

2016 FLTA CONVENTION

CLOSING SAND TRAPS

Hypothetical 1 – Unrecorded Deed Trap

Harry, a widower, died in 2016. No probate was filed. Harry's daughter, Sandy, has an unrecorded deed by which her father purportedly conveyed his home to her in 2010 as a gift. The witnesses and Notary, who are family friends, say they saw Harry give the deed to Sandy but told her not to record it so he could keep his homestead tax exemption. Harry also has a homeless adult son whose whereabouts are unknown.

If the deed is recorded, can Sandy convey marketable title? Is the homestead exemption an issue?

Notes: _____

Hypothetical 2 – Delivery of the Deed Trap

The seller is sick and could die before the closing. The Realtor wants the title agent to "do something."

If the title agent holds the seller's signed deed and other closing documents in escrow but the seller dies before the buyer transmits his closing funds and buyer documents, would the conveyance be valid? Alternatively, could the title agent obtain and record a deed to the seller's daughter who would then deed to the buyer?

Notes: _____

Hypothetical 3 – “Cancel the Closing” Trap

Immediately after the closing, the buyer discovered that the seller had removed the kitchen cabinets. He notified Why Me Title to “cancel the closing.” He threatened to sue Why Me if it did not return his funds. Why Me called the seller who threatened to sue Why Me if it canceled the closing.

At this point, the Realtors and seller have not yet cashed their checks that they received at closing. The file has not otherwise been disbursed or recorded. What should Why Me do?

Notes: _____

Hypothetical 4 – Deed Possession Trap

The parties say it took Bunker Title too long to obtain deeds from the numerous out-of-state heirs who are selling. They have moved the closing to Opportunistic Title. The buyer’s rate expires in a few days. Opportunistic wants Bunker to give it the executed deeds. What is Bunker’s best option?

- A. Give the deeds to Opportunistic.
- B. Return the deeds to the sellers.
- C. Destroy the deeds.
- D. Hold tight, they will have to come back to Bunker.

Notes: _____

Hypothetical 5 – Delay in Recording Trap

Bogey Title closed and disbursed. Before Bogey recorded, the buyers’ lender notified Bogey that it was going to send Bogey a revised mortgage rider, which Bogey should get the buyers to come back in and sign. A week later, Bogey finally received the revised rider but the buyers are not returning Bogey’s calls. What should Bogey do?

- A. Hold off on recording the deed and mortgage until the corrected rider is signed.

- B. Record the deed but hold off on recording the mortgage until the corrected rider is signed.
- C. Record the deed and mortgage and require lender to handle any corrective work.

Notes: _____

Hypothetical 6 – Notice of Commencement Traps

6. The commitment requires termination of a Notice of Commencement but construction is not complete. Cart Path Title obtained a Contractor's Final Payment Affidavit to record as an attachment to a Notice of Termination (NOT). Unfortunately, the affidavit states that the contractor is still owed \$50,000 for work done to date. The property owner objects to paying the \$50,000 because it is "retainage" and also objects to stopping construction.

What should Cart Path do? If Cart Path pays the \$50,000 at closing, does it need to get a revised affidavit to attach to the NOT?

Notes: _____

Hypothetical 7 – Disclaimer Trap

Widow Putter died intestate. An Order Determining Homestead stated that her homestead passed to her two children, Charity and Patrick. The title commitment required satisfaction of a judgment lien against Patrick. Thereafter, Patrick filed a disclaimer and obtained a revised Order Determining Homestead vesting title in Charity. Patrick has one minor child.

Can Charity convey marketable title? Explain.

Notes: _____

Hypothetical 8 – Disbursement Trap

Caddyshack Title closed a sale from Duffer, Inc., a dissolved Florida corporation. After closing, Simon Woods, President of Duffer, refused to accept the proceeds check payable to Duffer because Duffer no longer has a bank account and cannot open one without reinstating. The last annual report on *Sunbiz* only lists Simon as an officer/director but, previously, Simon's ex-spouse was also listed as an officer/director. Simon says he is the only shareholder.

Should Caddyshack cut the check to Simon individually? Explain.

Notes: _____

Hypothetical 9 – Documentary Stamp Traps

Divot Title is having documentary stamp issues. In one file, the buyers want to pay for extra doc taxes on their deed. In another file, although the contract price is \$400,000 the seller only wants to pay doc stamps on \$350,000 on the theory that the personal property included in the contract is worth \$50,000. What should Divot Title do?

Notes: _____

Hypothetical 10 – Government Regulation Traps

Pro Title is handling the purchase by a corporation of a residence in Broward County for \$1,500,000. The Realtor wired Pro the buyer's deposit of \$15,000 and the buyer wired the balance to close. Does the FinCen GTO apply to this transaction and, if so, what does Pro need to do to comply?

Notes: _____

