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TitleTRACK

Search products can limit liability

Anyone who has purchased or sold a home recently has an idea of what an abstract of title is and what it is used for.

An abstract is the history of a property showing all transfers, mortgages, liens and taxes and is used to determine the marketability of the title when transferred or refinanced.

What many people do not know is that a variety of additional search products prepared by abstract companies also are used to help limit liability and safeguard the transaction. Those products include tax searches, judgment and bankruptcy searches, information searches, UCC searches, assignment of mortgage searches, franchise tax searches and last owner searches.

Tax searches include a search for paid or unpaid town, county, school, village, sewer and water charges, which can be used to determine a property's assessed value and whether there are any delinquencies or a property is in tax foreclosure. Tax bills and a payment history also are included.

A judgment/bankruptcy search will show all unsatisfied judgments and federal tax liens docketed against the searched names within a given county.

Bankruptcy searches are produced using PACER reports, which search bankruptcy courts in a specific region and are not property specific. The searches are becoming more common and many banks are requiring them to be run against purchasers and noted on a loan title insurance report. It is a good idea to obtain the search any time a property is transferred.

I have seen many times where an individual has to pay off judgments against their former spouse that they knew nothing about when they obtained a quit claim deed from them in a divorce settlement and no search was conducted prior to the conveyance. When they went to sell the house the lien would be discovered and they would be responsible to clear this problem up before it could be sold to a third party.

Information searches can be done against names or properties. One party may want to know whether another party owns any property or specifically what property was owned by an individual or corporation during a certain period of time. A

grantee/grantor search shows all properties purchased and all properties transferred during a specific time period.

A local UCC search (financing statements) shows all open UCC filings against a certain owner affecting real property in the county being searched. A state UCC search shows all Albany UCC filings against a certain owner affecting personal property.

An assignment of mortgage search shows any assignments recorded for a particular mortgage. Today many mortgages are transferred several times for a variety of reasons, including bank consolidation or banks becoming insolvent. Such searches really are needed today because a large number of mortgage foreclosures are started by banks that are not the record holder of the foreclosed mortgage, which could lead to insurability issues as a result.

It also shows any gaps in the history of the assignments. A missing assignment will prevent the mortgage from being properly discharged.

A franchise tax search is ordered from Albany and shows whether a corporation has filed tax returns within New York state, whether all taxes are paid and whether a corporation has the authority to do business in New York state. It also will show whether a corporation has been dissolved for non-payment of state taxes.

A last owner search is a search of the records against just the current owners of a property, typically used in a refinance transaction or when marketability of title is not an issue. A property never should be purchased with just a last owner search as evidence of title because it will not disclose any problems prior to the current owner's transaction.

The additional searches I've outlined are ordered frequently by attorneys and are useful tools to limit liability and protect everyone involved.

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