MTC

MERIDIAN

TITLE CORPORATION

What is Title Insurance?

A simple answer would be that it is a contract of indemnity that protects the owner or lender, according to the contract terms, against loss or damage from title defects. Upon payment of the premium, the title insurance company agrees to defend the title or pay losses to the Insured that it may have suffered if the title is defective.

Before one can fully understand the above answer, it's important to take a step back into time to see how real property rights were protected and how title insurance has evolved into what it is today.

History 101

Most of the traditions we follow are a result of the English system of court decisions referred to as "Common Law". Ownership under common law was viewed as an assortment of rights or interests applicable to a parcel of land. Today we view this assortment like a "bundle of sticks" where a property owner may give away, for example, an easement right to a third party. Prior to the advent of title insurance, a buyer had no guarantees that the property he was buying was even owned by the person selling it. Abstracts were utilized which allowed attorneys to render their opinion of title. However, an abstract is nothing more than a history of the ownership of a particular piece of property, telling who bought it, who sold it and when. The abstract did not judge the correctness of any item listed.

In the late 1800's, a landmark case in Pennsylvania demonstrated the need for better protection for real estate purchasers. As a result of that case, the Pennsylvania legislature enacted a law that provided for the formation of title insurance companies. From that point in history title insurance was born which created protection and efficiencies in real estate transactions.

Apples and Oranges…

Title insurance is much different than other lines of insurance such as auto or home. Unlike those lines that protect against future events, title insurance protects against losses arising from unknown or undisclosed defects in the past. Unlike other lines, which require an annual premium, a title insurance premium is a one-time charge paid at the time of closing. For this one-time premium the policy remains in effect for as long as the owner owns the property or has any obligations to warrant the property when they sell it.

With title insurance there are generally two types: An owner's policy and a loan policy. Most lenders require a Loan Policy when they issue you a loan. The Loan Policy is usually based on the dollar amount of your loan. It protects the lender's interests in the property should a problem with the title arise. The policy amount decreases each year and eventually disappears as the loan is paid off.

Owner's title insurance is usually issued in the amount of the real estate purchase. Only Owner's title insurance fully protects the buyer should a problem arise with the title that was not uncovered during the title search. Owner's title insurance also pays for any legal fees involved in defending a claim to your title.

It is important to note that the policy for the owner and the lender are not interchangeable. This means an owner cannot be an insured under a loan policy. The provisions and terms of an owner's policy are different than a loan policy, which necessitates the issuance of separate policies.

Behind the Scenes

Before a policy can be issued a title search must be performed. A title search is the process of determining from the public record just what these rights are and who owns them.

A title search is “a review of all recorded documents affecting a specific piece of property to determine the present condition of title” (Financial Real Estate Handbook)

The title company must determine insurability of the title as part of the search process. This behind-the-scenes process involves performing many types of searches. For example, a tax search is performed to determine the present status of general real estate taxes against the property. The tax search will reveal if taxes are current and whether any taxes are past due and unpaid from previous years. Since unpaid taxes can result in an encumbrance on the title, it’s important that this search be performed.

Another search that must be performed is a judgment and name search to determine if there are any unsatisfied judgments against the seller or previous owners while they owned the property. Since a judgment is a lien against the real estate, it is extremely important to be sure that a title is not subject to judgments. Besides searching for judgments, a search of the clerk’s office will determine if there are judgments or orders that may affect property rights resulting from divorce decrees or probate matters.

Another search is of the public records as contained in the county recorder’s office. This search will determine if there are other liens such as mortgages, mechanic’s liens, land contract rights, and deeds that may have the rights of the owners. Other searches could include bankruptcies, name indexes and other records depending upon what has been disclosed to the title company.

Are We There Yet?

You would think after performing the above expansive search process, it would be time to issue a policy. Not so fast. When these searches have been completed, title personnel must examine and review the search before it can issue the title commitment. Before you think this examining process is nothing more than typing a piece of paper, consider the following sobering statistic: Title problems arise in about 36% of all real estate transactions. This means over 1.6 million curative actions are taken each year by title agents -- actions allowing homeowners to move in with the assurance that their title is clear. The title company will spend a tremendous amount of time trying to resolve the problems discovered in the title search before the homebuyer closes on the property. Often, court action or other steps must be taken to resolve the problem. Many times, buyers are never even aware of these problems because title professionals have resolved them without delaying the closing or bothering the buyer.

The title commitment is an offer to insure the real estate subject to the requirements and conditions as set forth on the commitment. Once the conditions have been met, the title company is now in a position to issue a title policy.

It is important to note that, in spite of an exhaustive title search, hidden hazards can emerge after closing. Things such as mistakes in the public record, previously undisclosed heirs claiming to own the property, or forged deeds could cloud the title. Owner’s title insurance also pays for any legal fees involved in defending these claims to one’s title where an attorney’s opinion or abstract would not.

The Final Chapter….

A buyer who has obtained an owner’s policy can now sleep at night. Although the perception is that claims are few in the title industry, keep in mind that in 2011, the American Land Title Association (ALTA) released the results of a recent industry study showing that title insurers paid approximately $1.02 billion in claims. It is equally important to note that the title industry spends more than 10 times the amount it pays in claims to perform title searches and cure these title problems to avoid claims. A title insurance policy not only protects against financial loss and hidden risks such as fraud and forgery, but it also buys you a piece of mind which is important since buying a home is for many people the biggest investment of their lives.