

LAWYERS LINK



WHAT YOU SHOULD KNOW ABOUT MARKETABLE TITLE IN REAL ESTATE

The last thing anyone wants in real estate is to be unable to buy or sell a home because of title problems. Defects or “clouds” on title at the very least can stall the real estate transaction, taking anywhere from days to months to resolve.

What is marketable title?

Marketable title is a concept in property law referring to a title free from any claims or disputes about the ownership, or from any threat of litigation. When a seller is selling property

to a buyer, an implied promise is that the seller will deliver marketable title to the buyer. A marketable title may also be referred to as good title, merchantable title, or clear title.

What is unmarketable title?

Title affected by an alleged or apparent matter that would permit a prospective buyer or lender to be released from the obligation to purchase or lend if there is a contractual condition requiring the delivery of marketable title.

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What factors prevent a clear title?

A myriad of factors can prevent clear title and interfere with the closing process. Here are the most common:

- Unknown or missing heirs
- False impersonation
- Liens
- Prior owner judgments
- Clerical errors in public records
- Forgery
- Fraudulent document execution
- Inaccurate representation of marital status
- Improper probate of wills
- Boundary, survey, or easement inaccuracies
- Unreleased deed of trust

How are title defects resolved?

Resolving defects on title varies depending on the issue preventing clear title and the circumstances surrounding it. The best way to protect against title problems is to work with a highly experienced title agent, ensure a thorough title search is conducted, and purchase Owner's Title Insurance. In some cases the courts may need to get involved to "clear" title and render it marketable. In others, liens or judgments must be satisfied, or necessary paperwork completed to remove title defects before closing.

Can a property be transferable even though the title is unmarketable?

Although an unmarketable title does not mean that the property cannot be transferred, it does mean that there are certain defects in the title which may limit or restrict its ownership to such an extent that a purchaser cannot be forced to accept a title that is materially different from the one bargained for in the contract of sale.

Marketable Title vs Insurable Title

As mentioned, marketable title is title to a property that is free and clear from any defects. Insurable title is title to a property that an insurance company is willing to insure irrespective of there being any type of title defect. Marketable title is a much higher threshold to reach when compared to insurable title.

Title Insurance

Title insurance protects the lender and owner against title defects identified after the transaction closes. Most lenders require a Lender's Policy, and buyers are strongly encouraged to purchase an owner's policy to insure against significant financial loss. In some cases the cost of an owner's policy may be included in seller concessions. Even if title appears to be "clear," purchasing title insurance is highly recommended.



MONTHLY INDUSTRY TERMS

Assumption of Mortgage

An obligation undertaken by a new purchaser of land to be liable for payment of an existing note secured by a mortgage.

Caps

Consumer safeguards that limit the amount the interest rate on an adjustable rate mortgage can change at each adjustment or over the life of the loan.

Discount Point

An additional charge made by a lender at the time a loan is made. Points are measured as a percent of the loan, with each point equal to one percent.