



Case Study: Taking Title To A Property At A Court Confirmed Sale

When someone comes into court and overbids on a property, it is very important that they know exactly how they are going to **take title**.

In California, buyers have several options, including, but not limited to, sole ownership, tenants in common, joint tenancy with right of survivorship, community property and revocable living trust. Each option has advantages and disadvantages.

Over the years we have seen many buyers giving inaccurate, incomplete or poorly considered information at the time of sale, which caused unnecessary delay and additional expense.

Some years ago, during a court confirmed sale, I inquired of an overbidder what her preference would be for holding title. At the time the woman was pregnant and she stated she was a married woman taking title as her sole and separate property. However, when it came time to close the escrow she told the escrow officer that she was in fact a single woman. The escrow officer inquired as to why the change in status and the woman stated that she had been embarrassed at the time of the hearing so she decided to say she was married. The attorney had to do a *nunc pro tunc* and charged the buyer for the additional fees.

We usually ask the buyer to write out how they want title held to avoid errors in spelling, marital status, etc. But just this past week we had a buyer overbid in court whose speech was difficult to understand and whose handwriting was not very legible. After the attorney misspelled the buyer's name and we untangled the clerical mess that ensued, The Sanborn Team concluded that in the future we will ask the buyer to provide a copy of his or her driver's license at the time of the overbid to make certain that we have the correct spelling. To further complicate *this* situation, the buyer stated he was putting the property into a trust that did not currently exist.

Similarly, it is increasingly common for buyers to take title in the name of an LLC, often named for the address of the property that is being offered for sale. Legally, unless the LLC already exists, the property is being sold to a nonexistent entity. If a buyer takes title as a nonexistent LLC, the estate has no recourse if the buyer fails to perform. To be certain that this does not happen, The Sanborn Team will now ask buyers to produce LLC operating documents before completing their offer.

Problems with title are one of the recurring nightmares of real property transactions. It is worth the buyer's time – and money – to consult a real estate attorney before entering an overbid, or, in fact, before making an offer on *any* real property.