

Why Is Title Insurance Important?

Purpose

Owner's Title insurance is extremely important when purchasing a house or other real estate property. Yet many consumers are unsure about what title insurance is and what it protects against. The purpose of this white paper is to help the purchaser of real estate property understand how titles can become defective and decide whether Owner's Title Insurance is the right choice for them.

Summary

The job of searching the public records to identify existing rights and interests is not an easy task.

Title Companies search public land records for matters that may affect the title, but even the most exhaustive search may not uncover all of the title defects.

Owner's Title Insurance protects the purchaser against hidden title defects. Potential defects might be:

- ⌚ Someone else owns an interest in your land
- ⌚ You do not have a legal right of access to and from the land
- ⌚ Restrictive covenants
- ⌚ Someone else has an easement on your land
- ⌚ Liens on your title
- ⌚ Unmarketable title
- ⌚ Forced removal of existing structures
- ⌚ Other defects, liens, or encumbrances

Lenders, typically banks or mortgage brokers, know the risks of real estate ownership and require Lender's Title Insurance to protect their investment, but it doesn't protect the new owner(s).

Background

In order to understand the importance of title insurance it's best to understand what a title company does and the many title problems they can come across when researching a title.

Basically, a title company searches the public records to find all aspects of title, which can be seen and recognized, and from the title search they produce an opinion of title. When searching the public records, what they are trying to determine are the various rights and interests that make up each link in the chain as it has passed from one owner to another.

Every title is made up of many different "rights" and "interests" that may be owned by different people. The "owners" of the property own the most valuable part of the property's rights and interests, such as rights of possession, use, occupancy, enjoyment, inheritance, etc. But other people may also have rights to the property, such as easements for utilities or mortgages, etc. And these rights and interests can be passed along to the new owner.

This is why it is essential for the purchaser to know before the transaction takes place, precisely what rights or interests the seller can pass along to the purchaser. The purchaser also needs to know who else may have rights or interest in the property, and about any encumbrances against the property that may affect the use or enjoyment of the property. The title search must cover all these rights and interests.

The trouble arises when only a few titles are perfect. That is to say they have a 'perfect' history from their source to the present day. Each transfer of ownership is a "link" in what is referred to as the "chain of title." As each transaction or link takes place, there is a potential for a problem. Even if the entire chain of title appears to be in order, the chain is still subject to interpretation. Let's learn how titles can become defective.

The Public Records

In the United States we maintain a public records system that is controlled by "recording statutes." Simply, this means that in each and every county there is a public office where people may have their deeds or other written instruments relating to title recorded in permanent record books. The public records provide constructive notice to everyone as to the rights and interests of parties in a particular piece of property. There may be other rights and interests that are not disclosed by the public records (i.e., secret marriages, incompetence, unknown heirs, forgery, etc.). The public recording offices and their records constitute the most important source of information about title to real estate.

The offices in which these public records are maintained have different names in different counties. In fact, there usually are several different offices in each and every county. One office may be for the recording of deeds, mortgages, and documents pertaining exclusively to land. Other offices in the same counties may contain the records of other matters affecting the title to the land. Lawsuits, marriages, divorces, insanity proceedings, and probate may all affect the title to the land. Still other offices may contain the records relating to taxes against the properties or, in some instances, recorded surveys.

With things such as mistakes in the public record, previously undisclosed heirs claiming to own the property; or forged deeds could cloud the title. It's easy to see how occasionally, in spite of an exhaustive title search, hidden defects can still emerge after closing.

Common Title Problems

Here are three real-life examples:

Fraud & Forgery

Those involved in real estate fraud and forgery can be clever and persistent—which ultimately can become a new owner's nightmare.

An innocent buyer purchased an attractive home site through a realty company, accepting a notarized deed from the seller. Shortly thereafter another couple suddenly appeared and initiated legal action to prove they were the entitled owners of the property. As it turned out, the forger spent time in advance at the local court house, searching the public records to locate property with out of town owners who had been in possession for an extended period of time. The individual involved then forged and recorded a deed to a fictitious person and assumed the identity of that person before listing the property for sale to an innocent purchaser, handling moot contracts through an answering service. Also, the identity of the notary appearing on deeds was fictitious as well.

Conflicting Wills

Conflicts over a will from a deceased former owner may all too quickly place your home ownership at stake.

After purchasing a residence, the new owner was startled when a brother of the seller claimed an ownership interest and sought a substantial amount of money as his share. It seemed that their late mother had given the house to the son making the challenge, who placed the deed in his

drawer without recording it at the court house. Some 20 years later, after the death of the mother, the deed was discovered and then filed. Permission was granted in probate court to remove the property from the late mother's estate, and the brother to whom the residence initially was given sold the house. But the other brother appealed the probate court decision, claiming their mother really did not intend to give the house to his sibling. Ultimately, the appeal was upheld and the new owner faced a significant financial loss.

Missing Heirs

When buying a home, it's important to remember what you don't know can cost you.

A couple purchased a residence from a widow and her daughter, the only known heirs of the husband and father who died without leaving a will. Soon after the sale, a man appeared - claiming he was the son of the late owner by a former marriage. As it turned out, he indeed was the son of the deceased man. This legal heir disapproved of his father's remarriage and had vanished when the wedding took place. Nonetheless, the son was entitled to a share of the value of the home, which meant an expensive problem for the unwary couple purchasing the property.

The good news? Every one of these examples has a happy ending because each of the new owners purchased Owner's Title insurance at the time of their closing. The title company paid the claims, along with additional amounts in legal fees incurred during the defense.

Title insurance protected everyone involved in these real-life examples.

What exactly is Owner's Title Insurance?

The purchaser of real estate needs protection against serious financial loss due to a defect in the title to the property purchased. For a single, one-time premium, which is a modest amount in relationship to the value of the property, a buyer can receive the protection of a title insurance policy - a policy that is backed by the reserves and solvency of the Insurance Company. A title insurance policy will cover both claims arising out of title problems that could have been discovered in the public records, and those so-called "non-record" defects that could not be discovered in the record, even with the most complete search.

A title insurance policy will not only protect the insured owner, but also that person's heirs for as long as they hold title to the property, and even after they sell by warranty deed. The Company will not only satisfy any valid claim made against the insured's title, but it will pay for the costs and legal expenses of defending against a title claim.

How Do I Protect Myself and My Family with Title Insurance

This step is easy. As soon as your offer has been accepted by the seller, contact Complete Title Services at **218.828.9611**. Their title professionals are trained and certified to help you choose the right amount and type of title insurance to sufficiently cover your risk.

Title Defects

There are a limitless number of title defects that are revealed during the title search and abstracting process. However, even after an exhaustive search, there may still be hidden defects that don't surface for months or years later. We've provided some examples of hidden defects below so you can be made aware of them and possibly help you better identify them when you evaluate the purchase of your new property.

1. Defective recording of any document - human error.
 - Deeds which appear to convey title but are really mortgages

- Deed to or from corporations before incorporation or after surrender of forfeiture of charter
 - Ineffective waiver of tax liens by tax or other govern authorities repudiated later by successor
 - Errors in tax records (For example, listing payment against wrong property.)
 - Erroneous reports furnished by tax officials, but not binding on municipality
 - Defective acknowledgment due to lack of authority of notary.
 - Deed from record owner of land where he has sold property to another purchaser on unrecorded land contract and the purchaser has taken possession of premises
2. Duress, incompetence, or incapacity
- Deeds by persons of an unsound mind
 - Deeds by minors
 - Deeds in lieu of foreclosure set aside as being given under duress
3. Forgery, fraud, or impersonation
- Tax homestead exemptions set aside as fraudulently claimed
 - Interests arising by deeds to fictitious characters to conceal illegal activities on the premises
 - Deeds from non-existent entities
 - Deed from trustees of purported business trust which is in fact a partnership or joint stock association
 - Deed of executor under non-intervention will when order of solvency has been fraudulently procured or entered
4. Local recordings were not filed.
- Corporation franchise taxes as lien on all corporate assets
 - Conveyances and proceedings affecting rights of servicemen protected by Soldiers and Sailors Civil Relief Act
 - Federal condemnation
5. Property liens because of:
- A mortgage or deed of trust
 - A judgment, tax, or special assessment
 - A charge by a homeowner's or condominium association
 - Labor and material furnished before the purchase date
 - State inheritance and gift tax
6. Interests in your property because of a relationship to an earlier owner.
- Undisclosed divorce of spouse who conveys as sole heir of deceased consort
 - Undisclosed heirs
 - Claims of creditors against property conveyed by heirs or devisees within prescribed period after owner's death
 - Misinterpretation of wills, deeds and other instruments
 - Birth or adoption of children after date of will
 - Children living at date of will but not mentioned therein
 - Discovery of later will after probate of first will
 - Administration of estates and probate of wills of persons absent but not deceased
 - Deed apparently valid but actually delivered after the death of the Grantor or Grantee, or without the consent of Grantor
 - Deed from bigamous couple-prior existing marriage in another jurisdiction
 - Deeds by persons apparently single but actually married

- Deed of property recited to be separate property of Grantor which is in fact community or joint property