



CHICAGO BULL

(CHICAGO TITLE NC BLAWG 2-1-2018)

WHO ARE YOU AND WHY ARE YOU ON MY LAND?

Buried in the lines of text on most standard title opinions is something that fundamentally looks like this:

Property Occupied By: Owner []; Tenant []; Unimproved []; Unknown [].

In ninety percent of residential transactions the check will be next to owner. Or maybe some other indication that the party buying the property won't have any unexpected surprises upon closing on the largest purchase of their life. And in the vast majority of situations, the house will be unoccupied when the moving trucks pull up.

From a title insurance perspective, insurers usually do one of two things: 1) require an affidavit from the seller, or certification from the attorney, that there are no parties with current occupancy rights to the Land; or 2) take an exception for current tenants. In commercial situations, the latter could be specified to show the specific tenant at issue. These could be tenants under oral, written unrecorded leases, or written recorded leases. Tenants under any of these may, and probably do, have rights that extend in their favor past the recording of a deed transferring the Land.

Your buyer/client may not be knowledgeable about rights of tenants and responsibilities of landlords in North Carolina. As the attorney for the buyer of a residential property with an existing tenant, what is your duty to (i) advise the buyer that he will "inherit" the lease and become the landlord responsible for upholding landlord's responsibilities under the lease, (ii) determine whether an assignment and assumption of lease should be prepared/executed/recorded, (iii) advise the buyer that he and the seller should come to an agreement about handling of the existing tenant's security deposit that complies with Chapter 42, Article 6 of the North Carolina General Statutes, (iv) advise the buyer that he should consider some form of liability insurance, etc?

Straightforward, right?

There *are* some situations that are a little more out of the ordinary, and that may require additional investigation in order to assure your client that they are getting what they expect. As the attorney, the client may look to title insurance to remedy potential issues (if insured over), but they will definitely look to you as the party that should have properly advised and guided them on the potential impacts that tenants have on their ownership rights.

NC Vacation Rental Act - NCGS §42A

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§42A-19 states, in substance, that the grantee of a deed for residential property shall take title to the land subject to the vacation rental agreement, if:

- the agreement ends not later than 180 days after the recording of the deed
- if the agreement is to expire more than 180 days later, the grantee under the deed must have *in writing* agreed to honor the terms of the agreement.
- grantee may be required to return rents and fees paid by or due to the tenant under said agreement.

Holdover Tenants in Foreclosure

§45-21.33A states, in substance, that unless the purchaser out of foreclosure will occupy the premises as a primary residence, said purchaser takes title subject to the rights of the tenant until the shorter of the end of the term of the lease, or one calendar year from taking title. There are some qualifications on the tenants' rights, like relationship to the borrower, need for a written lease that is not terminable at will, and the existence of an "imminently dangerous condition."

If the purchaser does intend to occupy the land as their primary residence, the tenant must receive a notice to vacate at least 90 days prior to the purchaser's attempt to take possession, if the tenant has an oral or terminable at will lease.

As stated before, from a title insurance perspective we are looking to the attorney or the seller to give us the information we need so that our policy factually matches up with the situation on the land. The client, though, is looking for what they are looking for. If that desire is immediate possession of the land, then checking unknown on the preliminary opinion will not be good enough for them.

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