

QUIET TITLE COURSE DESCRIPTION

Quiet titles are legal actions seeking to resolve disputed interests in real property. To quiet title in itself, the land owner must prove it has title to the property which is superior to the title claims of all other persons with an interest in the property. Once the land owner makes a prima facie case, the challenger must prove a superior right or title. This legal mechanism makes it possible to grant a clear title to a single owner to “quiet” all other claims. A quiet title action effectively puts to rest any claims that may result from unclear transfers of the property that took place in times past.

There is an enormous clouded title problem in the country caused by MERS business model (an electronic database that holds more than half the mortgages nationally) being employed in every deed recording office in the country , securitization failures that have damaged the titles of the properties, and the practices of foreclosure attorneys. As a result, there are millions of properties nationwide that now have "clouded" titles.

The effect of a cloud on title affects the ability to sell the real estate because owners can't establish they own the property. Title insurance company won't insure title if they know the title is clouded. As a result, banks won't approve a mortgage loan for purchasers to buy the property if good title is lacking.

Banks' foreclosure practices and the standard securitization deal are being litigated across the country. Many Courts are holding that both processes violate real estate law, and as a result, many foreclosures are found to be invalid. Also, courts are finding that many banks are using fraudulent documents to "prove" they have the right to foreclose. This is the classic robo-signing situation seen on “60 Minutes.” Those many foreclosures are invalid, thus a cloud on the property title.

The validity of the Mortgage Electronic Registration System, (MERS) was created by member banks for the sole purpose of electronic storage of mortgages/deeds of trust. MERS does not store the promissory note. That is passed on to the subsequent trust. Many counties today are employing litigation to recover monies due them from transfers of properties that were never recorded by MERS to avoid fees. In those courts where the MERS model is illegal, a foreclosure done by MERS or by the entities it assigns the mortgage to have clouded titles. Even where the MERS model is legal, MERS has been found to have sloppy record keeping resulting in multiple banks believing they have the authority and right to foreclose on a given property.

It is important to understand right from the closing table that the note is secured by the mortgage/deed of trust. Plain and simple. The, MERS business model separates the note from the mortgage/deed of trust. This action bifurcates the security. When this occurs, neither of the instruments are secured and now become un-secured. When discharged in bankruptcy court as an unsecured debt, this opens the door to many scenarios.

The investor or certificate holder is provided an instrument that identifies only a number of investment certificates or units of investment into the Trust that pays out a percentage of the profits from the note obligor.

If, the note has been entered into the trust and there are missing endorsements, fraudulent assignments, when proven this breaks the chain of title opening the window for sound legal counseling.

In order to make the property “whole”, the title to the property would have to be quieted by a court in order for it to be “good” and “marketable” to be insured.

In order to obtain a quiet title, the claimant must request a decree from the local court of jurisdiction. As part of the process, the claimant must be able to present what the court would consider a legitimate claim to the property. For example, the claimant may be able to document that the property in question is currently occupied by the claimant. Further, the claimant would need to prove that he or she had taken possession of the property in good faith, and had no idea there were other potential claimants to ownership.

If the court deems the claim to meet the standards set by the local jurisdiction, the claimant is granted what is known as an action to quiet title. This decree essentially is a formal announcement that the court recognizes the claim and believes it supersedes any other possible claims against the property. This is true even in cases where missing heirs, liens established under prior ownership, or remainders come to light at a later date. Unless compelling evidence arises at a later date, the claimant granted the quiet title is recognized as the legal and proper owner of the property.

One common reason for seeking an action to quiet title is to clear up any possible lingering problems associated with property conveyed with the use of a quitclaim deed. A quitclaim deed basically ensures that the previous owner relinquishes all claims to the property, but does not necessarily pledge that the title is completely clear. Since the quitclaim deed does leave the door open for other former owners to claim an interest in the property, some means of protecting the interests of the current owner is necessary. That is where the quiet title comes in.

When property is purchased with the use of a quitclaim deed, the new owner usually moves forward with requesting a quiet title as soon as possible. Doing so provides the security of ownership that a quitclaim deed cannot provide. Once the quiet title is granted, the owner can be reasonably sure that the title is considered good and can proceed to make use of the property in any manner allowed by current laws.

This course will provide a synopsis of when, where and why the mortgage industry is in turmoil. The class was written to enable attorneys to put their client’s needs on offense with sufficient proof of the bifurcation of the mortgage/deed of trust and the note. It is noted that when a competent attorney represents a client in a quiet title action, that he/she is armed with admissible evidence in the form of a securitized audit. A substantial portion of the class will present the latest case histories for discussion as to the merits and or judicial actions denying the quiet title claim.

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