Welcome to The Resistance

The Real People's Guide To Fighting Real Estate Fraud

[Homeowner's Edition]

By

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With

Lawyer's Notes by Subhana Rahim

"Somebody's always rewriting the rules. The great question in the martial arts is not what the new rules are going to be, or whether they'll tell us who is going to win the Super Bowl next February. The great question is … who's doing the writing and who are the written upon?"

- *The Martial Art of Non-Violence*

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Buyer Beware

[The Questions Nobody Will Warn You About]

The Man Who Bought Half a House

Eric bought half a house.

Nobody told Eric at the time he was buying half a house. Eric thought he was buying a whole house.

His wife Melina's new best friend, their real estate broker, told him, "It's a great deal, a fix-'er-upper but who cares? Prices are going only one direction, up, in this neighborhood."

"It's a great deal," the real estate broker's cousin, Phil the mortgage broker, said. "Property values are going nowhere but up in this neighborhood. If you put three hundred down I can get you a great rate from Munificent Mortgage Bankers."

Lucky Eric. He actually had three hundred thousand dollars to put down at the time. He brought home a hundred fifty a year, designing web sites for a Manhattan start-up, and his bosses paid him an extra hundred fifty a year in bonus money. Melina's salary as a Brooklyn charter schoolteacher paid for groceries and their summer

rental on Fire Island.

“I’ll get you an attorney too,” Phil promised him, “free of charge. Plus, I’ll take care of your title company for you.”

Eric said, “What’s a title company?”

Phil said, “They make sure your deed’s good.”

Phil got Eric a great rate from Munificent (“The Muni”), Phil’s attorney showed Eric where to sign the Muni’s loan papers and the “closer” from Phil’s title company notarized Eric’s signature everywhere Phil’s attorney said something had to be notarized. Everybody left Eric’s closing in a happy frame of mind. Eric and his wife had a new house to call their own. Eric’s sellers, Jimmy and June Hong, had Eric’s money – well, one-third of it Eric’s money, two-thirds The Muni’s – to put in the Hong family bank account. Phil, Phil’s attorney and Phil’s title company had Eric’s closing fees to put in their bank accounts.

Nobody told Eric that half of his house belonged to Yolanda Sanchez, who bought fifty per cent of the property in 1969. Yolanda’s niece Marisol bought the other half.

Marisol deeded her half of the house in 1984 to her kid sister Ilona. The deed didn’t say she was giving Ilona “half a house,” though. It looked like Marisol meant to give Ilona the whole house.

Ilona sold her half of the house in 1998 to the Hongs. (Betcha

nobody told Jimmy or June they were buying half a house from Ilona.)

Eric had no idea somebody named Yolanda Sanchez existed – let alone she owned half of his house – until earlier this year.

By then, the geniuses who started his start-up web company had sold the company to richer start-up geniuses in China. The new geniuses bought Eric's company so they could close it. They were killing their competition with kindness. Eric and Melina were now living on the grocery money Melina earned at her charter school. They cancelled their summers on Fire Island but that only spared them enough extra to pay Melina's car repair bills. It didn't cover the monthly nut on their mortgage loan.

Eric discovered that Yolanda Sanchez existed when somebody handed him a package of foreclosure papers from The Muni that said, "Hi. We're suing you. We're going to take your house."

Eric looked at the first sheet of paper in the packet, the one with his name above the heading "Defendants." Then he looked at the second name above the heading and asked, "Who is Yolanda Sanchez

and why is The Muni suing her?"

I told Eric who Yolanda Sanchez was, after Nancy, my life partner

and research partner, and I read the deeds to his property. Then I

asked him a question of my own, "Who hired your title company? ….

"You or your broker?"

Don’t Trust
Your Broker

Real estate and mortgage brokers work on commission.

If you don’t sell, buy or mortgage a piece of real property after signing a contract, they don’t get paid.

Up to a point, this is a good thing.

If you want to buy a house but the banks won’t give you a loan for it, you don’t owe your brokers anything after your deal falls through. Same thing if you want to sell your house, but for some reason your buyer can’t get a mortgage loan. You’ll be sorry your house is still on the market but you won’t be poorer for it.

Beyond that point, brokers working on commission are not such a good thing.

Brokers have a powerful incentive to tell you, literally, anything to close your deal for fear they won’t collect their fees. That means they have an equally compelling disincentive to be candid about anything that might be a deal killer.

Say, for example, Yolanda Sanchez is going to own half of your house after you pay Jimmy and June Hong the full price for a whole house.

Or – if you have to sell the house because suddenly you can't make your monthly loan payments to The Muni – you will owe The Muni all $600,000 of its mortgage from your $450,000 half of your sale price. Or, if you are lucky and prices actually did go uphill when your broker said they would, all $600,000 of its mortgage from your $600,000 half of the sale price. Yolanda didn't sign your mortgage. She won't owe anybody anything (property tax, water bills and sewer charges excepted) from your half of anything, purchase price, sale price or (in a downhill market) garage sale price.

So much for that "great" deal of yours. You're out your home, your hopes and your real money down payment. Yolanda and The Muni are the only ones who will be cashing in after your deal closes.

Six degrees of candor (from none to maximum) or – for that matter – six degrees of lack of candor do not mean that every broker in the United States is a liar. Honest brokers will give you an honest answer to a direct question, if you know what question you need to ask them.

On the other hand they probably aren't going to volunteer

anything. Not if volunteering something you really need to know before you sign anything final might stop you from signing at all. If you don't know what your "need to know" questions are, ahead of time, you'll find out what they were later. When, for instance, Yolanda Sanchez owns half of your house but you owe all of your mortgage.

Which brings us to the first point of this book.

Neither my co-writer, Subhana, nor I can tell you what questions you need to ask ahead of time if you are buying a new home, or refinancing the home you already own, because every property – and every property history – is going to have its own story to be told or to be concealed.

But we can – and we are going to – tell you how to find out what the questions are ahead of time.

Lawyer's Notes

[1]

I used to work for the other side, colloquially, the Big Banks.

I wrote the Pooling & Servicing Agreements (PSA's, in shorthand), the contracts used by your bank to sell your loan, together with tens or hundreds of thousands of loans exactly like yours, to investment trusts. The trusts have a stated purpose – providing a vehicle for pension funds, university endowments or similar institutions to collect as their annual income the interest and principal owed for the loans in the PSA – but the banking industry's actual practice serves an unstated purpose, concealing the sale of your loan from you at the time of sale and the identity of your loan's new owner after sale.

I didn't realize this unstated purpose existed until I started representing human beings instead of banks.

I had an Ivy League law degree when I wrote PSA's. I'd earned a Phi Beta Kappa before I went to law school. Yet, exactly like Eric the Half-Homeowner, I had to find out the hard way I'd trusted the wrong people because I didn't know the right questions to ask the right people.

Worse, I didn't know the questions existed.

My writing partner, Chuck, and I are not going to give you legal advice in this book.

Chuck won't because he and his life partner are title investigators, not attorneys. I won't, even though I am an attorney, because real legal advice has to be specific to you, your life, your needs, and specific to the laws and rules in your state or federal district. I am going to offer you something else, which I hope will be equally if not more valuable, the how's and the why's underlying the title stories that Chuck will be telling you in this book.

With these "Lawyer's Notes," I will be doing something I wish someone else had done for me before, or even after, I left law school ….

Alerting you to the questions all of us need to ask but no one warns us about.

The Count of Mondo Condo

Sarah bought a brand-new South Shore condo so she could join the wonderful new world of remote work.

"This is a great deal," the 'Count of Mondo Condo,' her seller David, told her, "state of the art house, state of the art kitchen, state of the art wifi, and you can pay off your mortgage loan by renting your state of the art basement and your state of the art top floor to paying tenants.

"On top of that," David said, "my people can get you a 'no docs' mortgage loan from my bank.

"Just use my loan guy to apply for your mortgage and my title company to close the deal."

Sarah, a Retro Era legal secretary making $50,000 a year in a good year, agreed this was a great deal. At $50,000 a year she couldn't afford the $850,000 sales price for her state of the art condo and at $50,000 a year she didn't qualify for a mortgage loan, with or without "docs" (tax returns, pay stubs, bank statements) attached to her application. That was okay, though. Her tenants would be handing her loan payments to her. She had David's word for it.

David's title company forgot to mention a couple of things to

Sarah at the closing where she signed mortgage loan papers for David's bank and Deed papers for David himself.

For one, the Countly David already sold Sarah's condo to somebody else but that title company he was "providing" for Sarah never filed the earlier buyer's deed.

For another, David never asked the City's Building Dept. for permission to put up her state of the art condo in the first place.

Sarah couldn't rent anything in her new home to anyone because it didn't have a "Certificate of Occupancy" ("C/O"), the piece of official paper that says humans are allowed to live in the building. These forgot-to-mentions on the title company's part were not accidental. David's business partner Dougie owned the title company.

Sarah, to no one's shock, surprise or astonishment but her own, fell behind on her monthly loan payments about three months after she signed her loan papers. David's bank filed a foreclosure lawsuit against her.

Sarah figured, I worked in a law office, I know how to read legal papers, I can defend myself. That worked well, right up to the moment when Sarah's judge told Sarah's bank to go ahead and foreclose.

Neither Sarah nor the judge knew that, in the meantime, the Counting House of Mondo Condo, LLC, had bought Sarah's loan on the 'third-party' market and (without the Counting House's Count telling anybody) was now 'the bank.'

When the Referee sold Sarah's state of the art condo three weeks ago at a foreclosure auction, a second LLC – think of it as "Dougie, LLC," not that Dougie called his company 'Dougie LLC' – bought Sarah's condo from the unannounced Count's court-appointed Referee.

If this sounds like Sarah was the target of a game of title three-card monte (street English for a "shell game"), it's because she was the target of a game of title three-card monte.

David and Dougie held all of the cards in the game because David, David's bank and David's title company, Dougie, didn't tell Sarah she was buying a hallucination from a pair of ghosts.

Don't Trust
Somebody Else's Title Company

The word "Title," in insurance industry English, means "ownership."

You hold title to your home – or your bank holds title to your loan or your mortgage – pretty much the same way you hold title to your car, your banker holds title to his or her stock portfolio or Mohammed Ali held title to the apt nickname "The Greatest."

Title companies are the people who sell insurance for your "title" (deed) to your house or to your bank for "title" to your mortgage if you take out a bank loan to buy your house. Or title to the vacant land to build a house on. Or to land with anything at all on it.

Bruce Payne, the title Agent who originally trained me, likes to tell his classes that, "We insure history."

By that phrase, Bruce means that title readers are in the same line of work as art curators or professional historians. Just as curators comb through chains of title for works of art to verify their provenance, or academic historians chains of title to original source documents to authenticate them, we read – or (should I say?) we are supposed to read – the records for past deeds, past and present mortgages and (when available) the loan contracts (“notes,” in industry jargon) underlying the mortgages to make sure there are no “breaks” in the “chains of title” from prior to subsequent owners of them. Where we find breaks in a chain, we are supposed to red flag them for you (or you and your bank) in the title reports we deliver to you.

The “standards” governing title reading are straightforward.

Title instruments are supposed to be truthful, transparent, accurate and self-consistent. Subsequent sellers are supposed to be the same persons or businesses as prior buyers. The person signing a title document is supposed to be the person identified on it as the signor. Deceit, concealment or “invention” of evidence is not a cure for a “red flag” title issue.

The standards are simple. But, when people commit title fraud, my life partner Nancy likes to say that the crisscrossing lines from one set of “red flag” breaks in a chain to the next several sets of them look more like a calculus problem than a title history.

Eric bought half a house in 2012 because Phil the Broker’s title company didn’t bother to read Yolanda Sanchez’s Deed from 1969. Or – worse – they did read it, then they didn’t tell Eric or The Muni about Yolanda because they were working for Phil not for Eric.

Sarah lost her state of the art condo because David’s business partner Dougie wasn’t about to tell Sarah that David already sold her state of the art condo to someone else or that he and Dougie hid the deed after he signed it.

There is a simple lesson here.

Never – and I mean never – let your seller or your broker "provide" a title company "for" you.

Hire your own.

Lawyer's Notes

[2]

Sarah, the secretarial victim of the Count's condos scheme, couldn't help but pick up some impressions about procedural and substantial law from her daily work. Impressions, however, are not the same thing as knowing the law that actually applies to your problems or knowing the law well enough to ask someone else the right legal questions.

Sarah could have sued David and Dougie as "third party defendants" when David's bank sued her.

This practice is called "interpleading" and – if Sarah had been aware of it – she would have had potentially a powerful tool against David and Dougie even if the time allowed by state law to sue them directly had ended.

The title of a "third-party" case looks like this ….

Grosse Pointe Blank Bank **(Plaintiff)**

v.

Sarah the Retro Secretary (Defendant)

Sarah the Retro Secretary (3rd Party Plaintiff)

v.

David & Dougie (3rd Party Defendants)

Third party cases are a two-step dance.

Step One. A judge (or, on rare occasions, a jury) will decide Sarah (the Defendant) owes money to Grosse Pointe Blank Bank. That is called a judgment in the "case in chief" (Grosse/Blank v. Sarah.) Step Two. Sarah asks the same judge or jury to force David or Dougie (the Third-Party Defendants) to pay Sarah what she owes to Grosse/Blank. Sarah pays Grosse/Blank's bill with their money and without losing her home in the process.

If Sarah had known the third party questions she needed to ask someone ahead of time, she could have confronted David and Dougie with the questions **<u>they</u>** forgot to ask ahead of time.

Don't be Sarah.

She became a victim without knowing it when the Count of Mondo Condo sold her a Deed without a real working condo attached to it. She went on being a victim of David's when David made a concealed purchase of her loan, because Sarah thought her working impressions of state and federal law added up to all of the law.

The questions that we don’t know exist will always do more harm to us than the questions that we do know.

The Dead Mom Who Signed a Deed

Becky Shore died fifteen years ago.

Becky – officially "Rebecca Renee Shore" – signed a deed eight years after she died, selling her Prospect Heights house to Harper Shore for $50,000. In a year when the late Becky's house was worth $550,000.

Harper Shore, incidentally, wasn't related to Becky Shore. Or Becky's husband, Bill, who died the year after she did. Or Becky's three daughters, ages fourteen, eleven and six, who went into foster care before their dead mom signed her deed to Harper.

Harper signed a deed two days later, "selling" the house he just bought to the Great White Trading Co. for … $50,000. Great White turned around a few months later and signed a deed flipping title (giving ownership for no money at all) to Jordan Ashe Weinrich & Smith, LLC.

(Flips of title are never a good sign in our line of work. Why would

someone, who bought property for real money, give it away for nothing to somebody else?)

Jordan Ashe filed the paperwork needed to turn the late Becky's property – technically, the "tax lot" owned by the late Becky – into three new, smaller, properties ("lots.") Then they filed the paperwork needed for permits, one set to tear down and carry away the late Becky's family home, the other set to build three new, condo-sized, side-by-side houses where one house used to stand.

Two years ago Ashe sold all three houses, for $695,000 apiece, to three new homeowners. You can bet their brokers told them, "This is a great deal. Prices are going nowhere but up in this neighborhood."

Jordan Ashe generously "provided" the title company that insured the new homeowners' deeds and their mortgages, the attorneys who represented the homeowners when they signed their deeds and mortgages, and the attorneys who represented JPMorgan Chase, Wells Fargo and Citibank, the new owners' lenders.

Nobody, Jordan Ashe's title company or Jordan Ashe's free-of-charge attorneys, ever asked "Becky Shore" why she sold a $550,000 house for $50,000, or "Harper Shore" why he bought a house, owned it for three days and then sold it for the same $50,000 to the Great White Trading Company. They never asked Great White's officers why they "sold" the house for nothing whatsoever to Jordan Ashe.