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Understanding the basics of title insurance: Examining the process of obtaining a policy

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Most people, when asked if they know what title insurance is, will tell you it is something they have to get when they purchase or mortgage property. That really goes to the question of, "When do I need title insurance?" not really what title insurance is and the process by which it is produced.

Title to real property indicates who owns a particular piece of real estate and how they may use and dispose of that property, which are their legal rights to the property. Title insurance is an insurance policy which protects the owner for the full value of the property in the event that those legal rights are challenged. That type of title insurance is known as an owner's policy. A second type of title insurance is called a lender's policy. A lender's policy will protect the lender's interest in the property for the amount of the loan given on any particular piece of real estate. If a mortgage is being placed on the property, a bank and/or lender will usually require a lender's policy to protect their interests.

The first step in the title insurance process is ordering a search of title. In New York and many northeastern states this is done by the purchaser's attorney. In other parts of the U.S. this is done by the real estate broker for the transaction. It can be done by either, but typically will follow the industry custom for the area in which the real estate is located. Once the contract is signed (but in some cases before the contract is signed) the title order will be placed with a title insurance company. The title insurance company will then engage several parties. They will have a title examiner (someone who physically examines the title records) go to the County Clerk's Office and search the records. This includes running every owner of that particular piece of property back approximately 60 years to see if the chain of title is correct. A common problem may be the following:

Deed dated 1/1/1950 grants Black Acre to Mr. and Mrs. Smith. On 1/1/1958 a deed is put on record from Mrs. Smith to Mr. and Mrs. Jones. The question is...what happened to Mr. Smith? Did he die? Did he do a separate conveyance? Is he still alive with an interest in the property?

A title examiner will run surrogates records to see if it can be determined if someone in the chain of title has died, they will also run a mortgage chain. Running a mortgage chain will determine not only what mortgages a current owner has on the property but if there are any mortgages that are open (not satisfied) from prior owners of the property. Additionally, they run lien searches for such things as federal tax liens, lis pendens, mechanics liens, UCCs and judgments. They compile all of this information into a title abstract which they submit back to the title company. In the meantime the title company will have ordered a survey of the property (or in some cases an inspection of the existing survey) and a tax and municipal search. The survey will allow the title company to see if there are any encroachments on the property being searched to determine boundary lines and allow the title company to write a description for the deed or mortgage. Tax searches will show if property, school, water and sewer taxes and charges are paid and up to date.

Once the title company has compiled all of that information they will issue what is known as a title report. The report will list all the parties to the transaction, the type of transaction and the amount. It will also include a description of the premises, mortgages and exceptions. The exceptions will be of two types. The first type of exceptions are permanent exceptions. An example of a permanent exception would be riparian rights where a body of water crosses the property. The second type of exceptions are ones that will be removed when certain items are provided to the title company. An example of this type of exception would be requiring a copy of the contract. Once it is provided that exception will be removed. The parties are then free to schedule a closing. At the closing a one time premium is paid for the title or mortgage insurance.

Following the closing on a piece of property, whether it is to transfer title or simply to mortgage property already owned, policies are issued. A policy will indicate who is insured (the owner or the lender), a description of the property and the permanent exceptions. The policy covers such hazards that would not be found on public record such as false record, undisclosed divorces of prior owners and false impersonations of the true owner of the land. The insurer will assume responsibility for the legal expenses to defend the title if it is ever challenged.

In the ever increasing litigious world that we live in title insurance allows the owners and their heirs of real property to know that they are fully insured. With real estate prices skyrocketing, title insurance may be the best investment you will ever make.

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