



What am I Signing at Closing?

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There are numerous affidavits to be signed at the real estate closing. By its definition, an “affidavit” is a sworn statement attesting to factual information made before a notary public or other authorized officer. At closing certain exceptions to title are listed in the title report. These exceptions include open judgments against the name of an individual or entity in title, environmental control board or parking violation judgments, federal tax liens, and open mortgages, to name a few. These exceptions are usually indexed against the same or similar name of the purchaser/seller/borrower “p/s/b” and need to be cleared so that a title insurance policy can be issued free and clear of said exceptions.

To enable title agents, who issue these title insurance policies, to exclude these issues or exceptions, we rely upon a “title affidavit”. A title affidavit is made by the p/s/b that sets forth statements to resolve issues affecting title. In essence a title affidavit allows us to address some of the uncertainties that cannot be resolved simply by examining the official real property records. Some of the more common statements made on the title affidavit are as follows:

*“I have been known by no other name for the past 10 years except ****”*

This statement allows us the ability to search any other names that the individual may have to check for open judgments and other liens that could potentially have priority over the fee or mortgage interest we are insuring. The statement includes a period of ten years, the statutory period for most money judgments to affect real property.

*“I am one of the grantors/grantees owners named in the deed/mortgage dated and recorded in *** conveying premises known as 123 Real Estate Place, NYC”*

In this instance the individual(s) certifies that he/she is the owner of the real property located within New York State or elsewhere, and in doing so helps to establish the identity of the person executing the closing documents.

“That there are no judgments or Federal Tax Liens against me unsatisfied of record in the Courts of this State or of the United States and the judgments set forth in the Report of Title Number HLS-NY-1000 are not against me but a person of the same or similar name and I have never resided or conducted business at the premises indicated against the judgment debtor”

This statement indemnifies us in the event that a judgment or other lien is docketed after closing but prior to our mortgage or deed being recorded. As New York State is a “race notice state”, the first to record, absent adverse notices, has priority. . We guarantee to our insured under the terms of the policy that such an event would be insured against. And we would use the affidavit as recourse against the affiant, the person signing the affidavit under oath.

“That I have not received any Emergency Repair Notices.....”

This statement indemnifies us in the event that the City of New York has entered the premises to make an emergency repair such as is the case when there is a tenant who has an emergency situation with an absent landlord.

“That there are no springs, streams, rivers, ponds or lakes bordering or running through the premises”

If there were we would not insure against “riparian” rights, which are the rights of the town, city, state, and government or of others to navigate through the waters of the property.

“That no proceedings in bankruptcy have ever been instituted by or against me in any court or before any officer of any state or the United States”

Should the seller in a transaction have filed bankruptcy we would have to obtain the information in bankruptcy court to determine whether there was a bankruptcy court order approving the transaction being insured, or in the alternative, we would need the bankruptcy case closed prior to proceeding with closing.

For commercial transactions the following statements would be found in the affidavit:

“That the charter of said corporation is in full force and effect and no proceeding is pending for its dissolution or annulment. That all license taxes, state franchise taxes and City Corporation tax (if applicable) which are due and payable by said corporation, have been paid in full”

This statement is used when a corporation is in title or is purchasing. City corporation taxes and state franchise taxes are liens affecting the real property when left unpaid.

“There are presently _____ tenants in said premises. Each of said tenants either (a) is in possession under a written lease containing a standard subordination clause fully and unconditionally subordinating said lease to all existing and future mortgages, or (b) is a statutory tenant. All persons in possession are in possession pursuant to written leases as tenants only”

This statement allows us to except the rights of Tenants who remain on the premises, or to get the landlord to subordinate the lease to our insured mortgage. We may also omit rights of tenants from a lender’s policy if in fact all of the existing leases are, by their terms, subordinate to any and all present and future mortgages.

The issues discussed above cover only the title affidavit. There are other affidavits that will be covered in future articles. It is important to understand the nature of the various affidavits to promote consumer awareness.