

Give Yourself Peace of Mind

and insure the title to your piece of property...

Insurance companies exist to make a profit by selling peace of mind. Title insurance companies are no exception. Be a smart consumer and know what to look for in your title policy - before you close on your purchase.

In the fourteen years that I have been selling real estate on the Outer Banks, I have often been asked questions about the kind of insurance property owners need in order to cover the costs associated with property damage - whether it be caused by wind, fire, flood or other accidents. Title insurance, on the other hand, was a routine requirement that got only fleeting attention. However, when construction clients of mine recently were prevented from building their dream home on a lot they had recently acquired, we all got a crash course on the ins and outs of title insurance. Had they known what they do now, they may never have purchased that particular lot. (The good news is that their policy will cover most of their loss.)

What is title insurance?

As the name implies, title insurance protects against loss from hidden defects in title which were not discovered by the buyer's attorney's title search prior to closing. In other words, if a party claims a right to your property after closing, you will be compensated for a loss arising from that claim.

How do I get it?

Your attorney will do a title search in the local courthouse prior to closing to make sure there are no outstanding claims on the property that would prevent the seller from conveying clear title. If the attorney's search reveals no defects, the title company will guarantee the value of the property.

How much does it cost and how much does it pay out?

Title insurance is a relatively inexpensive one-time premium based on the value of the property when purchased, with premiums running between \$2.00 and \$2.50 per thousand dollars. At the very least, it covers the lender for the amount of the mortgage loan; at best it covers the buyer for the entire purchase price.

What are some of the more common problems which may be found prior to closing?

• A change in marital status

The marital status of the sellers may have changed since the property they are now selling was acquired. Since North Carolina statute protects the marital interest of both the husband and wife, regardless of whether the property was purchased by one or the other before or after they got married, both signatures will be required on the deed conveying the property to you. If the sellers have since divorced, a recorded property settlement specifying ownership interest is the only alternative to requiring the signatures of both the husband and the wife. As divorces are often unpleasant, a property settlement may not be reached. In this case, a *lis pendens* will usually be filed by the petitioning spouse indicating that a decision of the court is still pending. Title will only be insurable when the matter is settled or adjudicated.

• Inheritance

If the sellers are married and only one spouse inherited the property, both signatures will be required on the deed. Also, all inheritance taxes must be paid prior to closing. Again, title will only be insurable if these two conditions are met.

- **Unrecorded easements indicated on the survey**

If adjacent property owners are sharing a driveway or if the driveway of one property owner is found to encroach on the adjacent property, the title company cannot insure the right of the buyer to use the driveway. Nor can the title company insure against any claims to access made by the adjoining owner. The only solution is a joint driveway agreement establishing each party's rights relative to the driveway.

- **Unrecorded violations of the required setbacks or minimum building lines**

These lines mark the areas on the property in which no building or part thereof may be erected. If the restrictive covenants of the subdivision are in conflict with the town or county minimum setbacks, the most restrictive will apply. Traditionally, title companies try to accommodate closing by agreeing to insure lenders for "minor" violations. This is a judgment call based on the degree of the violation, the nature of the structure which causes the violation (i.e. steps versus the main structure of the house), the number of years the structure has been in place, and whether adjoining or nearby properties are also in violation.

What if the title search reveals a problem?

Let's say a setback violation is uncovered prior to closing. If it is not possible to acquire and record a variance allowing the violation, the title company has several options. 1) It can deny coverage. 2) It can provide affirmative coverage to the lender which would only cover the loan amount. 3) It can provide affirmative coverage to both the lender and the buyer which would protect you for the full amount of the purchase price. Or 4) It can provide coverage with this exception, i.e. on everything but the setback violation, to the lender or to the lender and the buyer.

What is "affirmative" coverage?

This would cover a future claim arising from a violation such as a building line setback or a driveway which encroaches on adjacent property.

What is a "hidden" defect?

This is something which doesn't turn up in the title search but results in a claim after closing. A short and incomprehensive list of common hidden defects might include:

- Forged deeds or other legal documents;
- Deeds signed by minors or persons of unsound mind;
- Undisclosed heirs or misinterpretation of will or discovery of later will;
- Mistakes in recording legal documents;
- Deeds signed by persons apparently single but actually married (or divorced without a property settlement).

What do I do if a claim is made on my property after closing?

Let's say you are ready to sell your property and you find out just before settlement that the buyer's attorney has discovered a defect in the title that you didn't know about when you bought the property. It could be that a long lost heir filed a lien on your property after you closed. Perhaps it is revealed that the seller's signature on your deed was forged. Or maybe some neighbors contact you directly and say you can't build on your lot because it was originally platted as common property in the subdivision at the time they bought their homes and they have just recorded a lawsuit against the developer. (This is what happened to my clients.) Now what?

If the problem arises when you are ready to sell, your attorney will know about it. If you learn of the problem from neighbors, for example, you must inform your real estate attorney immediately. In either case, your attorney should inform the title company promptly and ask that you be compensated under the terms of your policy.

Who pays the legal costs of collecting on the claim?

Title companies will tell you that they will pay all legal expenses to clear title defects. This simply means that they will pay an attorney to represent their interests and yours. It may be to their advantage to delay compensating you for the cost of your property; at the very least they are not going to trip over themselves in a mad rush to compensate you for the value of your property. It is certainly in their interest to go after a third party to recoup the money they owe you on your claim. The attorney they appoint will represent the title company and you in both of these efforts.

So if you are looking for a quick and painless resolution of your claim, you are better off hiring your own attorney to represent you. It may need to be an attorney who was not involved in your original purchase of the property so as to avoid any potential conflict of interest. This legal cost is not covered by your policy. However, if you can shave several months off the monthly mortgage payments you are making in the interim, it is well worth it. Keep in mind that regardless of whether it takes one month or two years to settle your claim, the amount you are paid in the end remains the same.

Can I sue for damages?

No. Your coverage covers the purchase value of the property only. Interest payments, pain and suffering, delays caused by any litigation - none of these are covered. As a condition of receiving payment, the title company will require you to sign off on your rights to sue any third party who may have caused the problem. This is because the title company wants to retain that right exclusively so they can be in a clear position to recoup their loss, i.e. their payment to you. Your best bet is to work towards a speedy resolution and pay-off from the title company.

Peace of mind is yours for the asking...but you do have to ask for it!

If you are getting a mortgage, the lender will automatically require title insurance on the loan amount. It is up to you (or more specifically, your attorney) to make sure that your entire investment is covered.

It is quite unlikely that a problem will arise after closing – that is why the premium is so affordable. But if you are one of the unlucky few who faces a challenge to your ownership rights, you'll be much happier knowing that you checked to make sure your policy was a comprehensive one.

Courtesy of Beach Realty & Construction