NC DEPARTMENT OF INSURANCE

A CONSUMER'S GUIDE TO

TITLE INSURANCE

WHAT IS TITLE INSURANCE?

The decision to purchase a home (or other real property) is one of the largest and most important financial decisions you may ever make. However, having the deed to a piece of land does not necessarily mean the property is yours free and clear. Other people may have certain prior rights or claims that your deed will not erase. Such rights can go back all the way to the earliest owners of your new property. You and your lender will want to make sure that you will remain the true owner and that no one will have liens, claims, or encumbrances on your property — other than the mortgage you agreed to pay.

Title insurance is a contractual obligation that protects against losses resulting from various types of defects, as described in the policy, that may exist in the title of a specific parcel of real property. This protection is effective as of the issue date of the policy. Title companies issue policies on all types of real property.

ELIMINATING RISK BEFORE INSURING

An important part of title insurance is its emphasis on risk elimination before insuring. This means the insured has the best possible chance for avoiding title claim and loss. Title insuring begins with a search of public land records for matters affecting the title to the real estate. Title companies check for defects in your title by examining public records including deeds, mortgages, wills, divorce decrees, court judgments, tax records, liens, encumbrances and maps. The title search determines who owns the property, what outstanding debts are against it, and the condition of the title.

Title companies maintain title "plats" which contain information regarding property liens and transfers. The examination of evidence from a search is intended to fully report all material objections to the title. Frequently, instruments that don't clearly pass title are found in the chain, or history, of ownership assembled from the records in a search. These need to be corrected before a clear title can be conveyed. Here are some examples of instruments that can present concerns:

- Deeds, wills and trusts that contain improper vestings and incorrect names
- Outstanding mortgages, judgments and tax liens
- Easements
- Incorrect notary acknowledgments

Through the search and the examination, title problems like these are disclosed so they can be cleared up whenever possible. But even the most careful preventive work cannot always locate hidden hazards of the title.

PROTECTIONS PROVIDED BY TITLE INSURANCE

Protection from financial loss due to covered claims against your title, up to the face amount of the policy.

Payment of your legal costs if the title insurance company is required to defend your title against covered claims.

Payment of successful claims against your title, up to the face amount of the policy.

COST OF TITLE INSURANCE

Most of the cost for title insurance involves searching public land records, tax assessor records and court documents and analyzing them for risk, clearing matters that can be disposed of and preparing the necessary documents.

The amount and type of coverage provided determine title insurance premiums. The schedule of rates, forms and any rate modifications are required to be filed with the North Carolina Department of Insurance. Unlike other insurance premiums, however, the title insurance premium is paid only once, as the policy is effective for so long as title or "ownership" remains in the name of the insured, or his/her heirs. Title insurance, unlike other types of insurance coverage, does not have to be renewed.

TYPES OF TITLE INSURANCE

Both buyers and lenders in a real estate transaction may need title insurance. Title companies usually issue two types of policies: an owner's policy that insures the buyer for as long as he or she owns the property, and a lender's policy that insures the lender's security interest has priority over the claims that others may have in the property. A lender's policy does not protect you.

OWNER'S TITLE INSURANCE

An owner's title insurance policy describes the property and defines your ownership "limitations" (if any). Limitations could be in the form of existing liens or items disclosed to you before you agreed to the purchase. In other words, limitations you have accepted in buying the house. You are not required to buy an owner's policy.

The owner's policy remains in effect as long as you or your heirs own the property or when you are liable for any title warranties made when you sell the property. Owners title insurance ordinarily is issued in the amount of the real estate purchase and lasts as long as the insured has an interest in the property. This may even be after the insured has sold the property. You may want to keep your policy, even if you transfer the title. You can not transfer your owner's title policy to a new owner. If the new owners want an owner's title policy, they must purchase their own policy.

Similarly, the prior owner's policy will not protect you. If you want to protect yourself from claims by others against your new property, you will need an owner's policy. When a claim does occur, it can be financially devastating to an uninsured owner. If you purchase an owner's policy, it may be less expensive if it is acquired at the same time and from the same insurer as the lender.

LENDERS' OR MORTGAGEE TITLE INSURANCE

When you "close" on your mortgage loan, title insurance may be included in the amount you pay. Most lending institutions will not loan money for a house or other property unless you purchase a "lender's" or "mortgagee" title policy. This policy protects the lender's investment by paying the mortgage if a title defect voids the owner's/buyer's title. Investors who buy the new loan often require a mortgagee title policy. The amount of lenders title insurance decreases and eventually disappears as the loan is paid off.

WHAT IS COVERED

Title insurance protects the insured from losses resulting from claims against one's ownership of real estate. It is unique in that it provides protection from problems that occurred even before the insured took title.

Some of the more common hidden risks covered under owner's title insurance:

- False impersonation of the true owner;
- Confusion caused by similar names;
- Forged deeds and other documents;
- Signatures of minors or people who are not mentally competent;
- Signatures of people represented as single but who are actually married;
- Errors in recording legal documents;
- Clerical errors in public records;
- Undisclosed or missing heirs;
- Invalid documents executed under an expired power of attorney;
- Fraud;
- Invalid divorces;
- Unpaid child support lien;
- Unpaid taxes (local, state, federal); and
- Unrecorded easements (rights of way).

Title insurance protects you and your lender if someone challenges your property title because of title defects unknown at the time you bought the policy. Possible title defects include:

- Errors or omissions in deeds;
- Mistakes made in examining records;
- Forgery;
- Undisclosed heirs;
- Missing heirs;
- Liens for unpaid taxes; or
- Liens by contractors.

Title insurance offers financial protection against these and other hidden hazards through negotiation by the title insurer with third parties, payment for defending against an attack on title as insured and payment of claims.

WHAT IS NOT COVERED

Title insurance does not protect you from problems you create or problems unrelated to your or the lender's property interests. It also does not cover losses listed under your policy's exclusions or exceptions. Discuss these exceptions with an attorney before closing any real estate purchase. Some non-covered items may include:

- An unrecorded title defect you knew about;
- Condemned land;
- Violations of building and zoning ordinances;
- Payment, except for your legal right of access to your land, because your deed failed to give you rights to adjacent land you did not buy; streets; alleys; or waterways;
- Conveyance of title irregularities arising from a dead person's estate, a bankruptcy estate or a trust;
- Restrictive covenants limiting how you may use the property;
- Discrepancies, conflicts or shortages in area, boundary lines, encroachments, protrusions or overlapping of improvements;
- Claims from other people who may have certain rights if your property is on or near the shores of a body of water or has a river or stream flowing through it; or
- Losses resulting from rights claimed by "parties in possession" like renters or adverse claimants who occupy the land.

IMPORTANT INFORMATION

- The buyer should insure for the full purchase price of the property; the lender needs a policy only for the amount of the loan.
- Local practice determines who pays the premiums, not the law. This could be a negotiation point between the seller and the buyer. Your escrow officer can advise you who normally pays the various premiums in your area.
- Check to see that the effective date given on the policy matches the actual closing date of the escrow.
- Verify that the policy describes all of the property and all of the interests being acquired.
- Discounts may be available for first time buyers and for others with special circumstances. Always ask the escrow or title officer about potential discounts.
- Concurrent rates may be available if the insurer is providing both a homeowner's and a lender's title insurance policy in the same transaction.
- Discount rates may be available in bulk rates for new subdivisions.
- Refinancing discounts and short-term financing rates may be available.

- Title companies also handle property closings and hold earnest money in a trust account until a purchase is complete.
- You may choose the title insurance company you want. You do not have to use a title company selected by a real estate agent or lender.
- Note: A title policy does not guarantee that (1) you can sell your property, (2) you will not lose money if you sell it or (3) you can borrow money on it. Your title policy covers only actual losses up to the policy amount in force at the time of a claim. The policy amount is the sales price of the property on an owner's policy and the principal amount of the loan on a mortgagee policy. It does not cover increases in value. Ask your title insurance agent for more information on how to cover increases in value.

CONSUMER TIPS

- Shop around.
- Make sure you are dealing with licensed agents and companies. You can verify credentials by contacting the North Carolina Department of Insurance at 1-855-408-1212.
- Read your policy. Know exactly what your policy does and does not cover.
- Be sure to check to see that the policy amount is correct.
- Do not pay cash. When you purchase a policy make your check or money order payable to the insurance company, NOT the agent. Be sure to get a receipt.
- Know the name of the insurance company providing your coverage as well as the name of the agency and agent. This information is found on your policy.

IF YOU HAVE QUESTIONS, THE CONSUMER SERVICES DIVISION OF THE DEPARTMENT OF INSURANCE IS HERE TO HELP.

Toll free: 855-408-1212 Outiside of NC: 919-807-6750 Fax: 919-733-0085

North Carolina Department of Insurance
1201 Mail Service Center
Raleigh, NC 27699-1201

You can find additional information as well as a downloadable copy of our **Request for Assistance** form on the NCDOI Web site.