

## **What Is Title Insurance?**

Title insurance is protection against loss arising from problems connected to the title to your property. Before you purchased your home, it may have gone through several ownership changes, and the land on which it stands went through many more. There may be a weak link at any point in that chain that could emerge to cause trouble. For example, someone along the way may have forged a signature in transferring title. Or there may be unpaid real estate taxes or other liens. Title insurance covers the insured party for any claims and legal fees that arise out of such problems.

## **Why You Need Title Insurance**

After an hour in your lawyer's conference room, you've signed your name in half a dozen places and written checks for the down payment and fees. Standing up and stretching, you shake hands with the lawyer, the banker and the sellers. Despite all your worries, the closing has gone smoothly and you're free to gather up your papers, thank everyone and head down the hall. Stepping outside, it hits you that you now officially own that wonderful home. You can't help peeking again at the paper with "Warranty Deed" written in bold letters at the top. Everything looks fine: the lengthy legal description, the sellers' signatures, the statement in lofty language that you are the owner in fee simple, to have and to hold said premises forever. The document is authoritative, traditional and reassuring. So why did your lender insist on title insurance?

Because residential property often has a long and convoluted history of previous owners and transactions. You can't tell by looking at the property and the current deed whether the title is good, as if it were a grapefruit in the supermarket. For all you know, the people you bought the house from might have slipped out and gotten a second mortgage on the property two days before closing, or neglected to pay a \$5,000 special assessment for the new sewer. Perhaps the new patio is located right on the gas company's easement.

Title insurance is like a fence around your property, protecting it from title claims that might creep out of the past making you subject to a judgment or an alleged ownership claim from the long lost heir of the folks who sold you the property. Chances are you'll never file a claim, but you'll be mighty glad to have title insurance if you do.

To a great extent, securing title insurance is an exercise in preventive law. Just as health insurance companies refuse to insure people with a history of medical problems, title insurance companies refuse to insure properties with a history of legal uncertainties. Sometimes title problems occur that could not be found in the public records or are inadvertently missed in the title search process. To help protect you in these events, it is recommended that you obtain an Owner's Policy of Title Insurance to insure you against the most unforeseen problems.

Owner's Title Insurance, called an Owner's Policy, is usually issued in the amount of the real estate purchase. It is purchased for a one-time fee at closing and lasts for as long as you or your heirs have an interest in the property. Only an Owner's Policy fully protects the buyer should a covered title problem arise with the title that was not found during the title search.

An Owner's Policy provides assurance that your title company will stand behind you — monetarily and with legal defense if needed — if a covered title problem arises after you buy your home. The bottom line is that your title company will be there to help pay valid claims and cover the costs of defending an attack on your title. Receiving an Owner's Policy isn't always an automatic part of the closing process. The Owner's Policy protects you for as long as you or your heirs have an interest in the property.

You also have the option of purchasing a policy with expanded coverage. It's called the Homeowner's Policy and it covers more things than the Owner's Policy. Ask our office for an explanation of the expanded Homeowner's Policy so you can decide which policy is the best one for you.

### **Is Purchasing Title Insurance Obligatory?**

It is if you need a mortgage, because all mortgage lenders require such protection for an amount equal to the loan. It lasts until the loan is repaid. As with mortgage insurance, it protects the lender but you pay the premium, which is a single-payment made upfront.

### **Does Title Insurance Do Anything For Me?**

The required insurance protects the lender up to the amount of the mortgage, but it doesn't protect your equity in the property. For that you need an owner's title policy for the full value of the home. In many areas, sellers pay for owner policies as part of their obligation to deliver good title to the buyer. In other areas, borrowers must buy it as an add-on to the lender policy. It is advisable to do this because the additional cost above the cost of the lender policy is relatively small.

### **Doesn't the Lender Policy Indirectly Protect Me?**

No, title policies are indemnity policies, they protect against loss, and a lender policy would only cover the lender's loss. Of course, the fact that the insurer issued a policy to the lender

indicates that the title has been searched and nothing amiss has been found, but no search is 100% dependable. That is why an insurance policy is issued.

### **When Does Title Insurance Protection Begin and End?**

With the exception noted later, title insurance only protects against losses from claims that arose prior to the date of the policy. Coverage ends on the day the policy is issued and extends backward in time for an indefinite period. This is in marked contrast to property or life insurance, which protect against losses resulting from events that occur after the policy is issued, for a specified period into the future.

### **For How Long Is the Property Owner Purchasing Title Insurance Covered?**

Indefinitely. The owner's protection lasts as long as the owner or any heirs have an interest in or any obligation with regard to the property. When they sell, however, the lender will require the purchaser to obtain a new policy. That protects the lender against any liens or other claims against the property that may have arisen since the date of the previous policy.

For example, if the contractor you failed to pay for remodeling your kitchen places a lien on your home, you are not protected by your title policy; the lien was placed after the date of the policy. You will probably be required to get the lien removed before you can sell the property. But in the event the lien hasn't been removed and a search has failed to uncover it, the new lender will be protected by a new policy.

### **Will Title Insurance Protect Me Against False Claims That Arose After I Purchased the Property?**

The standard policy does not. Many events beyond your control can reduce the value of your house after you buy it. If it is a newly-constructed house, sub-contractors claiming they had not been paid by the builder may place a lien on the house. Identity theft can result in a new mortgage you know nothing about. A neighbor could build on your land without your knowledge, thereby adversely possessing and possibly eventually taking your land. Or you may suddenly be told that you must correct a zoning violation of the previous owner.

### **Does Title Insurance Coverage Rise With Increases in the Value of My Property?**

No, but coverage under the ALTA policy referred to above increases by 10% a year for the first 5 years after issuance, to 150% of the initial amount. You can buy additional coverage as a rider to the policy.

If your policy does not have such a rider and your property has appreciated sharply in value, you may be able to purchase additional coverage on the same policy by paying an incremental fee. The fee should be modest because no new title search is involved. The coverage will only apply to title defects that existed prior to the original date of the policy. To extend the coverage to events that may have clouded the title since the original policy, you would need to take out a new policy with a new search and pay the full rate.

### **Why Do I Need to Purchase a New Policy When I Refinance?**

You don't need a new owner's policy, but the lender will require you to purchase a new lender policy. Even if you refinance with the same lender, the existing lender's policy terminates when you pay off the mortgage. Furthermore, the lender is concerned about title issues that may have arisen since you purchased the property, such as the lien mentioned in an earlier question. A new title search will uncover the lien, and you will have to pay it off as a condition for the refinance.

Insurers generally offer discounts on policies taken out within short periods after the preceding policy. Be sure to inform our office of date of the most recent Owner's Policy issued for your property.

### **Does Title Insurance Guarantee Me That I Will Be Able to Sell My Property If An Unforeseen Claim Arises?**

No. Title insurance does not prevent loss of marketability due to a title claim, any more than fire insurance prevents fire. If a claim arises, you probably won't be able to sell your property until the claim is settled by the title insurer.