

# THE ROLE OF THE TITLE COMPANY IN REAL ESTATE TRANSACTIONS

## WHY TITLE INSURANCE?

When you buy a typewriter, television set or a thoroughbred, you have no need to know whether the former owner is married, single or divorced. You are not interested in whether or not he has paid his taxes or if there are any lawsuits or judgments against him. But when you buy real estate, it is necessary to have that information and a great deal more.

Whenever one considers the purchase of real estate, they should be aware that there may be others - in addition to the owner - who could have "rights" in the property that is being acquired. There may be a contractor, governmental agency, or any number of individuals who have perfectly proper claims against the property. "But I have a deed," many people say, "Isn't that all I need?" NO. A deed is no proof that the seller is actually the owner. Nor does it contain information regarding the rights others might have in the property. "Can't I find out about their rights from public records?" Yes - most of them. A careful investigation of all matters of record by competent individuals can disclose items such as unpaid taxes, mortgages, easements restrictions, etc. However, all of the necessary information is not contained in a single book, in a given office, or even in the same city. Add to this possible errors in indexing, improper searching, errors in examination....in other words, the human element. Besides, what is not in the public records is often what causes title trouble! "What about an attorney's opinion?" Well, an attorney's opinion is just that, an opinion. And it is based upon what appears in the records. If the attorney has erred, one's only recourse is against the attorney.

What about the hidden risks? There may be defects in a title which an examination may not disclose. A title policy protects against all these hidden risks, and more:

- Lack of authority to act
- Deeds by persons of unsound mind
- Unrecorded mechanic's and material men's liens
- Errors in recording and indexing
- Claims by undisclosed or missing heirs
- Forgery
- Instruments executed under invalid power of attorney
- Homestead rights
- Liens for unpaid estate, inheritance, income & gift taxes
- Fraud
- Misinterpretation of wills
- Marital rights
- and on and on

## REAL ESTATE IS BIG BUSINESS

The transfer of real estate in the United States is the nation's largest single business. The cost of the real estate a person owns, plans to sell, or plans to buy will probably be one of the biggest single investments a person will ever make.

## WHAT IS TITLE INSURANCE?

Title insurance means insuring, guaranteeing, or indemnifying the owners of real estate or others interested against loss or damage suffered by reasons of liens, encumbrances upon, or defects in the title to the property. As a rule, a title insurance company will not insure a bad title any more than a fire insurance company will issue a policy on a burning building. However, title companies can sometimes overcome some technical objections that might be raised by a title examination.



## KINDS OF TITLE POLICIES

To protect oneself against the many possibilities of loss due to title defects, a purchaser should purchase an Owner's Policy of Title Insurance. This policy insures only the current owner of the property and is not transferrable when the property is later sold. When a loan is secured in order to purchase real estate, the lender will want a Mortgagee Policy of Title Insurance as a requisite to making the loan. As the Owner Policy protects only the owner of the property, the Mortgagee Policy protects only the lender.

## WHAT DOES TITLE INSURANCE COST?

The premiums for title insurance policies are established by the Texas Department of Insurance and no title insurance company can charge more or less for a specific amount of insurance. The premium for an Owner Policy is based upon the purchase price; the premium for the Mortgagee Policy is based on the amount of the loan.

However, if both policies are issued at the same time (as in the event of a typical property sale wherein the buyer is financing the purchase of the property through a third party lender), the Mortgagee Policy premium is not based on the full premium rate set by loan amount. Instead, there is only a nominal charge for the Mortgagee Policy, usually ranging from \$100 - \$175.00, depending upon the extent of coverage a lender desires. A title insurance policy requires only a one time premium charge for as long as the owner has an interest in the property. This is because title companies are insuring risks for a specific period in the past, as opposed to all other kinds of insurance such as life, automobile, and homeowners which are insuring future risks.

## WHAT IS ESCROW AND WHY IS IT NEEDED?

An escrow is an arrangement in which a disinterested third party, usually the title company, holds legal documents and funds on behalf of the buyer, seller, and lender, and distributes them according to the buyer's, seller's, and lender's instructions. An escrow is convenient for all involved because each party can move forward separately but simultaneously in providing inspections, reports, loan commitments and funds, documents, and many other items, using the escrow holder as the central depositing point.

The escrow agent is responsible for processing and coordinating the flow of documents and funds, keeping all parties informed of progress, responding to the lender's requirements, coordinating legal document preparation and title work, prorating taxes and other items, preparing the final settlement statement of closing for each party, obtaining proper approval of documents and proper signatures, disbursing funds for title insurance, real estate commissions, lien clearances, etc., and recording the deed and other documents.

