

## ***Why title companies are picky – Recording***

This is the first of a series explaining why title companies are fussy about details. For example, when we insist that documents be set up a certain way, we're not trying to be technical for the heck of it. Instead, we're being picky for a reason: compliance.

It's true that our underwriters have rules based on risk assessment and loss avoidance. But, more often than not, compliance means bowing to the law itself, whether Federal, state, or local.

Let's start with names on documents. If Susan owns a house and her deed reads "Susan J. Blake", that's how her name must appear on the deed when she sells. But what if her name changes? Suppose Susan marries Alonzo Martin and becomes Susan B. Martin. Fine, but the deed will have to explain the details.

The practical reason for linking the two names? Making it clear the true owner is the seller. But the legal aim is to satisfy recording requirements under Indiana Code 36-2-11-16.

This statute dictates how documents such as deeds and mortgages must be drafted and signed. If not followed, the county recorder may refuse to record them. Obviously, if the closing has occurred, the title company will be up a creek if the deed and the buyer's new mortgage can't be recorded. Why? Because the title company must issue (or has already issued) insurance policies, which is the equivalent of saying recording has taken place. To avoid that problem, title companies must make sure recording requirements are met.

Let's look at a couple of examples.

If you've watched documents being signed, you've probably noticed the signature line is always above the typewritten name. Why? Because IC 36-2-11-16(b) says it must be. The statute also says the signature (sellers on the deed, buyer/borrowers on the mortgage) can't obscure the typed name or *vice versa* (the tail of a signed y or g can't make the typed letters unreadable). This is a rule of legibility, and it applies to the notary clause as well.

The statute goes on to say the name of the signer must appear the same way throughout the document. So, if Susan's name appears with her middle initial in the body of the deed, it's got to show up the same way below her signature line and in the notary clause. If for some reason it doesn't, the inconsistency may be explained by an affidavit, provided the affidavit is presented to the county recorder along with the incorrect document. This is why title companies commonly have buyers and sellers sign a "name affidavit" which lists their name variations and states that all the names on the list refer to the same person.



But what if the signature doesn't resemble the spelling? We've all seen signatures so scribbled (straight lines, crooked lines, flourishes, curlicues) they could belong to Susan B. Martin or a complete stranger. That's where the notary comes in. It's also one reason we check photo IDs. If the signature on the photo ID matches the version on the deed, we're good to go. Let's face it, people sign the way they sign; legibility doesn't enter into it.

Fortunately, the statute gives the recorder plenty of wiggle room. If it's clear who the document's referring to, the recorder can let it pass.

An off-shoot of this consistency requirement is linking the names on the deed and mortgage. The recorder won't care about that, but title companies and lenders do because it must be clear the owner of the house is the one mortgaging it. So, title companies and lenders must stay alert. Here's why. Unless told otherwise when an order is placed, title companies take the spelling of buyers' names from the purchase agreement. But loan processing follows a separate track, meaning buyers' names may appear differently on the loan paperwork. Because the title and loan tracks don't converge until the loan documents arrive at the title company (usually late in the game), corrections are made on the fly.

Savvy real estate agents ask buyers how they want their names to appear on the title documents. Savvy lenders do the same thing. Hopefully, both get the same answer.

- Morrie Erickson



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