



What Is A Title Insurance Policy?

A title insurance policy is a policy of indemnity. The policy says that the insurer will indemnify the insured against loss if title to the property turns out to be anything other than what was shown in the policy and subject to the limitations by the terms of the policy and the exceptions set forth in Schedule B (exceptions to coverage). Other forms of insurance cover matters that occur subsequent to (after) the date of the policy. The standard title insurance policy does not insure against loss for matters that occur after the policy date (except in certain instances, such as construction lien coverage). Losses could be caused by matters “not of record”, like an unknown heir or by Schedule B (exceptions to coverage) not showing all of the matters that affect the title to the property. However, there are specialized products available now that will insure matters after the policy date, but the cost is much greater and the potential claims for this specialized coverage also contains limits and the probability that they would occur and the need for such coverage would arise is relatively slim.

An owner’s policy of title insurance has four insuring clauses, a loan policy has eight. The insuring clauses are broad in scope and customers should be advised that, just like all forms of insurance coverage, the policy has exclusions from coverage, conditions and stipulations that narrow the specific coverage provided by the insuring clauses contained in the policy. Schedule B shows exceptions to title that will not be covered. If a customer wants explanations about items covered or specifically not covered, they should enlist the counsel of their real estate attorney or contact the title insurance underwriter directly for more detailed information.

The owner’s title insurance policy and the mortgage title insurance policy both contain the same first four insuring clauses. The first insuring clause is: Title (ownership) to the estate or interest described in Schedule A being vested other than as stated; Examples of situations that may be covered could be that someone else obtained title by adverse possession or that one of the grantors back in the chain of title didn’t own all of the title to the insured land.

The second clause is: Any defect in or lien or encumbrance on the title; Examples of covered defects could be a material mistake in the description of the insured land or the incompetence of a past owner. One matter that is not covered is the physical condition of property. The fact that the land would be found to be contaminated by toxic waste would be a physical condition, not a matter of title. Another matter not covered is economic value of the property. Because of a physical problem, the properties value may be effected, even the ability to sell the property, but this is not a lien, defect or encumbrance.

The third insuring clause is: Unmarketability of the title itself; Unmarketability is defined in the conditions and stipulations of the more recent policy forms as an alleged or



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apparent matter affecting the title to the land which would entitle a purchaser to be released from the obligation to purchase when the sale contract requires delivery of marketable title. “Marketable title” is not defined in the policy, but most cases involve a determination of whether the matter of “claim” is a “defect” in the title so as to allow a purchaser to back out of the deal because the title isn’t good enough. For example, an senior interest existing on the property might allow a buyer to refuse to purchase the property; existence of toxic waste might not.

The fourth insuring clause is: Lack of right of access to and from the property. The cases creating precedence have consistently held that the right of access is the legal right of access and not the quality of the access. In a situation where the dedicated streets were flooded by tidal flows and rendered impassible, the court held that the legal right existed even though the access could not be utilized. The fact that physical access is difficult because of terrain conditions also does not invoke the coverage.

The loan (mortgage) policy has an additional four clauses to the ones noted above, but lenders usually have a good idea of what coverage they are receiving under their policy, so description of additional coverage will not be discussed in this publication.

For many of us, buying a home is the biggest single investment we’ll ever make. Most of us wouldn’t even think of questioning the need to purchase homeowners insurance (sometimes referred to hazard insurance) to cover our investment against hazards such as fire, theft and weather damage, etc. But, in protecting our real estate investment against title defects, most of us don’t really know what title insurance is or why we need it. We’ve listed some common questions and answers below.

QUESTIONS & ANSWERS ABOUT TITLE INSURANCE

Q. What is a title?

A. A title is the foundation of property ownership. It is the owner’s right to possess and use the property.

Q. Why is transferring the title to real estate different from transferring the title to other items, such as a car or mobile home?

A. Because land is permanent and can have many owners over the years, various rights in land may have been acquired by others (such as mineral, air or utility rights) by the time you come into possession of it, even if the land has never before been built upon. So in order to transfer a clear title to a piece of land, it is first necessary to determine whether any rights are outstanding.



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Q. What is a title search?

A. A title search is a detailed examination of the historical public records concerning a property. These records include deeds, mortgages, property and name indexes and any other documents recorded that relate to the property. The purpose of the search is to verify that the Seller you are buying from has the right to transfer the property to you, and to discover any liens, claims, defects and other rights or burdens on the property.

Q. What kinds of problems can a title search reveal?

A. A title search can show a number of title defects and liens, as well as other encumbrances and restrictions. Among these are unpaid taxes, undischarged mortgages, judgments against the seller and restrictions limiting the use of the land.

Q. Are there any problems that a title search cannot reveal?

A. Yes. There are some hazards that can remain hidden even to the most diligent title searcher. For instance, the previous owner could have incorrectly stated his marital status, resulting in a possible claim by his legal spouse. Other “hidden hazards” include fraud and forgery, defective deeds, mental incompetence, confusion due to similar or identical names and clerical errors in the records. These defects can arise after you’ve purchased your home and can jeopardize your right to ownership.

Q. What is title insurance?

A. Title insurance is your policy of protection against loss if any of these problems – even a “hidden hazard” – results in a claim against your ownership. A title insurance policy is a policy of indemnification.

Q. How much could I lose if a claim is filed against my property?

A. That depends on the claim. In an extreme case, you could lose your entire home and property – and still be liable to pay off the balance of your mortgage. Most claims aren’t that dramatic, but even the smallest claim can cost you time, money and aggravation, and you may have to pay costs for a legal defense.

Q. How does title insurance protect my investment if a claim should arise?

A. If a claim is made against your property, title insurance will, (if coverage applies to the claim) in accordance with the terms of your policy, assure you of a legal defense – and pay all court costs and related fees. Also, if the claim proves valid and no other equitable solution or settlement can be achieved, you will be reimbursed for your actual loss up to the face amount of the policy.



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Q. The owner of the property has a deed that they received when they purchased the property. Isn't that proof of ownership?

A. Not necessarily. A deed is just a document by which the right of ownership in land is transferred, whatever that right may be. It's not proof of ownership, and it doesn't do away with rights others may have in the property. In addition, a deed won't show you liens or claims that may be outstanding against the title.

Q. Wouldn't an abstract show property limitations and restrictions?

A. Maybe. Maybe not. An abstract is a history of the property title as revealed by the public records. Abstracts may contain errors and do not disclose "hidden hazards" that can threaten your property title if you do not have a title insurance policy. Abstracts were generally prepared and later updated with each transaction focusing **ONLY ON THE PROPERTY DESCRIBED**. Consequently, other deeds or documents to parcels in surrounding or adjacent areas may have contained restrictions or encumbrances that could effect other property and would not be shown in an abstract if the legal description did not describe our abstracted property. These restrictions or encumbrances should however, be shown on title insurance.

Q. What about an attorney's opinion?

A. An attorney's opinion is based on a search of the public records. So, once again, even the most exhaustive search of these records may not reveal everything. Unlike a title insurance company, an attorney is not liable if you should suffer loss because of "hidden hazards" in the title.

Q. The owner of the property I want to purchase has lived in the home for only six months. He had title insurance issued six months ago. Why do I need it again?

A. Because the owner could, in a very short time, do many things to encumber the title. For example, he could grant easements or construct improvements that encroach on adjacent property. He could get married or divorced, or have a lien filed against the property. It is necessary to conduct an up-to-date search to uncover any such problems and have a title insurance policy issued to cover you specifically in the amount of your purchase price.

Q. If the builder of my home already has title insurance on the property, why do I need it again when I purchase the land from him?

A. A title policy insuring the builder does not protect you. Also, a great many things could have happened to the land since the builder's policy was issued. Liens, judgments and unpaid taxes for which prior owners were responsible may be disclosed after you purchase the property – causing you aggravation and costing you money.



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Q. Are there different types of title insurance policies?

A. Yes. Basically there are two commonly used types of policies – a loan policy and an owner’s policy. The loan policy protects the lender’s interest in the property as security for the outstanding balance under the buyer’s mortgage, during the life of the loan. The owner’s policy safeguards the buyer’s investment or equity in the property up to the face amount of the policy. (Title insurers in many states offer increased policy coverage through inflation endorsements to cover increases in value due to inflation.)

Q. How much does title insurance cost?

A. Probably less than you think. Charges vary in different sections of the country, but generally the cost of title insurance includes the search, examination and related services. In Michigan, the rates for all areas are filed with the Insurance Commissioner and each agent and underwriter must adhere to the filed rates. Unlike other insurance premiums that must be paid annually, a title insurance premium is paid one time only for each buyer and each new mortgage.

Q. How long does my coverage last?

A. For as long as you or your heirs retain an interest in the property and, in some cases, even beyond.

Q. Where can I get title insurance?

A. From any licensed title insurance company or its agents operating in Michigan. If you are obtaining financing to purchase a home, your lender may be involved in ordering the required title work. If you are working with a real estate broker or salesperson, they will likely be ordering the title work for your transaction. If you are working with an attorney or a professional closing service, their offices will typically take care of getting the title insurance for your closing and in all cases, you will simply be charged for the premium on your closing/settlement statement.

This data is intended for informational purposes only. Your title insurance policy contains terms and conditions that may limit or restrict coverage. Consult your attorney for specific advice regarding your legal rights and consult your real estate professional when selling or purchasing a home.