

How to Clear up the Title on Your Real Estate

By Peter Squier

Some people are under the false impression that they own the house in which they are living. However, once the property's title is properly researched, the actual property owner is often found to be unclear. An owner of a property has "title" to their property, which means the property is vested or "titled" in his or her name. This report identifies potential issues with property ownership and methods to resolve the title concerns.

There are official laws and regulations that must be followed to establish the true ownership of real property. A person intending to transfer property should follow these laws and regulations when transferring ownership, or the intended new owner of the property may face challenges and doubt as to his or her true ownership. When the title to a property is unclear, an owner cannot properly sell the property, nor can he or she use it as collateral to secure a mortgage or loan. An owner must clear up any title problems before he or she can confidently exercise any ownership rights. Done properly, the "title curing" process will officially



establish title in the appropriate owner or owners' names.

This article will explore the situations that cause most title problems along with ways to clear them up. **The author is not an attorney so this should not be considered professional legal advice.**

Title problems can arise when:

- A person dies without a will;
- A couple separates but never officially gets divorced;
- A couple gets divorced and one spouse remains in the house;
- An owner verbally tells another person he can have the house;
- A person inherits a property and then gets married;
- A person receives an invalid deed;
- A transaction does not get recorded with the county clerk;
- A person has a quitclaim deed; or
- A lis pendens has been filed on the property with the county clerk.

A Person Dies without a Will

Wills are designed to allow a deceased person to instruct others how his or her property is to be distributed upon

Your tax office may offer delinquent tax installment plans that may be less costly to you. You can request information about the availability of these plans from the tax office.

death. When someone dies, an executor carries out the instructions in the will, including the legal transfer of real property. The result is the estate conveys a warranty deed to one or more people. This warranty deed is filed in the real property records of the county or counties where the property is located thereby making the transfer official and public.

The most common title problem arises when a deceased person does not leave a will (called “dying intestate”), so there is no formal or recorded transfer of the deceased’s property to his or her heirs. To officially transfer the title from the estate to the heirs, the estate must go through the probate process in a probate court. There, the judge reviews all the facts and decides how the estate’s assets are to be distributed. The judge then issues instructions enabling a deed to be created officially transferring the property to the new owner(s). The final probate instructions are filed in the probate court records, and the deed is filed with the appropriate county clerk. Some people handle the probate court proceedings themselves, but most hire an estate planning, probate, or real estate attorney.

You must have clear title to your property in order to get a property tax loan.

All property in Texas is characterized as community or separate property. In a nutshell, anything owned before marriage is considered separate property and anything after marriage is community. However, property can be converted from one type of property to the other. If a person dies without a will or it has been four years since the person has passed and the will was never probated, then the property will pass by intestacy rules. Intestate succession in Texas follows a specific lineage chart which takes into consideration the type of property (community or separate) and the type of heirs that survive the decedent. A good article that explains the Texas intestacy laws, entitled “Issues with Inheritance – Who Gets the House?” can be found at www.PropertyTaxLoansForTexas.com/property-tax-resources/.

Those with delinquent property taxes wishing to get a property tax loan have a few choices:

1. If the estate has been probated, then the new owners can collectively take out the loan with each heir signing the loan documents,
2. If the estate is in the probate process and an executor

has been approved by the court, they then have the authority to take out a property tax loan on behalf of the estate, or

3. If the probate process has not been started and four years have not passed since the death, then most property tax lenders will accept two affidavits of heirship indicating the real heirs, and then allow those heirs to take out the loan. An “affidavit of heirship” is a document stating the family tree facts of the deceased which must be signed by two people (with no current or future interest in the property) who can attest to knowing the deceased and his or her heirs.

Once someone gets a loan on the inherited property, or provides affidavits of heirship, it does not mean that he or she now owns the property or has clear title. He or she will still need to have the estate properly probated through the probate court.

A Couple Separates But Never Officially Gets Divorced

If both spouses owned the property as community property before separating, then they will continue to own it together after separating. The length of time they are separated does not matter. Until this couple officially gets divorced and has a divorce decree that addresses the distribution of the property, they will continue to jointly own the property.

Consider this situation: A married man, who owned the community property jointly with his wife, left his wife and moved to Mexico 5 years ago. The wife, who remained in the house, had totally lost track of the husband and had no desire to see or talk to him again. Even in this instance, the husband still owns 50% of the house in which she lives. So, she could not take out a property tax loan or sell the house without his consent.

A Couple Gets Divorced, and One Spouse Stays in the House

Divorces result in a divorce court issuing a divorce decree, which spells out the distribution of the couple’s assets and liabilities. The divorce decree officially establishes who will own any property after the divorce.

Divorce decrees vary tremendously and can say anything the parties agree to. One spouse may get to live in the house, though both spouses retain 50/50 ownership. Or, one spouse may get the house with stipulations - he will have to sell it within X number of years, and then give half of the money to the other spouse. In another situation, the divorce decree might grant the property

to the minor child and not the mother. In this case, the mother has custodial rights over the child and would be able to live in the house and sign on the child's behalf. But, the mother would not be able to keep any of the money if she sold the house because that money could only go to the child.

A good divorce attorney will have warranty deeds and assumption agreements for the mortgage as part of the divorce documents that need to be signed, and he or she will file these documents with the county clerk to make the real estate transfers public information. If these documents are not provided, a divorce decree clearly awarding and divesting title can be filed at the county clerk instead. But one or the other should be filed with the county clerk; otherwise there is no way for the public to know ownership has changed. Filing at the county clerk is not required for ownership to change, but then the divorce decree will have to be produced any time title needs to be confirmed.

An Owner Verbally Tells Another Person He Can Have the House

Consider this situation: "Grandma told me if I took care of her that I could have her house." The laws do not allow for real estate to be transferred verbally. If the grandmother had Alzheimer's, she might tell this to a different person every day. It is a sad situation when this happens and very disappointing to the person who assumes he or she will get the house, but does not. A verbal promise is not sufficient to transfer ownership. It can only be done by a deed signed by every one of the heirs, or through a divorce or probate court. If there is no will, then the property will go to the relatives as defined by the state's intestate succession laws.

A Person Inherits a Property and Then Gets Married

Inherited property is treated specially. Unless the spouse is officially put onto the title, or the new spouse makes the property his or her homestead, the new spouse has no interest in the property. The spouse could not sell or take out a loan on the property because he or she has no ownership interest in it. There are special exceptions to this, but the law is clear that the title of property stays in the name of the person who inherited it.

A Person Receives an Invalid Deed

There are a number of ways a person can challenge or invalidate a deed. When these conditions apply to a deed, the owner should see a real estate attorney for help. Proper deeds describe the property, not with

an address, but with the official legal description that normally includes the county name, the subdivision, the plat page, and the block and lot number. Deeds that have a missing or incorrect legal description or that have the wrong owner name listed are considered not valid. Deeds that are not notarized by a notary public are also considered invalid. If both parties desire to fix a previously filed invalid deed, they can simply file a corrected deed with the county clerk's office.

The Deed is Not Recorded

If the Deed is not recorded at the county clerk's office, then there is no way for anyone to know about the change in ownership. Consider the possibility that an aunt signs a deed transferring the property to her niece. The niece, not knowing any better, just sticks the deed into her closet and never files it. Now there is no public evidence of the transfer of ownership. The fact the deed was not filed does not invalidate the sale, but it may mean she cannot secure a title policy, a property tax loan, or a mortgage until the niece can present the deed to prove her ownership. Many of the counties now have their county clerk records available online. Individuals who are not sure if their deed was ever recorded should go online and check, or they can contact the county clerk's office in person or by phone.

A Person Has a Quitclaim Deed

Sometimes people receive their ownership through a "quitclaim deed". A quitclaim deed (sometimes erroneously referred to as a "quick-claim" deed) is a legal instrument by which the owner (the grantor) of a piece of real property transfers his or her interest to a recipient (the grantee) but does so without any warranty or covenant of good title. The owner/grantor terminates or "quits" his or her right and claim to the property, thereby allowing any possible claim to transfer to the recipient/grantee.

Unlike normal general warranty deeds, a quitclaim deed contains no guarantee of title covenant and thus, offers the buyer/grantee no warranty as to the status of the property title. The buyer/grantee is entitled only to whatever property interest the seller/grantor actually possesses at the time the transfer occurs. This means that the seller/grantor does not guarantee that he or she actually owns the property at the time of the transfer, or if he or she does own it, that the title is free and clear. It is therefore possible for a buyer/grantee to receive a quitclaim deed but have no actual interest, and – because a quitclaim deed offers no warranty – have no legal recourse to recover their losses. Further, if the seller/grantor should acquire the property at a later date,

the buyer/grantee is not entitled to take possession, because the buyer/grantee can only receive the interest the seller/grantor held at the time the transfer occurred. In contrast, warranty deeds, which are normally used for real estate sales, contain warranties from the seller/grantor to the buyer/grantee that the title is clear and/or that the seller/grantor has not placed any encumbrance against the title.

Because of this lack of warranty, quitclaim deeds are most often used to transfer property between family members, as gifts, to place personal property into a business entity (and vice-versa), or other special circumstances. Quitclaim deeds are rarely used to transfer property from seller to buyer in a traditional property sale; in most cases, the grantor and grantee have an existing relationship or are even the same person.

Another common use for a quitclaim deed is in divorce, when one spouse terminates his or her interest in the jointly owned marital home and grants the receiving spouse full rights to the property. For example, when a wife acquires the marital home in a divorce settlement, the husband could execute a quitclaim deed eliminating his interest in the property and transferring full claim to the wife quickly and inexpensively.

Anyone who has received property via a quitclaim deed should have the title researched before investing a lot of money into the property because he or she may not really own it!

Title Disputes with a Lis Pendens Filed

“Lis Pendens” are Latin words for “suit pending” and this means a lawsuit is pending that may affect the title on the real estate. Lis pendens notices are filed with the county clerk to notify the public that there is an issue that may affect the title. It is very difficult, if not impossible, to sell a property or get a loan on property with a lawsuit on it. If a lis pendens is clouding the title on a property, a lawsuit can be filed to have the lis pendens released. When there are delinquent taxes, the owner and the lis pendens filer can both consent to a property tax loan, which will save money for whoever prevails from the lawsuit and becomes owner of the

property. Individuals whose property has a lis pendens on it should hire a real estate attorney to help protect their interest and represent them in the lawsuit.

Summary

Real estate property is one of the most valuable assets a person can own, and consequently there are laws and processes for transferring title of that valuable asset from one person to another. Failure to follow the processes correctly means ownership is either not valid or is not publicly known. People who are uncertain that they have good title to their property should contact a real estate attorney to assist them in getting clean title to the property.

Hunter-Kelsey of Texas frequently helps people with delinquent property taxes to clear up their title issues so the property owner can get a property tax loan. Clear title is required to be eligible for a property tax loan. Cleaning up the title issues sometimes requires an outside real estate attorney, but many times Hunter-Kelsey can help get things in sufficient order to qualify for the loan without the added costs of an attorney. Delinquent taxpayers who get a property tax loan, stop accruing penalties, interest and attorney collection fees associated with delinquent taxes. Hunter-Kelsey can provide the funds to settle delinquent tax lawsuits and to stop lawsuit foreclosures that otherwise might result in losing the property at a foreclosure sale.

Give Hunter-Kelsey a call if you would like to learn more about how they may be able to help you with either your title or your delinquent property taxes.



About the Author: Peter Squier is a landlord, developer and real estate investor who has bought and sold over 50 properties, many with title problems. Mr. Squier also serves as the President of Hunter-Kelsey of Texas, LLC, a property tax lender, that frequently assists its customers with clearing up the title on their property. Feel free to direct questions to him at peter@hunterkelsey.com.