



Alaska REAL ESTATE

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DEED OF TRUST OR MORTGAGE?

Dear Dave: We have just moved to Anchorage after living in Hawaii for some 10 years. We are a bit confused because the paperwork for closing the mortgage loan is completely different from what we are used to. Can you explain why Alaska's real estate practices are so weird? What is a Deed of Trust anyway?

Answer: Quite a number of States operate similarly to Alaska. In Hawaii, the lending process for real estate is Mortgage based. Alaska operates under a Deed of Trust theory. These are 2 distinctly different styles under which Lenders give loans for the real estate purchase.

In the case of a mortgage, there is simply the exchange of a Note and Mortgage between the lender and borrower. The Note is your promise to pay and the Mortgage gives the Lender a lien against the property which will, if you default, give them the right to recover the money and foreclose against the property if necessary.

There is no such thing as a 'Mortgage' or 'Mortgage Lender' in Alaska.

In Alaska, and in some 20 other States, a third party (the Trustee) is involved. Instead of you receiving the Title to the property, it is held in trust by a Trustee, usually a Title Insurance Company. The 'Deed of Trust' contains all kinds of protections for the lender in the event of a default, including taking possession of the property, collecting

rents if possible, and providing for a much cleaner foreclosure process than with a mortgage.

Since the title to the property is already held by a trustee, in the event of a default the lender simply instructs the trustee to foreclose. With a mortgage the foreclosure often has to go through the Court. Hawaii may be described as 'Old School' in this respect because the 'Deed of Trust' procedure is more advantageous to lenders and enables them to provide loans at a lower cost in States which allow it to replace the common Mortgage.

Dear Dave: I am buying a business through my Realtor and the contract mentions a U.C.C. search. What is this all about?

Answer: When you buy Real Estate, the Title Company searches the records of the Recorder's Office for details of any liens or other attachments to the property. Before transferring title at closing it is essential to clear these liens so that you receive a clear title.

When a Business is sold there is often no real estate involved. I would guess that the business you are buying involves equipment, furniture, office fixtures, inventory and perhaps a vehicle or two. But 90% of businesses are operating in leased premises and so there is not owned land and buildings included.

In other words, no real estate is involved in your transaction, no title insurance is applicable, and no title search is performed. However, there may be liens on the equipment and other company assets, and the only way to discover these liens is through a UCC (Uniform Commercial Code) search. This search, which your Realtor can arrange, is conducted through your City Recorder's Office, and at a State level through UCC Central.

Be sure to search both the company name and the names of all the individual proprietors. It would be most unfortunate to buy a business, only to have some third party creditor show up later to remove some of the assets. Never buy a business without conducting a UCC search, especially since it costs less than hundred dollars for this safeguard.

Dear Dave: Could you explain the difference between Litigation, Arbitration and Mediation in a Real Estate contract?

Answer: Most contracts, including a Real Estate contract, provide for a remedy in the event of a dispute between the parties.

The lowest level of dispute resolution, and often the best, is mediation. In mediation, a neutral third party simply helps the disputing parties to talk calmly to each other and, in effect, resolve their own dispute. It is the least expensive way to solve the problem.

Arbitration involves an agreed-upon Arbitrator hearing the points of view of each party, and handing down a legally binding decision. The Arbitrator will charge a fee for his or her time and usually is someone with a legal background.

Litigation is when you go to Court, with or without an Attorney. The court hears the case, makes a decision and, after the exhaustion of the Appeals process if chosen by either party, the dispute is resolved by Law. Lawsuits generally are expensive and can easily exceed \$30,000 in cost.

Should you have questions about these dispute resolution systems when buying or selling your home, you should obtain legal advice from an Attorney before committing to one or the other.