

The importance behind a free and clear home claim

By Charles Scutt

Posted: 10/08/2009 05:27:08 PM PDT

Updated: 10/08/2009 05:27:12 PM PDT

Get title insurance first to prevent claims against ownership later

They say you should never judge a book by its title. But you can certainly judge a home's hidden level of risk by its title insurance or lack thereof.

Today, having proper title insurance in place and choosing the right title company is more important than ever, say the experts.

There are basically two types of title insurance policies available: an owner's policy, which protects the owner against title defects; and a loan policy, which is provided to a mortgage lender and which has the effect of guaranteeing to that lender that their mortgage has a property lien against the property, according to Joseph L. DiTomo Jr., a Philadelphia attorney. The homebuyer, however, only needs to pay a single premium, which will include both types of policies.

Why is purchasing title insurance an absolute necessity? Because title insurance indemnifies, or protects, a property owner from claims against the property which may arise from events that occurred at some time prior to the property owner acquiring the title, says DiTomo.

Defects are things such as another person claiming an ownership interest, improperly recorded documents, fraud, forgery, liens, encroachments, easements and other matters that are specified in the actual title insurance policy, according to Michael B. Skalka, president and managing director of Global Underwriting Services at Stewart Title Guaranty Co. in Houston.

if your home's prior owner contracted for a new roof and never paid the final balance, but no one noticed that a lien was filed against your property, you could be at risk without sufficient title insurance, says Shari Olefson, author of *Foreclosure Nation: Mortgaging the American Dream* (Prometheus Books, 2009).

A title insurer searches the history of a property thoroughly. This insurer guarantees that if the state of the title to the property is other than what the search reveals, and if the insured suffers a loss because of that fact, then the title insurer will reimburse the insured for that loss together with any related legal expense up to the face amount of the policy, DiTomo says.

Title insurance is significantly different from many other types of insurance in that the insurance generally does not guarantee the condition of the title, says Eric Jacobs, JD, MBA, managing partner at Jacobs/Offir, P.L., in Hollywood, Fla.

That is, defects may exist on the title notwithstanding the issuance of the title policy. The insurer simply agrees to 'insure over them,' promising to pay for any eventual losses if there are any. If there is no actual financial loss, you cannot make a claim against the policy regardless of whether a defect actually exists.

Title insuring begins with a search of public land records affecting the property, says Skalka. An examination is conducted by the title agent or attorney on behalf of its underwriter to determine whether the property is insurable. Through the search and examination, title problems are disclosed so they can be corrected whenever possible. However, even the most careful preventive work cannot locate and identify all title hazards. Title insurance protects against such risks, he says.

Obtaining title insurance is vitally important, particularly to buyers of foreclosed properties, says Jacobs.

As people increasingly abandon properties, such properties are targets for fraud. These properties frequently reflect fraudulently satisfied mortgages or fraudulent conveyances to eventual sellers who are just looking to make a quick buck, Jacobs says.

The good news is that title insurance is a relatively affordable one-time only transaction made when the property is purchased and, once acquired, protects the insured as long as the insured has an interest in the property, Skalka says.

Title insurance is normally purchased through the title company you choose. If you're preparing to purchase a home, ask for a referral to a reputable title company from your real-estate agent or lender.

Title insurance coverage is basically the same, regardless of the underwriter, but using any of the major national underwriters is recommended, Jacobs says.

In fact, choosing a title company that is financially secure is of utmost importance.

Look for a company with one of the largest policyholders' surpluses in the industry and the best premiums-to-surplus ratio, Skalka says. These characteristics will ensure that a title insurance company has more capacity to grow and remain financially strong so that a policy is as strong 30 years later as the day it was purchased.

The cost for title insurance coverage varies by state, says Olefson, who notes that many states establish their own set rates for premiums.

Content That Works