What is Title Insurance?

When a house, building or other property is bought and sold, all the parties involved want to be sure the “title” or transfer of ownership is clear. Title insurance protects the owner and the lender against loss arising from problems connected to the title to the property.

Over the years, a home -- and the land it stands on -- may go through several ownership changes. The “chain of title” describes the history of ownership, with each person or entity listed who owned the land and/or building at some point in time.

However, there can be unexpected problems in that chain that could emerge to cause trouble. For example, there may be unpaid real estate taxes or other liens. When title was transferred, someone may have forged a signature, or written a property description improperly.

Title insurance covers the insured party for any claims and legal fees that arise out of such problems.

Technically speaking, title insurance is an indemnity contract between you (or your lender) and a Title Insurer for past defects in a chain of title.

More simply, title insurance is an agreement that, should a problem arise in the ownership records of your property, your insurer will fix the problem, defend you against it, or compensate you for any losses. Some problems that may arise in the records include fraudulent deeds, incorrect recording of documents, spurious (or improper) liens placed against the property, and in some cases even undisclosed easements or past violations of covenants by previous owners.

Why do I need a “title search?”

Because people are involved in recording deed transfers and plotting land parcels, there are opportunities for mistakes to be made. Title searches help uncover those errors before a piece of property changes hands. Title insurance protects the involved parties against defects and human error related to the property title. Deeds establish the chain-of-title, or history of the current ownership and who has previously owned the property. The title search looks to discover if those chains are broken, or if everything appears to be in order.

In addition, title searchers also look for proof that any encumbrances – such as the previous mortgage or any liens on the property -- are paid off, and they look for easements (permission that has been given to use the land by someone who is not the owner), rights-of-way, CCR’s (Covenants, Conditions and Restrictions), and any other elements affecting title to the property.

When the title search is complete, title insurance protects the buyer and the lender by insuring clear title to the property.

Do I have to purchase title insurance?

If you want a mortgage loan, all mortgage lenders require title insurance to protect them in an amount equal to the loan. The title insurance lasts until the loan is repaid. As with mortgage insurance, it protects the lender but in most cases the buyer pays the premium, which is a single payment made up front.

What is the difference between title insurance and other lines of insurance?

While most insurance (auto, home, etc.) provides protection against future events (fires, tornados, hail damage, etc.), title insurance protects you against matters that have already occurred (and matters that were not caused by any wrongdoing on your part.) For instance, if a lien was recorded prior to your purchase of the property, and it was not released or paid by the seller, you would most often be afforded coverage over that lien. However, if a lien was placed on your property because you failed to pay your Homeowners Association dues, you would not be covered under title insurance.

Another difference between title insurance and other forms of insurance is the payment of premium. For most insurance products you pay an ongoing premium to continue coverage. With title insurance, you pay a one-time premium (usually at closing) and are covered for as long as you own the property.

There are two basic forms of title insurance: Owners and Lenders.

Owners title insurance covers your interests as owner of the property, and usually insures for the amount you paid to purchase the property.

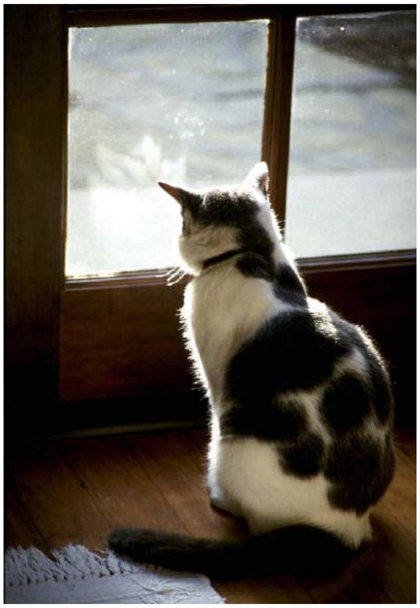
Lenders title insurance covers your lender's interests in your property, is usually issued in an amount equal to the loan amount. Whenever a loan is issued for the financing of a property, the lender acquires an interest in the property for as long as the loan is outstanding.

While who pays for the title insurance is negotiable, in Colorado it is traditionally the seller that pays for the Owners policy (thereby assuring the buyer title is clear) and the buyer that pays for the Lenders policy (in turn assuring the lender that title is clear.)

Most title insurance companies in Colorado offer discounted rates when both policies are issued at the same time and from the same company, so it is almost always one company issuing both policies in a transaction.

How Do I Choose a Title Company?

Buying property is a large investment, and most consumers will only have to purchase title insurance a few times throughout life. Because of this, many people rely on referrals from their real estate agents, mortgage brokers, or banks when it comes to choosing a title company.



However, federal and state laws and regulations state that no one can require the purchase of title insurance from a specific company. While a lender may and can require a borrower to pay for a Lenders' title insurance policy, the ultimate choice of which company issues that policy is up to the consumer.

There are two types of title insurance entities in Colorado: Underwriters and Agents.

Both underwriters and agents (or agencies) have the ability to solicit title insurance business, perform searches necessary to determine insurability, and perform closings. However, any insurance contracts purchased from an agency will be written on a particular underwriter's "paper," or policy form, as it is the underwriter who provides the actual insurance. Sometimes, an agency will have the ability to write insurance for more than one underwriter, giving them greater flexibility on the rates they charge. While agencies file their closing and other fee schedules with the Division of Insurance, it is only the underwriters who have the ability to file "rates."

The Division of Insurance encourages consumers to shop around before deciding on a title company. One place to begin the search is on the Division's website, which gives consumers the ability to search for licensed agents and companies, read about recent enforcement actions by the Division of Insurance, and compare rates from underwriters in the state of Colorado:

http://www.dora.state.co.us/Insurance/consumer/Titlemain.htm

The rates shown in the Title Insurance Premium Comparison charts are "basic" rates only, and do not include commonly applied discounts, closing fees, or other ancillary charges (such as wire and courier fees.)

It is also important to know that Colorado insurance laws and regulations require that all title insurance companies and agencies have on display and readily available for the public copies of their current rates and fees as they are on file with the Division of Insurance (§ 10-11-118 (2)(c), C.R.S. and Reg 3-5-1, Section 5 (A).) The Division also maintains publicly available copies of these filings.

The vast majority of title insurance entities will provide quotes for their services if contacted. While other factors can and should be considered in the selection of a title company - including customer services and location - publicly available rates and fees are a good place to start when comparison shopping.

How else is the Title Company involved in my transaction?

Most title insurance companies also provide closing and settlement services in connection with real estate transactions.

The following is an example of a typical real estate purchase, as it may involve a title company:

After a contract has been signed and accepted by all parties, the listing agent will forward a signed copy of the contract along with any earnest money to the title company who will be performing the insurance and closing work.

The title company will then search the property records, identifying any mortgages or liens that need to be paid off. The title company will issue a commitment for title insurance, detailing the premiums owed for insurance, requirements to be fulfilled prior to issuance of a policy, and any exceptions to coverage that may have been identified (covenants, mineral rights, easements, etc.)

The title company receives instructions from the buyers' lender, laying out additional fees that need to be paid (appraisals, credit reports, flood certifications, and accounts for taxes and insurance), and the title company will then work up a settlement statement for approval. The settlement statement details all sides of the transaction, and shows any and all fees and premiums that are to be paid.

At the closing table, sellers sign the deed to the property over to the buyers, everyone signs disclosures required by the title company, and the buyers will sign their loan documents. Once all monies have been accounted for (including any "cash to close" required from the buyers or sellers), the sale is complete and keys are given to the buyers.

After closing, the title company uses the money that was brought to closing (either by the buyer, seller, or money that was wired to the company by the lender), and pays off any outstanding liens, gives the seller any money that is due to them, and pays the underwriter the premium for insuring the property.

The title company then records the deed to the property at the county, as well anything that needs to be recorded to show the lenders' interest in the property.

Upon recording, title policies are issued, signed, and mailed. Owners' policies are mailed to the buyer (often with a copy of their recorded deed), and lenders' policies are mailed to the lender.

The title policy is an important document -- evidencing the contract of insurance between the owner of the property and the title insurer -- and should be kept in a safe location in case any issues arise later.