

Title Insurance: Essential Protection for Real Estate Purchasers

By Mark S. Litner

Purchasing a residence is the single biggest investment most people will ever make. But whatever the nature of your purchase and regardless of your financial resources, it is critical that you protect your rights to the property by obtaining title insurance. Without it, you may face disastrous consequences down the road.

Title Defined. To appreciate the benefits of title insurance, one must first understand what title is. In simplest terms, "title" in a real estate context is the owner's right to lawfully possess and use property. Because a parcel of real estate is permanent, it may have belonged to a number of previous owners before you came along. Moreover, any of these prior owners – or their creditors – may have acquired various rights in the real estate, including easements, rights of way, utility rights or tax or judgment liens. Therefore, before closing a real estate transaction, it is essential for the buyer to determine not only whether the purported owner of the real estate has the legal right to sell it, but also whether title to the property is "clouded," *i.e.*, subject to any rights, liens, claims or interests of third parties.

From Title Commitment to Policy. To ensure that the title being purchased is "clean" (free of outside interests) as opposed to "clouded," a prospective buyer should obtain an owner's title insurance policy.

The process begins with a title search conducted by a title insurer. The insurer examines the history of ownership of the property, including deeds, court records and property and name indexes. The purpose of the examination is twofold: (i) to verify the seller's right to transfer ownership, and (ii) to uncover any evidence of outstanding rights, claims, defects, encumbrances or burdens that could affect the new owner's title. Among the possible title defects which a diligent buyer might not discover or an eager seller might not disclose, but which a title search may expose, are unpaid real estate taxes, unsatisfied mortgages, unpaid special taxes or assessments, unsatisfied judgments, liens recorded against the property, or restrictions limiting the use of the property. If any of these title defects are uncovered, the prospective purchaser can either cancel the purchase or insist that the seller cause them to be removed from title prior to the closing.

Once the title search has been completed, the title insurer will issue a title insurance commitment setting forth the conditions under which it will insure title to the property. If these conditions are satisfied, the title insurer will then issue a title insurance policy. The policy guarantees that if the state of title turns out to be other than as represented in the policy, the insurer will defend all claims against the title and pay any losses and related legal expenses incurred by the insured as a result of the title discrepancies up to the face amount of the policy. In short, a title insurance policy protects against loss from any claim against the ownership of the property or the validity of title.

Protection Against Defects Not Shown of Record. A title insurance policy also provides protection against certain hidden title problems that are not shown in the history of ownership of a particular piece of property, including defects which even the most thorough title search might not reveal. For example, a title insurance policy would cover a claim filed by the legal spouse of a previous owner who misstated his or her marital status on a deed or whose signature was forged. Similarly, coverage would be provided for a claim made by a former seller seeking to rescind a sale and regain title to property allegedly transferred under duress or by means of fraud. Other off-record title defects which may not surface until after a purchaser has acquired the property include defective or "wild" deeds, a prior owner's mental incompetence or alien status, and clerical errors or misfiled public records. A title insurance policy is the best way – and often the only effective way – to protect yourself and your property against such title-jeopardizing risks.

In Illinois the seller customarily pays for the title insurance premium, which is relatively inexpensive compared with the value of the real estate. Unlike other types of insurance, the premium need only be paid once when the policy is purchased, and the coverage lasts for as long as the insured retains an interest in the property. Given the wide range of outstanding rights that could affect an owner's title, not to mention the time, aggravation and potential expense involved in defending a claim against title, it would be dangerous and unwise for a purchaser to forego adequate title insurance. Simply stated, this is not the place to try to minimize costs.

This article is intended to illustrate the basic benefits of title insurance and just some of the many risks to title which an owner or prospective purchaser of real estate may encounter. I can help protect your interests by working with title insurers to recognize and resolve title defects.

If you have any questions regarding title insurance, please feel free to contact me at 312-372-0414 or mlitner@jaffeberlin.com.