

What Is Title Insurance, Do I Need It?

Pyle & Dellinger, PL

When it comes to title insurance, buyer beware and buyer be smart. Title insurance guarantees ownership of real property, free and clear of any defects, encumbrances or other adverse matters, unless those matters are reflected as exceptions to the policy.

Transferring a home is not like conveying ownership of a motor vehicle. The fact that a person owns real property and has been in possession of it for a long time is irrelevant. Purchasing a new home from a builder or developer does not mean that one is the first owner of a home. In fact, there are additional problems that may arise in such a purchase.

A seller may be well meaning and have no idea that some transaction in the recent or distant past, was not documented correctly. The problem could have been overlooked because the seller did not obtain title insurance or a review of the title; because of an error made by the title agent or attorney reviewing an earlier transaction; or because the problem, such as a forgery, is one that is not obvious on the face of the document.

A buyer should never accept a certain known defect because he or she believes that it will not likely result in a loss of title. A title defect could result in an objection when you try to sell or refinance your property. When a title insurance commitment is prepared in such a transaction and it shows a defect, the buyer or lender can object to the title. At that point, the owner of the property must either resolve the problem, if it can be resolved, or watch the transaction fall through.

If the owner had purchased title insurance when he or she bought the property, and the problem was not shown as an exception on that policy, then the title insurance company would be obligated to resolve the problem, if possible, or to purchase the property, if not. To the public, this may seem like just another way for an insurance company to make money. In fact, however, title insurance claims are very real and can be very costly.

Every title insurance company has a claims department staffed with attorneys whose job it is

is to evaluate claims, attempt to resolve them and hire outside law firms when necessary.

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Title insurance is different than other types of insurance. It is not casualty insurance. One cannot purchase title insurance without first conducting a title search. It is not a blind offer to insure without review of the risks. Here's how it works. A title insurance agent searches the title from the earliest public records or from a prior title insurance policy. He or she makes a determination about the nature of the title, including the identity of the current owner of the property, the legal description, the requirements to issue a new policy and other matters that should be noted as exceptions to the insurance.

These matters are reflected in a title insurance commitment at, or prior, to closing, which is followed by a title insurance policy after closing. If any defects or questionable items are found, a claim is filed and the title insurer must resolve the problem(s).

- Common problems resulting in title insurance claims include:
- Errors in legal descriptions of real property
- Errors in probate or foreclosure proceedings resulting in claims by persons who were not properly notified
- Documents that were not listed as exceptions, such as easement, reservations or restrictions on the title

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- Claims of prior owners whose interest was fraudulently eliminated
- Claims for unpaid property taxes, income taxes or liens imposed by a governmental authority
- Claims of unpaid subcontractors or material suppliers in new construction
- Encroachments of a building or other structure over a property line or onto an easement, if a survey has been obtained
- Failure to obtain the signature of a spouse when conveying homestead property
- Errors in the creation of a condominium or subdivision

In summary, title insurance provides peace of mind. Title defects can arise and often do result in significant claims. If a title problem ever does arise, it is assuring to have an insurance company standing behind the title prepared to resolve the matter.