



# TITLE INSURANCE... A PRACTICAL MATTER

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In California most real estate transactions are closed with the issuance of a title insurance policy in favor of the owner, the lender or both. Many homebuyers erroneously assume that when they purchase a piece of real property, possession of the deed to the property is all they need to prove ownership. Not so, because hidden hazards may attach to the real estate. Forgeries, faulty surveys, hidden liens, or the false representation of ownership of a married person as being single are just a few examples of factors which may cloud title to real property ownership. A property owner's greatest protection is a policy of title insurance.

## WHAT IS TITLE INSURANCE?

Title insurance assures property owners that they are acquiring marketable title. Unlike casualty insurance policies which insure against future events, title insurance is designed to eliminate risk or loss caused by defects in title from past events. Title insurance provides coverage mainly for title problems which were already in existence at the time the policy was issued.

A title policy is a contract of indemnity which guarantees that the title is as reported, and if it is not and the owner is damaged, then the title policy covers the insured for his loss up to the face amount of the policy.

## THE TITLE SEARCH

Issuing a title policy is an extensive and exacting process. Title companies work to eliminate risks by performing a painstaking search of the public records or the title company's own "plant," where public records, laws and court decisions pertaining to the property and the parties to the escrow are maintained, to determine the current recorded ownership, any recorded liens or encumbrances, or other matters of record which could affect the title to the property. Once the title search is complete, the title company issues a preliminary report detailing the current status of title.

## THE PRELIMINARY REPORT

The preliminary report contains vital information which may affect the willingness and the ability of the parties to close the escrow: the ownership of the subject property, the manner in which the current owners hold title, matters of record which specifically affect the subject property or the owners of the property, as well as a legal description of the property and an informational plat map.

The preliminary report indicates the type of title insurance offered by the title company and the exclusions and exceptions from coverage subject to which the policy will be issued, such as recorded deeds of trust, easements, agreements, and covenants, conditions and restrictions (CC&Rs), etc.



# TITLE INSURANCE... A PRACTICAL MATTER

page 2

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## WHAT TO LOOK FOR

Agents should review the preliminary report as soon as it arrives, paying particular attention to certain areas:

- Verify the ownership vesting. Be certain the names on the report are the same as the names on the purchase contract. Sometimes the name of an unexpected owner will appear (e.g. a previous spouse or relative who died), and corrective documents may be required.
- Verify the property address. The plat map and legal description should match the address. An owner could own two properties adjacent to or across the street from each other, causing confusion in identifying the correct property.
- Read the informational notes for pertinent items about the property, e.g. transfer taxes, monument fees, homeowner's association fees, etc.
- Carefully review the exceptions. Common exceptions include current taxes, bonds, deeds of trust, Mello-Roos assessment district items, CC&Rs and easements. Be sure the CC&Rs or existing easements do not interfere with the buyer's future plans. For example, an easement across the backyard could have a profound effect on the buyer's ability to add a swimming pool later.

ALWAYS look for surprises. If you can't locate an easement; if an unexpected deed of trust shows up; if you see an item you weren't aware of before, immediately call the escrow officer or title company to discuss the matter. The title company should be a problem solver, and top-notch escrow officers and title companies go out of their way to resolve quickly the majority of "red flag" areas. However, the responsibility for early detection and resolution of problems falls on the entire escrow team: the agents, the escrow and title companies and sometimes the buyers and sellers as well.

## WHAT'S COVERED?

Not all risks can be eliminated by a title search since certain "hidden defects" such as forgeries, identity of persons, incapacity, incompetence and failure to comply with the law, cannot be disclosed by an examination of the public records. Where the preliminary report is an offer to insure under certain circumstances, the title policy is a contract, providing coverage against such "hidden defects."

Just a few of the many title risks covered in the California Land Title Association (CLTA) standard coverage policy in the event of a loss include a lack of right of access to and from the land and a number of recorded defects:

- A forged signature on a deed
- Impersonation of the real owner
- Mistakes in interpretation of wills or other legal documents
- Deeds delivered without the consent of the grantor
- Undisclosed or missing heirs
- Deeds and mortgages signed by persons of unsound mind, minors, or by persons supposedly single but actually married



# TITLE INSURANCE... A PRACTICAL MATTER page 3

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- Recording mistakes and missed recorded documents
- Falsification of records
- Errors in copying or indexing

In addition to indemnifying the insured against losses which result from a covered claim, the policy also provides for legal fees and defense against future claims against the property.

Extended owner's and lender's policies provide broader coverage and are available through the American Land Title Association (ALTA). Coverage is extended to certain matters that are off-record but which are generally discoverable by an inspection of the property or by questioning the parties in possession, such as:

- Unrecorded liens and encumbrances
- Unrecorded easements
- Unrecorded rights of parties in possession
- Encroachments, discrepancies or conflicts in the boundary lines

ALTA policies are available for lenders or owners, and a "plain language" ALTA residential policy is also available for residential property of one to four units.

Realtors, buyers and sellers should not assume that all title policies and title companies are the same. They're not, and it is important to ask questions of your title company to determine the type and cost of coverage available.

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