

# Why Title Searches Are Conducted to Ensure the Smooth Transfer of Property

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**In this article, the author discusses title searches and their importance when purchasing commercial or residential real estate.**

If you or your client plans on buying commercial real estate or residential property, it is important they understand the purchase process so you can avoid any major setbacks. While many buyers are likely aware of the inspection process for physical conditions, which assesses the condition and safety of the property, your client may not be aware of title searches and their importance when purchasing property.

## **WHAT IS A TITLE SEARCH AND WHO PERFORMS IT?**

A title search confirms that the seller legally owns a specified property, and thus, is able to transfer title of the specified property to the new owner. Depending on the state, title searches can be performed by either a title company or real estate attorney. In several states, a real estate attorney is required to conduct the purchase or sale of a property. If your state requires a real estate attorney present during your transaction they will be able to conduct the title search on your behalf. If your state does not require a real estate agent for your transaction, a title company can conduct the title search on behalf of the buyer.

A survey will be needed to obtain an endorsement that the property shown on the survey is the property whose title was researched, but that is not necessarily a survey of that property alone. The problem is that houses and buildings have been built on the property the parcel buyer thought it acquired, which was not the parcel conveyed by the deed from the seller.

## **WHY ARE TITLE SEARCHES DONE?**

Title searches can reveal any potential claims, liens, or encumbrances placed on the property as well as any issues with the deed. Title searches, together with accompanying evidence sought from the applicable taxing authority will also uncover unpaid bills that are liens against the property or outstanding property taxes that the current owner needs to settle before a sale is finalized.

A real estate attorney or title company must check that the title was properly conveyed in each prior deed, or other transfer of ownership, throughout the entire search period. If a good title was not conveyed to a prior “owner” in the chain of title, then the seller cannot

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convey a good title to the buyer. This includes restrictions on use, obligations to pay others, or perform specified actions and rights given to others that burden the property. There may be publicly recorded restrictions or title exceptions that the buyer should be made aware of by their real estate attorney or title company. Sometimes a governmental body or agency can require, in an order or permit, that certain work must be completed on the property within a specified period of time. If that work does not occur in the specified time frame, it may be necessary to formally reopen that action in order to get a certificate of compliance issued. For example, if the required landscaping died, it may need to be replanted.

### **WHAT IS COMMONLY FOUND DURING A TITLE SEARCH?**

Outstanding payments are one of the most common encumbrances to a smooth title transfer. A real estate attorney or title company will determine if there are any outstanding mortgage payments, bills, tax payments or other liens or attachments against the property or property owned by the seller in general.

Easements may limit what you may do on your property. When buying residential or commercial real estate you need to uncover if there are any easements burdening the property that will impact your clients intended use. There may be an easement that was granted decades ago that limits subsurface use within the easement area or a restriction stating that no structure or other improvement can be built within the easement area.

Restrictions are another important factor for commercial properties is that they can be controlled agreements or covenants that restrict what can be done on a commercial property. Residential properties can be restricted by the bylaws of a homeowners' association or a declaration on a development. These restrictions could also require payment to another property owner for a share of maintenance and operational expenses. You must factor all of these restrictions when conducting a title search as this property might not be the best fit for your clients needs.

Taxes are another important aspect of a title search. You must determine if the property has been given a tax classification that is taxed at lower rates and if those lowered taxes give the municipality a right of first refusal or option to purchase the property. One must conduct their due diligence by considering possible state or federal tax liens of the seller if estates were involved and the person proposing to act for the seller has authority to sell the property.

### **CONCLUSION**

Completing a thorough title search is critical to ensuring a smooth transfer of the property from the seller to the buyer. The best way to be certain that there are no hurdles in the purchase of commercial property or a dream home is to work with a seasoned local real estate attorney or title company to perform a title search. Their attention to detail and dedication to the process will greatly alleviate potential stress during the commercial acquisition or homebuying process.