

2021 MLTA Boot Camp

The Basics of Title Search Examination



Week #3: April 21, 2021
Presented by Allan Dick

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We begin with a quick review of weeks 1 and 2:

- The basic nature and history of *Land* Title (Real Estate); Land Registry – Register of Deeds records; and the value and importance of Title to the Land and how to protect one's Title (interest) – leading up to Title Insurance.
- Then, the basic process for searching and examining, and creating a chain of title; the various types of legal descriptions; and examining the documents in that chain of title.



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Today, more detail on that examination process and the creation of a Title Commitment

What all must we search and be accountable for?

- The Chain of Title, and the documents reflected, especially focusing on the deeds.
- Additional documentation – taxes, plat maps, etc.
- Name searches for all interested parties, both in the general name index and with a Patriot Act search.

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Just how far back must we search & examine?

- Not such a simple answer, because it depends on several factors and what we are searching for.
- As for the “Chain of Title” (conveyances & liens) in Michigan, MCL 565.101 et seq. provides a minimum 40 year statute.
- This does not, however limit or apply to easements or restrictions and covenants. Current legislative efforts have been in motion to try to likewise limit them.
- One possible short cut, is relying on the seller’s prior Owner’s Policy. But, this, too, has some limitations. (MIA)
- Another short cut: many Underwriters (Title Insurance Companies) have issued Search Guidelines or Standards to their agents, based on the assumption of more risks, which may shorten the period of time or number of qualified transactions back you need to begin your search.

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Another look at Examining Deeds

- Last week, Hollie listed and described the various types of Deed you might find in your search.
- And she explained the need to match up names and account for all the previous parties in the Chain.
- Deeds often contain more information beyond the type of Deed, the names of the Grantor(s) and Grantee(s), the Legal Description of the Land, the tax parcel ID and the \$\$\$ consideration paid for the conveyance.
- Deeds may contain conditions, restrictions, rights reserved, and references to various easements or other's rights.
- They will also typically (but not always) reflect the tenancy of the Grantors and the Grantees, among other things.

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WARRANTY DEED 74-19654815-STD

KNOW ALL PERSONS BY THESE PRESENTS: That Joshua Paul Viola also known as Joshua P. Viola, a married man, ("Grantor")

the address of which is 271 N. Elizabeth, Marine City, MI 48039

conveys and warrants to Frank Walter Tilton, a married man, ("Grantee")

the address of which is: 9821 Seaway Dr. Clay, MI 48001

the following described premises situated in the City of Marine City, County of St. Clair, State of Michigan, to wit:

The North 32.5 feet of Lot 8, Block 43, Map of the Village of Marine, according to the plat thereof as recorded in Liber 6, Page 41 of Plate 28, Clair County Records.

Commonly known as: 271 N. Elizabeth St., Marine City, MI 48039

Parcel ID No.: 74-02-475-0481-000

together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining, for the sum of One Hundred Forty Two Thousand Five Hundred and 00/100 Dollars (**\$142,500.00**).

Subject to existing building and use restrictions and assessments and rights of way of record.

Dated this August 19, 2019

Signed by

Joshua Paul Viola 8-19-2019 Date August 23 2019

Joshua Paul Viola
also known as Joshua P. Viola
State of Michigan
County of St. Clair

Deanna Ewert
Notary Public, Prescribed Name: Deanna L. Carter
Notary County: St. Clair State: MI
Commission Expires: 12-31-21
Acting In: St. Clair

When Recorded return to: Frank Walter Tilton
273 N. Elizabeth St.
Marine City, MI 48039

Send Subsequent Tax Bills To: Grantee
ATA National Title Group
36800 Garatich Avenue
Clinton Twp., MI 48035

Drafted By: Joshua Paul Viola
271 N. Elizabeth
Marine City, MI 48039
Assisted by: ATA National Title Group, LLC

ATA National Title Group, LLC

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Another Look at the Types of Deeds

- **Warranty Deed** – the standard “requirement” from owner/seller to the buyer in a Title Commitment.
- **Quit Claim Deed** – with many uses.
- **Covenant Deed** – with “covenants” not “warrants”.
- **Sheriff’s Deeds** – upon a Mortgage Foreclosure.
- Several other variations and names: Trustee’s Deed, Lady Bird Deed, Deed in Lieu of Foreclosure, Fiduciary Deed or just plain Deed.
- Each has its place/use under the right circumstances.

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Now, What about Tenancy?

- **Tenancy** is simply the form of holding (owning) an Estate (Land). But that may be held a number of different ways – with different consequences.
- Tenancy in Common – the default if no tenancy expressed otherwise
- Joint Tenancy
- Joint Tenancy with Rights of Survivorship (JTWROS)
- Tenancy by the Entireties (for married couples only)

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Who has the Authority to execute/sign a Deed?

- Individuals
- Powers of Attorney (Attorney in Fact)
- Trustees of Trusts
- Corporations
- Limited Liability Companies (LLCs)
- Partnerships (in general)
- Other Fiduciaries (Probate)
- Sheriff or Deputy Sheriff (Foreclosure)
- Court Appointed Receivers

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Examining: What other unresolved items were disclosed by the Search?

- Whether there were flaws in the chain of deeds.
- Undischarged mortgages, and unreleased liens.
- Whether the Land to be insured has Legal Access.
- Other encumbrances, such as unreleased Oil & Gas Leases; Easements across the Land; Easements benefitting the Land; apparent unreleased or not re-conveyed interests or claims of interest; affidavits; agreements; notices of lis pendens, (and others?).
- Whether the Land is crossed or bounded by water.
- Whether the Land is crossed by or was formerly a part of a railroad.

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Preparing to create a Title Commitment

- The goal of all this searching and examining is to create a Title Commitment, which is a commitment to issue a Title Insurance Policy, once all the requirements on Schedule B-I are satisfied.
- The Policy will be “subject to” those items shown on Schedule B-II, unless they are released.
- The Policy will also be subject to any items and encumbrances on B-I, which were not released or satisfied at or before closing.

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The Basics of the Title Commitment

- The revised form of the ALTA Title Insurance Policies now have several *Insuring Provisions*.
- There are now many more nuances and coverages, but the 4 basic provisions remain: (1) that the insured owner owns the title; (2) that there are no encumbrances to that title, which were not disclosed and accepted by the insured; (3) that said title is marketable; and (4) that the Land has a legal right of access to and from a public road.
- These are described in the commitment and policy jackets, and are uniform for all such Policies.

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The differences are found in the Schedules

- Likewise, an ALTA Loan Policy (insuring the Mortgage lender – the mortgagee) contains much the same coverage, adding the mortgage as an insured lien.
- Additionally, there is an expanded coverage form of both Owner's and Loan Policies, available for an additional premium. Sometimes the Purchase Agreement will have a provision for the issuance of such an ALTA Homeowners Policy. The requirements and exceptions to be shown on the following Schedules will essentially be the same. The policy type to be issued is referenced on Schedule A.
- So now, with the information gathered from the title order, along with the search and examination of the title, we create the following commitment Schedules.

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Schedule A

- Identifies the Effective Date: the date to which the are posted and certified in the county records.
- Identifies proposed purchaser and/or lender.
- Identifies the amount of insurance – the value of the property or the loan amount. (We can't insure for a portion of the value of the property but may insure for a portion of the value of the loan.)
- The type of ALTA policy to be issued (which dictates the premium)
- Identifies the current "owner" of the property.
- Identifies the legal description of the property to be insured.

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Schedule B, Part I Requirements

- *Pay the agreed amount for the Title and/or the Mortgage to be insured.*
- *Pay us the premium, fees and charges for the policy.*
- **Recordation of the vesting instruments: deed and/or mortgage to be insured.**
- **Discharge/release of all open monetary liens or other encumbrances (or same will be shown as exceptions to coverage on the final policy).**
- **Release or conveyance of interests necessary to vest title in grantor or borrower. (*clean up*)**
- **Submission of all documentation necessary to evidence authority of parties to execute the instruments.**
- **Payment of current unpaid taxes and assessments.**

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Schedule B, Part II Exceptions

Pre-printed standard exceptions (off-record matters):

- *Any defect lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records, is created, attaches or is disclosed after the Commitment Date.*
- Any discrepancies or conflicts in boundary lines, any shortages in area, or any encroachment or overlapping of improvements
- Rights or claims of parties in possession not shown of record.
- Easements or claims of easements not shown of record.
- Encroachments, overlaps, boundary disputes or matters disclosed in an accurate survey.
- Mechanic's/construction liens not shown of record.
- Taxes or assessments not shown in the public records (treasurer's offices).

Specific exceptions for matters found of record.

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Other factors which may affect or complicate the creation of your Title Commitment

- Your title order involves New Construction
- The vesting deed is from the County Treasurer, or there is such a deed in your Chain of Title (tax title)
- You are informed that your vested owner has died
- You are informed that your owners are divorced
- You are presented with a survey of the property and asked to remove the standard exceptions
- The Land is part of a Native American reservation
- The Land was previously owned by a Railroad

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Title Commitment – a Road Map to the Closing

- The Escrow Processor and Closer should be following your requirements as a checklist for what is needed, in order to close (unless new info is submitted).
- Curative documents may be submitted or recorded, in order to revise your commitment's requirements (a revision of the commitment). This is called title clearance, and may occur prior to or at closing.
- Such curative submissions must be closely examined to make sure that they fully resolve the issues.

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Miscellaneous items or issues you might also encounter in you search and examination

- Court Judgments or Notice of Lis Pendens.
- Title established by Judgment
- Oil & Gas Leases.
- Mineral Reservations.
- Powers of Attorney.
- Certificates of Trust.
- Land Contracts (or Assignments thereof).
- Recorded Land Surveys.
- Evidence of Foreclosures and/or Forfeitures.
- Evidence of New Construction.

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So, let's play a little game of what if. Preparing for the purchase or refinance transaction, as the Examiner, what should you do:

- If there appears to be a break (gap) in the chain of title?
- If in your search and exam, you find that an interest on a prior deed was never conveyed?
- Or, if a 12 year old mortgage was never discharged, even though another mortgage was later recorded?
- Or, you find 2 Notices of Forfeiture for unpaid taxes?
- Or, it appears from the available maps that your metes-and-bounds description (with no reference to a road in that description) does not abut a public road, even though it has a street address?
- Or, you find a 4 year old undischarged "Claim of Lien"?
- Or, You find a 6 year old Federal Tax Lien filed against the name of your current owner?
- Or, the owner you show on Schedule A does not match the seller's name who signed the Purchase Agreement?

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Final thoughts before your Questions

- As noted in week #1, agent examiners are subject to the rules and guidelines set forth by their Underwriter.
- This means some types of transactions (e.g. tax title) may require Underwriter approval, and others may be subject to certain dollar limits requiring approval.
- Beyond senior underwriting for such approvals, every search and exam involves a bit of “underwriting” and risk identification and management at every stage.
- As such, the examiner can be a bit of a troublemaker, looking for problems and issues – for which he makes requirements to resolve them (“junking it up”), not always popular determinations, but managing the risks.

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Questions regarding Title Examination and Title Commitments.



Questions?

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