

Taking Title – Help Your Clients Understand

Krista B. Lockyear, Esq.

It is not uncommon for real estate professionals and loan officers to be involved in a decision as to how their clients take title to real estate. The following outline offers simple answers to a common but often misunderstood matter.

“Tenants by the Entireties” can only be utilized when title is taken by a husband and wife. This method offers the greatest protection against creditors as a lien against one spouse does not become a lien against the real estate. Upon the death of a spouse, the property vests as a matter of law, without further action, in the surviving spouse.

“Joint Tenants with Rights of Survivorship” can be taken by any two or more individuals. Unlike “tenants by the entireties” property, a lien against one joint owner vests in that owner’s proportionate interest in the real estate. However, the survivorship feature provides that upon the death of a joint owner, the property vests in the survivor(s). It is noteworthy that to become “joint tenants with rights of survivorship” the owners must take title from the same deed.

Please see *Taking Title* on p 2

INSIDE THIS ISSUE

- 1 Taking Title – Help Your Clients Understand
- 2 Sen Bill 287 – Attach HUD to Sales Disclosure?
- 3 Owner’s Title Coverage – Don’t Overlook It
- 4 1031 Exchanges – The Vacation Home
- 5 Meet the Experience of

For the best title and closing experience

Sen Bill 287 – Attach HUD to Sales Disclosure?

Krista B. Lockyear, Esq.

Currently pending in the Indiana Senate is Senate Bill 0287 which, in attempting to deal with various property tax issues, takes up the matter of the Sales Disclosure Form. SB 287, in its original form, required that additional information be included in a sales disclosure form, including “If a closing statement was prepared for the conveyance, a copy of the closing statement.” Obviously, there are enormous privacy concerns with making public the settlement statement associated with any closing, including the public disclosure of payoffs, seller credits, commissions and other sensitive information. Due to pressure from the title insurance industry and other interested lobbying groups, the sales disclosure portion of the bill has, for the time being, been removed.

However, of additional concern is the remaining requirement that all sales disclosure forms be forwarded from the Auditor’s office to the appropriate Township Assessor for review and approval prior to acceptance. This requirement poses a great risk for additional delay in the recording process.

Please see *Sales Disclosure* on p 3

Owner's Title Coverage – Don't Overlook It

Krista B. Lockyear, Esq.

Real Estate professionals know that if a loan will be involved in a sale or refinance transaction, the lender will require the issuance of a title insurance policy to protect the lender. Who ensures that the owner of the real estate will have adequate coverage? Does a lender or real estate broker have the duty to order an owner's policy of title insurance to protect the owner against monetary loss in the event there is a claim against title? Is there a duty to advise the owner to obtain such a policy? If the owner does not have legal counsel, who reviews the owner's commitment to make sure the owner is getting the coverage they pay for? Do you know what coverage your client is getting?

"Does a lender or real estate broker have the duty to order an owner's policy of title insurance to protect the owner?"

Know The Basics

At its most basic, Schedule A of the title policy describes what is insured - it includes a legal description of the insured real estate and names the insured parties. The coverage granted in Schedule A is then limited by the exceptions contained in Schedule B. If a purchaser of title insurance doesn't scrutinize the Schedule B exceptions, chances are the coverage could be severely limited.

Ask to Remove Exceptions

Many of the exceptions to coverage can be removed by the insurer upon request. Standard exceptions such as "rights of parties in possession" and "mechanic liens" can be removed by the title company upon receipt of an acceptable Vendors' or Owners' Affidavit. Closer scrutiny may reveal that certain exceptions do not even apply to the subject real estate. Additional information, such as that disclosed by a current survey, may allow other exceptions to be deleted. Although it is sometimes easy to get the exceptions pared down, many owners simply never ask.

Ask for Copies of Exceptions

See Owner's Coverage p 4



Make sure the Owner is Protected

Taking Title from page 1

"Tenants in Common" means that each joint owner owns an undivided interest in the property (i.e. the property stays whole) but that each owner's interest remains with him/her, even at death. Accordingly, upon the death of a joint owner under this ownership, his/her interest passes to his/her legal heirs.

"Tenancy for a Period" is most commonly seen as a "life estate" held by a parent or grandparent, when the remainder is vested in the children/grandchildren. It is critical that in a conveyance of the remainder, the life tenant must either sign the deed or an affirmation must be made representing to the death of the life tenant. This tenancy is often utilized in estate planning but should be very carefully evaluated due to potential adverse inheritance tax and real estate tax consequences.

1031 Exchanges – The Vacation Home

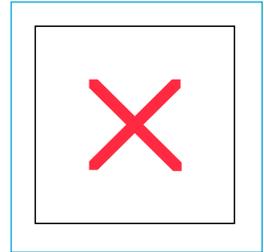
By Krista B. Lockyear, Esq.

Real estate clients are often interested in taking advantage of one of the few tax deferral methods that remain sanctioned by the Internal Revenue Service, the Section 1031 Exchange. A 1031 Exchange allows an owner of real estate to sell the property and defer paying taxes on the gain by rolling the proceeds into a replacement property. Many clients would like to utilize this tool to acquire a vacation home. Can this be done?

To obtain favorable tax treatment, the property sold must be “held for a productive use in a trade or business or for investment” and such property must be exchanged solely for property of like kind which is to be held either for productive use in a trade or business or for investment. A vacation home when the taxpayer’s personal use of the property is *minimal* may be viewed as appropriate replacement property for other investment property owned by the taxpayer. However, the taxpayer must be careful in its use and the timing of this investment.

To qualify, the taxpayer should place the vacation home on the market for rent by third parties. Listing with a rental agency is the easiest way to establish the rental status of the property. If a taxpayer wishes to handle the rental personally, he should take care to maintain appropriate records evidencing the rentals and a good faith effort to market the property.

In addition, if a taxpayer intends to convert the property to personal residential use in the future, a new IRS ruling (Internal Revenue Bulletin 2005-7, Feb. 14, 2005) provides that the property cannot be sold as a personal residence (hence



*Vacation Home can Qualify by
Carefully Following IRS Rules*

Sales Disclosure from p. 1

Of special concern to all real estate professionals is the requirement that the Assessor “reject and return to the filer each sales disclosure form that is not accurate and complete.” This provision raises the likelihood that, post-closing, the closer, lender, or real estate broker will be forced to track down the parties to obtain additional information, clarification or re-execution of a sales disclosure form.

Clearly, in the interest of enhancing the real estate tax assessment effort, the legislature is considering the imposition of measures that will be burdensome and frustrating for all parties dealing with a real estate transfer. Now is the time to let your legislators know that you are opposed to these additional measures.

To follow the progress of this bill, which will resume discussion when the legislature reconvenes, see the following website:

www.in.gov/apps/lisa/session/billwatch/billinfo

*“A new IRS ruling
provides that the
property cannot be sold
as a personal residence
unless the exchange
occurred more than 5*

Owners Coverage from p 2

For those exceptions that remain, an owner should request copies from the title company to determine how they affect the use of the real estate. Buyer dissatisfaction is generally a result of being misinformed about a property prior to closing. Accordingly, buyer's representatives should be careful to point out title issues such as restrictions, zoning covenants, and even easements that may adversely affect an owner's enjoyment of their property.

An Informed Client is a Happy Client.

Meet the Experience behind

Lockyear Title, LLC started business as a new entity on July 1, 2006. Although the entity is new, the staff of Lockyear Title brings more than 30 years of real estate experience to the company.

President, Krista B. Lockyear, remains a practicing attorney at the law firm of Rudolph, Fine, Porter & Johnson, LLP. Krista has been practicing real estate in Evansville since 1992. Krista began writing title insurance to help developer clients maintain better control over the timing and the cost of title insurance. The title company was formed to expand the services to third parties and to share the success in making real estate transactions an enjoyable experience.

Manager, Cari McCandless, has been in the real estate business for over 7 years. Cari started her real estate career in mortgage lending, and from there moved into the closing department. Cari graduated from Castle High School and Western Kentucky University with a B.S. in marketing. You may recognize her from past closings at Bosse Title Company and

Although a recent court ruling holds that a loan officer was not negligent in failing to secure an owner's policy for his customer, the best course of action is to be sure your client knows his or her options and makes an informed decision whether to order title coverage and understands the coverage they receive.

Southwestern Indiana Land Title. Cari's familiarity with the lending process helps her deal with questions commonly posed at the closing table.

Attorney Kelly Jackson also remains a practicing attorney with Rudolph, Fine, Porter & Johnson, LLP, where she has practiced since 2000. Kelly assists with title examination, closings, and any legal work necessary to facilitate the transaction.

Shawn Zuber comes to Lockyear Title as a Title Examiner with 5 years of experience. Shawn is an Evansville native who graduated from Mater Dei High School and the University of Evansville. In addition to title examinations, Shawn handles curing exceptions and title defects.

Sondra Bell brings 30 years of abstracting experience to the company. After working with the late, and very missed, attorney Jerry Atkinson for 22 years, Sondra came to Lockyear Title in the summer of 2006. Sondra has experience in the field that is known statewide and she is an invaluable resource of knowledge concerning real estate title matters.

Marilyn Gregory is the Title Coordinator for the department. Marilyn's background as an administrative assistance allows her to juggle every aspect of the order from inception to close. Marilyn can assist with new orders, schedule closings and general processing questions. If you have a question about the status of any order, she will provide quick answers.

Lockyear Title, LLC is a title issuing agent for Chicago Title Insurance Company and Attorneys Title Guaranty Fund, Inc. Lockyear Title and its agents are licensed title insurance providers for the State of Indiana.

Lockyear Title, LLC

221 N.W. 5th Street
P.O. Box 1507
Evansville, IN 47708
812-421-8405
812-421-8406

E-mail:

Krista@LockyearTitle.com;
Cari@LockyearTitle.com;
Kelly@LockyearTitle.com;
Shawn@LockyearTitle.com;
Sondra@LockyearTitle.com;
Marilyn@LockyearTitle.com