

The "title" to real estate is the right of the owner to its peaceful possession and use, free from the claims of others. The exercise of that right is limited by the existence of other rights which are called "easements." To obtain electricity, sewers, telephone, etc., an owner gives the municipality or public utility the right to place its lines or pipes across his/her property. Other often encountered easements provide for drainage of surface water, or access rights of way such as for a jointly owned driveway.

When purchasing property, the Seller or Purchaser (depending on the contract terms) obtains an "Abstract of Title" (which is a title history) for the Purchaser, in order to establish that there is clear title to the property. The standard practice is for the abstract to go back forty years. Because many owners have the abstracts from when they purchased the property, and pass them on in subsequent sales, there are many abstracts that go back more than a century.

The Abstract shows how the property transferred from owner to owner through history. It shows all the easements of record, that is, on file with the County Clerk. Reading the legal descriptions of the property as it passed from owner to owner reveals any errors or intentional changes. The legal descriptions include any covenants running with the land. The Abstract will also show any mortgages and any satisfactions of mortgages. An outstanding mortgage needs to be cleared at the closing.

(The Abstract does not show local zoning law. Zoning maps are on file with the municipalities. The municipality's code enforcement office has information on zoning and applying for variances.)

A tax search is also needed to show clear title. The standard for tax searches is five years. Any outstanding taxes must also be paid at closing in order to clear title.

Abstracts of Title are prepared by commercial abstractors. They can be found in telephone directories or an online search. The abstractor may also be hired to do the tax search, or the tax search may be ordered from the county treasurer's office.

There are different types of deeds for transferring real estate. Residential transactions usually use only two types. The first is a "Warranty Deed," which warrants that the title is good against anyone who may claim a superior title. In other words, if there is a title problem, the Purchaser may sue the Seller for damages. The second type of deed is the "Bargain and Sale Deed with Covenant Against Grantor's Acts." This deed warrants that the Seller has done nothing to affect the title to the property through his/her own acts. As such, the Seller does not warrant that any owner prior to him/her had good title. In both instances, if the title is insured by a title insurance company, the Purchaser will look to the title insurer for protection against claims even though the Purchaser may make a claim against the Seller.

The "closing" of the purchase is the transaction in which the Purchaser receives all the documents required to convey the title to the property, and at which the Seller receives the payoff. All expenses of the transaction, such as lawyer's fees, mortgage costs, recording fees, any realtor's commission, etc., are paid at the closing.

