

OWNER vs. LENDER POLICY

Why You Need Title Insurance

When you purchase your home, how can you be sure that there are no problems with the home's title and that the seller really owns the property? Problems with the title can limit your use and enjoyment of the property, as well as bring financial loss. That is what a title search and title insurance are for.

The Title Search

After your sales contract has been accepted, a title professional will search the public records to look for any problems with the home's title. This search typically involves a review of land records going back many years. More than 1/3 of all title searches reveal a title problem that title professionals fix before you go to closing. For instance, a previous owner may have had minor construction done on the property, but never fully paid the contractor. Or the previous owner may have failed to pay local or state taxes (See below for some other common title problems). Title professionals seek to resolve problems like these before you go to closing. What happens if a problem arises after you move in? Read on. (If you are refinancing, scroll down or click here to jump ahead and learn more about what you can expect.)

The Owner's Title Policy

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. Possible hidden title problems can include:

- Errors or omissions in deeds
- Mistakes in examining records
- Forgery
- Undisclosed heirs

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, and is paid for by different people in different parts of the country. Be sure you request an Owner's Policy and ask how it is paid for where you live. No matter who pays for the Owner's Policy, the fee is a one-time fee paid at closing. 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 your local title

company for an explanation of the expanded Homeowner's Policy so you can decide which policy is the best one for you.

To learn more about title insurance, see the sections below concerning:

- The Loan Policy
- Common Title Problems
- I'm refinancing, why do I need new title insurance?
- I'm buying a newly built home, do I need title insurance?
- How the Title Insurance Dollar is Divided Up
- Finding a Local Title Company
- How To File A Claim
- Need More Information?

The Loan Policy

There are two types of title insurance: Owner's title insurance, as mentioned above, and Lenders title insurance, also called a Loan Policy. Most lenders usually require a Loan Policy when they issue you a loan. The Loan Policy is usually based on the dollar amount of your loan. It only protects the lender's interests in the property should a problem with the title arise. It does not protect the buyer. The policy amount decreases each year and eventually disappears as the loan is paid off.

Common Title Problems

Here are three short stories on some common title problems:

Fraud & Forgery

(NAPS) — Those involved in real estate fraud and forgery can be clever and persistent, which can spell trouble for your home purchase.

In a western state, an innocent buyer purchased an attractive home site through a realty company, accepting a notarized deed from the seller. Then another couple, the true owners of the property — who lived in another locale — suddenly appeared and initiated legal action to prove their interest in the real estate was valid. Under the Owner's Title Insurance Policy of the innocent buyer, bought for a one-time fee at closing, the title company provided a money settlement to protect against financial loss. 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 most contacts through an answering service. Also, the identity of the notary appearing on deeds was fictitious as well.

Fraud and forgery are examples of hidden title hazards that can remain undetected until after a closing despite the most careful precautions. Although emphasizing risk elimination, an Owner's Policy protects you financially through negotiation by the insurer with third-parties, payment for defending against an attack on the title as insured, and payment of valid claims.

Conflicting Wills

(NAPS) — Conflicts over a will from a deceased former owner may suggest a study topic for law school. But the subject can take on a reality dimension and all too quickly your home ownership is 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. Since the new owner had acquired an Owner's Policy of Title Insurance upon purchasing the real estate, the title company paid the claim, along with an additional amount in legal fees incurred during the defense.

Missing Heirs

(NAPS) - 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.

Although the absence of a will hindered discovery of the missing heir in a title search of the public records, an Owner's Policy of Title Insurance issued for a one-time fee at the time of the real estate transaction would have financially protected the couple from the claim by the missing heir. For a one-time charge at closing, an Owner's Policy will safeguard against problems including those even an exhaustive search will not reveal.

An Owner's Policy is necessary to fully protect a home buyer. Lender's title insurance, which is usually required by the mortgage lender, serves as protection only for the lending institution.

I'm refinancing, why do I need title insurance?

When you refinance you are obtaining a new loan, even if you stay with your original lender. Your lender will usually require a new title search and Loan Policy to protect their investment in the property. You will not need to purchase a new Owner's Policy; the one you bought at closing is good for as long as you and your heirs have an interest in the property.

Even if you recently purchased or refinanced your home, there are some problems that could arise with the title. For instance, you might have incurred a mechanics lien from a contractor who claims he/she has not been paid. Or you might have a judgment placed on your house due to unpaid taxes, homeowner dues, or child support for instance. The lender needs reassurance that the title to the property they are financing is clear.

Ask if you qualify for a "refinance" rate, sometimes called a "reissue" rate. These rates are not available in every state, and you might have to meet some criteria to be eligible, so be sure to ask.

I'm buying a newly built home, do I need title insurance?

Construction of a new home raises special title problems for the lender and owner. You may think you are the first owner when constructing a home on a purchased lot. However, there were most likely many prior owners of the unimproved land. A title search will uncover any existing liens and a survey will determine the boundaries of the property being purchased. In addition, a builder may have failed to pay subcontractors and suppliers. This could result in the subcontractor or supplier placing a lien on your property. Again, lenders want to be sure the property has clear title, and they are insuring the correct property. Purchasing an Owner's Policy will protect you against these potential problems and pay for any legal fees involved in defending a claim.

How To File A Claim

An owner's policy of title insurance is intended to provide the homeowner with peace of mind about their legal rights to real property.

Whenever the homeowner has any question or concern about his or her rights, he or she should promptly notify the title insurance company whose name appears on his title policy. The title policy includes instructions for contacting the title insurer, usually at the end of the "Conditions and Stipulations" section within the policy.

If you are unable to locate your policy, or are unsure whether you purchased a policy, you should contact the title company, title agent or attorney that handled your purchase and inquire about your coverage. You can determine if you have title insurance coverage by reviewing the settlement statement ("HUD-1") provided at the closing of your purchase, which itemizes receipts and disbursements by the closing officer. For example, charges for an owner's policy of title insurance are listed on line 1110 of the standard HUD-1 form of settlement statement. Contact information for the title insurer may also be found in telephone directories, on the internet, or by inquiry to your state department of insurance.

When giving notice of a potential claim to the title insurer, you should include the property address, a brief statement of the question or matter that concerns you, copies of any claims documents received, and a copy of your owner's policy (if available).

Remember, the broad coverage of title insurance includes protection against frivolous claims, or "clouds" on title that may not present an immediate problem. So it's best to contact the title insurer promptly, as soon as you have any question or concern about your legal rights with insured land.