

# ***Correspondence Course***

*Read the booklet, Take the quiz, Mail it to the school with Tuition*



# **Who Owns this House?**

by  
**Natalie Danielson**

This 3 clock hour course looks at how home ownership is basically a “bundle of rights” and that it is more complicated than it appears.

PROFESSIONAL *Direction* INC

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*A Washington State Approved Real Estate School under R.C.W. 18.85.*

# Who Owns This House?

## Curriculum

<b>Session Hours</b>	<b>Major Topics</b>	<b>Method of Instruction</b>
1 1 hour	Compare and contrast ownership of real vs personal property Identify how ownership in real property passes to buyer Who Else has rights to a property? Learn the history of title insurance.	Read Material
2 1 hour	Go over scenarios where the ownership of real property is not clearly identified.	Read Material
3 1 hour	Learn about what is involved in a title search Learn what to look for on the preliminary title policy that might show ownership problems Identify ways that buyers think they are purchasing when that is not the case.	Read Material



*Please Read this First! Thanks!*



## Clockhours by Mail

- You will be provided with a booklet of with the class material here in a pdf format. It is a THREE CLOCKHOUR CLASS FOR \$30.00 TUITION.
- The course has been divided up into one hour sessions. In Washington State a “clock hour” is 50 minutes. There are questions about each session. They can be answered while reading the material, at the end of the session, or at the end.
- **Answer** the questions on the quiz sheet.
- If you have any questions regarding the material or the questions, don’t hesitate to call or email Natalie Danielson.
- **EMail** Quiz and Evaluation to Professional Direction.
- The certificate will be mailed within 10 days of receipt of course materials and handout. If you are desperate... just email us!!!!

Disclaimer.. the course materials and questions are not to be used for legal advice. Information can change over time. Real estate transactions are handled different ways in different regions in the State of Washington. If you have any comments or concerns about the material contact Professional Direction.

Thanks!

*Natalie Danielson*

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**Admission Policy:** All courses are open to all persons whether or not they are licensed real estate agents. No person will be denied admission based on race, creed, color, sex, age, national origin, familial status, appearance, or sexual orientation.

**Attendance Requirements:** All students are required to be physically in attendance for the stated number of clock hours required for the course. Any class missed during the course may be made up at the mutual agreement of the student and the Administrator at a future time, if available. No auditing of courses.

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**Course Materials:** The student may receive workbooks or outlines as part of the course. There are some courses that require a text during the time period of the course. The course materials and the outlines are the property of Professional Direction, Inc., and are not to be duplicated without the prior written permission of the Administrator.

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# Who Owns This House?

## Course Objectives

As a result of taking this class the real estate licensee shall be able to:

- Compare and contrast ownership of real vs personal property
- Learn who else has rights to a property
- Identify how ownership in real property passes to buyer
- Learn the history of title insurance.
- Learn from actual scenarios the importance to ownership and title searches
- Identify documents that may or may not pass ownership including quit claims, lease purchase/options and tenancy/possession.
- Learn what to look for on the preliminary title policy that might show ownership problems
- Identify ways that buyers think they are purchasing when that is not the case.

# Ownership History

When buyers purchase a television, they do not need to know whether the former owner is married, single or divorced. Shares of stock are traded without being concerned if the seller has a tax obligation. The purchase of a car happens without the worry about whether there are any suits against the person who owned it. When you purchase most products you can throw them in a bag, drive them away or store them in a closet. With real property even the person in possession may not own the property but may have rights. Possession of real property is NOT considered ownership.

But, when you take title to a house, condominium, business opportunity, building or vacant land it is vital to know all these things.

Each parcel of real property is unique. It cannot be recreated like a car or other piece of personal property. It is due to this uniqueness that the laws surrounding the disposition of real property have evolved. The property cannot be moved. Ownership is subject to laws, zoning, restrictions, liens, and governments.

It is most important when buying or selling property that the ownership established. Any owner of real property has exceedingly strong rights...so do the family and heirs of the owner. But, others may have rights in the property as well:

- Lenders with a security interest in the real property.
- Contractor who provided labor to build a fence.
- Neighbor who accesses his home by driving across the yard.
- Coal miner who reserved the right to mine the land.
- Prior heirs to the property.
- Spouses due to Community Property Laws
- Government because of tax liens, eminent domain, codes, or zoning
- There can be rights to the air space above the property.
- Tenants can have rights for occupancy.

## Ownership can be described as a “Bundle of Rights”

The most accurate description of title or ownership to real property is a “bundle of rights in real property.” Real estate has such great value and is so basic a form of wealth that many special laws have been enacted for its protection. Laws are so strict and far-reaching that real estate is more strongly safeguarded than almost any other material ownership.



## Who Else Has Rights?

### Lenders

When a buyer obtains financing for a mortgage, typically, the lender puts a “lien” against the property. This makes the property security for the debt. If the debt is not paid, the lender has rights to take the property to pay off the debt. The primary lender is usually in first position behind government taxes should the property be foreclosed and sold at auction to pay off the debt. The lien is recorded in the county. If there are others that have liens against the property, the other liens would be paid off in order or priority.

If the owner sells the property, the underlying liens are typically paid prior to transferring title. If a purchaser takes title to the property that has liens that were not paid, the purchaser may not have the ownership rights that he believes. The title company researches prior liens.

### Contractors

In Washington State, contractors have rights to file liens against real property for unpaid work that was performed. These are recorded in the county and are researched in a title search.

### Easements

Easements can affect the use of property. An Easement can be as narrow as a walking path and as wide as the property. They can vary from easements for underground utilities that don’t affect the use of the front yard to a driveway for ingress and egress. Easements can be shared or for only personal use. Easements may not be obvious to the naked eye. Easements are not always recorded in the county. If they are not recorded, that doesn’t mean that they don’t exist. Easements and the rights that they grant can be disputed. A title search would uncover recorded easements.

### Mineral Rights

The property may have valuable minerals from coal to timber that the previous owner retained when the property is sold. These mineral rights would be on the deed. The previous owner may retain the rights to take the minerals at a later date. It is rare that these rights are exercised and typically they do not have the right to destroy the property. A title search would reveal mineral rights recorded against the property.

### **Prior Heirs**

The son that went missing for the past decade may have rights to the property and could knock on the door someday wanting to take back the property that was previously sold. Because the title insurance searches the back ownership records and insures against prior heirs, the current owners are typically protected.

### **Community Property Rights**

Washington State is a community property state when it comes to rights of spouses. The laws in the state give the spouse joint rights to property depending on certain factors. For example, one spouse may have property prior to marriage. That property may or may NOT become community property over the next decade depending on whether there is a written agreement, sharing possession or sharing in costs and maintenance. Don't make assumptions as to whether there are community property rights or whether a title search will uncover a spouse.

### **Governmental Rights**

Though we might "own" property; our use of that property is restricted due to governmental regulations and laws. Federal tax liens are of the highest priority in terms of liens. The government, with eminent domain, can take property to construct a freeway, for example. Cities and counties can restrict the type of use and the building codes for what is built on the property. Health departments can make regulations on the water and waste on the property. Fire regulations can restrict how properties are built for fire codes.

### **Air Space Rights**

Commonly we think of real property as the land and buildings. Rights can be restricted as to the type and size. In addition, though, the rights to the air space above the land can also be limited or sold. The convention center in Seattle is built over the I5 freeway. The YMCA building in Seattle sold air rights to the IDX building next door. That gave the IDX building some additional rights for building height.

### **Tenants**

A tenant that has a lease agreement with a landlord or owner has rights to possession, typically. Just because the property is sold, that lease agreement remains in force unless there are exceptions in writing in the agreement. This is information that is not typically recorded and not found in a title search.

### **Others**

These are not inclusive as to all the rights others may have in the property. There are many more, but these are the most common.

**When you purchase a house, you are purchasing a bundle of rights.**



## How do you transfer ownership?

When you buy a television you give the money to the clerk and you take home your product. Your receipt is proof that you purchased the product. It would be hard to prove that one is yours when thrown into a pile of other TV's unless you had the serial number recorded like on the receipt.



Ownership to a car passes with a title which is the piece of paper that is signed and goes from seller to buyer. The car is registered in the state with you as the owner.

Homeowners fire insurance cover the property for the term which could be a year. It covers harm that occurs during that term.

When you purchase a house, the title or ownership passes with a “deed.” A deed is merely a conveyance instrument which passes the ownership rights held by the grantor to the grantee. A deed transfers the seller’s right of ownership, whatever it may be, to the buyers. It does not pass clear title to the new buyer. Title is the evidence of the rights of ownership.

I can give you a deed with my signature for Mercer Island, but the deed would give no title whatsoever. It would merely give the grantee, you, the right to sue me for the land...a right that may be quite empty. A deed is no proof that the person described as the seller or grantor is actually the owner. It does not do away with claims or rights others may have in the property. From the deed, you cannot determine what rights, liens or claims may be outstanding against the title.

Most often in Washington State ownership passes with a Statutory Warranty Deed. Although a Statutory Warranty Deed includes legal warranties made by the grantor, it may not always be possible to locate or to receive a settlement from the grantor.

A Quit Claim Deed is commonly seen in many transactions. It gives only the rights that the signer has to give. For example, I could sign a Quit Claim deed to Mercer Island for whatever rights I have which may, in fact, be none. Quite Claim Deeds are commonly used in transfers of ownership in divorce situations with one spouse signing one for another. It does not typically relieve the other of the responsibilities and liabilities of the mortgage.

Title insurance is purchased for the buyer and the lender to identify rights and ownership, liens and other interests in the property. The documents that transfer ownership are drawn up and signed to “close” the transaction. In Washington State closing usually occurs by a licensed escrow office, title insurance company or an attorney’s office.

## History of Title Insurance

In the early days of the country, land was mostly used for agricultural purposes. It was held in families so that transfers of ownership were predominantly from generation to generation. When a transfer or sale occurred the lawyers would go to the courthouse and make a formal check of the records. They would then check the tax records with the tax collector. In real estate transactions, the name of the game was caveat emptor -- "let the buyer beware." The ultimate responsibility for verifying the validity of a land title was the burden of the buyer. As a result, many lost their investments.



As the nation grew to the west, land speculation became feverish and the land transactions became more numerous and more complicated.

When property was sold the contract of sale would call for the seller to furnish the buyer with an "Abstract of Title", which was a history of the title of the land in an abbreviated form. An Abstract of Title is the document prepared by the attorney which showed all matters ever recorded against the property in question. When even these abstracts became too complicated to comprehend, attorneys began issuing Opinions of Title. In these opinions, the abstractors sorted out which recorded documents still affected the title to the property being researched.

According to the websites of numerous title insurance companies across the country it wasn't until 1868 that the problem drew public attention in the Pennsylvania Supreme court case of *Watson v. Muirhead*. After losing his investment at a sheriff's sale as a result of an outstanding prior lien, Muirhead sued his conveyancer. The conveyancer had uncovered the lien, but represented the title as clear after an attorney advised that the lien was not valid.

The court eventually ruled that conveyancers and attorneys could not be held liable for erroneous opinions based on professional standards of evaluation, and Muirhead lost his investment. As a result of the case, it became clear that something was needed to protect innocent investors from similar hazards and to encourage land development and American growth.

On March 28, 1876, the year Alexander Graham bell invented the telephone, a group of conveyancers led by Joshua H. Morris met in a small office opposite Philadelphia's Independence Hall to incorporate the world's first title insurance company, The Real Estate Title Insurance Company of Philadelphia. They pledged that their new firm would "insure the purchasers of real estate and mortgages against losses from defective titles, liens and encumbrances," and they guaranteed that "through these facilities, transfer of real estate securities can be made more speedily and with greater security than heretofore."

A short time later, the first title insurance policy was purchased by Morris' aunt, Martha Morris, who took out a \$1,500 policy to protect her loan on a home on North 43rd Street in Philadelphia. In that first year of business, The Real Estate Title Insurance Company of Philadelphia issued 169 policies. Eventually, the abstractors moved in to the business of insuring these opinions.

Over time, as “hidden risks” or defects came to light. After research the abstractor would issue an insurance policy telling the purchaser that he was acquiring good title to the property.

In the 1930’s reliance upon title insurance was amplified by the federal government as loan terms increased and interest rates decreased. The post WWII housing boom vastly expanded the use of title insurance. The American Land Title Association (ALTA) standardized the policy forms in conjunction with attorneys and government organizations including the Federal National Mortgage Association (FNMA). Congress created FNMA in 1938 to strengthen the sagging post depression housing industry. FNMA became a private company in 1968. It is currently a publicly held company that buys mortgages on the secondary market and sells them as securities to investors. The emergence of organizations such as FNMA stimulated business and standardized the title insurance coverages. ALTA worked closely with lenders to develop the most popular policy form.

## **Who Buys Title Insurance?**

Today, most transactions include title insurance. The one-time premium is paid at the closing of the transaction. As a matter of local custom, the seller pays for the new owner’s title insurance policy and the buyers pay for the lender’s policy of title insurance. If the buyer wants extended coverage, they generally pay the extra fees which may include a survey.

Title insurance coverage is in force as long as the owner or the heirs are in title. The coverage is for matters of title that occurred prior to the owner acquiring title but, which may not surface until after the acquisition. Title insurance is purchased to cover problems that may arise in the future due to defects in the past. Title problems originating after the owner is in title are not covered. Title insurance policies are dated and timed the same time as the insured document is recorded, whether a deed or deed of trust. The policy covers only matters occurring prior to this effective date and time.

## **What if Title Insurance is NOT Purchased?**

Title insurance is NOT required to close a sale of real property in Washington State. But, the lender usually requires it to identify clouds on title, make sure the seller can sell, and make sure that the property is free from other liens.

If a buyer closed a sale on a property ownership may pass with a deed. But, the rights of others could eliminate any value the buyer that that they had. This could include rights that are not showing up on a quick look at the county records.

## **How is it Title Insurance different from Car and Fire Insurance?**

With car insurance you pay a premium for a given period of time which could be six months or a year. Your premium paid usually in advance, will cover problems that occur during that period of time. That may include problems (accidents) you may have been involved in. It covers damage to the car and the passengers. Car insurance does not insure ownership of the car or the title. The premium is paid for each term of coverage and covers problems that occur during that following term which could be year. Those problems do not include any problems with the sale or ownership of the car.

Homeowners fire insurance is paid usually annually to cover losses should there be a fire or damage to the property usually due to an unforeseen catastrophe. That insurance is paid for coverage for the upcoming year. It is often required by lenders as they have an interest in the property and if it were to be destroyed, the house as collateral would no longer be there as security for the loan. This insurance does not cover any issue regarding ownership.

With title insurance, you pay a premium at the time you purchase the property. It is for coverage primarily related to ownership issues until you sell and transfer ownership. So the term is indefinite. The Title Insurance covers primarily problems that occurred before you bought the property. Those problems can surface or become an issue in the future. The premium is paid when you purchase and it covers primarily problems from the past.

When a property sells typically the seller pays for a title insurance policy for the buyer to make sure clear ownership is transferred. The buyer usually pays for the title insurance coverage for the lender that is carrying the mortgage.

## **Regulation of Title Companies**

The Title Insurance companies in Washington State are regulated by the Insurance Commissioner in Olympia. They have to follow strict guidelines for everything from the rates they charge to how much they spend on advertising.

In 2006 the insurance commissioner in Washington State audited many title companies and found violations of the laws. The statutes specify that they cannot spend more than \$25 per agent per year for marketing to it could be construed as steering business. In 2007-2008 the Title Insurance companies worked on changing policies to comply with the laws and the interpretation of the law by the insurance commissioner. Today, the industry is very regulated. For more info go to [www.insurance.wa.gov](http://www.insurance.wa.gov)

## **A.L.T.A.**

The American Land Title Association is a national trade association. It provides a degree of uniformity in title policies and endorsements and forms. ALTA promotes professional standards and ethics.

Sometimes it was thought that an ALTA policy meant an extended coverage loan policy. But, ALTA policies can be issued in both standard and extended forms, for both owners' and loan policies.

## **What is Closing?**

The closing of a real estate transaction in Washington State occurs when the documents are signed recorded and the funds are available to the seller. At the time of closing and drawing documents any cloud on the title must be cleared. Possession occurs when specified on the purchase and sale agreement.

The parties to the transaction sign usually 48 hours before the actual closing. At that time the documents are all drawn and signed. At this time any final money owed as part of the transaction is paid by certified check. There is a final review by the lender and the title insurance company.

As transactions become paperless, the closing process has become more streamlined and happens quicker.

## **What is Escrow?**

In Washington State escrow is a method of closing in which a neutral third party is authorized to act as escrow agent and coordinate the closing activities. During the escrow process the preliminary title policy is reviewed and clouds or problems with the title and ownership conveyance are cleared. The escrow agent holds monies and legal documents on behalf of the buyer and seller according to their instructions in order to close or complete the sale.

## **Who can close transactions in Washington?**

Washington's Escrow Agent Registration Act requires escrow agents to be licensed and registered with the Department of Financial Institutions (D.F.I.). There are a number of exemptions from these requirements, however. Attorneys, title companies, banks, savings and loans, credit unions, insurance companies, and federally approved lenders are allowed to perform escrow services without being licensed or registered under the act. In addition, those acting under the supervision of a court such as receivers, trustees in bankruptcy, guardians, executors, and probate administrators.

In Washington State a broker handling escrow for their own transactions is also exempt from licensing, provided they do not charge a fee for their escrow services. Very few brokers ever close real estate transactions because of liability issues.

For a company to be licensed as a Certified Escrow Agent to engage in the escrow business under the registration Act it is necessary for a partner or corporate officer to pass an escrow agent examination, pay a fee, submit affidavits of good character, present a good credit report and obtain a fidelity bond. The certified escrow agent may employ Escrow Officers to close transactions and they must also be licensed.

## **Limited Practice Officer**

The term "L.P.O." is short for Limited Practice Officer, a person who has been authorized to prepare certain closing documents and perform routine closing functions under rules approved by the Supreme Court of Washington. Different laws govern the conduct of different classes of Escrow Agent.

A "Closer" is someone who works for an escrow agent. A closer may or may not be an LPO.

# Challenges to Ownership

Here is one important clue on any question or dispute on ownership or equity.....

YOU, as a real estate agent will NEVER have the authority or be able to review legal documents to determine if ownership or equity division based on the paperwork or what the sellers say.

## Fight to Own

This book and screenplay, The House of Sand and Fog, was based on the ownership issues of a home. In the story Massoud Amir Behrani, a former colonel in the Iranian military, reflects on his job search efforts since arriving in the U.S. four years before. “I have spent hundreds of dollars copying my credentials. I have worn my French suits and my Italian shoes to hand deliver my qualifications. I have waited and then called back after the correct waiting time. But, there is nothing.” The father of two, Behrani has spent most of the money he brought with him from Iran on an apartment and furnishings that are too expensive desperately trying to keep up. On impulse he sinks his remaining funds into a house he buys at a foreclosure auction, thus unwittingly putting himself and his family on a trajectory to disaster. After purchasing the house he is surprised when he learns that the house could be sold for as much as four times what he paid for it. He could become rich without hard labor. But, he finds out that the county erred in seizing and auctioning the property for sale due to back taxes. The house, it seems, once belonged to Kathy Nicolo a self destructive alcoholic living in her car. She wants it back and she finds herself at the brink of desperation. The story is quite a tragedy. It is based on the error made regarding ownership. But, it also focuses on the government control issues over property and taxes and the investment potential of real property.

## Honey, I Want Equity

Peter purchased a house in 1996. He met Rebecca in 1997 and they soon wed. Rebecca moved into Peter’s lovely home. But, unlike the fairy tales, Rebecca and Peter filed for a divorce after living in the house for 5 years. Rebecca moves to an apartment.



Peter lists the house with Friend Fred, the agent. Peter says that he is the only signature needed to sell because he owned the house prior to getting married and he is the only name on the title. Fred pulls out a listing agreement and gets Peter’s signature. Rebecca is living on the other side of town and is unaware that the house has a “For Sale” sign out front! Driving by one day she sees the sign and pulls out her cell phone.

*If Peter purchased the house prior to marriage, isn't the house his separate property and not community property? They lived in the house 5 years. How would the real estate agent know that Peter was married?*

*Will Rebecca’s name show up on the preliminary title?*

Here’s a clue... as a Real Estate agent you are not in the position to determine who “owns” the house! But, if there is a married couple, it is best to assume community property.

## **She is Behind on the Payments!**

Elizabeth has fallen on to hard times. She got divorced from Michael 3 years ago. She was awarded the house and equity as part of the settlement. But, she cannot make enough money to make the payments. She can't qualify to refinance the house so the equity she has built up is unavailable to her. She ends up in default and the property is heading into foreclosure.

Martha, a real estate agent, encourages her to list the property for sale and finds a buyer. Upon review of the preliminary title as the transaction proceeds to escrow, Martha is informed that Elizabeth does not have enough equity to pay the costs and fees to sell. The sale price does not even pay off the underlying liens. So Martha decides to negotiate with the bank to proceed and complete a "short sale."

*Will Martha get paid commission at closing if there is not enough equity?* Not always!

*Does the bank have to agree to a short sale?* NO

*Can you explain what short sale means to a lender?* Lender loses money.. takes less than loan.

*What happens to the other liens attached to the property?* Depends on priority

The knock on Elizabeth's door is from Tom, who is a foreclosure rescue "expert" who wants to save her house for her. Tom shows empathy and wants to help her get the house back and he has an easy solution. She signs a quit claim giving her interest in the house to him. He "buys" the house and gets the foreclosure stopped. She also signs a lease agreement with an extremely high payment and pays Tom rent for the house with an agreement that at the end of a period of time she will repurchase the house at an agreed upon (outrageous) price back from Tom.

*What happens to Elizabeth should she not be able to make one lease/rental payment?* Evicted

*What if the house is not worth what the agreed upon purchase price is at the end of the year.*

*Does Tom have to sell the house back to Elizabeth?* No, and most likely won't.

*Could Tom be a real estate agent with a license?* Some agents are finding this profitable.

Elizabeth goes to a "Mortgage Elimination" seminar with her friend. They find out that there is a process where you can eliminate your mortgage lien for only \$2,500. It sounds too good to be true, but what does she have to lose if she is already in foreclosure. So she writes the check and starts signing papers.

She is asked to sign a quit claim deed, a change of address, a change of trustee, a power of attorney. She is told that papers will be recorded in the county that will eliminate her mortgage loan because it was "illegal" for the bank to take that promissory note and deposit into the bank funds and borrow off it.... (the story goes something like that.) Then, Elizabeth can refinance and get the amount of cash or more than the original loan.

*Is there such a process that can legally eliminate mortgage debt?* No.. homeowners must pay it!

*Does she technically "own" the house if she signed a quit claim?* She is still liable for loan.

*If the house does go into foreclosure would she know prior to her eviction notice?* NO

*If an illegal deed of reconveyance is filed and recorded in the county could she be liable?* Depends

## **Lease to Own Fixer**

There are signs on every telephone throughout the city. They beg you to lease purchase with an option on homes that are fixers. You are encouraged that the money spent on the property will increase the value and equity over time. A percentage of every lease/rent payment will go directly to the down payment. It just sounds too good to be true!

So Ron calls the number and meets with the ‘owner’ of the home, Bob. It is your standard split level home from the 1950;s that is “tired.” He figures this would be a fantastic buy. So he jumps. He can’t qualify for a loan today for the house. But, in 2 years he thinks he might. So he signs the rent to own lease option and puts \$5000 down which will go directly to the sales price in the two years. He moves in and immediately replaces the carpet and works hard on the landscaping. He starts making the payments to Bob. Three months later he gets a knock on his door that he’s being evicted.

*Who owned the house?* Bob is probably someone that paid owners to leave.

*What rights does Ron have? He’s made payments?* Probably none.

*Who’s name is on the original deed of trust?* Most likely the owner that left.

*Why would Bob have he keys to a house he doesn’t own?* Because he got them from owner.

## **But My Husband Died**

A nice young couple purchased a home from a widow. She was the only known heirs of the husband who died without leaving a will. Soon after the sale a man appeared claiming he was the son of the late owner by a former marriage. As it turns out, he indeed was he son of the deceased man. This legal heir disapproved of his father’s remarriage and had vanished when he wedding took place. Nonetheless, the son was entitled to a share of the value of the home which was an expensive problem for the unwary couple purchasing the property.

*Does the lost son have an interest in the property?* Maybe

*Did the title company pay out the claim for the lost son’s equity?* Maybe

## **Do I need title insurance if I am just Refinancing?**

I went to refinance my property. I have owned it for the past two years. There are no additional liens on the property? The preliminary title, when finally reviewed showed that I did not own the property. The preliminary title shows the previous owners as current with no mention of my name. Upon review the transaction closed with the incorrect legal description.

*Do I own the house?*

*Do I own the property with the incorrect legal?*

*Do the previous owners have any interest in my property?*



## Buy Direct from the Builder!

Andy wants to save money on the new construction house that he had purchased with a lease option. So, Andy does not review a preliminary title insurance policy. He pays a substantial amount of down payment to the builder to have the option to purchase in one year. After about 6 months he is contacted and the house has over 10 liens. Evidently the builder could not pay his bills to the subcontractors in the plat.



*What can Andy do to force the builder to sell to him at the end of the year even though the builder owes more on the house than is worth? Probably not much*

*What could Andy have gleaned from a preliminary title report? The first liens maybe.*

*What advantage would Andy have for lease purchasing the house vs just buying it outright? No up front mortgage and not much money to get into the house.. but that money could be gone.*

## Does the Non Profit Agency own the house?

Two properties were sold to the Bay State Housing agency. The owners were listed on the county records as the non profit agency. But, the properties were recorded prior to the completion of the articles officially creating the Agency. Because of serious code violations, the city is fining the owners of the two properties.

*Can you purchase property as an LLC, Corporation, or non profit before you are legal?*

*Who owns the properties if the agency has not been created? Who knows?*

## The Boat Dock is not on the Legal Description

Mark is purchasing a condo on Lake Sammamish. The closing date has been set for Friday. His loan documents have been sent to escrow. On Tuesday afternoon someone in escrow notices that the purchase and sale agreement refers to a boat dock but the legal description does not mention it. She finds that in the past there was a recording error and the dock was actually deeded to the condominium on the 3<sup>rd</sup> floor. There is less than 60 hours before closing. Mark is sent over to the condo on the 3<sup>rd</sup> floor with a quit claim. Paul and Diane answer the knock on the door. To their surprise they are delighted that there is a chance that they actually own a second mooring space for another boat. They can barely breathe. "Of course, we are NOT signing that quit claim deed," they say with excitement. The next morning they run to the attorney with the quit claim and the excitement about the possibility of owning more moorage. The attorney does in fact agree that the second dock has been deeded to their condo but that the "real" owners will be able to solve the problem. The attorney says, the buyer is under a time pressure so why not "charge the buyer for their signatures on the quit claim and go spend the money on a vacation!"



*Could Paul and Diane on the 3<sup>rd</sup> floor actually have a claim to the dock when it was a clerical error in the past? Probably not*

*Can they be "forced" to sign the quit claim? No, but it would make transfer easier.*

*Can Paul and Diane ask for money to sign the quit claim? Maybe*

# Title Search

The process of searching the records for the ownership history is made by the title company to determine the rights that others may have that limit ownership or conveyance.

## **Chain of title**

The “chain of title” is simply a history of the ownership and the transfer of ownership of a particular piece of property. It is the continuous record of ownership. An abstract is a condensed history of those records.

## **Tax Search**

This is a search to determine the present status of general real estate taxes against the property. The tax search will reveal if taxes are current or are unpaid and past due from previous years. In addition, the tax search will indicate the existence of any special assessments against the land and whether or not these assessments are current or past due. A due and unpaid tax or special assessment is a prior lien or a claim on the property above all others. These liens can be cleared by the seller so that the buyer can take clear title. A special assessment could include a utility assessment for sewer installation in the street, for example.

If a buyer were to purchase property with unpaid and past due taxes, they attach to the property and the property can be foreclosed on if they are not paid. Lenders will not loan on property with unpaid tax liens that go into first position.

## **Lien Search**

Mortgage or other liens recorded against the property that must be paid upon sale of the property. It will also include deed of reconveyances and lien releases.

## **Recorded Documents**

There may be documents recorded on that property. The documents might include easements, liens, or deeds. There may be mistakes in recording of documents.

## **Report on Possession**

Often inspectors are sent to look at the property to verify the size, check the location of improvements and look for evidence of easements. The purpose is to supplement the information learned from the title search. In the eyes of the law, any buyer of real estate is assumed to have notice of all matters shown in the public records on that property. Sometimes a survey is required.

There are rights to a property that may limit ownership. The right of way for a road or power line, an easement for a driveway or even air rights or mineral rights may have been sold or granted to someone else by a former owner.

If an inspector detects an unrecorded easement or other evidence of outstanding rights it could affect the owners' title and possibly the value and intended use. Title insurance can protect the buyer from unrecorded easements or rights.

### **Judgment Search**

One of the most important parts of the title search is to determine if there are any unsatisfied judgments against the seller or previous owners. A judgment is a general lien against the debtor's real estate and constitutes security for any money owed under the judgment. The real estate can be attached and sold to satisfy the judgment.

It is extremely important to be sure that a title is not subject to judgments against the seller or previous owners that could hinder the seller's ability to sell or delay closing. The seller must eliminate the judgment before the property can be passed on to the new buyer. Title insurance provides this protection by searching for judgments attached to the property.

### **Similar or Identical Names**

Sellers and buyers may have names that are similar to other people who have judgments. If that occurs, the title company will ask for a signed affidavit from the seller and purchaser verifying his or her name.

Despite a careful investigation to prevent it, some confusion of identity is possible. Examples include:

- A person's title to his or her land, established thirty years ago may be under one name and the taxes may still be paid under that name... but the lawsuits, marriages, divorces, wills and other actions may be under a simplified family name such as "Lee."
- Two members of the same family might have the same name as in the case of a father and son. The title may be in one while the deed is executed by the other having no title.
- A house owned by a person named John Smith may show many judgments on the title search due to other "John Smith's"

### **Clerical Errors**

Clerical mistakes are infrequent, but they do happen. Examples include:

- A document may be missed in searching.
- Entries or indexing in records may be in error.
- A legal description can be recorded incorrectly.

### **Undisclosed Heirs**

When an owner dies intestate where there is no will, the courts must decide who the rightful heirs are. But, even then, such a decision by the court may not be final or binding on any heir who was not notified of the proceeding. The court may have to settle questions on interpretation of the will. Examples include children born after the date of the will and heirs overlooked due to incorrect probate proceedings.

### **Mental Incompetence or Minors**

A transfer of property by a minor or a person adjudged to be mentally incompetent raises special problems. To be valid and binding on a minor or incompetent, the transaction must be made by guardians or conservators appointed by the court. If a deed or release was executed by a person who was a minor or under mental disability at the time, the transaction may be voidable or invalid.

### **Fraud and Forgery**

Fraud and forgery will not show as a matter of record. Examples where the title insurance company protects the new owner include:  
A previous owner that may have been fraudulently impersonated, and  
Deed, releases, mortgage or other documents that may be forged.

### **Defective Deeds**

The deed may be defective for a number of reasons that may not be found in the title search. Examples may include:

- A deed that may have been delivered with consent of the owner on or after his or her death.
- A deed that may have been executed under an expired power of attorney.
- The name on the grantee may have been inserted in the deed after its delivery.
- The officer or a corporation that may have not been properly empowered to act.

### **Marital Status of the Owner**

Under the law, one spouse may have an interest in property owned individually by another spouse. An owner may say that he or she is single, although secretly married or perhaps divorced in another state. This could result in a claim by a spouse or a former spouse whose existence was not suspected.

In Washington State is a community property state when it comes to married folks.

### **Notes**

Informational items may follow the body of the preliminary title report. These include address verification and clearance of inspection. These notes are for information only and will not show on the final policy.

## Reading the Preliminary Title Report

If you read the preliminary title report carefully, one paragraph at a time, you will find it is relatively easily understood. Your title officer is happy to assist you with any items you may wish clarified, including providing you with full copies of any documents shown on the report.

- Find out who is listed as the owner of the property. Look at the names carefully. This may seem basic, but you cannot sell a property without the signature of the owners. Sometimes, for example, the spouse that has passed away is still listed as an owner. This should be dealt with prior to listing a property.
- Check carefully for any restrictions or easements of record which may affect your buyer's intended use of the property. There might be an easement that could affect how the new buyer intends to use the property. For example, the new owners might want to build a garage but find out on the preliminary title that there is a power line easement along the property line affecting the ability to put in a driveway.
- Look for liens that are on the property or judgments against the sellers. This could affect the sellers ability to sell the property. The sellers might owe more for the property than the market value.

Careful review of your title report at the start of a transaction may save hours of headaches and frustration later on!

## Who Owns this House

Quiz to take if this is a correspondence class.  
Attach answer sheet to the evaluation.

Circle correct answer True or False.

1.	When you purchase a car, it is important to know if the previous owner had any lawsuits against him.	T	F
2.	“Possession” of real property is considered “ownership”	T	F
3.	Kari wants to purchase a house. She needs to know if there are others that have rights to the land in the backyard.	T	F
4.	When a house is sold, the rights that a tenant leasing the property has are automatically eliminated.	T	F
5.	Contractors have the right to file mechanics liens on property.	T	F
6.	Owners of real property have exceedingly strong rights.	T	F
7.	Ownership can be described as a “bundle of rights.”	T	F
8.	Real Estate is more strongly safeguarded than almost any other material ownership.	T	F
9.	The prior owner gives up any rights to the timber on the property unless he retained them on the deed.	T	F
10.	Easements are not always recorded in the county.	T	F
11.	Easements that are not recorded go away when property is sold.	T	F
12.	Ownership to real property is subject to certain restrictions.	T	F
13.	If a spouse owns property prior to marriage, it never becomes community property after marriage.	T	F
14.	Easements are always visible.	T	F
15.	When you purchase a house, ownership passes with a deed.	T	F
16.	Title is evidence of the right of ownership.	T	F
17.	An owner can transfer ownership with a deed but the owner may not have any rights to transfer.	T	F
18.	Title insurance is for purchasers of cars.	T	F
19.	In the past, buyers could use lose their house if a prior lien was not discovered.	T	F
20.	An “Abstract of Title” is a mini title insurance policy.	T	F
21.	Title insurance is typically a one time premium paid at closing.	T	F
22.	Title insurance coverage is in force as long as the owner or heirs are in title.	T	F
23.	As local custom, the seller pays for the buyer’s title insurance policy and the buyer pays for the lenders title insurance policy.	T	F
24.	If a transaction closes without title insurance the buyer may not actually own the property paid for.	T	F
25.	ALTA is a type of title insurance policy.	T	F
26.	Title insurance premiums cover only problems discovered at closing.	T	F

27.	Title insurance companies are regulated by the Department of Licensing.	T	F
28.	Under Federal law, the title companies in Washington State can only spend \$25 per agent per year for marketing.	T	F
29.	ALTA policies can be issued on both standard and extended terms.	T	F
30.	Closing in Washington State occurs at the time of possession.	T	F
31.	The Escrow agent is a neutral third party.	T	F
32.	Escrow agents must be licensed with the Department of Financial Institutions.	T	F
33.	A closer may or may not be an L.P.O.	T	F
34.	An L.P.O. is a "licensed property originator."	T	F
35.	Real estate agents should not review legal documents to determine ownership issues.	T	F
36.	In the movie, <u>The House of Sand and Fog</u> , the property was auctioned in error.	T	F
37.	If a married couple lives in a house, only one spouse needs to sign the legal documents.	T	F
38.	There are cases where the sale price agreed upon is not high enough to pay off the liens.	T	F
39.	If the property sells for less than the mortgage, the bank automatically agrees to a lower payoff amount.	T	F
40.	Programs that rent a property in foreclosure back to the owners are often schemes that take advantage of the owners.	T	F
41.	A homeowner with a mortgage can pay a mortgage elimination company to make a mortgage legally disappear forever.. and it really will vanish!	T	F
42.	A prospective tenant could actually lease purchase a property without ever checking to see whether the landlord is actually the owner.	T	F
43.	If escrow fails by accident to convey the boat dock to the owner of the condo, the owner can never get it back.	T	F
44.	A homeowner should get title insurance when refinancing.	T	F
45.	The preliminary title report will often list and uncover liens against the property.	T	F

I attest that I have read the materials and have answered the 45 questions.

**Date Course Started** \_\_\_\_\_ **Date Course Completed** \_\_\_\_\_  
**Print Name** \_\_\_\_\_ **Company** \_\_\_\_\_ **Signature** \_\_\_\_\_

PROFESSIONAL Direction, 13148 Holmes Pt Dr NE, Kirkland WA 98034  
Email: clockhours@gmail.com



# Who Owns this House

Answer Sheet

You must attach the Evaluation to the Answer Sheet to receive clockhours.

1		26	
2		27	
3		28	
4		29	
5		30	
6		31	
7		32	
8		33	
9		34	
10		35	
11		36	
12		37	
13		38	
14		39	
15		40	
16		41	
17		42	
18		43	
19		44	
20		45	
21			
22			
23			
24			
25			

Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_





### Mandatory Evaluation

Did you read the material in the booklet on this date? YES / NO  
 Did you complete the quiz and attach answer sheet? YES / NO  
 Did you enclose Tuition (\$30 for 3 hrs) or use pay pal YES / NO  
 Did you fill out and sign this form? YES / NO  
 Paid by Check or Visa/MC # \_\_\_\_\_ exp \_\_/\_\_/\_\_\_\_print clearly PayPal avail on website.

Why did you choose to take this course? Topic? Time? Cost? Ease? Other?  
 A "clock hour" is 50 minutes. This 3 hour class should take about 2 hrs 30 min. How long did it take you to complete the course? \_\_

	No			Yes	
Will the material you learned improve your performance?	1	2	3	4	5
Were the course materials easy to follow?	1	2	3	4	5
Were the course materials relevant to your profession?	1	2	3	4	5
Were your objectives met by attending the class?	1	2	3	4	5

What are 3 things that you learned from the course?

1. \_\_\_\_\_ 2. \_\_\_\_\_ 3. \_\_\_\_\_

Who Owns this House		
Print Name CLEARLY	Signature	Company
Address	City Zip Code	Phone
Twitter name @	Email	
License Renewal Date		Date class taken

*Thanks for taking this class! I really appreciate the agents that take clockhours from my school! I am always working on my classes and writing new ones! Natalie*

**Professional Direction, 13148 Holmes Pt Dr NE, Kirkland, WA 98034 email: clockhours@gmail.com  
 www.clockhours.com**