



STEERING CLEAR OF TITLE TROUBLE

When stage great Helen Hayes died in 1993, her son, James MacArthur, inherited her Victorian mansion overlooking the Hudson River in Nyack, N. Y. MacArthur arranged to sell the house for

REAL ESTATE

\$730,000 to Christopher and Georgine Chalsen, who planned to live there with their five children. A few weeks before the scheduled closing last June, a title researcher found buried in the public records a 29-year-old right of first refusal that Hayes had granted to a neighbor. After much frustration and weighing of legal options, MacArthur honored the agreement, and the neighbors bought the house. They removed a strip of land connecting the Hayes property and their own to the river bank and put the house back on the market at \$849,000. With the river access gone, the Chalsens declined to pursue a deal.

The fiasco over the Hayes mansion, known as Pretty Penny, is an example of how a defective title can kill a real estate deal that both parties

badly want to complete. No matter how much you feel that you've finally found your dream home, don't get in too deep unless you're sure the house clearly belongs to the seller or that you won't get involved in a bottomless legal pit. Refusal rights, liens, easements, or boundary disputes are the type of problems to watch out for.

But even the seller doesn't always know. MacArthur was unaware that the refusal right existed, much less that it had passed to the couple next door when they bought their house from his mother's original neighbors a few years ago. Hayes had granted an unlimited right to all "heirs, executors, administrators, successors, and assigns" of the neighbors. Says Alan Wayte, a Los Angeles attorney: "That's a mistake, and a very common one." What Hayes should have done is restrict the refusal right to her original neighbors or limit its duration.

The broader issue is

that title searches are often left until it's too late to prevent both parties from spending a lot of money and effort getting ready to close. A title is evidence that an owner has the right to possession. Mortgage lenders require a search to assure that the property's title is free and clear of claims or any other problems. The search may show that the seller has a former spouse who is a co-owner but knows nothing of the sale; a trucking company has an easement that allows it to drive through the property during the night; or that the toolshed was built two feet over the boundary of a neighbor's lot and the problem needs to be resolved. It should also show any liens for unpaid taxes or mortgages.

EARLY REQUEST. The key is not to let the title check wait until after you have completed other aspects of the deal, such as mortgage approval and arranging to move. If possible, obtain a pre-approved mortgage before going out to shop for a house, suggests Gary W. Eldred, author of *The 106 Common Mistakes Homebuyers Make (And How to Avoid Them)* (John Wiley & Sons, \$14.95). Getting mortgage approval out of the way allows everyone involved to concentrate on the title and other matters, he says.

The minute your bid on a

house is accepted, start re-searching the title. Ask the seller's lawyer or broker to send a copy of the title report from the property's most recent sale and the proposed contract, says Eric Gonchar, MacArthur's attorney. Also ask for the most recent property survey and certificate of occupancy.

Before the contracts are signed, make sure you or your bank orders the search from the company that will issue your title insurance. Also get a copy of the summary report. It shouldn't take longer than two weeks. Don't wait until the property is appraised or until your loan is approved. If possible, have the abstract of the title and property survey before your closing or moving dates are made. That way, if there are problems that will take weeks or months to resolve, you won't have to undo preparations to move from your current residence and inconvenience your buyer or tenant.

Title searches and reports cost \$150 to \$500 and, if the deal closes, that cost is rolled into the title-insurance bill. If the title report turns up information that makes closing impossible, most home-sale contracts require the seller to pay the buyer's title-search fee and related title-examination costs.

Although MacArthur picked up the tab for \$1,000

of title-research costs, Christopher Chalsen says he still spent \$700 on the inspection. Chalsen recalls that he told his lawyer to hurry to get the title information, but he and his wife signed the contract before the data were in hand. Luckily, the Chalsens eventually found another house. It hadn't belonged to a famous actress, but its title was free of anything that could have turned the purchase of the home into a tragedy.

Richard Korman

Before You Seal the Deal...

- Get the title search done as early as possible, well in advance of closing and arranging to move. Press lenders, real estate agents, and attorneys not to neglect this part of the deal. Try to get a mortgage approved early so you can concentrate on the title.
- Seek the title data from previous sales and refinancings prior to signing a contract. Ask for copies of the survey and certificate of occupancy as a tip-off to trouble involving boundaries or illegal structures.
- Always buy title insurance. Be sure the policy covers the owner, not just the mortgage lender. Try for a policy that insures the full equity in addition to the mortgage amount.

DATA: THE 106 COMMON MISTAKES HOMEBUYERS MAKE (AND HOW TO AVOID THEM), CHICAGO TITLE INSURANCE CO., ERIC GONCHAR