

## MEMORANDUM TO PURCHASERS OF REAL ESTATE

The purpose of this memorandum is to explain the scope of an attorney's title opinion. Our title opinion does not cover all risks associated with taking title to real property. Since certain steps can be taken to protect a buyer from additional risks, we will also discuss title insurance.

**LAND RECORDS:** Ownership of real property is usually transferred by deeds or other written records. Successive deeds are recorded in the Land Records (at the Town Hall for each Town in Vermont). The successive deeds make a chain of title: Ann deeds to Bill; Bill deeds to Carol; Carol deeds to Dave; and Dave deeds to the present owner.

Other documents are also recorded in the Land Records. If a person transfers title to land by a Will, the Will would be probated and the Probate Court would issue a Decree transferring title. The Decree would be recorded in the Land Records. Other records entered in the Land Records include divorce decrees, Court judgments, mortgage foreclosures, and similar documents. Each of these records can show transfer of title, and thereby become a part of a chain of title.

**TRANSFER NOT IN LAND RECORDS:** Title to real property does not always transfer by a written document. If a person died without leaving a Will, title to the person's land automatically transfers to the person's heirs, (Title must be confirmed, however, by Probate proceedings). If a person takes over another's land, and uses it for a long period of time, that person can take title to the other's land through a legal doctrine known as "adverse possession" without any documentation whatsoever. If a landowner does not pay taxes (whether they be real estate taxes or income taxes) the taxing authorities may undertake proceedings to obtain title to the landowner's property. Each of these situations can cause a transfer of title to real property. None are necessarily recorded in the Land Records to be effective.

**LAWYER'S TITLE OPINION:** A lawyer's title opinion covers only the state of record title to property, because a lawyer can examine only the documents found in the Land Records to make sure the records show an unbroken chain of title for an appropriate period of time. The lawyer relies on the indexes to the Land Records, and the lawyer assumes that the indexes are complete and correct.

When a lawyer gives an opinion of the state of record title to a parcel of real property, the opinion reports on the chain of title shown in the Land Records and any encumbrances or liens that appear in the Land Records. It is obvious that the lawyer cannot report on anything that is not contained in the Land Records.

**MATTERS NOT IN LAND RECORDS:** Besides the actual transfers that may not be in the Land Records, there are several states of facts that may be inaccurately reflected in the Land Records. These inaccuracies may be caused by mistakes, errors or even outright fraud. These are some areas where inaccuracies occur:

- The marital status of a party to a deed may be incorrectly stated in a deed. Spouses usually have marital rights that they can enforce even if the existence of the spouse is not known.
- Wills or court decrees may leave out some heirs of a person who owned property. These undisclosed heirs may have rights in property that do not appear in the land records.
- Wills or court decisions that are recorded in the land records may contain mistaken legal interpretations that can be successfully challenged.
- The persons who signed the documents in the Land Records may not have been competent to sign the documents. They could have been minors, or judicially declared incompetent.

- Deeds could have been forged, either with a fraudulent intent, or because the signer thought she was authorized to sign the deed.
- Deeds can be defective and ineffective to pass title. They may have been signed under an expired power of attorney; they may have been properly signed, but then delivered without the owner's consent; or, they may have been signed by an officer of a corporation who did not have the authority to sign deeds.
- Confusion may arise if persons have similar or identical names. For instance, a son may have the same name as his father. After the father dies, the son may think he owns the father's property and sign a deed to the property. The records would show the same names, but the person would be different.
- Finally, there is the possibility that the persons who maintain the Land Records made mistakes in recording and/or indexing documents.

**TITLE INSURANCE:** Lenders frequently require that borrowers obtain a title insurance policy for the benefit of the lender up to the amount of the mortgage. Title insurance provides protection against claims which may be made in the future concerning events which occurred in the past. The loan policy provides coverage until such time as the mortgage is discharged.

While the lender and the property owner have similar interests in the property, they are not identical. Furthermore, the property owner may be liable for any loss up to the extent of the owner's equity in the property before coverage through the lender's policy would become effective.

Property purchasers can obtain an owner's policy of title insurance. Then, the owner would be protected against many title defects.

In addition to providing coverage for losses or damages actually suffered, title insurance also provides for defense of the insured's title against defects covered by the policy.

An owner's policy of title insurance provides coverage at the fair market value of the property. There is most often, at no additional charge, a limited inflation protection endorsement which provides additional coverage due to inflation of the fair market value of the property. Your attorney or title insurance agency can provide you with a premium quote.

**MISCELLANEOUS:** This memorandum is intended to provide a general overview. Any specific questions relating to marketable record title to property or title insurance as well as specific questions directed to a specific piece of property should be directed to your attorney.

## COMPARISON OF ALTA STANDARD AND CATIC EXTENDED PROTECTION POLICY COVERAGES

### Residential Owners Policies

COVERAGE	ALTA Standard	EXTENDED Protection
1. Third party claims of an interest in title	X	X
2. Improperly executed documents	X	X
3. Pre-policy forgery, fraud, or duress	X	X
4. Defective recording of documents	X	X
5. Non-recorded restrictive covenants	X	X
6. Liens not disclosed in the policy	X	X
7. Unmarketability of title	X	X
8. Mechanics lien claims		X
9. Forced removal of a structure because it: <ul style="list-style-type: none"> <li>● Extends on to other land or on to an easement</li> <li>● Violates a restrictive covenant in Schedule B</li> <li>● Violates an existing zoning law</li> </ul>		X X X
10. Land cannot be used for Single Family Dwelling because use violates a restriction in Schedule B or a zoning ordinance		X
11. Unrecorded easements		X
12. Rights under unrecorded leases		X
13. Forced removal resulting from a building permit violation in an amount up to \$25,000.00 (after a deductible of 1% of the policy amount)		X
14. Inability of insured to obtain a building permit for an addition or remodeling, or refusal of a buyer to purchase or a lender to make a loan, because of a violation of a subdivision law in an amount up to \$10,000.00 (after a deductible of 1% of the policy amount)		X
15. Restrictive covenant violations which result in: <ul style="list-style-type: none"> <li>● Loss of title</li> <li>● Inability to obtain a loan or close a sale</li> <li>● Loss due to enforcement</li> </ul>		X X X
16. Access coverage enhanced to include both vehicular and pedestrian access		X
17. Map attached to the policy does not show the same location and dimensions of the land as those shown in the public record		X
18. <i>Post policy</i> forgeries of any instrument which permits someone else to claim to own the land or have a mortgage or some other lien on it		X
19. <i>Post policy</i> encroachments, other than boundary walls or fences, where neighboring property owner attempts to build on a portion of the insured's land		X
20. <i>Post policy</i> damage to an insured's existing home, or one that may be built as a modification or replacement of the existing home, because someone uses the surface of the land for the extraction or development of minerals		X
21. Policy continues in force as of its original effective date if the insured transfers the title to the property to a living trust where the insured is the trustor and/or settlor of the trust		X
22. The amount of insurance automatically increases 5% each year for the first five years for an increase in coverage to 125%		X