

# You can't buy if the title isn't 'clear'

by Carlton Smith  
for the Tundra Times

As property ownership changes hands from seller to buyer, title insurance is a critical part of making sure that the seller provides good, and "clear" title for the buyer when the sale is completed.

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## OPINION

Title insurance serves to set out and organize all those facts about the property that exist at the time of the proposed sale. These facts include the location of improvements to the property, such as buildings, fences, driveways and rights-of-way.

Also included is a review of any and all judgments or legal claims against the property and its seller that may have been claimed such as federal tax liens. These facts also include a thorough review of second deeds of trust that are recorded, which show other financial obligations that have been made using the property as collateral.

Title insurance and the protection it offers is usually paid for by the seller in a real estate transaction. The "coverage" literally insures the buyer against situations where the property has defects of title, which may include third-party claims of ownership or what are called "encroachments" which can include problems with how the structure or access to the structure on the property interfere with the existing lot lines or easements for utilities on the property.

When a sale of property is assembled for buyer and seller to consider, the seller usually pays for the title policy. This policy, as a selling cost for the seller, sets out for the buyer the complete records of existing title; it also insures that the buyer will not be involved in accepting title to a property that has known defects in its ownership record; and where a lender is involved a title policy "searches" the recorded local records for assurances that the buyer of the property has no outstanding claims against him at the time he purchases the property.

Companies providing title insurance also offer what is called "escrow services" for buyers and sellers. This service executes uniform and accepted procedures for transactions to be completed where the government requirements have to be met.

Specifically, most lenders require the use of a Housing and Urban Development settlement statement showing the costs borne by both sellers and buyers. Regulation Z, a federal disclosure regulation which requires disclosure of total payments and interest paid during the term of a loan is an example of the detail that title companies must provide when a transaction is completed by a trusted third party, often known as an escrow agent.

One of the biggest problems for title companies in rural Alaska is completion of surveys. Rural surveys are often hard to obtain, and a great deal of time is often spent in obtaining survey information that will relate to rural parcels changing hands.

Let's look at a recent example of how a seller of a remote parcel in the Brooks Range offered his property for sale to a couple from Fairbanks.

The acreage, to be sold on a land contract for \$10,000 cash, was to be



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transferred within 10 days of the contract completion. Before the buyers paid the seller the balance due, they consulted a real estate broker who suggested that the buyers "protect" their investment of cash by requiring the seller to produce a title report and evidence of "good title" before the sale was completed.

They followed his advice and found the following:

- The seller had no legal "right" to the property. Instead the title of the property was held by the U.S. government.

- The subdivision plat recorded in 1988 was not approved by the appropriate governmental authority.

- The "owner" had a sizable tax lien payable to the Internal Revenue Service.

The buyers, upon reviewing this report, made the decision to drop the sale and sought to seek recovery of the \$500 deposit they had sent to the seller as earnest money on the contract.

They were fortunate enough to have insisted on a title report before completing the transaction. Title insurance in this case, protected them from fraud by a seller who did not have "clear" title to pass on to them in this particular sale.

In our state, at least two Alaska Native Claims Settlement Act corporations have invested directly in title companies that offer services to the real estate community. Stewart Title Co., an Alaska corporation with a Texas-based parent corporation is a significant investment for Calista Corp.

Stewart Title offers a series of educational courses and seminars in Anchorage for the real estate industry and students of business. According to Art Eash, president of the company, Stewart Title looks forward to the continuing recovery of the Anchorage and Alaskan economy.

Eash describes the work of title agents as "demanding, exacting work, with attention to detail and the changes in laws and regulations critical to our success."

At Stewart Title's Anchorage office, Calista shareholder Sharon Chase assists Eash with a variety of administrative duties, while attending full-time as a student at the University of Alaska Anchorage. Stewart Title has established an intern program at the company to allow the individual to "capture a level of understanding of the title business and couple this with utilizing her educational background." Stewart hopes to bring her on full-time upon graduation.

In Ketchikan, the Cope Fox Corp. Board of Directors saw fit several years ago to invest in the future of Southeast Alaska's title business by investing as 100 percent owner in Ketchikan Title Corp.

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Bill Williams, Cape Fox president, describes Ketchikan Title as a "well run, profitable company," under the leadership of general manager Bob Norton. Norton, who has hired shareholder Dan Williams to train for the position of accounting and recording officer, looks to Williams to assume full-time duties in this position this summer.

Sellers of real estate in Alaska need title services for putting transactions together and to insure property transfers for both buyers and sellers.

These are safeguards that are necessary for all concerned, including lenders that want protection against buyers that may have existing claims elsewhere against them such as tax liens.

While some delays in completing a transaction may be experienced when title reviews are conducted, title insurance is a necessary ingredient for a successful sale.

As our example pointed out, it is necessary that a transaction be handled in a complete and legal fashion to protect all interests involved. If you have questions about title insurance or the services that can be provided by an escrow agent, contact your banker, real estate broker or attorney for advice. All can offer you direction on the selection of a title agency to assist you.

*Carlton Smith is an associate broker of real estate and a director of Sealaska Corp.*