

## **Buying & Selling Real Estate – What is Title Insurance?**

Years ago, when real estate was purchased, the purchaser requested an Opinion of Title from an attorney. This Opinion required the attorney to review previous conveyances of the real estate (often compiled in an Abstract) and to determine if there were any liens or other encumbrances affecting the property. The attorney then gave the purchaser assurance that the Purchaser was acquiring good title to the real estate, and identified all liens and other matters affecting the property, such as restrictions on use and easements crossing the real estate. The purchaser could then evaluate the status of title to the real estate and if acceptable, proceed to closing while ensuring that the seller satisfied any liens affecting the property from the proceeds of the transaction.

The Opinion of Title has slowly but surely been replaced by Title Insurance. One of the driving rationales for this transition was that to recover damages based upon an Opinion of Title, the purchaser had to sue the attorney and make a claim against the attorney's malpractice insurance. This could be difficult if the attorney was no longer in practice, and the attorney may have numerous defenses to a claim of malpractice. Title Insurance puts money behind the assertion that the purchaser is obtaining good title to the property (subject to the listed exceptions contained in the title insurance policy).

All lenders require title insurance on land upon which they are taking a mortgage. Consequently, if a lender is involved, a purchaser will undoubtedly be required to purchase title insurance. However, the purchaser must be proactive to confirm that the insurance to be purchased includes an owner's policy, not just a lender's policy. If a lender's policy only is purchased, the insurance will only be effective in the event that the title defect actually causes a loss to the lender – generally when there is a mortgage default. An Owner's policy covers all title matters not specifically excepted in the policy, so an owner would have coverage (including defense of claims) against claims to title to the property. These may include circumstances where an unrecorded easement is asserted, title is disputed, or other claims are asserted which are adverse to the owner's interest in the property.

Title insurance is a "one-time purchase," meaning it is good for as long as the purchaser owns the real estate. It is not transferable, and in instances where an owner has changed the names of record title (for instance, transferred property to a living trust or limited liability company) the owner should contact the insurance company to determine whether they can obtain coverage for the new title holder.

In addition to the basic policy, there are many types of extended coverage which an owner or lender may request. This extended coverage may be in the form of an ALTA 98 policy, which provides coverage for increases in value (up to 150%), certain zoning matters, covenant violations, and other common residential matters. Other extended coverage is available through "endorsement" to the standard policy. Some common

endorsements include coverage against violations of covenants and restriction, coverage against encroachments, and coverage against environmental liens. The availability of endorsements depends upon whether the property is commercial or residential, whether a survey has been performed, and whether the endorsement adds insurance to the owners or lenders policy.

Given the ready availability and widespread use of title insurance, most transactions utilize the services of a title company. Besides issuing the title insurance, the title company often prepares closing documents and handles the actual closing. Getting to know and trust the company that will close your transaction will facilitate the closing when the parties actually meet at the closing table.

Title insurance is good protection for any property owner. There is a premium involved, as with any insurance. The premium is tied directly to the value of the real estate. Since the premium is paid only once, an owner of real estate can rest assured after the closing that they have protection against adverse claims to their property.

One final note to consumers – title insurance policies are only as good as their terms. The list of exceptions to a policy should always be examined by a purchaser to ensure that there are no troublesome issues affecting title. Obtaining a binder for title insurance and reviewing it prior to closing can help ensure not only a smooth closing, but protect an owner from risks of title throughout ownership of the property.

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