

The Title Insurance Process



What is title insurance, anyway?

Title insurance protects an owner's legal title (ownership rights) to a property from defects in title that might arise from events that occurred before the property was purchased. It is the only type of insurance that protects from acts that already happened, rather than an act that might happen in the future. Title insurance indemnifies the insured for covered losses up to the policy amount. The title insurance policy also covers attorneys' fees incurred by counsel appointed by the insurer.

Is title insurance required?

A buyer who is paying cash for a property is not legally required to have title insurance. However, this leaves the buyer open to a potentially serious loss should a defect in title that existed before you acquired the property be disclosed after closing.

When a buyer is going to have a mortgage, the lender generally requires the buyer to buy a lender's title policy to protect the lender's interests.

Generally, the owner's title insurance policy provides in an amount equal to the purchase price of the property. The lender's title insurance policy covers the amount of the mortgage.

What is the process to ensure a property's title is clear and to get a title insurance policy?

Step 1 - Initial Request for Title Insurance / Records Search

Usually the buyer's attorney or the buyer (or in the case of a refinance, the lender) places an order for title insurance with the title agency. The agency initiates several searches that are necessary to tell the full story of the current state of the property's title. These searches typically include county searches against the property, judgment searches against the individual parties involved in the transaction or in the chain of title, tax searches, and patriot searches, plus any searches that might be unique to a particular municipality, county or state. These searches are usually done with the help of independent search companies or through accessing online records. Full title abstracts are returned to the title agent with copies of all pertinent documents.

Step 2 - Title Examination

The skill and expertise of the title officer is the key to an accurate title report. A title insurance agency begins the review by analyzing the documents of record. The title insurance agency then makes an interpretive analysis of all recorded matters to evaluate their impact on the title to the property.

Step 3 - Binder / Commitment (or, in NY, a Title Report)

The title officer at the title agency issues a title commitment, on behalf of the title insurer. The title commitment is an agreement to insure title on the terms and subject to the requirements set forth therein. The commitment specifies the amount of insurance, the insured parties, exceptions and requirements to be met in order to issue the policy.

Step 4 - Clearing the Clouds

The title agent then works to clear any "clouds" to the title. A cloud on the title is any irregularity in the chain of title (ownership) of the real property that would give a reasonable person pause before accepting a conveyance of title. For example, if there is an open judgment on the property, the title officer contacts the parties involved to get the judgment paid and clear the title. The title officer works with buyers, sellers, lenders and their attorneys to resolve the often complex and varied title issues that can arise during the search and examination process.

Step 5 - Closing / Premium Payment

Unlike other insurance policies, there is a one-time only premium payment for title insurance. The premium is paid by the buyer / borrower at the closing table. Closing can occur at the attorney offices or offices of title agent or title company or any place else, depending on the circumstances involved.

Step 6 - Policy Issued & Delivered

After the closing, the title agency issues the actual title policy on behalf of the title insurer.

What kinds of risks does title insurance protect against?

Some of the common issues that can cause a loss of title or create an encumbrance on title include:

- Impersonation of the true owner of the property
- Forged deed, releases or wills
- Instruments executed under an invalid or expired power of attorney
- Undisclosed or missing heirs
- Mistakes in recording legal documents
- Misinterpretation of the consequences of various documents, such as wills, leases, easements, etc.
- Deeds by persons of unsound mind, by minors or by persons supposedly single, but in fact married
- Lack of authority of person signing the deed. This can occur when the seller is a corporation, a partnership or a limited liability company.
- Fraud
- Liens for unpaid real estate taxes, estate, inheritance, income or gift taxes