Top 10 Title Defects Cured

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Break in the Chain of Title
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QUIET TITLE!
Break in the Chain of Title

What is a “Chain of Title”?

• Documents
• Actions
• Operation of Law
Break in the Chain of Title

How is it “broken”?

• Lack of transfer of title
• Lack of evidence of transfer of interests
• Lack of evidence in “public records”
Break in the Chain of Title

How can it be “fixed”?  

• Curative Documents in the Chain  
• Marketability/Merchantable title statutes  
• Affidavits  
• Quiet Title actions
#9
SELECTED RIGHTS OF THIRD PARTIES

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#9 SELECTED RIGHTS OF THIRD PARTIES

ANNOYING RIGHTS THAT TIME MAY CURE

• Contracts for Deed
• Options and Rights of First Refusal
• Rights of Reverter or Reentry
• Sleeping Minerals
Lis Pendens are a Problem

- Ignore them
  (but LEGIS DEVITA aka BEWARE THE LAWYER!)
- Expunge Them
- Interlocutory order
- si iuris proscriptae erunt tum soli proscript et cum peritis (if lawyers are outlawed, only outlaws will have lawyers)
Why Tax Titles are Unhappy Titles

- The pesky constitution
- Neurotic Predecessors
- Federal National Mortgage Association (FNMA or Fannie Mae)
- Federal Home Loan Mortgage Corporation (FHLMC or Freddie Mac)
- Federal Deposit Insurance Corporation (FDIC)
Food For Thought

- Perishable Agricultural Commodities Act (PACA) [Eat Nuts]
- Packers and Stockyards Act (PSA) [Fish]
- Get Affidavits
Office of Foreign Assets Control (OFAC) is NOT Your Friend

- Check Names
- Establish course of conduct and proof

Just Kidding! OFAC is everyone’s friend
Mortgage Defect: an error or imperfection in or the existence of documents filed of record in connection with a mortgage financing transaction between two parties, resulting in an exception to title coverage.
Common Occurrences

What type of mortgage related defects?

- Unrecorded Releases of Lien
- Missing or Defective Assignments
- Intervening Mortgages or Filings
- Errors in Security Instruments and Deeds
Unrecorded Releases of Lien

- Release vs. Satisfaction
- Evidence of Payoff or not?
- Lost/Defunct Lenders
- State law requirements for releases
  - Statutory procedure
  - Statutory cures
- Title underwriting considerations
Practice Pointers

- Verify underwriting requirements
  - What must be done to clear the exception?
- Curing the defect
  - If located, record
  - Obtain a new one from the current noteholder
- Check for statutory relief
  - Statute of limitations/time lapses
  - Attorney affidavits
- Search for lost lenders and current noteholder
  - Clues from chain of title
  - Helpful websites or filings
Missing or Defective Assignments

- Effect of the assignment
- Improper or defective on its face
- Unrecorded assignments
- Assignments to MERS
Practice Pointers

- Verify title requirements
  - What *must* be done to clear the exception?
- Can the defect be cured by affidavit or corrective instrument?
  - Intentions of party otherwise clear
- Have lender record assignments in possession or re-create/file affidavit if lost
Intervening Mortgage or Filing

- Construction
- Bridge financing
- Self Help or Neighborhood Deals
  - Homemade assumptions
  - Internet form conveyances
- Mineral Leases
Practice Pointers

- Verify title requirements
- Review state law
  - Check validity of the filing
  - Is there a clear legal disposition?
- Negotiating with the parties
- Filing documents or corrective instruments to reflect the intentions of the parties
Errors in Security Instrument or Deed

- Name Issues
- Trust Vesting
- Dates, Terms, Property Descriptions
- “Scrivener” Errors
- Errors in filing
Practice Pointers

- Verify title requirements
- Filing to correct filings
- Affidavits to insure around
- Trust Amendments, as available
- Correction Instruments
  - May or may not cure the defect
  - Public filing indices
  - Name correction by deed or affidavit
Statutory and Common Law Theories

- Equitable Mortgage
- Equitable Subrogation
- Constructive Notice
- State Statutes addressing validity in case of failure to strictly comply.
#7 Judgments and Liens
(and other hindrances)

- Judgments
- Lis Pendens
- Superpriority Liens
- Federal Tax Liens
- Mechanic’s Liens

Cartoon: garyvarvel.com
How Judgments Differ From Liens

- A **judgment** is a debt-repayment security for one or more creditors when a court order places a claim on a property situated within that court’s jurisdiction. Judgments are involuntary.

- A **lien** is a qualified security interest a creditor has over specific property of a debtor as security for the debt or charge or performance of some act. May be voluntary or involuntary.

Source: adapted from Black’s Law Dictionary
Judgments

- Civil monetary (including small claims)
  - State statute dictates attachment and duration
- Which **must** be dealt with?
  - Review in context of transaction and title exceptions

- Dealing with Lis Pendens
  - Serve as constructive notice
  - Statutory validity and procedure (Tex. Prop. Code §§ 12.007 and 12.008)
Liens

- Superpriority
  - HOA/COA Association, Ad Valorem
- Governmental Agencies - Federal, State, Municipal
- Mechanic’s Liens
  - State statutory requirements
  - Discharge/Release
  - Contractor Disputes
Practice Pointers

- Verify title requirements
- Reviewing the judgment
  - Proper parties, jurisdiction, attachment
- Negotiating with judgment creditors
- If superpriority – Pay it!
- Mechanic’s Lien Cleanup
  - When construction is complete
  - When construction is ongoing
Clearing the Hurdles

Always know:

- Title rules applicable to your situation and jurisdiction
- Look for exceptions or insuring around provisions after verification
- Lender guidelines applicable to the transaction

Consider underwriting counsel a resource

Goal: Closing the transaction
Legal Description Errors
Legal Description Errors

Quiet Title!
Legal Description Errors

What caused it?

• Typo
• Use of “new “ legal from surveyor
• Bad Monument
• Overlap of record
Legal Description Errors

Intrinsic Description Problems
Legal Description Errors

The NORTH 3 Acres of
Goyle Lot 3

Shoreline
Shoreline

3

A

B
Legal Description Errors
Cures?
- New Survey
- Boundary line agreement
- Quiet Title
- Adverse Possession
DEED in LIEU

(IF YOU CAN)
Foreclosure Issues

Where are you?
Foreclosure Issues

Judicial or non-judicial process?

- Where are you in the process?
- Pre, during or Post determination
- Trustee's deed v
Foreclosure Issues

What is the issue?

• Lender deficiencies
• Service or notice deficiencies
• Document deficiencies
• Foreclosure defense
Foreclosure Issues

How long ago?

Property Vacant?
#4 – Estate Issues

- Primary Issue: Breaks in Chain of Title
- Affidavits of Heirship and Heirship Proceedings
- Intestacy
- Independent vs. Dependent Administration
- Small Estates
Caveat: Court records trump!

An ounce of prevention

- Representing the seller/buyer/refinancing party
- Responsibility of parties to the transaction

When probate proceedings must be filed

- Obtaining letters testamentary
- Temporary orders/Permission to sell property
EASEMENTS, ENCROACHMENTS, AND SETBACK ISSUES

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Getting Rid of Easements the Old Fashioned Ways

- Beware the Ides of Necessity
- Location, Location, Location
- Relocation, Relocation, Relocation
Challenging Ways to Make Easements Disappear

- Abandonment Issues
- Prescription for Failure
Making CC&Rs like Setback Lines Go Away

- Laches are painful
- Waivers are objectionable
- Talking out Estoppel
Encroachments

- May cause unmarketability
- But if minor
- For prescriptive period
Unpaid Taxes
Unpaid Taxes

PAY THEM

(IF YOU CAN)
Investigate

• Current or Delinquent?
• Tax or Special Assessment?
Unpaid Taxes

• What caused the issue? (besides failure to pay!)
  Wrong Tax Parcel identifier?
  • Description or address?
  • Old Identifier, new subdivision
Unpaid Taxes

Tax sale buyer

• Rights

• Obligations
Unpaid Taxes

Other Helpful hints:

• Check the Purchase Contract

• Check the Title Policy
FRAUD AND FORGERY

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#1 FRAUD AND FORGERY

Charles Ponzi
(1882-1949)
The Ponzi Scheme
His name says it all
Victor Lustig
(1890-1947)
He owned the Eiffel Tower (?)
George Parker (1870-1936)
He actually sold the Brooklyn Bridge more than once! Shame on him
Yazoo Land Scandal

• Massive land fraud
• But Georgia’s word is its gold
• Don’t mix it up with Pine Barrens (the producers) Speculation
Popular fraud Schemes

- Foreclosure Rescue (oxymoron it is)
- Equity Skimming
- Rental Fraud
- The Ostrich Defense
- Borrowing Escrow Funds (United States v. Thyfault)
#1 FRAUD AND FORGERY

Forgery
- Forged Releases
- Counterfeit
- No Bona Fide Purchaser (E
- SCAM
- FRAUD
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