

Here today and gone tomorrow



Mike Chesser

Everyone knows that a real estate closing involves a stack of documents. I can argue that every one of those documents has a purpose, and mostly be correct. I cannot argue that every word

in each one of those documents is necessary, because usually every word is not. However, one of those documents you will see is called an "Affidavit of Possession;" There are people who want to know why.

There are two very big reasons an Affidavit of Possession would be in a closing package. The first is most apparent in South Florida. The condominiums and even single-family houses are filled with people from

somewhere else. Often that means they vacation to wherever they are from, for weeks at a time. The property they own in Florida is sometimes vacant for weeks.

In Dade County, closing agents often have no idea the identity of the Realtor or parties. They have never seen these people before and never expect to see them again. In today's tech world, any one of those people can create a driver's license,

credit card, or picture ID on a high-quality copy machine. I have said in these articles before, when someone tells me they have to close on a property right away, and especially with a room full of strangers, count your fingers if you shake hands.

South Florida is replete with title policies that are called on to defend a title to real estate because someone signed a deed or mortgage as if he or she

owned the property of who was on vacation, in a nursing home, or was losing the home in foreclosure and simply not occupying it. When a stranger gets access to the house, it can be inspected, appraised, and closed before its owner has any idea it has happened.

When I do a closing, I want to know someone at the table, if possible. I want to know from that person that he knows the others at the table,

and that someone has some history with each other and the property.

An Affidavit of Possession can be forged like any other closing document, therefore the parties should pay attention by asking themselves, "Who is in this house?"

An even more critical issue is that the state of Florida is known as a "Notice" state. That means that

See **CHESSER, E4**

CHESSER

From Page E3

if you have actual knowledge that someone has an interest in a property, you are obligated to find out what that interest is. That is to say, when someone is occupying property, it cannot simply be ignored.

On Feb. 12 of this year, the Fourth District Court had a case before it regarding property that was conveyed to a person who did not record his deed. Instead, he moved onto his land and made it his home. A few years later, the Grantor apparently had noticed that the deed had not been recorded, put

a mortgage on the house, took the money and ran.

You can imagine the rest. A mortgage company holds a mortgage on property that was occupied on the day they took their mortgage from the prior owner. The mortgage company timely recorded their mortgage and, when it was not paid, foreclosed the mortgage. They took title and sold the property to someone else.

The last chapter involved the person who had lived on the property throughout the saga. He stepped forward to say that his occupancy of the property took priority over the mortgage. He was right. The court said that actual occupancy of the property was easily visible and took priority over a recorded deed or mortgage.

The moral to this story is that a closing agent or title company will want to know who occupies the property and under what right. That is the reason for an Affidavit of Possession.

From this article, I want you to see that if property is unoccupied, be careful that the people who convey an interest in the property are who they say they are. On the other hand, if the person occupying the property is different from the record owner, find out why.

Mike Chesser is President of Chesser & Barr, P.A. and Old South Land Title, Inc. He can be reached at mike@chesserbarr.com. All articles are indexed and can be found online at www.chesserbarr.com/blog/.