association and told it that they would pay them a \$500 bonus to induce them to terminate my contract. I had been performing fine, but it is just a matter of economics. Somehow I feel I have been wronged by the management company. What can I do?

Consider your legal alternatives

against the other management company as well as the association. The association may be obligated to you for breach of contract depending upon the terms of your contract and what provisions it has with respect to early termination. As to the other management company, when one person tortiously interferes with the contractual rights of a third person, that person can be held liable for interference with contractual relations or economic expectations for damages.

Robert M. Meisner is a Birmingham attorney concentrating his practice in the areas of condominiums, real estate and corporate law.

U-M real estate forum hosts national speakers

The University of Michigan, in cooperation with area builders and real estate dealers, will present its fifth annual Real Estate Forum Friday on Saturday, Nov. 8-9, in Ann Arbor.

Nov. 8 topics and speakers include:

- Real estate risk assessment, Dennis R. Capozza, professor of finance.

- Real estate industry in the '90s and beyond, Douglas M. Elkin of Elkin Equities, developers; Dan

Gilbert, president of Rock Financial, mortgage banking; Joel Smith, vice president of Neumann Smith Associates, architect; and David L. Steuer, principal of the asset-management company, Steuer, Canvasser.

- Crisis and opportunity in real estate.

Registration for the complete forum is \$95; \$25 for Saturday only. For information, call 764-5304.

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