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Title companies key to real estate transactions

Special Report: Legal Support Services

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It is a real estate attorney's responsibility to protect a client by making sure a property title is clear before a sale can be completed.

As an essential part of this process, these attorneys rely heavily on title insurance and abstract companies in both commercial and residential real estate deals.

This includes requesting a title search and examination, which involves title insurance, so there are a group of people that will take part in getting the property ready for the attorney to finish the sale.

"If you were to buy a house (or property), you'd want to know if it had any clouds on the title, and that's where your title company would really come in and help save the day," said Jennifer Persico, a commercial litigator, whose practice includes foreclosures and real estate.

The partner at **Lippes Mathias Wexler Friedman** also relies on title



MIKE PETRO

Cheryl Simmons of Trinity Title & Abstract Corp. looks through books of deed documents inside the Erie County Clerk's Office in downtown Buffalo.

companies to prepare searches for thousands of properties during the annual Erie County In-Rem foreclosure process. Title companies help determine the properties' owners, judgment creditors and other interested parties that may be listed, so they can be notified of the foreclosure.

The companies know what they're looking for and where problems tend to crop up, according to Persico.

"They're generally very helpful and knowledgeable, in terms of order, easements and all types of questions that come up," she said. "So we work with them very regularly."

Since In-Rem searches go back only 10 years, however, title companies are even more integral to the process of voluntary real estate transactions, Persico said. Those searches date back much further.

New York is deemed an attorney state, so there must be one present for the buyer and seller in order to close a real estate transaction. Sometimes there is also a bank attorney involved in the process, bringing three attorneys to the closing table. The bank's attorney makes sure that the documents get signed properly and that the title insurance commitment is verified at the time of closing.

Buffalo attorney Christopher Willet started in private practice in 1992, primarily in real estate, and performed title insurance work for other attorneys. He began working exclusively with a title company in 2004 and then went to Holland Land Title & Abstract Co. Inc. when it opened in 2009.

"Real estate was my primary area of practice and something I've been interested in," he said. "I've enjoyed working with other attorneys and that's primarily what you do in this job and in my private practice when I would do title insurance for other attorneys."

In commercial and private real estate transactions, title companies provide services such as abstracts of the title, property reports, fee and mortgage title insurance, title examination and informational searches of

foreclosures, bankruptcies and liens.

There are essentially two sides to what they do. In addition to offering title insurance, they are providing an abstract search history of the property, according to Audrey Czesak, the president and CEO of Trinity Title and Abstract Corp in Buffalo.

As a paralegal, Czesak first worked for an attorney who owned a title company. After he retired, she started her own company 22 years ago.

Cheryl Simmons, a senior abstractor and title closer, pointed out that every property is unique, so there is a need for due diligence in the research process.

After working as a paralegal in real estate for about 10 years, she began working with a title company and from there learned the searching end of the business. She's worked for Czesak's company since 2000.

Czesak said: "We're really following the trail to make sure something doesn't fall through the cracks."

Title search and insurance

During a standard residential closing, the requirements of the New York State Bar Association and Board of Realtors is that a joint contract be prepared indicating the seller is to provide the title search, according to Willet. In Erie County, the abstract of the property goes back to 1920.

An attorney representing the seller of real property will contract with a title company to examine whether there are issues that need to be fixed. The search is provided to the purchaser at closing.

The work is performed by title searchers who work out of the county clerk's office. They will search for the name of the current owner on the computer back to about 20 years, Willet said. To find information prior to 1986, they'll go through grantor and grantee books to ascertain the chain of title and search for any liens or encumbrances on the property, he added.

Czesak said the buyer's attorney then has an obligation to examine the title — which is where the title insurance would be ordered, clear any title objections, and get it back to the seller's attorney for closing.

Only when the title is cleared can it be transferred and then the seller can receive the funds, but that can take a lot of paperwork, according to Czesak. She said most of the title company's interaction with attorneys is in writing.

"It's like a really big puzzle, and when all of the pieces fit together, the deal closes," Czesak said.

In addition to the title search, an important part of the process is the title insurance product, which is provided to a lender or a buyer's attorney, according to Molly Irvin-Peter of Holland Land Title & Abstract Co. Inc.

The title search is necessary to prepare the title insurance product, and the two go hand-in-hand at the closing, she added.

"A buyer's attorney would get the title insurance in the instance in which their client is electing to purchase it at their own expense, but if there is an insurable defect in the title, it puts the burden of payment on the seller's attorney," explained Irvin-Peter, who has been in the business for 36 years.

After the title search and survey, if issues exist, curatives are sought so that it can be insured, Czesak said.

There is a loan policy, which guarantees to the bank that there is a valid first or second lien on the property, and an owners policy, which ensures title of the property is maintained and that the seller of the property has the authority to do so.

There is no negotiation on the title insurance rates, which are filed with the state, Irvin-Peter said.

"I think that the process of production is basically the same for each company. The one thing that distinguishes one company from another is service," said Irvin Peter, who noted that the search staff and title

department at Holland Land and Title, collectively, has more than 200 years of experience between them.

Changes to title process

The biggest issues that tend to come up during the process have to do with bankruptcy, legal and foreclosure proceedings and access to real property, according to Willet.

The process encompasses a variety of areas of the law, he said. It could be an impending or prior bankruptcy or there could be issues with the physical property, such as the encroaching of a building onto the property. Some properties also come through tax or mortgage foreclosures so an examination of those proceedings may be necessary to determine if proper notice was given to all parties.

Attorneys representing the buyers and lenders are increasingly under the gun to produce the necessary documentation before getting to the closing table due to new regulations in the mortgage industry, Irvin-Peter said.

“For us, if we might receive what appears to be a simple real estate transaction ordered today, it’s not unusual for us to get the call tomorrow to ask, ‘Is it done?’ It’s just the compression in the time of production that has changed for us,” she said.

While there is always a big push to close everything in a hurry, when issues arise with the initial title order, there are going to be questions, resulting in a period where issues have to be ironed out through further communication, according to Willet.

Czesak said they work closely with their client attorneys during the process. Certain orders take more time and effort than others. And there are times when suggesting alternative ways to get things done becomes necessary, she added.

“If a challenge arises, there is usually more than one way to fix it,” Czesak said. “Sometimes you have to put your mind together to come up with

solutions.”

There is an ever changing landscape for the business, Willet said, especially with additional regulations being instituted and changes in substantive law.

Last year there was a change in the non-profit cooperation law and several years back there were changes to laws regarding power of attorney. Also, beginning last year, a new law requires that attorneys and others who prepare title insurance are licensed.

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