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The Facts About Title Insurance

What is Title Insurance?

You're probably quite familiar with other types of insurance. And you undoubtedly have insurance that covers your car, medical bills, and your life. Title insurance is one type of insurance that millions of home owners have, but few know why they have it, or for that matter, what it is. When you buy a piece of real estate, whether it's a home, condo, or a piece of land, you must have a complete investigation of the property. This includes the title of the property. Sometimes, unfortunately, some points are missed during the investigation of the title due to clerical errors or misrepresentation from previous owners. You could one day find out that the property that you bought and paid for is not actually yours at all! That's where title insurance comes in.

It was Will Rogers who once said, "Buy land, 'cause they ain't makin' any more of it." This is a fantastic way to understand how valuable real estate is. Because of its value, special laws have been created for its protection. Some of these laws are so strong and rigid that real estate is quite possibly more safeguarded than any other form of property. This has created incredibly strong rights for the property owners and the family & heirs of the property owners. But others have rights in the property, as well. There are leaseholder rights, mortgage rights, government liens due to unpaid taxes, contractor liens, plus many others. If someone files a lien against a piece of property, they are a part owner in the property. The lien holder cannot be denied their interest in the property unless their claim has been settled or released. The property may be sold even without their knowledge, but their claim is still good until it has been satisfied. When you buy a home, you may not be aware of any liens. Title insurance protects you from claims that were not revealed during the title search

In some parts of the country, you can order an abstract that provides an overview of the history of a title. The information for the abstract comes from public records so it may not be totally conclusive. For example, if a contractor puts a new roof on a house and is never paid for it, the roofer may file a lien against the property. That lien may not show up in the public record, but as the new property owner, you will be responsible for the lien. Title insurance is designed to protect you and your property. It is not mandatory unless you are obtaining financing. However, it is a good idea. So when you purchase your next home, work with your title company to ensure that you are buying a home with a clear title and cover yourself by getting title insurance.

Why do you need Title Insurance?

When a lender commits to loan money on a piece of property, they have gone to great lengths to insure the security of the investment. The security of the mortgage is protected by performing a due diligence investigation of both the purchaser / borrower and the property. A significant part of the due diligence is insuring the quality of the title to the property. The lender does this by obtaining a loan policy of title insurance.

THE LOAN POLICY DOES NOT PROTECT THE PURCHASER / BORROWER.

The loan policy protects the lender against loss due to unknown title defects. It also protects the lender's interests from certain matters that exist but are not known at the time of sale. This policy only protects the lender's interest. It does not protect you. That is why you need an owner's policy, which can be issued at the same time as the loan (mortgagee's) policy.

What does a Title Search Include?

A Title Search includes: A search of the history of the property, the owners of record, any liens or clouds on title and documents filed by legal description. Search of buyer and seller for liens, lawsuits, divorces, probates and documents are filed by person's name, not property description.

What danger of loss can you face?

If a lender has title insurance protection and you do not, what possible danger of loss can you face? For example, a purchase of property is made in the amount of \$200,000. The equity investment or down payment is \$40,000, leaving a loan amount of \$160,000. But your equity of \$40,000 is not covered. What if some matter arises affecting the past ownership of the property? The title insurance company would only defend and protect the interest of the lender. The owner/borrower would have to assume the financial burden of the legal defense. If the legal defense is not successful, the result could be a total loss of title. The title insurance company pays the lender's loss and is entitled to take an assignment of the borrower's debt. The borrower loses the down payment, any other equity that may have accumulated, and the property. The balance of the note is still owed.

How can there be a title defect if the title has been searched and a loan policy issued?

Title insurance is issued after careful examination of public records. But even the most thorough search cannot absolutely assure that no title hazards are present, despite the knowledge and experience of professional title examiners. In addition to matters shown by public records, other title problems may exist that cannot be disclosed in a search. Here are a few of the most common hidden risks that can cause a loss of title or create an encumbrance on title:

- False impersonation of the true owner of the property
- Forged deeds, releases or wills
- Undisclosed or missing heirs
- Instruments executed under invalid or expired power of attorney
- Misinterpretations of wills
- Deeds by persons of unsound mind
- Deeds by minors
- Deeds by persons supposedly single, but in fact married
- Liens for unpaid estate, inheritance, income or gift taxes
- Fraud

What protection does title insurance provide against defects?

Title insurance will pay for defending against any lawsuit attacking your title as insured, and will either clear up title problems or pay the insured's losses. For a one-time premium, an owner's title insurance policy remains in effect as long as you, or your heirs, retain an interest in the property or have any obligation under warranty in any conveyance of it.

On a refinance, am I entitled to a credit on my title policy if I do not close with the same title company?

The Texas Department of Insurance regulates all title premiums in the state of Texas. They do offer a credit on a refinance transaction for the title policy premium if the last title policy was issued during the last 7 years or less regardless of the title company that issued the policy. A credit is issued as follows:

- 40% for a title policy less than 2 years old
- 35% for a title policy greater than 2, but less than 3 years old
- 30% for a title policy greater than 3, but less than 4 years old
- 25% for a title policy greater than 4, but less than 5 years old
- 20% for a title policy greater than 5, but less than 6 years old
- 15% for a title policy greater than 6, but less than 7 years old

Is it common in Texas for the seller to pay for the buyer's owner's title policy?

Yes, in Texas it has been standard for the Seller to pay for the Buyer's owner's title policy unless negotiated otherwise.

What is the Texas Homestead Exemption?

Stated simply, the Texas Constitution and various statutes establish the homestead rights in Texas. The homestead rights protect a family's homestead from claims of creditors, both secured or unsecured, with four exceptions. A forced sale of a homestead can occur if the debt arises from:

1. Funds borrowed to finance the initial purchase price of the homestead
2. Funds borrowed to finance work and materials used in construction
3. Permanent improvements on the homestead (i.e. mechanic's lien)
4. For property taxes due on the homestead
5. Equity loans

What are the applications of the Homestead Law in Texas?

Article 16, Section 50 of the Texas Constitution states that "No mortgage, trust deed, or other lien on the homestead shall ever be valid, except for the purchase money thereof, or improvements made thereon, as herein before provided, whether such mortgage, or trust deed, or other lien, shall have been created by the owner alone, or together with his or her spouse, in case the owner is married. All pretended sales of the homestead involving any condition of defiance shall be void. This does not mean to say that a mortgage on a homestead cannot be refinanced to secure a more favorable interest rate."