

What is "The Title?"

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Two real estate brokers recently asked me almost the same question about how to change "The Title" to real property. I have answered this many times. Perhaps this public answer may help many.

The first question was about a bank employee's request to a man to get a deed from an ex-wife. The Divorce Decree 20 years ago stated that this property became his property. That Court is in the same county as the property. In 2006, the bank started a home equity line of credit (HELOC) in his name alone. The bank did not get title insurance at that time. However, the bank recently got a copy of the "last deed of record" that showed when H & W acquired the land 30 years ago. Now the bank employee wants him to find the ex-wife and get a deed so "the title" will be in his name only.

The second question also comes from a bank employee's request to a woman who recently had her name changed by a decree of court. This bank is considering a refinance loan to the woman secured by a home she acquired before her name was changed. The land and the court are in the same county. The bank now wanted a deed recorded so "The Title" would show her new name.

In both cases, the bank employees thought that only recorded documents were "The Title."

Why are Documents Recorded?

The only purpose served by recording documents is to give public notice about who has an interest in real property. That recording protects that person's interest against the possibility that the grantor might sell that same interest to a second person. Our [RCW 65.08.070](#) is like the "race-notice" recording laws of almost all states. It says that between two people claiming the same interest, the one who records first, *without knowledge of the other person's claim*, will win. Thus, the second purchaser of a valid deed from a fraudulent seller can defeat the claim of a prior purchaser holding a valid deed, as long as the second person did not know about the prior deed and the second person records first.

Recording itself is not a requirement for an effective conveyance. A deed is entirely valid when it is signed, acknowledged and delivered to the grantee, even if never recorded. Similarly, a mortgage (or Deed of Trust) is valid and enforceable between the parties even if not recorded.

Therefore, recording is certainly important. That system works so well that people rarely succeed to sell the same land twice, or get two loans secured by "first" mortgage liens. [*The title company certainly has expensive claim stories when that occurs.*] But the recorder's office is not "The Title" to real property.

Court Orders and Other Government Offices are Public Records

In Washington, the Orders, Judgments and Decrees filed at the Clerk of the Superior Court are automatically public records that legally change the title to affected land and the status of affected property owners (such as a divorce, adoption or change of name).

Similarly, other government offices maintain records of birth, marriage, death, registered domestic partnership, corporation and partnership formation, merger and dissolution. These are also public records that legally change the affected owners, yet no separate recording is required in the land records.

The Divorce Decree vested "The Title" to the real property in that man "as his separate estate" when it was received by the court clerk. Similarly, the Order changing that woman's name automatically changed "The Title" to her home. There is nothing more needed. There is no recording required in either case. The new Deed of Trust should include the prior name as "*Her New Name, who previously acquired title as Her Prior Name.*"

I've written letters to the customers that explain that deeds are not required, and not even proper, in both cases. Hopefully, the particular bank employees will understand. If they chose to purchase title insurance, the title company would show current vesting of "The Title" to make it easy for them.

So, What is The Title to Real Property?

Title to real property is a legal conclusion, not a page in a book at the Auditor's Office. As a comparison, the State of Washington issues a "title certificate" for automobiles. That is evidence of ownership. An ancient system created in 1907 still provides for registration of land titles, allowing most interests in that land to be shown on a single certificate. [See the Torrens Act in chapter 65.12 RCW](#). Though still possible, registration involves legal proceedings that are costly, so very few land titles are now registered.

Title to property is more than just ownership. In law school they still teach this by analogy to a "bundle of sticks" because there are so many rights that one can hold in land. Ownership can be divided, like tenants in common or like a life estate and a remainder estate. Some rights may be taken by others, such as an easement to a neighbor or a lien held by a bank.

In order to determine ownership of all interests and liens on land, one must search all the real property recordings, all the court decrees, all the various government public records and the ordinances and the assessment records of all state, county, city and various assessment districts with jurisdiction over a particular property. These disparate public records that affect "The Title" to real property are not designed to make it easy to search.

Prior to the evolution of title insurance to solve that task, people requested the services of "abstractors" and "title examiners" to find the pertinent documents, and then employed the services of "title attorneys" to render legal opinions about the title based upon the "abstract of title" containing the pertinent documents.

The present solution to find "The Title" is to ask a title company for a title report that shows its conclusions about the condition of the title that it is willing to insure. The title report is that written conclusion about the present ownership, the lesser interests in land and the liens that are currently enforceable. [*Think about that process the next time you receive a title report one day after your request.*] The title report is also not "The Title" to the land.

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