



A CONSUMER GUIDE TO TITLE INSURANCE

Maryland Insurance Administration

INTRODUCTION

The Maryland Insurance Administration (MIA) is an independent state agency that regulates Maryland's insurance marketplace and protects consumers by ensuring that insurers and insurance producers (agent's) act in accordance with insurance laws. We produced this guide to help educate Maryland residents about title insurance.

WHAT IS TITLE INSURANCE?

Title insurance protects real estate purchasers and/or lenders from losses that arise after a real estate settlement, but result from unknown liens, encumbrances or other defects upon the title that existed prior to settlement. Examples of title defects include outstanding property taxes not paid by a previous owner, fraud or forgery of a prior deed or transfer, or a spouse or unknown heir who steps forward to make a claim against the title. If a claim were made, defending the claim could cost thousands of dollars in attorney fees and, if the claim were valid, could even cause you to lose the property itself. A title insurance policy provides coverage for legal defense, as well as the coverage amount listed in the policy, which usually equals the purchase price of the real property.

WHO IS PROTECTED BY TITLE INSURANCE?

For most Americans, purchasing real estate represents the largest single investment we will make. Given the cost of real estate, very few of us can purchase our homes, vacation or investment properties by paying cash. Instead, we borrow the funds from banks, saving and loans, mortgage companies or other lenders, granting them a secured interest in the property. One of the conditions that lenders place on the buyer is that a lender's title insurance policy be purchased in an amount equal to the mortgage loan. A lender's policy only protects the financial institution in the event that a valid title claim arises. In a worst case scenario, a buyer could make mortgage payments for 20 years when an unknown title defect comes to light, creating a valid claim that causes the buyer to lose the title. The lender would be covered, to the extent of the outstanding mortgage, and the owner could lose the property and all equity acquired over the 20 years that he "owned" the property.

There is an option available to the buyer to avoid the scenario outlined above – the purchase of an owner's title insurance policy to protect your interest in the real property. If the decision is made to purchase an owner's policy and a lender's policy at the same time, there may be considerable premium savings. In the title insurance business, this is known as a "simultaneous issue" and the premium rates

charged for the owner's policy will be calculated on the difference between the amount of coverage provided to the lender (amount borrowed) and the amount of coverage provided to the owner (purchase price).

HOW IS A TITLE INSURANCE POLICY DIFFERENT FROM OTHER TYPES OF INSURANCE?

Before real property is transferred from the seller to the buyer, a title search must be conducted. Title searches are usually conducted by an attorney who researches the land records in the county court house and documents the chain of ownership of the property. The purpose of a title search is to identify all prior owners, outstanding liens, encumbrances, encroachments, rights of way, easements and the like associated with the real property, so that the buyer is aware of them prior to settling on the property. As such, the title search can eliminate most of the risk from the transaction. Anything that is identified during the search will generally be excluded from coverage under the title insurance policy, since these liens, encumbrances, etc. are now known and should be satisfied at the time of settlement so legal title can be transferred.

However, something may be missed during the search process, which could result in a claim being presented at a later date. Since the defect was not known at the time title was transferred, coverage would be provided by the title insurance policy. In this respect, title insurance is different from all other types of insurance coverage. It protects you against events that occurred before the policy was purchased as long as the title policies protect you against events that occur after you purchase the policy.

HOW DO I PURCHASE A TITLE INSURANCE POLICY?

Title insurance policies are paid for at the time of closing through a one-time premium charge that will be listed on the settlement sheet, commonly known as the HUD-1.

In Maryland, all insurance companies must possess a certificate of authority from the MIA to conduct insurance business lawfully in the state. Title insurance companies are subject to all capital and surplus requirements; as well as laws that require them to submit their policy forms and rates for approval by the MIA prior to issuing a policy in the state. Most title insurance companies appoint producers (agents) to underwrite the risks, collect the premiums and issue the title insurance policies. These producers also conduct the settlements or closings, and escrow funds for mortgage payoffs, taxes, closing costs, realtor commissions, etc. The producers must be licensed by the MIA as well.

Some title insurance companies also will provide escrow or closing services directly, as well as underwrite and issue the title insurance policy.

The buyer decides who will conduct the closing and issue the title insurance policy. While the real estate agent or broker may suggest or recommend a title insurance producer, the buyer is under no obligation to retain the services of that company. Additionally, some real estate firms or mortgage companies have "affiliated business arrangements" with certain title producers or insurance companies. If one of these arrangements exists, it must be disclosed to the buyer in writing so that the buyer can

make an informed decision. The federal Real Estate Settlement Procedures Act (RESPA) prohibits kickbacks and referral fees among persons involved in real estate settlements.

Before choosing any firm to conduct the settlement, the buyer should contact the Maryland Insurance Administration to verify that the firm and/or insurer is licensed to conduct business in the state. Only licensed producers can conduct settlements, so the buyer can also check to see if the individual settlement officer possesses a valid license, as well. This information is available on our web site, www.mdinsurance.state.md.us or you can also call us at 410-468-2000 or 1-800-492-6116 to check the licensing status of a producer or insurance company.

Please understand that the premiums charged for the title insurance policy must be on file and approved by the Maryland Insurance Administration; however, many of the fees, such as courier fees and document preparation fees charged by the title insurance producer or insurer at closing are not regulated by law or regulation. As such, the companies are free to charge whatever fees the market will bear. So, it may pay to contact more than one title insurance company or producer to ask what the fees will be for the services provided and whether any fees can be waived. The fees that can vary from firm to firm have been highlighted. So, if you are shopping for a settlement company, you can ask what each would charge for those services to make sure that you are paying a reasonable amount.

Additionally, the buyer should always ask the seller if he or she purchased a title insurance policy when the property was purchased, and if so, the name of the company issuing that policy. Many title insurance companies include in their rate filings premium discounts commonly referred to as "reissue rates". If the same insurance company has already underwritten the risk and has issued the prior policy, the title search can be shortened, since the chain of title has previously been researched and documented. In that case, the attorney would only need to "bring to date" or search the title from the current owner through the date of settlement. Since most of the work was done previously, the cost to underwrite and issue a new policy for the buyer and/or lender is much less and will be reflected by discounting the premium.

If you are refinancing your principal mortgage, reissue rates on the lender's policy may also be available provided you purchased an owner's title insurance policy when you purchased your property. **(Please note:** When refinancing, title agents may use a HUD-1A form to itemize your charges. A copy of this form may be found on the Department of Housing and Urban Development's (HUD) web site at www.hud.gov/respa.)