



A lawyer discusses what you need to know about troubled deals

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It is not unusual in these economic times to come across interesting property, which would be great to sell, if only it did not have so many mechanic's liens and other problems clouding title which I see as legal counsel in various real estate deals. I have discussed in other articles what mechanic's liens are, in this article I would like to discuss the effect of having mechanic's liens and other defects in the title to the property, if you are trying to sell or are the party thinking of buying it.

First, one must understand that having a mechanic's lien on a property only becomes problematic if the owner is trying to "do" something with the property, such as refinance or sell it. If the lienor has not started a lawsuit to foreclose on the mechanic's lien, it can just sit there and in some instances, may expire after the statutory time period has passed. They last for one year and can be extended for another year. Sometimes they overlap, since a general contractor may file a mechanic's lien and so may various subcontractors.

If the lien is not too large, it may be bonded. This takes the lien off of the title to the property. If the lien cannot be bonded and a closing needs to occur, money to cover the amount of the lien may have to be placed in escrow with the court, a bonding company or the title company. Even when a lien is bonded, there may still be litigation over the subject of the lien on theories such as breach of contract.

Clearing up a judgment, on the other hand, can be much harder. Judgments can last for 20 years. If there is an old judgment on a title search, it may be very difficult to locate the parties needed in order to resolve it. Sometimes the property owner has not really had a reason to do a title search in a while, so he or she may not even know about the judgment until a title search is done on the most recent transaction.

Corporations often move their offices and fail to have legal counsel update their corporate records. If a lawsuit is started, the secretary of state only has to "serve" the corporation at whatever address has been given for that corporation. If the corporation's forwarding order has expired, the notice of the lawsuit may never actually reach you. However, it is still good service by the plaintiff, because the secretary of state was served.

The worst nightmare is for a property owner to find an old judgment that came about due to his default. The general rule is that you have one year after the judgment was entered to file a motion with the court to ask that the default judgment be vacated. However, it is not as simple as just asking. You have to be able to explain why you were in default, why it took you so long to do something about it and that you have a meritorious defense to whatever you were sued for. Brokers hoping to be able to sell such property should also be aware of these details.

Another issue that can arise has to do with development deals that have fallen apart for some reason. A developer may have been working with an architect to design a project and have been

unable to secure financing, then try to sell the deal to someone else with the drawings he paid for. Buyers and their brokers should be careful to seek legal counsel knowledgeable, since the developer normally does not "own" these plans and cannot sell them as part of a package. I am always surprised to see how little people know about this area.

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