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Middletown Title Presents...

A Primer to Home Buying

Notes:

PRIMER 1

Find a Lender

Pre-approval

How much home can I afford? How will my credit affect me? These are all questions that your lender can help you answer. It's important to have someone help you with these financial issues. You need to create a budget. Determine your monthly income and your monthly expenses. Write these figures down prior to seeing your lender. Remember to bring your current paystubs, W-2's, tax information, etc. Your lender will then "pre-approve" you for a specified amount. Take this pre-approval to your real estate broker. This will allow both you and your broker to know which homes will be within your price range.

PRIMER 2

Find a realtor

But I'm buying a home, not selling.

Many people think that you only need a realtor if you are selling your home. A realtor has access to hundreds of homes in the area. Simply give them your price range, type of home you're looking for, and they do the work for you. Remember that you don't pay for your realtor, in this instance. The SELLER pays for YOUR realtor.

PRIMER 3

What's under the hood?

Get it inspected...

There can be potentially several problems that may not be obvious to the untrained eye. Having a home inspector or pest inspector can give you piece of mind that your new home has no "hidden" surprises.

PRIMER 4

The Title Search

What's in a title search?

You've decided to purchase a home and hope to take possession as soon as possible. The terms have been agreed upon and all the financial arrangements have been made. But there's one important detail remaining. Before the transaction can close, a title search must be done.

The most accurate description of title is a bundle of rights in real property. A title search is the process of determining from the public record just what those rights are and who owns them.

A title search is a means of determining that the person who is selling the property really has the right to sell it, and that the buyer is getting all the rights to the property (title) that he or she is paying for.

In those transactions where title insurance is involved, the title company must determine insurability of the title as part of the search process. This leads to the issuance of a title policy, which insures the existence or non-existence of rights to the property.

What are the steps to a title search?

Chain of Title

This is simply a history of the ownership of a particular piece of property. It will state who bought and sold it, making sure that all documents were executed correctly and that all liens had been taken care of. This information may be derived from public records (usually from the county recorder's office.)

Tax Search

This is a search to determine the present status of general real estate taxes against the property. The tax search will reveal if taxes are current or whether any taxes are past due and unpaid from previous years. In addition, the tax search will indicate the existence of any special assessments against the land and whether or not these assessments are current or past due.

AN IMPORTANT NOTE IS THAT ONLY THE COUNTY RECORDS ARE CHECKED. IF YOU ARE BUYING PROPERTY THAT MAY HAVE BEEN ASSESSED A LIEN BY LOCAL AUTHORITY (SUCH AS A NOXIOUS WEED ASSESSEMENT OR AN UNPAID WATER BILL), IT IS UP TO THE BUYER TO CHECK FOR SUCH LIENS WITH THE LOCAL AUTHORITY. **This normally occurs in a foreclosure where no one has been taking care of the property.** Remember that only the county records are checked, no local, city, or other authority's records are checked.

Judgment and Name Search

One of the most important parts of the title search is to determine if there are any unsatisfied judgments against the seller or previous owners which were in existence while they owned the title. A judgment is a general lien against the debtor's real estate and constitutes security for any money owed under the judgment. The real estate can be sold to satisfy the judgment.

Rights established by judgment decrees, unpaid federal income taxes (good for 10 years), Ohio liens (good forever), and mechanic's liens all may be prior claims on the property, ahead of the buyer's or lender's rights. If a judgment is discovered that constitutes a defect in the title, it is pointed out, and the seller must then eliminate it before the title of the new buyer can be insured free and clear of that judgment.

Commitment

When these searches have been completed, the title company issues a commitment to insure, stating the conditions under which it will insure the title. The buyer, seller, and mortgage lender can proceed with the closing of the transaction after clearing up any defects in the title which may have been uncovered by the search and examination.

The mortgage lender is as concerned as the buyer about the quality of the title because the property is to be security for the new mortgage loan. The mortgage lender requires assurance that it has a valid first mortgage lien (or another acceptable priority) on the property.

The lender's title insurance, however, does not protect the new buyer. Although the land is the same, the interest of the buyer and the interest of the lender are very different. The provisions of a lender's title insurance policy are very different from those of a buyer's policy, so the buyer should obtain his/her own policy often issued simultaneously with the lender's policy.

What the homebuyer should know about title insurance

Why the Buyer Needs Title Insurance

Without a title insurance policy, you may not be fully protected against errors in public records, hidden defects undisclosed by the public records, or mistakes in examination of the title of your new property. As a result, you may be held fully accountable for any prior liens,

judgments or claims brought against your new property. However, your policy insures that if such an occasion arises, you will be defended free of charge against all covered claims and paid up to the amount of the policy to settle valid claims. With a title insurance policy, you do not need to worry that your new property's history will tarnish your bright future.

The Lender's Policy

A lender goes to great lengths to minimize the risk of lending money for the purchase of real estate. First, credit is checked as an indication of the borrower's ability to repay the loan. Then the lender seeks assurance that the quality of the property's title to be acquired is satisfactory. The lender does this by obtaining a loan policy of title insurance.

NOTE: The loan policy does not protect the borrower.

The loan policy protects the lender against loss due to unknown title defects. It also protects the lender's interest from certain matters which may exist, but may not be known at the time of the sale.

This policy only protects the lender's interest. It does not protect the borrower. That is why a real estate purchaser needs an owner's policy which can be issued at the same time as the loan policy for a nominal one-time fee.

What is the danger of loss?

If the lender has title insurance protection and the owner does not, what possible danger of loss exists?

As an example, assume real estate was purchased for \$150,000. A down payment of \$30,000 was made, and the lender held a \$120,000 mortgage lien, or beneficial interest. The lender acquired title insurance protecting the lender's interest up to \$120,000. But the purchaser's down payment of \$30,000 would not be covered.

What if some matter arises affecting the past ownership of the property? The title insurance company will defend and protect the interest of the lender. The purchaser, however, will have to assume the financial burden of his or her own legal defense. If the defense is not successful, the result could be a total loss of title.

The title insurance company will pay the lender's loss and will be entitled to take an assignment of the borrower's debt. The purchaser will lose the down payment (\$30,000.00), other equity in the property that may have accumulated, the property, **AND THE BALANCE (\$120,000.00) ON THE NOTE IS STILL DUE!**

How can there be title defect if the title has been searched and a loan policy issued?

Title insurance is issued after a careful examination of copies of the public records. But even the most thorough search cannot absolutely insure that no title hazards are present, despite the knowledge and experience of professional title examiners. In addition to matters shown by public records, other title problems may exist that cannot be disclosed in a search.

Remember that you cannot hold the title company liable for any missed liens. There is only privity of contract between the lender and the title company. Simply put, the lender hired the title company and not the borrower. Therefore only the lender, not the borrower, can go after the title company for a title problem.

What title insurance protects against.

Errors/omissions by county officials or their employees in maintenance of public records.

Errors/omissions by employees of the company in the process of examining and insuring the title to the real estate described in the policy.

Missing heirs as a result of incomplete, wrongful, or non-existent probate court records in the chain of title.

Estate Tax Liens

Dower of spouses of owners in the chain of title whose interests were not disclosed in the public record, or the release of which was not properly secured.

Invalidity or impropriety of judicial actions in matters affecting the transfer of title or ownership of the real estate described.

Deeds of record obtained by fraud, or deeds of record which may be forged by reason of which the insured's title is defeated.

Forged mortgages, releases, waivers, assignments and cancellations of mortgages and mortgages cancelled by mistake.

Divorce proceedings outside of the county in which property is located.

Bankruptcy proceedings had in a foreign county.

False personation of the true owner of the land.

Deeds and mortgages made by minors or persons of unsound mind.

Deeds executed under expired powers of attorney.

Deeds of record which may be ineffective because delivered after the death of grantor or grantee, or without the consent of grantor.

Missing dower interests in title by reason of deeds by persons representing themselves as single, but who are actually married.

Birth or adoption of children after date of will.

Wills not probated, or wills probated after deed is executed and delivered by heirs.

Deed never delivered, but appears of record.

Release of dower of minor, husband or wife, under 18 years of age when there is no record proof of age of minor.

Falsification of records

What protection does title insurance provide against defects and hidden risks?

Title insurance will pay for defense against any lawsuit attacking the title as insured, and will either clear up title problems or pay the insured's losses. For a one-time premium, an owner's title insurance policy remains in effect as long as the insured, or the insured's heirs, retain an interest in the property, or have any obligations under a warranty in any conveyance of it. Owner's title insurance, issued simultaneously with a loan policy, is the best title insurance value a property owner can get.

How much does an Owner's Policy cost?

The policy is issued in an amount equal to the purchase price (Owner's) or loan amount (Lender's). Fees for the insurance policy are regulated by the State of Ohio. This means that policy amounts are the same throughout the State.

Let's say that Ed buys a house for \$150,000 and obtains a loan for \$120,000. A loan policy for a \$120,000 loan will be \$480. An owner's policy for property worth \$150,000 will be \$862.50. You can get a discount if you purchase an owners policy within 30 days of the purchase of a loan policy.

Simultaneous policy is calculated as follows:

Owner's policy plus \$100.00 ($\$862.50 + \100.00) = \$962.50

Less Lender's policy paid of \$480

Equals the simultaneous policy rate of $\$962.50 - \$480 = \$482.50$

SO IF ED GETS AN OWNERS POLICY WITHIN 30 DAYS OF THE CLOSING, HE ONLY HAS TO PAY \$482.50 FOR HIS OWNER'S POLICY, NOT \$862.50!!

THAT'S LESS THAN ½ OF 1% OF YOUR PURCHASE PRICE TO PROTECT YOUR REAL ESTATE INVESTMENT!

PRIMER 5

The day of the closing

What do I bring?

- 1.) **CERTIFIED FUNDS** - Certified fund or cashier's check if \$1000.00 or over.
- 2.) **INSURANCE**
 - a.) **Need "Dec" sheet** – shows the amount of coverage (must be at least the amount of your loan. Also, your lender must be listed on the mortgagee clause.
 - b.) **Paid receipt.**
- 3.) **DRIVER'S LICENSE** – A title company needs to make a copy to verify who you are.
- 4.) **FHA/VA** – You'll need to bring the termite inspection.

PRIMER 6

What documents will I see at closing?

Kill a tree, sell a house (there's a lot of documents to sign!)

FROM THE TITLE COMPANY

- 1.) **HUD or Settlement Statement** – This discloses all the costs associated with your closing. It discloses the fees from everyone involved in the closing.
- 2.) **Name Affidavit** – You promise that the person you claim to be is really you and aliases are really you.
- 3.) **Tax proration** – You hold the title company harmless from any assessments not entered into the county computers when the real estate taxes are checked.
- 4.) **Privacy disclosure**
- 5.) **Notice to borrower** – This notice is that the title company only performs a title exam for the lender's behalf and not yours.
- 6.) **Information release** – Authorizes the title company to release any information in order to complete your closing transaction.

FROM THE LENDER

- 1.) **Note** – The bank promises you \$\$\$ and you promise to pay the lender \$\$\$ back. It will disclose the following:
 - a. Interest rate – is it the same as what you locked-in?
 - b. Principal and Interest payment (only, does not show any escrow amount)
 - c. Term of loan (30 yrs., 15yrs.)
 - d. Fixed or Adjustable rate – If adjustable, know the terms (when it adjusts, maximum rate loan can go up to.)
 - e. Prepayment penalty – **Did you agree to one?**
 - f. Late payment penalty – Typically if you are more than 15 days late, it's 5% (4% FHA) of that particular payment.
- 2.) **Mortgage** – This allows the bank to foreclose against the property, if you default upon the note. The mortgage has a lot of verbage!! One way to look at a mortgage is that if you loan \$150,000.00 to someone, what would you want them to do and not to do on the property (eg. Keep the property insured, not to store hazardous waste, etc.)
- 3.) **Escrow disclosure** – This shows what's being paid throughout the year from your escrow account, if you have one. An escrow account is extra money that is paid to your lender each month on top of your principal and interest. Your lender holds this money until it is time to pay your real estate taxes or homeowner's insurance. Also, your lender collects (usually 2) extra payments called a "cushion." Your escrow account is re-evaluated every 12 months. This means that if an assessment was put on your property within the 12 months, you may end up with a shortage in your escrow account. Your cushion helps "cushion" the shortage that may result.
- 4.) **Compliance agreement** – You're affirming that if any clerical mistakes are made (yes even lenders and title companies make mistakes) you agree to cooperate in helping correct those mistakes (Document needs to be re-executed, or misspelling of name, etc.)
- 5.) **W-9** – Best document in the house! It gets your taxpayer identification number so that you can write your interest payments off of your taxes.
- 6.) **4506** – This authorizes the IRS to release your tax transcripts to state or federal auditors. These auditors are looking to make sure that no "bogus" loans are being made.

- 7.) **Truth in Lending (TIL)** – The TIL gives you the following information
- a. Shows the total principle and interest over the life of the loan. A good rule of thumb is that if for a 30 year loan you make 1 extra payment each year, you'll knock 7 years off of your loan.
 - b. APR – Annual Percentage Rate – This IS NOT the rate you are paying on the note. The APR factors in prepaid closing cost and the rate you are paying on the note. It is federally mandated and again is not the rate you are paying on the note itself.
 - c. Assumption – JUST SAY NO TO ASSUMPTIONS! If you sell your house and have someone assume your loan, you are still liable if the buyer defaults on the note! Many loans are not assumable anymore (FHA and VA loans are assumable).

FROM THE SELLER

- 1.) **Deed** – There can be many different types each with a different type of warranty.
 - a. Quit Claim Deed – This type of deed is where the Seller gives NO warranty to the Buyer.
 - b. Limited or “Special” Warranty Deed – This type of deed is from a Lender or a Governmental Entity like HUD. Here the Seller only warrants from the time the Seller obtained the property forward. So if there are any problems in the past before the Seller obtained the property, it's your problem.
 - c. Warranty Deed – This is where the Seller warrants that they own the property, that there are no liens on the property, and that there are no problems with the title from the previous owners as well.
 - d. Survivorship Deed – This is typically a Warranty Deed, but is beneficial where there are two owners (typically a spouse.) If one spouse dies, the property is transferred to the survivor and avoids the probate process.

Remember that preparation is key to a smooth closing. Don't be afraid to ask questions from your Lender, your Realtor, or your title company (hopefully Middletown Title Agency!). Make a folder and collect all documentation from start to finish. We hope you'll find this primer helpful. Congratulations on your way to home ownership!

This Primer is for informational purposes only. It is advisable that you obtain the advise of an attorney should you have any legal questions regarding any real estate transaction.