

# Complete Guide to Title Insurance



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# Title Insurance: Clear and Simple

## What is title insurance?

Title insurance is the application of insurance principles to hazards that are present in real estate titles. The actual definition of title insurance is a composite of the answers to the questions that follow.

## What is "title?"

"Title" is the foundation of ownership of property. It means that you have a legal right to possess that property and use it within the restrictions imposed by authorities or limitations on its use-superimposed on the basic right to possession by previous owners.

## Why does buying a home differ from all other purchases?

Because the life of any other property isn't comparable to the life of land. Owners die, new ones succeed, but land lasts forever. People who own goods may change their locations at will, but land is immobile. Because it's both permanent and immovable, it lends itself to the absorption of innumerable rights. Lawyers and jurists formed a separate body of laws for land. These laws, creating many types of rights in land, are so numerous and complicated that it's impossible for there to be a mathematical certainty of ownership.

## What are some of the limitations and restrictions commonly imposed on land?

Many common encumbrances can be placed on land. The most common is a mortgage. As long as the mortgage (or any portion of it) is outstanding, only a limited title can be passed. Other common limitations include granting the right to cross the property with electric and telephone lines, an underground cable or sewer line. A family burial plot establishes a sanctified spot for all time. An ordinance may restrict land to residential use, or it may prohibit construction of a building closer than a specified number of feet from the street line.

### **What is meant by a title defect?**

A title defect is anything in the entire history of ownership of a piece of real estate that may encumber the owner's right to the "peaceful enjoyment" of the property or that may cause the owner to lose any portion of the property.

### **Why should I protect the home I buy with title insurance?**

Without title insurance, you become a self-insurer. This isn't advisable unless you're in the financial position to lose the money you have invested in your home without upsetting your financial condition in any way.

### **Is title insurance always used in property transfers?**

No. Sometimes the buyer considers an abstract of title sufficient. Sometimes only a deed (usually a General Warranty Deed) is required. In other cases, an attorney will offer an opinion or certificate of title that a buyer might accept as sufficient protection.

### **Why isn't an attorney's opinion sufficient if he or she has examined the title?**

There are many title defects that even the most astute title examination will not uncover. When that's the case, chance of recovery in the event of a title loss depends entirely on the solvency of the attorney examining the title, and that attorney's liability is limited to errors and oversights that would not be made by a diligent attorney. An attorney is not liable for loss caused by hidden defects.

### **Why won't a General Warranty Deed fully protect me?**

With a General Warranty Deed, the Grantor can pass on to the Grantee only such title as he or she holds. It's true that if title fails, the Buyer may have, under certain circumstances, a cause of action against the Grantor, but the chance of recovery depends entirely on the financial ability of the Grantor to pay at the time the judgment is acquired-often after a long and expensive court action.

Title insurance is a corporate guarantee of a company operating under the rules and regulations of the insurance commission or other state agency. The security afforded by any policy is controlled by the integrity and financial structure of the company issuing the policy.

### **What's wrong with an abstract?**

An abstract is simply a condensed version of the recorded documents affecting title to the property. The limitations on the liability of an abstracter who issues an abstract are the same as those of an attorney who issues an opinion of title.

### **The contract I signed makes the sale subject to title to the property's being good. Doesn't that protect me?**

Only on the surface. The Seller can't be sure the title is good. Even a perfect-looking title may be seriously defective with hidden defects. Then if anything should happen to defeat your title, your cause of action would be against the Seller. Your chance of recovery would depend on your finding and suing the Seller, winning the suit, and, finally, on whether or not the seller was able to pay the judgment. Regardless, your attorney's fees and expenses would be a loss to you.

### **If the real estate broker says the title is good, isn't that enough?**

No. The broker can't be sure that the title is good. No one can.

### **The mortgage lender is usually represented by an attorney. Won't that attorney look out for my interests, too?**

Only coincidentally, to the extent as your interests and those of the mortgage lender are the same. When a lender retains an attorney, the attorney must look after the lender's interests in any areas that may conflict with your own. You should have your own attorney represent you, too.

### **If I retain an attorney, can't I be assured that my title is good?**

All attorneys know that there are hazards in real estate titles that cannot possibly be discovered with even the most diligent search of the public records.

For example, the attorney can't be sure that the marital rights of all previous owners have been properly relinquished; that all mortgages, judgments, etc. affecting the property have been properly indexed in the record room; that all signatures on all recorded documents are genuine; that no unknown heir of a former owner can appear to assert his or her claim. These are just a few of the matters that can come up to defeat real estate titles. Among others are fraud, duress, infancy, insanity, impersonations, etc.

If you should suffer loss because of any "hidden defects" in a real estate title, an attorney is not liable. Liability extends only to losses caused by oversights or carelessness in the attorney's work. That liability is limited by the attorney's ability to pay, as well as by his or her lifespan.

### **When I buy a home and have it financed, should I still have title insurance to safeguard my purchase?**

Yes. While the title insurance coverage afforded the lender and owner is somewhat the same, it's also considerably different in important ways. Because of the diminishing debt of the mortgage and the increasing equity of the owner in the property as he or she makes payments, it's apparent that there could be a complete title failure with the mortgagee suffering no loss because of title insurance coverage and the owner suffering substantial loss because he or she had no title insurance.

If the owner is not protected with an owner's policy, it's entirely possible that payments made by the title insurance company in the process of perfecting title under a mortgagee policy can be made a lien against the property second only to the mortgage under which the mortgage policy was issued. The lien becomes, in effect, a junior or secondary mortgage secured by the property and must be paid off by the owner after the prior liens are paid, or before the property can be sold.

### **When I buy a home and the deed is recorded in a record room, wouldn't that prove that I own the home I bought?**

No. It is only evidence that you have taken over whatever rights the Grantor had in the property. For example, if the deed to the Grantor had been forged, then the Grantor had no rights to pass on to you.

As another example, maybe the driveway on your property had been made a joint driveway by giving the next-door neighbor the right to use it. In that case, the Grantor or Seller could not pass sole ownership of the driveway on to you, no matter what the deed says. The recorded deed is public notice that you have taken over only those rights the Seller may have had in the property.

### **Is title insurance as important as fire insurance?**

Yes, since your losses without title insurance can be greater than fire losses. If a house burns, the land still remains to be rebuilt on. If title to the property fails, you have nothing. That's why owner's title insurance is always written to cover the value of the house and lot.

### **Does title insurance protect the safety of my investment and the security of my home?**

Yes, but title insurance can't eliminate title defects any more than fire insurance can eliminate fire. However, title insurance does 1: assure you of the best possible legal defense if your title is attacked, and 2: reimburses you up to the face amount of the policy if the title, or any part of it, should fail.

### **Why don't we see title losses reported in newspapers?**

A title loss is rarely as spectacular as a fire or hurricane, and a title loss is not as immediate as those threats. When a claim is made, it's followed by a long, involved court action filled with legal technicalities that can be confusing.

All this is uninteresting to the press and its readers. The actual loss may take place years after the claim is made against the title. Perhaps within your experience you have known of a title loss, or title dispute-for example, a fight among heirs over a property or between neighbors over a boundary line.

### **Are there several kinds of title insurance?**

Yes. One is the owner's policy, which the homebuyer needs to protect him- or herself. Next there is the mortgagee's policy, that protects only the mortgage company/money lender.

Most financial institutions lending money for mortgages on a wide scale insist upon mortgagee title policies for their protection. Also, there is a leasehold policy, which is used primarily by commercial and industrial organizations that rent property through long-term leases.

### **How much does title insurance cost?**

Local conditions affect premium rates. Sometimes rates are prescribed by the state agency responsible for proper operation of title insurance companies. The pure basic premium rate for owner's title insurance varies within the narrow range of \$3.50 to \$5.00 per \$1,000 of coverage.

Some areas combine the "title insurance" rate with the charge for title examination. Regardless of circumstances, this premium is payable only once. There is no recurring premium, although the policy is effective for as long as the insured or his or her heirs have any interest whatsoever in the property, and afterward so long as liability under any warranty of title exists.

### **Does the title insurance premium cover the fee for searching the title?**

No. However, in some areas, a "package rate" is charged, which includes the attorney's or abstractor's search fee and the title insurance premium. The entire "package rate" is referred to as "title insurance."

If a title search fee is not shown as such on your closing statement, the "title insurance" charge probably will include the search fee plus the title insurance premium.



### **When I buy a home and protect it with title insurance, what happens in the event someone should challenge my ownership of the property five or ten years after the purchase?**

You notify the title insurance company which, following the terms in the policy, undertakes, at its expense, defense of the title. If the claim reaches the courts, the title company retains attorneys and bears the expense of defending the suit. This is true whether your period of ownership is a day or a generation or more.

### **Is title insurance protection available in the area where I plan to buy a home?**

Most likely it is.

### **What should I do to make sure the home I buy will be safeguarded with title insurance?**

Insist on title coverage at the initial stages of the transaction. Your attorney will know how to get it.

### **If the person I'm buying from has title insurance, why do I also need it?**

First and most obvious is that the previous owner could, in a very short time, do all sorts of things to encumber the title. For instance, he or she could grant easements or construct improvements and encroach on adjacent property.

The deed into the new Buyer could be fatally defective because of forgery or incompetence or any number of situations. Also, if a title defect arises that antedates the date of acquisition of the property by the Grantor to you, you would have to take action against the Grantor under the terms of the deed to you. In that case, as an insured, the title insurance company would represent the defendant in your action.

### **How does title insurance help protect my home investment?**

It puts the assets of a corporation behind the title to your home. If it's attacked, the title will be defended without cost to you and if the title (or any part of it) should be defective, you'll be reimbursed up to the face amount of your policy for any financial loss incurred.

### **How does title insurance protect both me and my heirs and devisees?**

A title insurance policy provides coverage from the time of its effective date back to the origin of title. After the property has passed to your heirs or devisees, if any defect antedating the policy should arise, the title insurance company would defend the title for your heirs and devisees just as it would for you if you were alive.

Or, if the property were sold under a General Warranty Deed and the Buyer faced a claim arising within the effective term of the policy, the Buyer's action for recovery from you or your heirs would be taken over by the title insurance company according to the terms of the policy issued.

### **Do many people actually lose their homes because of title defects?**

Not if they have title insurance! Title companies realize how important it is to homeowners to keep their homes. Therefore, when an insured title is found to be defective, the title company does everything possible to perfect the title. Often it is necessary to buy a claimant's right in the property and transfer them to the insured. This is practically always possible when only a partial interest is outstanding.

### **Are all titles insurable?**

No. Some companies must turn down some applications. Just as fire insurance companies will not insure fire traps and life companies will not insure seriously ill people, some title companies will not insure a defective title. This is one of the great values of title insurance service.

If the title is uninsurable, it is usually in such defective state that no prudent Buyer would want it. If the contract specifies that a sale is contingent upon good title being passed on to the Buyer, the Buyer is not obligated to purchase property with an uninsurable title.

## Property Ownership: The Whole Story

*Life and Liberty are secure only so long as the right to property is secure. This is one of the principles adopted by the founders of our country and writers of our U.S. Constitution.*

### How Do You Know the Land You Bought is Really Yours?

Buying real estate is unquestionably an important investment, usually the largest investment the average person makes during his or her lifetime. The soundness of that investment largely depends on the condition of the title to the land, because what you buy is not land, but the title to it.

Land is both permanent and immovable. No other property has such a useful life associated with it. Owners eventually die, and new ones take over; the title itself can be sold, exchanged, borrowed upon, given away-but the land itself goes on indefinitely. Its appearance may change, but its location doesn't.

Because of these factors, a completely different set of laws and procedures govern real estate. These laws and practices are so numerous and complicated that it's impossible to be certain that the title has no defects which would impair your right to the use of the land.

For example, there are many possible defects in titles that could be so well hidden that even the most painstaking examination of the records cannot discover them: defects arising from fraud, forgery, insufficiency of deeds or other documents, persons of unsound mind, missing heirs, widow's dower, rights of divorced persons, or a child born after the making of a will-these and multiple other circumstances can arise to impair the title to your property and your investment in it.

Financial institutions that lend money on real estate as security recognize these kinds of risks. They can't afford to assume the risks, and thus require a title insurance policy for their protection.

But note that it is only for their protection! The mortgagee's (lender's) policy issued on your property will not protect you, because:

1. The title company's duty is to protect only the mortgagee or lending institution, because the lender is the insured, not the property owner.
2. The title insurance policy is issued only in the amount of the mortgage; as you make payments and reduce the amount of the mortgage, the insurance provided by the mortgagee policy is reduced accordingly.

You should protect yourself at the time you buy real estate by requesting an owner's policy for the full purchase price, naming you as the insured. There is a premium rate discount offered if you buy an owner's policy at the same time the mortgagee policy is issued. There is no recurring premium to pay for title insurance; you pay only the initial premium for the policy-and the coverage continues indefinitely, even extending to your heirs for as long as they have any interest in the property.

An owner's title insurance policy will assure that you:

1. Are protected against financial loss that you may suffer because of concealed title defects that cannot possibly be discovered by title examiners.
2. Are protected against human errors of title examiners and others that may cause you financial loss.
3. Are protected by the knowledge, skill, and expertise of title insurance professionals who base their decisions on an exhaustive search of your title and whose broad objective is to eliminate guesswork and the probability of loss.
4. Have a written guarantee that the title insurance company will undertake, at its own expense, to defend your title in all legal actions or proceedings alleging the title to be other than as insured.
5. Have a definite insurance contract indemnifying you, according to its terms, against loss or damage due to title defects and backed by the known assets and reserves of the title insurance company.
6. Will have no recurring premium to pay for title insurance. Remember, you pay only the one premium for the policy-and the coverage continues indefinitely, extending even to your heirs for as long as they have any interest in the property.

For your peace of mind, don't settle for less than full protection. Make certain you, too, are protected with an owner's title insurance policy from a reputable carrier.

## Guide to Title Insurance Fees and Costs

### The HUD-1 Demystified – How Much Will Your Closing Cost?

As the settlement date approaches, a big question on a potential borrower's mind is, "How much will I need to bring?"

All of the closing costs are summarized on the HUD-1 Settlement Statement, and fees will be from a variety of sources. The lender will have certain fees for providing a mortgage, and if a broker is used he or she will certainly have fees as well. Plus, there could be items such as a survey or termite certification, and last, but not least, the settlement and title insurance fees from the title company.

Because every mortgage company and transaction is different, it is impossible for the title company to know all of a borrower's fees in advance. However, we can let you know what our fees are going to be for a transaction. Most of our fees are fairly fixed; the Title Insurance Premium is based on the loan amount.

Below is a list of typical closing costs that we will charge on a transaction, along with an explanation for each. As you can see, most of our costs are fairly easy to calculate or predict, with the exception of Title Insurance. We include the examination fee, search fees, and endorsements into the the title insurance premium, so the amount shown on the HUD will be different from the amount calculated using a rate sheet.

<b>HUD Fee</b>	<b>Cost</b>	<b>Explanation</b>
Settlement/Closing Fee	\$300-325	Our Settlement Fee. In South Jersey this is usually split between the Buyer and Seller. Closings in our office are \$300 split between both parties, out of the office is \$325. For a refinance the buyer is responsible for the entire fee.
Notary Fee	\$15-40	This goes to whoever notarizes your documents. The buyer is charged \$25 for notarizing the mortgage package. The seller is charged \$15 for notarizing the deed. If there is a quitclaim deed on a refinance, the borrower will be charged a total of \$40.
Title Insurance	varies	This is the premium for Title Insurance. This varies on the purchase price or loan amount for a refinance. Included with the premium are county, tax, and Superior Court searches, examination fee, and applicable endorsements.
Copy/Electronic Transmittal	\$0-50+	This is charged if we have to make copies of the loan documents for the borrower and/or if we receive the package via email. If there is also a 2nd mortgage this will be charged for that also. The charge is \$25 for each copy made or package received electronically.
Recording Fees	\$260+	This is amount the County Clerk charges to record mortgages and deeds, and release mortgages of record. Releases are \$75 and the borrower only pays for these on a refinance. For a purchase the borrower pays to record their mortgage (~\$185, if 15 pages) and the deed (~\$75, if 4 pages). If there is also a 2nd mortgage, that will be added in also. If the actual documents are more or less pages than these estimates, add or subtract \$10/page.

This sums up estimated Title Company closing costs on the buyer’s side of the HUD. Other things which will affect the buyer’s costs are tax prorations, lender fees, lender escrows, and other costs such as taxes paid in advance, survey, termite certification, other certifications required by the lender, Homeowner’s Insurance, and a host of other fees which may or may not be associated with a particular transaction.

## **Closings: A Home-Buyer's Seminar**

Preparing for closing is stressful for both the buyer and seller. The Seller is anxious for the sale to go through, while the Buyer has second thoughts about taking on a large debt. You as the Buyer should keep in mind that once the sales contract and loan commitment letter have been signed and accepted, and you fail to follow the transaction through, you will lose your deposit and face possible litigation (a lawsuit).

### **Setting the Closing Date**

The Lender and your agent may set a tentative Closing Date. The Closing Date is set after the loan has been approved and the Buyer's commitment letter accepted. The Buyer must make sure the closing takes place before the Lender's commitment expires and the Buyer's rate lock expires which is usually either 30, 60, 90 or days.

### **Securing Title Services**

Generally, your attorney, real estate agent or lender will assist you in selecting a title company. Closings may be held at your attorney's office, lender's office, realtor's office, or title company.

### **Title Search**

The Lender requires a title search for both your protection and theirs. A title search prevents fraudulent sales (i.e., from bad marriages, wayward kids, etc.). It makes sure the seller is the property owner and has the legal right to sell the property. A title search uncovers any encumbrances on the title, such as liens by creditors. These liens must be paid before or at closing.

### **Title Insurance**

Title insurance affirms that the seller is conveying marketable (e.g., free of all claims, rights of others and potential litigation) property. There are two types of title insurance policies: Lender's and Owner's. Generally, the Buyer pays the cost of both types of policies; combining both policy types (lender's and owner's) can save money.

## Types of Ownership

The names appearing on the deed are generally those whose names that are on the mortgage. There are four types of ownership highlighted below. Examine these closely to better understand the various options that are available for those seeking homeownership. Please contact Collegiate Title Corporation on the options available in your particular state.

- **Sole Ownership** is property is in the name of one party.
- **Tenancy by the Entirety** is conveyance to husband and wife only. Neither spouse can sever, alienate or affect the marital property without the consent of the other party. In this type of ownership, if one spouse dies, the property automatically goes to the surviving spouse without going probate (a legal process of distributing property after death).
- **Joint Tenancy** is where any of the owners may sell their interest to anyone during their lifetime. If one owner dies, the surviving owner(s) automatically get the deceased owner's share in the property.
- **Tenancy in Common** means that the property is owned jointly between parties. However, if one owner dies, the deceased owner's share goes to his or her heirs rather than the surviving owner(s).

## Homeowner's Warranty

Homeowner's warranty is a warranty that protects against certain defects in the home. This kind of warranty is usually offered on new homes, although now it is offered for older homes. The covers the Buyer for major house systems during the first year of ownership.

## Final Estimate of Closing Costs

The Lender is required to provide the Buyer with an estimate of closing costs soon after Buyer has filed the application. Estimates are subject to change, and you have the right to review the Settlement Sheet (HUD-1) one business day before closing. The Estimate is sometimes called the Good Faith Estimate. The Buyer is required to pay the remainder of the down payment(minus the deposit) and closing costs with a Cashier's Check. Personal checks are usually not accepted.



Most often, the closing is a formal meeting between all parties (i.e., Buyer(s), Seller(s), listing agent, and lender). It is recommended that you have an attorney represent you at closing to read and interpret the documents, and advise you on exactly what you are signing. Note that the closing agent is not allowed to give you legal council. You should bring proper identification (photo driver's license, passport, etc.). Once you sign the documents and pay the closing cost, you get the keys to the property (if applicable).

## Actual Closing Costs

The Bottom Line on the settlement sheet begins with the sales price, plus total Buyer's closing costs, plus any pro-rations payable by Buyer, minus the Buyer's deposit, minus the principal amount of the mortgage, minus any adjustments payable by Seller, equals the amount the Buyer pays at settlement.

## Closing Documents

The HUD-1 Settlement Statement is a form required by law which itemizes the services provided. It lists charges to both Buyer and Seller. The settlement agent completes the HUD-1, which the Buyer and Seller both must sign.

- **A deed** is a conveying instrument, given to pass title from the seller to the buyer. The Seller must bring the deed to the closing, properly signed and notarized.
- **The Truth in Lending Statement** is a part of the Consumer Credit Protection Act, which is Federal legislation designed to protect borrowers by requiring lenders to furnish information about the cost of the loan. The law calls for interest to be expressed as the annual percentage rate (APR) to the nearest 1/8th of one per cent. The APR must include charges such as loan fees, discount points, servicing fees, etc., as well as interest. The law applies to 1 to 4 family residential property only.
- **The Note** is given to the lender by the borrower and is their written promise to pay back the mortgage by a certain date. This is signed by the borrower then sent back to the lender for them to hold.
- **The Mortgage** is also held by the lender. This creates a lien on the property which must be paid one way or another. If the borrower does not pay the their mortgage company, this enables the lender to take the property through foreclosure.
- **Affidavits of Title** are oaths given by the buyer and seller to say that they are the

only people with an interest in the property, to the best of their knowledge. This means for the seller that all liens are being satisfied on the closing date and there are no judgments or other liens against the property that are not disclosed. If there is an open lien against the property the seller did not disclose, legal action can and will be taken against the seller through the Affidavit of Title.

## The Lender's Closing Costs

The lender will charge various fees in connection with giving a loan. Some of the common charges will be explained below.

- **The Loan Origination Fee** covers administrative cost of processing a loan. May be expressed as a percentage (%) of the loan amount (e.g., 1%). Loan Discount Points are charged by the Lender to adjust the yield (ratio of income from an investment to the total cost of the investment over a given period of time), on the loan to market conditions. Each point equals 1% of the mortgage amount.
- **The Appraisal Fee** pays for the appraisal. An appraisal is the act of setting a value on the property. The lender has to confirm that the appraised value of the property is enough to cover the loan.
- **Credit Report Fee**
- **An Assumption Fee** is charged for taking over the payments of the seller's existing loan (if applicable).
- **Advance Payments** include two types:
  - Pre-paid-Lender requires payments at settlement
  - Interest-Buyer pays on mortgage from date of settlement to period covered by the first payments.
- **Mortgage Insurance Premiums (MIP)** protects the Lender against loss incurred by mortgage defaults. Enables the Lender to lend a higher percentage of the sale price. Lender may require first year premium or lump sum at closing.
- **Hazard Insurance Premiums**
- **Escrow Account or Reserves** are required if Lender is paying property taxes, Mortgage Insurance, or hazard insurance.

### **Title Charges include:**

- **Settlement/Closing Fee**
- **Search/title insurance premiums**
- **Attorney fees** (legal services for the Lender); do not include Buyer's or Seller's attorneys.
- **Recording Fees** are items such as Transfer Tax, and the fees charged by the county for recording the deed and mortgage.

### **Additional Charges include:**

- **Surveyor Fees**
- **Termite and Pest Inspection**
- **Other lender-required inspections**

**Adjustments** may include Items paid in advance by Seller that are reimbursed by Buyer or vice versa.