



Northwest Land Title, Inc.

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Title Insurance Success Stories

Protect Your Most Important Investment

Title insurance protects your property against the past as well as the future. A policyholder is protected against challenges to rightful ownership of real property, challenges that arise from circumstances of past ownerships. Each successive owner brings the possibility of title challenges to the property. When you purchase real property, rely on us to protect your interests. You'll be insured by a company backed by more than 150 years of successful title operations.

KEEP
CALM
AND
COLLECT
ALL
SIX

Note: While the situations have taken place, the names and locations been changed to protect the privacy of the individuals and/or companies involved.

#6 - Subordination Nightmare - Scenario of Security Lend Finance Company

The We-Sell Property Company is approached by Trust-Us Developers who offer to buy 6 acres of We-Sell's prime downtown real estate. Trust-Us explains that they have plans to build "Downtown Center," a beautiful complex of high-end retail and commercial tenants.

Trust-Us offers We-Sell \$3,000,000.00 for the land on the following terms: \$500,000.00 cash and seller carry back a Deed of Trust of \$2,500,000.00. This Deed of Trust will, of course, have to be subordinated to a construction deed of trust for approximately \$20,000,000.00. Trust-Us tells We-Sell the completed project will be worth "a fortune" and, the construction lender will monitor the construction.

We-Sell agrees to these terms on the following conditions: -Construction loan may not exceed \$20,000,000.00 -Interest rate may not exceed Prime +2% -All construction loan funds must be used solely for the development of this project and are to be controlled by the construction lender.

A deed of trust in favor of We-Sell is executed by Trust-Us and a rider is attached which sets forth the automatic subordination provision and its conditions.

Shortly thereafter, Trust-Us finds construction financing with Security-Lend Finance Company. The construction loan is negotiated for a first deed of trust of \$18,000,000.00 at Prime Rate +2% interest. Security-Lend sends its deed of trust to the title company and requests an ALTA Loan policy showing its lien in first position based on the automatic subordination provision in the We-Sell deed of trust.

The title officer reviews the We-Sell deed of trust and sees that the amount of construction financing and interest rate comply with the conditions set forth in the rider. The title officer however requires that We-Sell execute a standard CLTA form Subordination Agreement. We-Sell agrees and signs the CLTA form but adds language that the subordination is conditioned upon all construction funds being used solely for development of the "Downtown Center" project and that the construction lender will control disbursements.

The title officer rejected the document stating that he will insure only if an unaltered CLTA form Subordination is used. We-Sell complies, the transaction closes and the construction lender funds the entire loan amount to Trust-Us.

After three months, no work has begun on the project and We-Sell tries to contact Trust-Us. Their telephone has been disconnected and it appears that they have disappeared with all of the construction funds.

We-Sell receives a Notice of Default from Security-Lend Finance Company and immediately retains an attorney to file an action to enjoin Security-Lend's foreclosure. We-Sell claims that the subordination is invalid because all of its conditions that were set out in the rider attached to their deed of trust were not met. We-Sell argues that its conditions to subordination contained on the rider put Security-Lend "on notice" of those conditions, depriving Security-Lend from their first priority position as the title company had insured.

Security-Lend tenders its defense to the title company, who is pleased to see that their title officer required an unaltered CLTA form subordination agreement.

In litigation, with the title insurer defending Security-Lend, it is ultimately determined that the subordination language in the CLTA subordination form clearly provides that it supersedes all prior agreements regarding subordination of the deed of trust. Security-Lend is in first position as it intended and as it was insured.

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