

WESTERN WAKE LAW GROUP

CLOSING ATTORNEY'S RESPONSIBILITIES

Most do not know or understand the duties and work of a closing or title attorney. The following describes the work most title attorneys must perform to insure the soundness of the title to the property the Buyer wishes to purchase.

CURRENT TITLE OR OWNER

After receiving a copy of the sales contract, the title attorney must find the current record or title owner of the property in the public records. This means the title attorney must find the current record owner of the property as established by the public records. In some cases the Buyer may think he is purchasing the property from John Smith, but in reality the record owner is a corporation named J.S. Associates, Inc. The title attorney must then contact the Secretary of State's office to determine the corporate owner's status as a corporation.

CHAIN OF TITLE

The title attorney must then establish the "chain of title" either for the last sixty years or since the last date of issuance of a title policy. Every prior deed of conveyance of title must be scrutinized for proper execution of the document. In some cases, estate files must be reviewed where a prior owner died before the next conveyance was made. Sometimes the title attorney will have to contact former owners or those who knew the former owners to verify ownership of the property.

SURVEY

A surveyor is extremely important to a title attorney (and incidentally to the Buyer) as a surveyor defines the real boundary lines of the property to be purchased. Where rural or old property (as opposed to a lot in a subdivision) is involved, a title attorney may have a survey conducted contemporaneously with the title search. This is true where the bounds of the property are uncertain and must be established to conduct a reliable search and to formally advise the Buyer what is being purchased.

OUT CONVEYANCES

Once the chain of title is established, the title attorney must review the Grantor indices held at the County Register of Deeds office to determine all out conveyances of record made by each of the prior owners of the property. This is done to insure that none of the prior owners ever conveyed the subject property (or a portion of it) previously. This can mean checking five to ten out conveyances on up to several hundred, depending on the activity of any of the former owners. Additionally, checking the "outs" will establish the outstanding deeds of trust against the property, which must be paid off before the Buyer can obtain clear record title.

JUDGMENTS AND LIENS

After establishing the chain of title and out conveyances, the title attorney must also check the judgments, civil actions, special proceedings, lis pendens, taxes and assessments which may have become liens against or affect title to the property. If there are outstanding judgments against a previous owner, these must be satisfied or released as to the property to

clear title for the Buyer. Releases and other agreements must be drafted to facilitate clearance of title.

RESTRICTIVE COVENANTS

Most subdivisions, townhouse and condominium projects have restrictive covenants, which apply to each and every lot within the subdivision. These restrictive covenants provide requirements for location of a house on a lot, the use of the lot and location of service and drainage easements. The title attorney must review these restrictive covenants and a current survey of the lot to be sure there are no violations of the restrictive covenants (i.e., a shed which violates a side set back).

LENDER'S INSTRUCTIONS

The closing attorney's office also prepares the loan documentation according to the lender's closing instructions. While the closing attorney cannot negotiate or change the terms and fees associated with the loan, the closing attorney is responsible for:

- Ensuring that the correct fees and charges are included on the HUD-1 Settlement Statement according to the lender's closing instructions;
- Ensuring the correct legal description on the lender's deed of trust and proper recordation of same;
- Ensuring that the lender's loan package and title policy are delivered to the lender as soon as possible.

The foregoing represents an outline of the work a title attorney should do for a Buyer of real property. Many times far more work is involved if there are numerous judgments, assessments or other title defects associated with the property. At a minimum, a title attorney will spend ten (10) hours of work time devoted to the entire transaction of a Buyer from beginning to end. Many closings require far more time where issues involving interim lease agreements, negotiations of purchase terms and other special documentation are required.