WHAT IS TITLE?

Land is as old as time itself. Like the structures built on it, land is “real property", meaning that it can’t be moved or hidden. Because real property is valuable, many people want to claim ownership. “Titles” came about as a means of legally proving who owns the property.

Through the centuries, however, a parcel of property may change hands dozens of times. At any point along the chain of ownership, problems may arise that cast a “cloud” over a title, putting a claim of ownership in doubt. Such as:

- **Long lost relatives or past owners** could show up, sometimes from long ago, with a claim to the property that supersedes yours.

- **Sometimes people fraudulently sell houses** that don't belong to them. For example, the husband of a divorcing couple could forge the signature of his wife, and abscond with the proceeds of the sale. In a court of law, the rights of the wife could be upheld and the property could go to her, no matter how much money an unsuspecting purchaser had placed in the house.

- **To get loans, people often use property as collateral** (security against nonpayment). If someone doesn’t pay back their loan, the lien holding lender has a legal right to sell off the property to get their money back—even if the house has since sold to a new owner. This is because the lien (claim to a property as payment on a debt) is on the house. Unless the debt is paid off and the lien released, the lien stays with the house even when it changes ownership.

- **With today’s booming refinance and home equity markets**, lenders’ interest in properties has increased exponentially and both lenders and county recorders are challenged to keep up with the documentation. So it’s more likely than ever that an unrecorded or unreleased interest in your property could be out there, making title insurance more important now than ever.

- **An easement is a right to use the land of another** for a special purpose. For example, the city may have plans to build a sewer line sometime in the future. If the sewer line runs through the back of your yard, and if the city has an easement on the underground portion of your property, this might cause your prize roses to be dug up, or prevent you from building a pool in your back yard.

- **If a homeowner fails to pay his or her taxes**, local, state or federal tax authorities can obtain a lien on the home, which gives the government a claim to that property in case of nonpayment of debt. If the owner sells the home without settling the tax lien, the tax authority can legally get the new homeowner to pay the original homeowner's back taxes. And if the new homeowner fails to comply, they could lose their new home.

- **How do you protect yourself from mistakes, fraud and other complications?** Through title insurance. It protects your claim to your property from potential problems caused by irregularities that may have occurred in the past. Dollar for dollar, it’s one of the most cost-efficient forms of insurance for home owners. Its relatively low, one-time premium covers you against legal problems that could cost tens of thousands of dollars—and even the loss of your home.

WHAT IS TITLE SEARCH?

A title search is a means of ascertaining that the person who is selling the property really has the right to sell it, and that the buyer is getting all the rights to the property that he or she is paying for.

Fidelity Title examines several aspects during a title search. For example:

Chain of Title — This is simply a history of the ownership of a particular piece of property, describing who bought it and sold it, and when. The information may be derived from public records—usually a County Clerk's or Recorder's Office—or obtained from title plants privately owned and maintained by Fidelity Title. Because the history of title goes back many decades, these records can take the form of index cards, punch cards, tract books, or one of today’s digital formats. Regardless of format, our title plants contain essentially the same information by which a title history can be determined.

Tax Search — This is a search to determine the present status of general real estate taxes against the property. If a buyer purchases property with unpaid and past due taxes or assessments against it, he or she is likely to find a government body —the village, county or state—placing the property up for sale to pay those taxes or assessments. Title insurance from Fidelity protects the buyer against loss from unpaid and past due taxes and assessments.

Report on Possession — We often send inspectors to look at the property to verify the lot size, check the location of improvements, look for evidence of easements that are not shown of record and check on who is living there.

This eyewitness account supplements the information learned from the title search. For example, the inspector might detect an unrecorded easement or other evidence of outstanding rights that could affect the owner's title and possibly the value and intended use of the property.

Judgment and Name Search — One of the most important parts of the title search is to determine if there are any unsatisfied judgments against the seller or previous owners which were in existence while they owned the title. A judgment is a general lien against the debtor's real estate and constitutes security for any money owed under the judgment. The real estate can be sold to satisfy the judgment.

It is extremely important to be sure that a title is not subject to judgments against the seller or previous owners. Title insurance provides this protection. A judgment against a person named Smith may affect the title of a seller named Smith, depending on whether or not they are the same person. So all possible variations of the name must be examined.

For example, the name Smith might be spelled Schmidt, Schmid, Schmidtt, Schmidz, Schmied, Schmiedt, Smid, Smythe, and so on. The name Nichols can be spelled 73 different ways, from Nachols to Nychals.

The task is to determine which of these applies to the owner in question. First names have to be checked, too. There are 25 foreign forms of John, including Johann, Jehan, Hans, Shaun, Gudi, and Efom.

Commitment — When these searches have been completed, Fidelity Title issues a commitment to insure, stating the conditions under which it will insure the title. The buyer and seller and the mortgage lender can proceed with the closing of the transaction after clearing up any defects in the title which may have been uncovered by the search and examination.

WHAT IS ESCROW?

An escrow is an arrangement in which an objective third party, called an escrow holder, holds legal documents and funds on behalf of a buyer and seller, and distributes them according to the buyer's and seller's instructions.

People buying, selling and refinancing real estate often open an escrow for their protection and convenience. The buyer can instruct the escrow holder to disburse the purchase price only upon the satisfaction of certain prerequisites and conditions. The seller can instruct the escrow holder to retain possession of the deed to the buyer until the seller's requirements, including receipt of the purchase price, are met. Both rely on the escrow holder to carry out faithfully their mutually consistent instructions relating to the transaction and to advise them if any of their instructions are not mutually consistent or cannot be carried out.

An escrow is convenient for the buyer and seller because both can move forward separately but simultaneously in providing inspections, reports, loan commitments and funds, deeds, and many other items, using the escrow holder as the central depositing point. If the instructions from all parties to an escrow are clearly drafted, fully detailed and mutually consistent, the escrow holder can take many actions on their behalf without further consultation. This saves much time and facilitates the closing of the transaction.

THE PLAYERS

A number of different parties are involved in the process of refinancing or transferring ownership of real estate. You can expect to see any or all of them at the closing itself.

Your Real Estate Agent — Acts as an intermediary between you and the seller. Generally assists in helping you purchase property for the lowest possible price and best terms.

Seller — Signs the deed over to the buyer and presents the keys to the home.

Seller's Real Estate Agent — This real estate agent represents the seller (who may not be present at the closing itself). Generally assists in helping the seller get the highest possible price and best terms for the property.

Escrow Officer — An objective third party who processes and disburses funds in accordance to the instructions provided by the seller and buyer. The escrow officer is often a representative from the Fidelity Title.

Settlement Agent — A representative from Fidelity Title, this person is responsible for facilitating the closing by preparing and recording documents.

Lender/Bank —The institution (usually a bank or mortgage company) that lends the money to the buyer. The lender is often called the “mortgagee", while the borrower is referred to as the “mortgagor".

Loan Servicer — The institution that will receive and process your mortgage payments and manage your escrow account. This is often the lending institution, but not always.

THE DOCUMENTS

You will be asked to initial or sign a number of documents during the closing. Among the most important are:

Good Faith Estimate — A written estimate provided by the lender of all charges—including closing costs and pre-paid and escrowed items—which you are likely to pay at closing. You should receive this within three days of submitting your loan application. You'll want to compare your estimate with the HUD-1 (see below) before your closing date.

Mortgage Note — A promissory note that states your intention to pay a specific sum of money at a specified rate of interest within a fixed period of time.

Mortgage — A legal document that gives the lender the right to take possession of the property if the borrower fails to pay off the loan. In some states, this is known as a “deed of trust".

Certificate of Occupancy — A document issued by a local municipality stating that the home meets all building codes and is suitable for habitation. You'll see this document if you're purchasing a newly built or renovated home.

HUD-1 — Also called the “settlement statement". This document provides an itemized breakdown of all costs and disbursements associated with the sale of the home. You are entitled to review this document a day before closing, so you should compare it with your Good Faith Estimate and resolve any issues before settlement.

Final TILA statement — Your “Truth In Lending Act” statement. This will disclose the full cost of your mortgage and annual percentage rate (APR). It will show any modifications such as rates and points that may have been made since applying for the loan.

CLOSING COSTS

Closing costs are all of the expenses associated with the purchase, sale or refinancing of property. These charges will vary widely from state to state and lender to lender, but will likely include:

Points — Money paid by a borrower to the lender in exchange for a lower interest rate. Each point equals 1% of the loan amount.

Mortgage Application Fees — Charged by the lender to cover the costs of processing a loan application. It’s sometimes paid up front at time of application; otherwise, it’s included in the closing costs.

Appraisal Fees — The cost of paying a professional to assess the fair market value of the property. Usually required as a condition of the loan.

Inspection Fees — The fees charged for home, pest and other inspections. Lenders sometimes require inspections to verify that the property is in good condition and will retain its collateral value.

Survey Fee — The charge for confirming the lot size and shape and to check for any encroachments.

Title Search Fee — Paid to Fidelity Title to verify that the home’s title is “in the clear", (i.e. that there are no liens or outstanding claims on the property).

Title Insurance Premium — The lender's policy covers only the lender and is required in most cases. A buyer's policy is optional but highly recommended, and is usually very affordable if purchased at the same time as the lender's policy.

Recording Fees — Charged by the local register of deeds to make the transfer of property a matter of public record.

Pre-paid Property Insurance —The first full year's property insurance premium, paid in advance, directly to the homeowners insurance company.

Pro-rata Property Taxes — An adjustment to ensure that both the seller and the buyer pay their share of the annual property tax, proportionate to the percentage of the year that each has ownership of the property.

Pro-rata Interest — An adjustment to cover the interest on the loan for the number of days until the first payment is due.

THE PROCESS

Even though “closing” or “settlement” often refers to the actual day that the transaction is finalized, it’s actually a process that begins as soon as a purchase contract is signed.

PRE-CLOSING

Inspection — You’ll want to be sure the home you’re purchasing doesn’t have any major flaws. Hire a professional inspector to walk you through the property and point out any issues. You should also receive a written summary of his/her findings.

Appraisal — Your lender will require an appraisal of the property’s fair market value to ensure that they’re not lending you more than the house is actually worth. Your real estate agent can help you find a licensed appraiser, but most lenders have their own and will take care of scheduling this directly with the realtor, or homeowner.

Title Insurance — It's a good idea for you to take out title insurance before you purchase the home, to protect you against any unforeseen claims that may arise. (Get a Guaranteed Rate Quote)

Homeowner's Insurance — Because your new home will be used as collateral against your loan, your lender will require that you secure homeowner's insurance. Be sure to take care of this well in advance of the closing date. You will likely be required to show proof of purchase, so ask your insurance company for a binder.

Walk-Through – Within 24 hours before your closing meeting, be sure to conduct a walk-through of the property to ensure that it's in good condition and that any issues and/or contingencies have been resolved.

While you're handling all of the above, Fidelity Title will be conducting a search on the property's title. We pore through property records looking for potential problems that might prevent a smooth transfer of ownership, such as old liens, tax liability, and housing code violations.

We may also physically inspect the property to verify the lot size and check for unrecorded easements. Once our work is complete, we offer title insurance to the lender, to protect the bank from any undiscovered issues surrounding the title. (Because the lender's policy protects only the lender, you'll want to be sure you're covered by a title insurance policy of your own.)

Meanwhile, one of our settlement agents is hard at work coordinating a lot of details. First, he/she looks over the purchase contract to make sure it's complete and accurate. If you've paid a deposit or "earnest money," the agent places the funds into an escrow account. He/she also coordinates the payoff of an existing mortgage, making sure the payoff figure is available for the final closing.

If there are any problems with the property, we bring them to the attention of all parties involved. In short, we coordinate many behind-the-scenes activities and gain the cooperation needed to ensure a smooth transaction.

CLOSING

When "closing day" finally arrives, you'll meet with several parties to finalize the transfer of property. Generally, the steps are:

Sign Documents — You'll be asked to initial or sign a number of documents.

Pay Closing Costs and Escrow — You should arrive at closing with a certified check to pay for closing costs.

Handing Over the Keys — Once all the papers are signed and the money has changed hands, you'll receive the house keys from the seller.

POST-CLOSING

After the settlement meeting, we officially record the mortgage and deed at your local Recording Office or Register of Deeds. Funds held in escrow, such as broker commissions and money owed to the seller, are disbursed after the transaction is recorded at the municipal office.