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Abstract of title in real estate

A property abstract is a document that summarizes the ownership record of a piece of land. Abstracts, and related documents like title reports, are used to establish the rights of owners. The abstracting process can also uncover any defects in a title so they can be fixed. While property abstracts themselves are used less frequently in states that have title insurance, and are almost never used in some states, preliminary title reports or commitments are very similar to abstracts. An abstract is a record of a property's ownership going back as far as possible. Abstractors typically use their own records, stored in an abstract or title plant, coupled with visiting government offices to pull additional title data. After reviewing all of the documents that are related to a property, the abstractor summarizes them into a condensed document. By reviewing the abstract, you can see not only who currently owns the property, but the entire history of the property's ownership. When you own a piece of real estate, it's because someone gave you a deed to it. However, your deed is really only valid if the deed that the seller gave you is valid. Even if her deed seemed valid, an owner 60 years ago could have forgotten about an unpaid mortgage, spoiling every deed since then. Ultimately, when you trade pieces of physical land with pieces of paper, there's a risk of something going wrong. The title process assesses the validity of every owner's right, in the hope of finding an unbroken chain from when the land was first deeded to the time of your purchase. Some states, like California, don't use formal property abstracts. Instead, when you purchase a property or put a loan on it, a title company reviews the property's title and produces a report. The report isn't an abstract, though. It has much of the same information, but it is not written to prove that the title is clear. The report simply establishes the condition of the property's title so that you can buy title insurance from the title company. While an abstract of title is a start, many buyers want more protection and, if they don't, their lenders do. Title insurance, which can usually be bought on the basis of a less-expensive title report, insures you against defects in your title policy. The title insurer inspects the condition of the title, issues a policy, and if something goes wrong for a reason that is covered, they'll pay to defend your title. An abstract, on the other hand, carries weight. While it's not an insurance policy, you could sue the abstractor for malpractice if a title issue arose that wasn't covered in the abstract. A condensed history, taken from public records or documents, of the ownership of a piece of land. An abstract of title, or title abstract, briefly summarizes the various activities affecting ownership of a parcel of land. When a person or business agrees to purchase real estate, that person or business arranges for an examination of the history of the property's title. This examination is known as a title search. A title search is conducted to determine that the seller of the property in fact owns the property and has a free-and-clear title. A free-and-clear title has no clouds on it, which means that no person or business other than the seller has an interest in, or claim to, the property. The process of determining the precise ownership of a piece of land by searching an abstract is complex and laborious. Often, the title abstract does not contain every transaction or proceeding that may affect ownership of the land. The search conductor, or abstractor, usually a trained professional, must verify that the abstract is complete by reviewing recent certifications that the abstract is correct, checking for gaps in dates and certification numbers, and ensuring that a proper legal description appears with each entry. The abstractor conducts a credit and finances check on all the names appearing in the abstract to see if any of the parties has filed for BANKRUPTCY or has incurred other debts that may have caused a creditor to file a lien against the property toward payment of the debt. An abstractor must refer to many different sources to verify that the title to a parcel of land is true and correct. The abstractor verifies the original government survey, which should include gaps and overlaps in land ownership. Given improved technology, surveys have a margin of error of less than one foot. The abstractor must understand the various means of describing the exact boundaries of a piece of land and must recognize unacceptable methods. Claims on the title to a property are subject to time limitations, but the limitations have certain exceptions. For example, the Forty-Year Law holds that no party with a potential claim that arose over 40 years before can claim an interest in a property of which one person or business has been the recorded owner for at least 40 years. Exceptions are made, however, for those holding mortgages or contracts with terms that span more than 40 years and also for prior interests claimed as school or school district lands, parkland dedications, or the property of religious corporations or associations. To perform a title search, the abstractor must obtain a copy of the abstract from the county recorder in the county in which the land is located. Then it takes time to make sense of the document. The accompanying sample abstract of title illustrates typical entries. Entry 1 identifies the land in question. The sample abstract is for platted land, which is land described by lots and blocks. A platted parcel spans a certain number of feet, on a certain lot, within a certain block, within a certain city. Another method of identifying a parcel of land is by metes and bounds. For metes and bounds land, a parcel is identified by its boundaries according to their terminal points and angles. Platted descriptions are used in urban areas, and metes and bounds descriptions are used mostly in rural areas. Entry 2 is the original entry. It states the time and place that the U.S. government first conveyed this tract of land to a private individual. The description follows a progression from small to large. The parcel is identified first by its location within a certain section, which is located within a certain township, which is located within a certain range. Each range spans six miles and several townships, and each township contains several sections, which in turn are divided into quarters, which can also be divided into quarters. The last two lines of the right-hand column might read, for example, "Land Office Records, page 100. North 1/4 of Section 36, T. [Township] 32, R. [Range] 22." The original description of any parcel of land comes from the measurements of the original government survey of the nineteenth century. Entry 3 is the land patent, or John Doe's title defense. The land patent is issued by the government to operate as proof of title for the first governmentally recognized owner of the land. The land patent shows the date of the land transfer, the date the patent was filed with the government, the particular book of deeds containing the patent, and the land parcel as described in the original entry. Entry 4 reveals that John Doe platted his quarter of section 36—that is, he subdivided the land and dedicated it to the public for sale. The beginning of the entry might read, "Plat of Stoneybrook Addition to the City of New Heidelberg." Note that township 36 has become, or has been incorporated into, what is now New Heidelberg. The entry continues with the date John Doe received approval from the city of New Heidelberg, the date the subdivision was filed with the county, the particular book of plats in which the subdivision is entered, and the original description of the land. The subdivision is entered in the county's book of plats because New Heidelberg has chosen to identify its land parcels by plats, and not metes and bounds. Other means of identifying land parcels are sometimes employed. Land is sometimes identified by acres in rural areas, and by government lots for land adjacent to meandering lakes, but most of the land in the United States is identified by either plats or metes and bounds. A sample abstract of title 5. Entry 5 shows that John Doe sold a parcel of the subdivision to Richard Roe. Roe received a warranty deed, which serves as evidence of Doe's title. A WARRANTY deed means that Doe has warranted to Roe that Doe is the rightful owner of the land. This type of deed has legal ramifications that benefit the purchaser, here Roe. There are other types of real estate deeds. A purchaser receives a tax deed, for example, when he or she buys real estate sold for nonpayment of taxes, and this purchase involves procedures that differ from those of other land purchases. A sheriff's deed is given to the purchaser of land sold by court order such as in a mortgage foreclosure, and this transaction also has special legal ramifications for the purchaser. Because the land in the sample abstract is platted, the parcel is assigned a lot number, within a certain block, within the city of New Heidelberg—for example, this entry might read, "Lot 1, Block E, Stoneybrook Addition to City of New Heidelberg." The entry also contains information on when the warranty deed was signed and when it was filed with the county. 6. Entry 6 shows that Richard Roe and Ruth Roe have mortgaged their property to John Smith. With an interest in lot 1 of block E as collateral, Smith has paid for the Roes' property, and the Roes have undertaken to repay Smith. The entry shows the date the mortgage agreement was signed and the date the mortgage was filed with the county. The remainder might read, "Book 1 of Mortgages, page 10, to secure \$10,000, due January 10, 1910. Lot 1, Block E, Stoneybrook Addition." 7. Entry 7 shows that John Smith has assigned the mortgage on lot 1, block E, to William White. In other words, Smith has sold to White his mortgagee interest in lot 1, block E. An assignment can occur for any number of reasons, but often it is a sale made to satisfy debts. This particular action is entered in the book of assignments in the county seat. 8. Entry 8 shows that Richard Roe and Ruth Roe have paid off, or satisfied, the mortgage (et ux is Latin for "and wife"). This entry is filed in the book of assignments in the county seat. 9. Entry 9 reveals that Richard Roe has died. This "Will and Probate" entry reports that, upon his death, Roe seeks to transfer ownership of lot 1, block E, in New Heidelberg, to his wife, Ruth Roe. 10. Entry 10 identifies Ruth Roe as the sole owner of the parcel. The probate court, which tends to property matters surrounding the death of an individual, has approved the assignment of lot 1, block E, contained in Richard Roe's will. 11. Entry 11 shows that Ruth Roe has taken out a mortgage on lot 1, block E. She has borrowed money from Samuel Brown, using the real estate as collateral. The entry is identical to the first mortgage agreement with John Smith, entry 6. 12. Entry 12 reveals that Ruth Roe was unable to make her mortgage payments to Samuel Brown, and Brown has sought payment by exercising his right to force a sale of the property by foreclosing on the mortgage. The forced sale was published in a newspaper. The dates of public notice, the publication AFFIDAVIT, and the service of notice to Roe are all entered in the abstract. The certificate of sale and the date the forced sale was filed with the county are also included. This entry shows that Brown has purchased lot 1 at the resulting sheriff's sale of the property. The amount Brown paid would depend on the value of the real estate and the amount of the mortgage. The "No. 11" following "Foreclosure of" simply refers to the court document number of the foreclosure. 13. Entry 13 shows that Samuel Brown and Sophy Brown have sold a part of lot 1 to James Jones by quitclaim deed. Generally, a quitclaim deed transfers title to property without warranties that the title is free and clear. Owing to Ruth Roe's financial troubles, the Browns are probably uncertain of their title's completeness, so they have chosen to sell parts of their lot by quitclaim deed instead of warranty deed. Jones now owns a northern piece of lot 1, block E, of Stoneybrook Addition. 14. Entry 14 shows the taxes paid on the property, except for the current year. An entry of taxes paid is listed every time a tax assessment is made or paid in relation to the property of the abstract. Taxes listed in the abstract may include estate taxes, inheritance taxes, capital gains taxes, and local government property taxes. The abstract should include the current amount of these taxes and certification that they have been paid. 15. Entry 15 reveals that, to avoid financial disaster, James Jones has filed bankruptcy. The northern piece of lot 1, block E, Stoneybrook Addition, New Heidelberg, is now being used to secure protection from creditors. Jones has given to the bankruptcy court a trust deed, which the court retains until Jones has fulfilled his obligations under the financial rehabilitation plan approved by the court. Should Jones default on this arrangement, the court could order a forced sale of the property, with proceeds going to Jones's creditors. The land covered by this particular abstract has now been defined; it is a certain northern piece of lot 1 of block E in the Stoneybrook Addition of New Heidelberg. The land to the south of this piece would have its own abstract, which would be identical to this abstract up to the point that lot 1 was divided up and part of it sold to Jones. Likewise, the abstract for the adjacent lot 2 on block E would have an abstract identical to this abstract up to the point that John Doe sold to Richard Roe the newly platted land of section 36 in township 32, range 22, Galaty, Fillmore, Wellington J. Allaway, Robert C. Kyle, 1998. Modern Real Estate Practices, Chicago: Dearborn Trade, Jacobus, Charles J. 1986. Real Estate Law, Paramus, N.J.: Prentice Hall. Koenig, R. Harry. 1991. How to Lower Your Property Taxes. New York: Simon & Schuster. Being able to locate your abstract of title and survey can save you hundreds of dollars when it comes time to sell your home. The abstract of title is a bound packet of documents that show the chain of title for your property. When you sell your house it is generally required that you produce the original abstract. If you do not have the abstract then a new one must be created which can cost hundreds of dollars. For most of us, buying and selling our home is something that does not happen very often and may only occur once or twice in our lifetimes. This can make it difficult to locate important documents when it comes time to sell the home 10, 20, or 30 years down the road. When buying a home, there is generally another entity (i.e. attorney or bank) that will walk guide you through the process making sure that all the pieces of information get gathered. At the end of the home buying process the new home owners will get a packet of important information. Besides bank documents (copy of note & mortgage, etc.) there may be a copy of the deed, survey, and abstract of title. If you kept the packet of documents in a safe place and you remember where the safe place is, then great you get a gold star. However, if you do not have a copy of the abstract all is not lost as you may not have been given the abstract to hold. One trick for locating your abstract is to review the documents from the closing. The lender likely had a title insurance policy (and maybe you had an owner's policy) and some documents (HUD-1 or Statement of Sale) may have the title company's name on it. It is a good bet that they would have the abstract. Also, if you had an attorney then your attorney may have a copy of the abstract as well. A copy of the survey is also helpful and can save time and money because if there were no significant changes to the property then all you may need is for the survey to be re-certified rather than completely reconstructed. This can also save a few hundred dollars and help you realize the full value of your home at sale time. Contact Our Real Estate Lawyers

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