



STEIN LAW, PLC

A Real Estate & Business Deal Firm

Big Picture. Small Details. Distinct Approach.

Recent Developments - Spring 2013

Ensuring More Than Title

For many real estate buyers, obtaining a title insurance policy has become synonymous with a clean bill of health that "everything's okay." Sadly, that is not always the case. While title insurance does ensure that "**marketable title**" is vested in the name of the new owner, like any policy of insurance, even assuming the policy was issued correctly, there are exceptions and exclusions to coverage that need to be fully understood so that buyers are aware of not only the policy limitations, but also the impact of those exceptions will have on the future use and enjoyment of the acquired property.

Below is a "big picture" framework regarding the title insurance and our role as transactional attorneys to minimize such risks:

- For starters, it is important to keep in mind that title insurance is unlike most other forms of insurance as it looks backward from the date it is obtained (i.e., closing). This means an owner would not be covered for any defects arising post-closing (or the date of the policy), for example, a future encroachment by a neighbor, or cloud on title created by a third-party. Plainly, title insurance provides coverage for past events, not events that may occur in the future.
- As part of the deal process, buyers are provided with a "title commitment," which includes certain requirements for the insurance company to issue coverage (found on Schedule B I) and stated exceptions from coverage (found on Schedule B II). Purchase Contracts often provide a time period for back and forth notices by the parties relating to the matters disclosed by the commitment and what, if anything, needs to be done for closing. This is also the time for buyers to gain a full understanding as to the various recorded documents and disclosed matters that will impact their use of the property.
- Commitments contain both "standard" (but not always acceptable!) exceptions (to limit coverage) as well as property specific exceptions relating to the recorded matters impacting the property. We help our buyer clients evaluate those Schedule B II exceptions to determine the impact each will have on the future use of the property as well as if there are any matters which are "objectionable" and need to be removed or cured by the Seller (i.e., encroachments, prior deed restrictions or defects in title). Sometimes, even more so, it is the "non-objectionable" matters (such as existing declarations or CC&Rs, which can include use restrictions and architectural controls) that must be fully analyzed and understood prior to the purchase because title insurance is not going to apply to such exceptions and so buyers will have nowhere to look after closing if they did not fully appreciate the impact of matters disclosed by the exceptions.
- Similar to other types of insurance, title insurance also includes some gaps in coverage, which can be covered over with the appropriate endorsement. There are virtually hundreds of types of endorsements, as well as custom endorsements, which can be created for a unique situation. We help our clients understand the appropriate endorsements to obtain for the given situation and type of property, without which meaningful coverage would not exist.

Title Companies issue title insurance policies and neither escrow agents nor brokers can provide legal advice regarding the availability of coverage relating to stated exceptions and disclosed matters for such policy. We help our clients understand the various complexities of real estate transactions, including helping buyers appreciate obtain meaningful title coverage and assisting sellers in responding to various requests as part of that process to close deals and make sure everything's more than just okay.

For more information please call (480) 889-8948, send an email to info@steinlawplc.com or visit www.SteinLawPLC.com.

Stein Law, PLC is a boutique business and real estate deal firm focused on:

- Real estate acquisitions and sales, development and leasing (both tenant and landlord);
- Business transactions, operating agreements, joint venture structuring and corporate contracts;
- Loan financings, workouts and modifications; and
- Hospitality development, management and licensing matters.

Below are some of the exciting representations Stein Law handled in 1Q13:

- Developer client acquired 15.5 acre shopping center using debt/equity financing and negotiated new leases with three national retailers as major tenants (Laveen, Arizona - March, 2013)
- Sale of 68-unit apartment with carry back financing (Phoenix, Arizona - March, 2013)
- Client bought 190+ unit Class B multifamily complex with private equity and agency financing (Texas - February, 2013)

The following is a link to our Stein Law, PLC Recent Developments Archives:

- [Recent Developments Archives](#)

- Disposition of two single-tenant NNN lease investment properties with national retailers to REIT purchaser (Texas - January, 2013)
- Acquisition of large "broken condo" apartment complex for ongoing rental operations (Phoenix, Arizona - January, 2013)



Get Connected



(Attorney advertising material)

Copyright © 2013 Stein Law, PLC, All rights reserved.

[Back to Stein Law PLC Newsletter Archives](#)