



## **TITLE REPORTS: A VERY BASIC OVERVIEW**

### **What is a title report?**

A title reports is an analysis of the ownership, liens, judgements, and restrictions associated with a piece of real property.

Title companies perform a title search to (1) confirm the ownership of the property, (2) identify any restrictions or allowances related to the property, and (3) report any liens secured against the real property.

All information reported in a title search is of public record. Anyone can find this information if she knows how and where to look. Title companies are experts at performing such searches.

### **Contents of a title report**

Legal description of the property

Details of the current ownership

Current real estate taxes

Liens secured against the real property

1. In rem judgments
  - a) Mortgages, home equity lines of credit, unpaid water bills, unpaid estate taxes, unpaid income taxes, and/or unpaid inheritance taxes.
2. In personam judgments

- a) Unpaid medical bills reduced to judgment, court judgments, tax liens, fines reduced to judgment and mechanics liens the against the current and prior record owners, as well as your client
- b) For example, assume John Doe owns two pieces of real property. A judgment against John Doe for \$20,000 related to unpaid medical bills will show up on a title search for either property.
- c) If your client's name is John Doe, the report will include judgments against all John Does in the region in the municipality where the property lies.

### What to look for when reviewing

Does everything seem accurate?

Any surprises, such as a deed you do not expect, typos, or recording errors?

Watch for liens when your client has a common name or is a Jr/Sr/III. (See the John Doe example at D(2)(c).)

- 3. Title companies are *overly* inclusive in their title reports. When in doubt, the title company includes items as a protective measure.
- 4. Just because a lien is listed on the title report does *not* necessarily mean it attaches to the property.

How do the liens compare to the value?

- 5. Clients typically will want title to the property even if the liens are significant and near the value of the home. This is okay. (See IV below.)
  - a) Philadelphia has an affordable housing crisis. The average applicant can wait 7 -10 years for public housing. Taking title to an encumbered property is a more feasible than waiting for subsidized housing.
  - b) Low-income clients may be eligible for payment plans for water, real estate tax, and other liens.

- c) Creditors are not likely to initiate a foreclosure action to collect a small lien. (See “E” below.)

What is the probability that one of the lienholders will force a sale of the property to collect on the debt?

6. If the record owner has a \$1,000 judgment lien for an unpaid credit card, the collections agency is unlikely to foreclose. If a lien is for \$50,000, it's more likely the creditor is going to pursue foreclosure.
7. Many lienholders wait until the property is sold to collect

### **Most VIP clients receive title subject to existing liens.**

When the liens are, for example, real estate taxes related to the time the client was living in the property, usually the client can accept this cloud on title and can understand that a payment plan may be available to her.

If, instead, the client is involved in a lease-purchase agreement gone bad and the liens on the property are related to the prior owner's unpaid federal income tax, your client may want to walk away, or at least try to have the lien released as to his or her property.

Philadelphia VIP and the Tangled Title Fund do not want to spend a volunteer time, money, and resources on a case where the house is going to be lost because the client cannot afford it. If affordability is a concern, discuss it with your client and consult with VIP staff as needed.

#### Payment plans

8. Your client may be able to enter a payment plan for water and real estate tax liens. Once in the plan and consistently making payments, the collector will not foreclose on the property to collect the lien.

### **How to talk to your client about the title search**

You should review the results of the title search with your client.

Ask your client if she is aware of various encumbrances on the real property.

Does your client still want to own the property even though it is encumbered?  
(Most clients do.)

## GENERAL RESOURCES

### Understanding a Title Report

*This memorandum was originally created by Bernard Lee, Esquire, of Cozen O'Connor, with assistance from Hillary Ladov, 2010 summer law clerk, and is reprinted with their permission.*

#### OVERVIEW

A title insurance commitment is a document issued by a title company or a title agent on behalf of a title company, following a title search to reflect the status of record title and to indicate the requirements to be satisfied as a pre-condition to issuance of insurance. It is sometimes referred to as a title binder, title report, or preliminary report of title. Other title documents, which are sometimes obtained rather than a title insurance commitment, include search abstracts and records and lien certificates. These are generally issued by search or abstract companies as opposed to title insurance companies or agents.

A title search has several purposes that are generally described as follows: establish and identify ownership (chain of title); determine defects to title, if any; identify outstanding mortgages and other liens; and disclose adverse matters such as recorded covenants, conditions, restrictions, leases and plans. However, as will be discussed below, the requirements set forth in the title commitment need to be satisfied if a title insurance policy is to be obtained. These requirements can also prove helpful in identifying issues regarding the property. Additionally, the defects, liens, and other adverse matters must be examined to determine if requirements or restrictions exist that would prevent the valid conveyance of title, decrease the value of the property, impose monetary or other obligations on the owner or the property, or make the property unusable for the intended purpose.

Most title commitments state the name of the title company and/or title agent and an effective date on the cover or at the top of the first page. Generally, the effective date reveals when the title search was performed. The older the effective date the less reliable the title report regarding matters which may be of record. There is a "gap" in the time between when a document is submitted for recording and indexing with the recorder's office and when a search would reveal its existence in the normal course. If a title insurance policy is obtained, the title company deals with the gap by performing an updated search close to the closing date. In doing so, the title company takes on the risk for intervening matters. If no policy is to be obtained, the more current the effective date the better. However, absent a title policy, the title insurance company has no liability.

The parts of the title commitment are as follows:

- Schedule A - contains effective date (generally at the top of the page as noted above), form and type of policy to be issued, party to be insured, amount of coverage, party currently in title, and the land covered by the commitment.

- Schedule B-I – contains those items and objections, which will ordinarily be removed if a title policy is to be obtained by payoff, production of necessary proofs, receipts, title affidavits, and, possibly, by indemnities.
- Schedule B-II – contains preprinted exceptions (“gap”, rights of tenants, “survey” exceptions, future taxes) and exceptions obtained from the title search. Title will be taken subject to all exceptions absent removal by “mark-up” at or before settlement.
- Schedule C – contains legal description of the land to be insured (usually metes and bounds description), and often contains a recital or source of title showing the deed by which the current owner took title or the lease by which the tenant acquired its leasehold interest.
- In addition to the Schedules noted above, a title commitment may include a copy of the vesting deed and copies of Schedule B-II exceptions, although Schedule B-II items are not automatically delivered for residential transactions and must be requested. Schedule B-I items generally will not be provided for any transaction absent special request.

Set forth below is a brief discussion of the schedules in the two attached title insurance commitments identified by their order numbers V1075 and V1061 respectively. Following this discussion is a brief description of the attached record and lien certificate, identified by its order number V1115.

## **SCHEDULE A**

V1075 AND V1061 have effective dates of 5/30/2008 and 1/14//2008 respectively. A number of transactions and/or the attachment of liens to the property may have occurred between 2008 and the date of review of the title commitment, so an update should be obtained if possible.

Section 1 has blanks for the insertions to be completed if title insurance is to be obtained. These blanks are for the name of the owner to be insured, if applicable, and the lender to be insured and the amount of insurance for each. It is worth noting that if a loan is involved a lender will almost always require title insurance. The additional premium for an owner’s policy is nominal and should also be requested.

Section 2 refers to the estate described in the title commitment. It will almost always be a fee estate, but it is possible to request title commitment for a long term recorded lease or for an easement. This is rarely done in residential transactions, the exception being a transaction in which the fee also is being insured. As you will note, V1061 states that title is, as of the effective date, held by the executrix of a will and three individuals. This condition will serve to create different requirements in V1061 Schedule B-1 than V1075 Schedule B-1.

Section 3 refers to property for which the title commitment was produced as described in Schedule C. There is also a provision in which the address of the property is stated, but this is purely informative and the description in Schedule C takes precedence over the address.

Incorrect legal descriptions and addresses are a common problem, so as much care as possible should be taken to ensure they are correct subject to potential limitations that can arise due to the lack of a survey. Google World and access to City records via the BRT website can be helpful (but not conclusive) in eliminating such mistakes. Many area counties also have property information available online.

## **SCHEDULE B-1**

Section 1, "Requirements," generally identifies the items to be discharged, satisfied or complied with in order to obtain title insurance. Section 1 in most title commitments will have the same, or a similar name, although the order in which the requirements are listed varies. Many of the requirements are industry wide standards, but there are variations depending on information regarding the current state of title and the practices which may vary among title companies. For instance, if the current title is in an estate there will be different requirements than if the current title is in a married couple.

### REQUIREMENTS

V1075:

1. Delivery of a deed and the name of the grantee and if applicable the name of the mortgagee.
2. Payment of the purchase price.
3. Payment of taxes and charges levied and assessed against the premises, which are due and payable. If not paid, they will become the responsibility of the new owner since the taxing authority will have the right to lien the property for unpaid taxes.
4. No improvements or repairs or alterations. This is to avoid imposition of a mechanic's lien. Affidavit and inspection should be made. Essentially, this is asking for proof that no such work has occurred, which is generally proved by affidavit. If work has occurred, then as noted, it is necessary to make sure that all contractors have been paid. However, verification is often quite complicated.
5. Disclosure of unrecorded lease or parties in possession. A grantee takes subject to a valid lease.
6. Full age and legally competent. Both are necessary for a valid conveyance. If not of full age, requirements may include proof of guardianship or other authority to permit minor to participate in transaction.
7. Proof of identity. This is important to avoid fraud. All grantors (parties who sign the deed) should be present, possess valid proof of identity (such as a driver's license), and have signature notarized.
8. No sewers recently installed or under construction. If they have been, grantee can be liable for assessments.

9. Notice of taxes.
10. Water and Sewer Rents. There are three primary issues to be aware of in regards to water and sewer rents. First, information provided by the city may not include prior amounts due, which could potentially become liens against the property. Second, if there is a substantial gap in time between the date of the last known billing and the present, there could be substantial amounts owed, particularly if there has been a water leak or similar problem. Third, whether all of the accounts for the property are set forth and investigated. In the event of any of these three scenarios, you should: 1) request a water reading for current billing 2) try to obtain copies of paid water bills for prior periods, and 3) perform a visual inspection of the property if possible to look for additional water meters. If amounts are due, you should inquire about having such amounts waived, in full or in part, or initiate a payment plan.
11. Mechanics' and Municipal Claims. Since liens can relate back to a date prior to the transaction at hand, the facts should be investigated to determine whether work was performed during the period prior to transfer of title. If there are liens, contact whomever filed the lien and see if the lien has been satisfied and if not, whether it is possible to negotiate a deal for lesser payment. Additionally, make sure all personnel who performed work on the property up to six months prior to transfer of title have been satisfied.
12. Mortgages. In the event of a mortgage, attempt to obtain a release – acknowledgement that mortgage has been paid off (also referred to as mortgage satisfaction piece) – directly from the mortgage holder. (Please see examples of each in packet.)
13. Judgments. If there is an applicable judgment (typically, all names that are the same or somewhat similar to the name of the grantor are listed, which can result in judgments being listed that do not apply to the subject property) proof of payment or proof that it does not apply to property is needed. While, generally speaking, it is difficult to find the holder of judgments, it is often possible to negotiate deals with the holders of judgments if they are located.
14. Bankruptcies. Consult a person with expertise in bankruptcy.
15. Possible Additional Assessment for Taxes for New Construction. If there is new construction, an interim assessment could result.
16. Identification regarding Social Security Numbers and Tax ID Numbers. This relates to providing information to the government regarding the transaction.
17. Denial of Liability by Title Company for Water Usage Without Current Water Meter Reading. This relates to the issue of the gap between the time of the last water reading and the date of closing. Water receipts should be obtained.
18. Proof of No Support or Other Domestic Orders of Judgments. This is to determine whether there are any such claims against the grantor or other individuals related to the transaction. In addition, if the grantors are husband and wife, then efforts

should be made to verify that each signs the deed, even if one of them is not on the deed.

19. Philadelphia Gas Works Claims-Proof of Payment. This is to avoid imposition of a claim against the property.
  20. Special District Assessment Taxes-Proof of Payment. This is to avoid imposition of a claim against the property.
  21. Water Abatement Liens. This is avoid imposition of a claim against the property, which may be made by the Water Revenue Bureau.
  22. Notice of Last Insurance. This is to show that the property was previously insured. It can also result in a reduction in the title insurance premium for the current transaction.
  23. Probate Search. Required where the grantor is an estate. If no probate of estate can be located, then there may be issues in regards to estate taxes and authority of the grantor. If the grantor signs a deed in the capacity of executor or administrator, then they should be required to provide evidence that they indeed have the authority to act and that the estate has been probated in addition to estate taxes having been paid.
  24. Names of Purchasers to be Furnished. This relates to issues concerning the purchaser.
  25. Same as item 10.
- V1061:
- 1-15. See V1075.
- 16/17. Proof of death. Request a death certificate.
18. Proof that the parties are not in divorce proceedings. If a grantee is married, most title companies now require joinder or approval of the spouse to the deed under certain circumstance.

## **SCHEDULE B-2**

Section 2 "Exceptions," generally identifies risks regarding taking title if a title policy title is obtained. The risks remain unless discharged to the satisfaction of the title company.

### EXCEPTIONS

V1075:

1. Defects, liens, encumbrances, adverse claims, or other matters first appearing in the public records after the effective date relates to the gap referred to earlier. If a title

- policy is obtained, the title company normally takes this risk but will require an affidavit from the grantor.
2. Claims of Parties in Possession. If there are parties in possession, then a red flag should go up, since this could prove to be problematic. This is generally removed upon affidavit if a title policy is obtained.
  3. Liens for Services, Labor, Materials Not Shown by the Public Records. This relates to the mechanics' lien exception and if, as noted above, work has been performed, then this could be a problem.
  4. Taxes Not Shown by the Public Records. Tax receipts should be requested.
  5. Possible Tax Increase Based on Additional Assessments for New Construction. As noted above, if there is new construction or major improvements, then further investigation should be made.
  6. Easements, Encroachments, Boundary Line Disputes and other Matters which a Survey Would Disclose. This is often referred to as the survey exception and evidences that the grantee is taking unknown risks regarding the property which might be disclosed by a survey. However, it should be noted that obtaining a survey in Philadelphia for residential properties is not common practice, although in certain less-developed areas, it is highly recommended.
  7. Roadways, Streams or Easements and Riparian Rights and Title to Fill In Land. This exception evidences risks regarding title which might be disclosed by a physical inspection. Easements generally regard utilities or rights of ingress or egress. Riparian rights references the right of the Commonwealth to land which may be part of a water way.
  8. Easement of a 15 ft. wide driveway.
  9. Proportionate part of expense of keeping the driveway in good order. A shared driveway is generally the expense of each adjoining property owner, unless some different arrangement is made by written agreement.
  10. Recorded Rights, Restrictions, Easements and Covenants that may appear of record. This refers to specific documents which are recorded against the property. If any exist, they should be disclosed by the title company and reviewed to see if they impact upon the intended use of the property.

V1061:

See Items 1-7 above.

## **SCHEDULE C - DESCRIPTION AND RECITAL**

Schedule C is a metes and bounds description of the property. If a survey is available, then the description should be compared against the survey. If a prior deed is available, then the description should be compared against the prior deed. The description sometimes includes easements which benefit the property – those are done by a “together with” clause. See, for

instance, the easement for the three-foot wide alley in the Record Owner and Lien Certificate that is discussed below, and the easement for the driveway set forth in order V1075.

Schedule C will often include a “recital.” A recital is the description of the manner in which title was vested in the grantor. For V1075, it is noted as being the same premises which were granted by a deed to the grantor. For V1061, the title is more complicated. Title at one point was in a husband and wife. Following the husband’s death, title passed to the wife by right of survivorship and thereafter title passed from the surviving wife pursuant to provisions set forth in a will, which was probated.

## **ADDITIONAL LIMITATIONS OF TITLE COMMITMENT**

**A title company has no liability under a title insurance commitment.** If it is determined that there was an error or omission in a title insurance commitment and a title insurance policy was not obtained, there is no recourse against the title insurance company. In most cases, the premium for title insurance is regulated. If a lender with a mortgage is involved in the transaction, they will undoubtedly require title insurance. In such case, the additional cost for a title policy which covers the owner is nominal, but must be expressly requested. For clients who elect not to obtain title insurance, it is important that they understand that it is different from property insurance, which they hopefully will obtain.

A title search does **not** disclose the following and will not be included in a title commitment unless the title company or agent is informed of the facts: marital status (such as a divorce); death of fee owner; or status of delinquent real estate taxes which have not been reduced to lien.

A title search does **not** involve a physical inspection of the land and buildings unless the title company or agent is informed of facts. The title commitment does not disclose the physical condition respecting buildings or the land, environmental contamination, nor does a title commitment disclose whether the property is in compliance with zoning regulations, subdivision or building and housing codes. For that reason an inspection should be made of the property if possible. In addition, if a survey is available it should be examined.

## **RECORD OWNER AND LIEN CERTIFICATE**

A Lien Certificate is somewhat similar to a title commitment. It differs primarily in the manner in which items are presented and it does not list many of the requirements set forth in a title commitment. This is because there is no intention of using the Lien Certificate as a basis for title insurance.

V1115:

This Lien Certificate does provide that the abstract company could have liability not to exceed \$2,000. This Lien Certificate includes: a description of the property, a Recital with respect to the manner in which title was vested in the current owner, and encumbrances against title. Such encumbrances are taxes, water and sewer rents, a mortgage and list of what are called requirements/exceptions, including an extended list of judgments. The listed judgments may or may not affect the property. Typically, all names that are the same or somewhat similar to

the name of the grantor are listed, which can result in non-applicable judgments being listed that do not apply to the subject property.

## **L&I CERTIFICATE**

In Philadelphia, and many other municipalities, a certificate from licenses and inspections or its equivalent can be obtained. However, its value as compared to a physical inspection (especially if by a professional) as evidencing that there are no problems with the property should not be overstated. In Philadelphia and those jurisdictions which provide such certificates, the certificates inform of the conditions as noted in the records, but the request does not trigger an inspection for compliance. In Philadelphia it is possible to inspect L&I records without paying for a certificate.