

LAWYERS LINK



WHAT IS AN ENCUMBRANCE ON A PROPERTY?

Understanding encumbrances and their implications is important for any potential home buyer or investor, as they can impact the owner's ability to realize the property's full potential. An encumbrance is a claim or

burden on a property that can affect its value, use, transferability, and ability to refinance. Encumbrances can be financial (like liens or mortgages) or non-financial (like easements or restrictive covenants).

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You can find encumbrances on a property by hiring a title company to conduct a title search. A title search involves examining public records and tracing the chain of ownership and any associated legal or financial issues that could impact the buyer's or lender's rights to the property. After the search is complete, a title report (also known as a preliminary title report) is prepared, summarizing the findings and identifying any potential issues or concerns. Reviewing the title report is crucial in a real estate transaction because it ensures a smooth and legally sound transfer of ownership.



But what if an undiscovered encumbrance in the title appears after you purchase the property? That's where title insurance becomes important. Title insurance protects you against defects and encumbrances in the title to the property that were undiscovered

at the time you purchased the property. Title insurance lasts as long as you or your heirs own the property, making it a one-time investment with lifelong protection.

Common Types of Encumbrances

Mortgages

Loans secured by the property, meaning the lender can claim the property if the borrower defaults on the loan.

Liens

These are financial claims against the property, that are used to resolve a debt such as a mortgage, unpaid taxes, or remodeling projects.

Easements

These are rights granted to another party to use a portion of a property for a specific purpose, like a utility line or driveway.

Covenants, Conditions, and Restrictions (CC&Rs)

These are limitations or rules imposed by a homeowners association or a previous owner that govern how the property can be used or altered. CC&Rs can include a variety of stipulations, so it's important that buyers are aware of them before closing.

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Restrictive Covenants

Legally binding agreements that limit how a property can be used or developed, like prohibiting commercial activities or limiting the number of dwellings that can be built on a lot.

Deed Restrictions

These are limitations on how a property can be used, often written into a property deed.

Encroachments

When a structure on one property extends onto another property, like a shed or fence crossing a property line.

Getting Answers

Encumbrances can turn into complex issues and pose significant challenges in both commercial and residential property transactions. Lawyers Title is dedicated to protecting your ownership rights and safeguarding your investment against encumbrances and other title defects. Please contact your Lawyers Title Representative for more information.

This information is deemed reliable but not guaranteed, and is for informational purposes only.



MONTHLY INDUSTRY TERMS

Adjustable Rate Mortgage (ARM)

A mortgage in which the interest rate is adjusted periodically in accordance with a market indicator, to more closely coincide with the current rates. Also sometimes known as renegotiable rate mortgage, the variable rate mortgage, or the graduated rate mortgage.

Deed

Written instrument which, when properly executed and delivered, conveys title.

Deed Restrictions

Limitations (covenants) written into a deed to restrict the control, occupancy, or use of a property.

