

# TITLE INSURANCE: #HUH? #WHATISIT?

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## Title Insurance...

protects you and the lender if someone challenges your title to your property because of title defects that were unknown when you bought the policy.

The usual way to do real estate business is a closing at a title company that issues a title insurance policy to both buyer and lender. This is not the only way.

Closings can occur without title insurance, for example, at a lawyer's office or even at the dining room table of one of the parties. There are good reasons, however, to obtain title insurance.

# Reasons for Title Insurance

- Title company maintains a database of real estate documents that can be searched in order to produce a “title commitment”, an integral part of the pre-closing process.
- Title company acts as a clearinghouse for closing documents that need to be signed and recorded, as well as for funds that need to be collected and disbursed at closing.
- Title policy provides an avenue of recourse and recovery in the event either the lender or the buyer later sustains a monetary loss as a result of defects in title. Monetary loss? Well, suppose the title company missed a valid lien and the lienholder comes to collect; or suppose there is a previously unknown heir who suddenly appears and claims an interest in the property. The title insurance underwriter will work to resolve such issues or will, if appropriate, pay compensation. In this sense, a title company is like any other insurance company.

# The Title Commitment

- Produced after the title company has received a copy of a signed sales contract and a check for the earnest money.
- Reviews the status of title, lists title issues and defects, if any, that need to be cured before closing, and identifies any other pre-conditions to issuance of a policy.
- The title commitment also shows existing liens, which the title company routinely requires release of. Other miscellaneous requirements may apply, such as a marital status affidavit to clarify the seller's marriage status, a "not-same-name" affidavit if there is a judgment in a name similar to that of the seller, and the like.

# The Title Commitment

- Examples of issues and defects: mechanic's liens, labor liens, judgments against the seller, tax liens, lawsuits affecting title to the property, or heirship issues due to a previous owner dying without a will.
- The commitment states the issues and what must be done if title is to be cleared (i.e., be made insurable in the name of the buyer).

# The Title Commitment

- Four schedules: A, B, C and D.
- Schedule A includes: commitment date; proposed insured (lender and/or purchaser); amount of title insurance coverage; the legal description of the property; and how title to the property is vested (who owns the interest in the property and the type of interest).
- Schedule B includes the exceptions to coverage.
- Schedule C shows items to be resolved prior to closing.
- Schedule D is a required regulatory disclosure.

**See Sample Commitment**

# Role of the Earnest Money Contract

- Title company's duties start when it receives the executed sales contract and a check for the earnest money.
- 20 days to produce the commitment, with an automatic 15 day extension if needed.
- For residential transactions, the standard sales contract TREC 20-13 (One to Four Family Residential Contract – Resale) is often used.
- Paragraph 6, entitled "Title Policy and Survey," applies. Although it is customary for the seller to pay for the title policy, this is not required, and paragraph 6 provides the opportunity to check the buyer as the paying party.

## Role of the Earnest Money Contract

- Paragraph 6.D. provides a blank for insertion of a time period during which the buyer may object to issues raised by the commitment. Usually 7 to 10 days.
- If buyer does not make timely objections, any such issues are waived. If buyer raises objections within the allotted time, then the seller must cure them or the contract terminates.

# Policies of Title Insurance

- T-1R Owner Policy of Title Insurance – For the Buyer.
- Sales price of the land and improvements, which remains in effect so long as the new owner retains an interest in the property.
- An owner title policy is not required by law.
- It is possible to do a title search, or obtain a title report or abstract of title and then proceed on that basis. It is not advisable, however, unless you learn how to do informal title searches at the courthouse and consult with an attorney about what is found.

# Policies of Title Insurance

- T-2 Loan Policy of Title Insurance (formerly called the “Mortgagee Policy”).
- Value of the property or the amount of the loan, whichever is less.
- Policy terminates when the loan matures and the four-year statute of limitations for foreclosure on the lien expires.
- You will not get a loan on Texas real estate from an institutional lender without a loan policy. Even a hard money lenders usually require a loan policy.

# Texas Title Insurance Rates

- Set by the Texas Department of Insurance.
- Basic premium for a \$100,000 policy is currently \$875, which is a one-time fee for coverage that lasts as long as the buyer has an insurable interest in the property.
- A formula applies for amounts higher than that.
- (1) Policy is \$268,500
- (2) Subtract \$100,000  $\Rightarrow$   $\$268,500 - \$100,000 \Rightarrow$  Result = \$168,500
- (3) Multiply by 0.00554  $\Rightarrow$   $\$168,500 \times 0.00554 \Rightarrow$  \$933.49  $\Rightarrow$  Result = \$933
- (4) Add \$875  $\Rightarrow$   $\$933 + \$875 \Rightarrow$  Final Result = \$1,808

## Exclusions to Coverage

- Residential owner's policy expressly excludes items such as building and zoning ordinances; condemnation; title problems created by or undisclosed by the insured, or arising from fraud by the insured; title problems that result in no actual loss; access issues; refusal of anyone to lend money; and physical condition of the land.

# Exceptions to Coverage

- Exceptions are specific limitations on coverage.
- Includes so-called standard printed exceptions on Schedule B – restrictive covenants and deed restrictions; the survey exception (“discrepancies, conflicts, or shortages in area”) that can be deleted for a fee; homestead, community, and survivorship rights; the exception for riparian rights, water-rights, and tidelands; the tax exception, including rollback taxes; the mechanic’s lien exception; the exception for leases and subordinate liens; the rights of parties in possession; and, if there is no survey, easements and encroachments.

# Exceptions to Coverage

- The title company may also add “special exceptions” that it deems necessary after examining title to the property.
- Do not insure fraudulent conveyances or “preferential” transfers (i.e., transfers made to avoid payment of creditors that can subsequently be set aside by a judge).
- Excluded is “any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors’ rights laws, that the transaction vesting the Title as shown in Schedule A is (a) a fraudulent conveyance or fraudulent transfer; or (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.”

## Worst Case Scenario

If an unexpected title defect or lien appears, the title company must investigate and then:

- (a) commence legal proceedings to clear title;
- (b) indemnify the insured pursuant to the policy;
- (c) reinsure the title to the property at current value;
- (d) indemnify another insurer if another company does the reinsuring; or
- (e) cure the defect or obtain a release of the lien.

## Worst Case Scenario

- Recovery under an owner's policy is limited to the owner's actual money loss or the amount of the policy, whichever is less.
- Insured must give the title company prompt notice and cooperate in furtherance of the claim.
- Payment must be made by the company within 30 days of determination of liability and the extent of the loss.
- If the title company settles a covered claim, it is subrogated to the rights of the insured as to that claim (i.e., it assumes the insured's right of recovery).

# Frequently Asked Questions

Q: Do you have to renew your policy?

A: You pay for title insurance only once, when you buy the policy, unless you decide later to add more coverage. Keep your policy, even if you transfer your title or sell the property. Coverage lasts as long as you or your heirs own the land, and may last forever for any title warranties made when you sell the property.

Q: What happens if I transfer my title to my business, my trust, my LLC, or my children?

A: Depending on the type of policy you have, it may not provide coverage when you transfer your title into your business or to someone else that is not considered an insured. To determine what type of coverage you have, read your policy, check with your title agent, or speak with an attorney.

# Frequently Asked Questions

Q: Is it like homeowners insurance?

A: No, title insurance is different from other types of insurance. It does not insure against fire, flood, theft, or any other type of property damage or loss. It protects against losses from ownership problems that arose before you bought the property, but were not known at the time you bought the property. It does not guarantee that you will be able to sell your property, or borrow money on it.

Q: What if my home increases in value? Am I still covered?

A: You are covered for the value of your policy. If you add improvements to your home, or if your home increases in value over time, you can buy an increased value endorsement to cover the increase in your property's value.

# Frequently Asked Questions

Q: If there's something you don't like in the policy, can you change the policy language?

A: Title policy forms in Texas are promulgated, or standardized. This means most of the policy language is the same regardless of which company that sells the policy. Title agents are required to use the standardized forms. The parts of the policy that may be changed are the property description in Schedule A, the Exceptions in Schedule B, and the Exclusions. You can request corrections if you notice an error. The agent may be able to remove an exception, if a title problem is cleared up or if you buy additional coverage.

Check the policy's legal description of the land against your survey to confirm that what is being conveyed in your contract is accurate. Title insurance does not protect against boundary disputes with your neighbor, unless you purchase additional coverage.

# Frequently Asked Questions

**Q: What is a “title defect”?**

**A: A title defect is anything that can cause a title to be considered invalid or defective in some way. Some examples are:**

- **Invalid documents due to forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation.**
- **Failure of any person or entity to have authorized a transfer or conveyance.**
- **A document affecting title that is not properly executed, signed, witnessed, notarized, or delivered.**
- **Undisclosed or unrecorded easements not otherwise apparent on your land.**

# Frequently Asked Questions

- No right of access to and from the land.
- A document executed under a falsified, expired, or otherwise invalid power of attorney.
- A document not properly filed, recorded, or indexed in the public records.
- Ownership claims by undisclosed or missing heirs.
- Defect arising from an improper prior foreclosure.
- Undisclosed restrictive covenants affecting your property.

# Frequently Asked Questions

Lien issues can also cause title defects. Some examples of lien issues are:

- Any statutory or constitutional contractor's, mechanic's, or materialman's lien for labor or materials that began on or before the policy date. Lien for labor or materials furnished by a contractor without your consent.
- A previous owner failed to pay a mortgage or deed of trust; a judgment, tax, or special assessment; or a charge by a homeowners or condominium association.
- Other liens or claims that may exist against your title that are not listed in the policy.

# Frequently Asked Questions

Q: What doesn't a title policy cover?

A: A title policy generally won't cover mistakes or defects, financial issues, or rights issues.

- Defects that are created after the policy is issued.
- Defects that you create, or of which you had knowledge.
- Problems that arise because of your failure to pay your mortgage, or to obey applicable laws or restrictive covenants that were disclosed to you.
- Certain taxes and assessments.
- Losses resulting from rights claimed by someone else occupying the land. The title company may need to inspect the property. There may be a charge for the inspection.

# Frequently Asked Questions

- Homestead, community property, or survivorship rights of a policyholder's spouse. Texas homestead laws address the rights of a spouse or survivors of a property owner.
- Claims from other people who may have certain rights if your property is near a body of water or has a river or stream flowing through it.
- Condemned land, unless a condemnation notice appeared in the public record on the policy date or the condemnation occurred before the policy date.
- Violations of building and zoning ordinances and other laws and regulations related to land use, land improvements, land division, and environmental protection.
- Disclosed restrictive covenants limiting how you may use the property.

# The End!

Please call and/or email us if you ever have any questions. We would love to help!