



MATTERS TO WATCH OUT FOR IN A PRELIMINARY REPORT

A Preliminary Report will oftentimes reveal the existence of certain matters that could delay or prevent a sale of the property. Such matters may include the following:

VESTING - Title should be shown as being vested in the sellers. If it is shown as vested in someone else, the reason for this will need to be determined before the sale can close.

TAXES AND ASSESSMENTS – All taxes and assessments should be shown as paid current, and all special assessments must be disclosed.

DEEDS OF TRUST – If a loan secured by a Deed of Trust has been paid off but the Deed of Trust has not been reconveyed, either a reconveyance from the trustee or a court order expunging the Deed of Trust must be recorded in order to remove it from the record. Deeds of Trust that are still of record affect the seller's property, and will prevent the seller from conveying clear title.

IDENTITY MATTERS - As part of its searching process, the title company will examine the General Index records to determine if there are any Abstracts of Judgment or other liens against the seller. Oftentimes, however, the seller will have the same name as a judgment debtor. To clear up any confusion, the seller will be asked to provide the title company with an Identity Affidavit, commonly known as a "Statement of Information" or "S.I." If the S.I. reveals that the seller is the same person as the one against whom the Abstract or lien was recorded, a release of lien or Satisfaction of Judgment will be required to eliminate the matter from the record.

PENDING ACTIONS - A search of the title will sometimes show that a "Lis Pendens" or "Notice of Action Pending" has been recorded against the property. This means that a lawsuit has been filed concerning title to, or possession of the property, and anyone who takes an interest in the property will take it subject to the outcome of the lawsuit. Either the lawsuit will need to be dismissed, with prejudice, or the Lis Pendens will need to be withdrawn in order to convey clear title. There may be special requirements in the case of probate matters or marital dissolution actions.

MAINTENANCE AGREEMENTS – In some cases, a property may be subject to a recorded Maintenance Agreement which obligates the property owner to pay the future cost of maintaining or repairing common walls, driveways, private roads or easements. If a preliminary report shows the existence of a Maintenance Agreement, the buyer should obtain a copy of the Agreement and thoroughly review and understand it prior to closing escrow.

EXTENDED COVERAGE MATTERS - In any transaction in which an extended coverage owner's policy is requested, an ALTA/ACSM (American Congress on Surveying and Mapping) survey will be needed in order for the title company to issue the policy.

LEGAL DESCRIPTION – The legal description set forth in the preliminary report must match the map of the property attached to the report. Any questions as to the description of the property being conveyed should be directed to the title officer.

NOTICE OF DEFAULT - This is a recorded notice that the borrower under a loan secured by a Deed of Trust against the property is currently in default. In most cases, a Notice of Trustee's Sale can be recorded within ninety (90) days after the Notice of Default has been recorded, and the property can be sold to satisfy the debt.

NOTICE OF TRUSTEE'S SALE - This is a recorded document showing that the property is being sold to satisfy an obligation secured by a Deed of Trust, which gives the date, time and place of the sale. If a property is being purchased in a transaction in which a delinquent Deed of Trust is to be satisfied, care must be taken to ensure that the Close of Escrow (COE) date is set prior to the date of the trustee's sale.

If you have any questions concerning any matters disclosed in a preliminary report, contact us today for further information.