

Proposal by the Center for Economic Justice

Text for Information for Title Insurance Shopping In Brochure or Electronic Presentation

October 21, 2015

What Is Title Insurance? Do I Have to Buy It? Do I Want to Buy It? Frequently Asked Questions and Answers Provided by the [State Ins. Dept.]

What is title insurance?

When you buy a property (home or land), you want to be sure the seller can legally transfer ownership of the property to you. The *title* to the property is the legal ownership of the property. If you have a mortgage, your lender also wants to make sure that they have clear title to be able to foreclose and sell the property if you default on your mortgage.

Title Insurance combines two things – the insurance company's opinion that the title is clear to transfer and an insurance policy to pay you or the mortgage lender if they're wrong.

How does title insurance work?

When you get a mortgage to buy a property or refinance a mortgage, your lender requires you or the seller of the property to buy title insurance that protects the lender. That insurance is called a *lender's title insurance policy*. The title insurer searches public records to see if there is anything that might prevent *clear title* to the property. Things that can create a title problem include, for example:

- Someone other than the seller (for a purchase) or you (for a refinance) has a claim on the property. This might be a contractor who wasn't paid and has filed a legal claim on your property to get paid (**a lien**).
- A mistake in the land records means the land you thought was part of the property isn't.

Most title policies only cover problems with a title problem that happened before you bought the property or refinanced your mortgage. For these title insurance policies, there is no coverage for title problems that arise because of actions after the policy was issued. For example, if your local government changes the permissible use of your property after you buy your property, title insurance won't cover that problem (unless you get specific coverage for that type of problem with an ***endorsement***).

Title insurance doesn't guarantee your title to the property, but it does protect you in other important ways. If you have title insurance and there's a problem with the title (that is covered by the title policy) after you bought or refinanced your property, the title insurer will try to fix the problem. But, title insurers don't guarantee that your title will be fixed if there is a problem. If the title insurer can't fix the title problem, the title insurance policy will pay the lender (if there is a mortgage) and/or pay you (if you have **an owner's title policy**). In either case, the insurance payment won't be more than the amount of coverage on the policy.

Do I have to buy title insurance? Yes, for lender's title insurance

If you have a mortgage to buy a property or are refinancing your mortgage, the lender will require you or the seller (for a purchase) or you (for a refinance) to buy a lender's title policy. A lender's policy protects the lender if there's a problem if a problem with the title shows up. The amount of coverage (the most the title insurer will pay to the insured lender) is the principal amount of the mortgage – the amount you borrowed. As you pay down the principal over time, the amount of coverage on the lender's policy goes down to match the lower balance you owe on the mortgage.

Even if the lender requires you to buy lender's title insurance, you have the right to shop and pick the title agent and title insurer you want. You don't have to use the title agent or title insurer recommended by your real estate agent, mortgage lender, builder, attorney or other real estate professional.

Do I have to buy title insurance if I refinance my mortgage? Yes.

Your mortgage refinance lender will require a new lender's title policy every time you refinance your mortgage. But, if you refinance within a few years of your original mortgage or last refinance, you're usually entitled to a ***refinance discount***.

You should always ask about discounts – Ask, “What discounts are there that might reduce the title premium?”

What is owner's title insurance? Do I have to buy it? No, it can provide protection you want.

An *owner's title policy* protects you for the full price you paid for the property plus legal costs if there's a problem with the title after you buy the property. *An owner's title policy is optional – you don't have to buy it – but it can provide protection you want.*

Title insurance policies and coverages vary – ask questions when you shop.

Some important things to know about owner's title insurance:

- You only buy it once – you're covered as long as you own your property for title problems that happened before you bought the property.
- The coverage in an owner's title won't increase as the value of your property increases over time – unless you get an *endorsement* to cover that increase in value.
- Defending your title can be expensive if there's a problem. If your owner's policy covers the problem, the policy will also cover those defense costs.

What to watch out for when you shop for title insurance? “Affiliated Business Arrangements”

A real estate agent, lender or other real estate professional may recommend you use a particular title agent or title insurer. That real estate professional may be paid money by the title insurer to make this recommendation. If the person will make money to make the recommendation, he or she must tell you if they will. This is called “an affiliated business arrangement” and *you should get a separate notice about it*. Beware of statements like these from the person making a recommendation to use a particular title agent or title insurer:

“If you choose another title agent, your closing may be delayed.”

“Everyone charges the same price.”

“We will give you a discount on [something else] if you use our title agent.”

If you're told any of these things or you feel you aren't being treated fairly, contact the state insurance department (<https://eapps.naic.org/cis/fileComplaintMap.do>) or the U.S. Consumer Financial Protection Bureau (<http://www.consumerfinance.gov/complaint/>)

How do I shop for title insurance? Does the state insurance department set title insurance rates or do title agents and title insurers compete on price?

Version 1: In [state], title insurance rates are set by the commissioner of insurance, so your title insurance premium will be the same from every title insurance company. But, not all title and closing services are covered by the title insurance premium (link to below), so you should shop around for best price and service for those activities you'll be charged for in addition to the title

insurance premium. You can check the premium for title insurance by using the title premium calculator at (link to department web site if premium calculator exists).

Version 2: In [state], title insurers can compete on price, so you should shop around to compare title insurance premiums. Be sure to ask what title and closing activities the title insurance premium covers and doesn't cover (link to below). –You may be charged a separate fee for some of these activities. Your insurance department has a tool for comparing title insurance prices (link to department price tool if it exists)

How do I shop for title insurance? What's included in the title insurance premium?

The services included in the title insurance premium are different in each state. Here are the activities that are part of title and settlement services. Your title insurance premium may cover some or most of these activities:

- Title Search – Searching for information about who has the title to the property
- Examination – Looking at (**examining**) the title information for any problems with the title
- Title Insurance – The title insurer's promise to pay if there's a problem with the title
- Closing – Preparing documents related to buying or refinancing and arranging for documents to be signed
- Escrow – Accepting, holding and paying money for the purchase or refinance.

In [insert state], the title insurance premium covers [insert list of included activities].

A title agent, title insurer, attorney or other professional may charge a separate fee for [insert non-included activities].

Remember, you have the right to shop around for all these services.

How do I shop for title insurance? Where do I find a title agent or title insurer?

Start by going to your state insurance department web site (http://www.naic.org/state_web_map.htm) for a list of title agents or title insurers and any shopping tips.

You can do an internet search for “title insurance” or “title agent” and add your city or state.

You can ask your real estate agent or attorney for the names of title agents, but be sure to find out if the real estate professional will make money by recommending a particular title agent or title insurer.

Most states have an association of title agents and title insurers (**trade association**) – check out their web page for a list of their members. You can find your state here

(<http://www.alta.org/consumer/index.cfm>). Remember, these trade associations aren't government agencies and not all title agents and title insurers are member of the organizations.

What is “enhanced coverage” for title insurance?

There are other differences in title insurance policies besides owner's title and lender's title. Compared to a ***standard title policy***, an ***enhanced title policy*** protects against more kinds of title problems. The enhanced policy may, for example, cover some problems with title due to events that happened after you buy the policy. The enhanced policy costs more than the standard policy. You can choose an enhanced policy only for the owner's policy – the lender chooses the type of lender's title policy.

What are endorsements to the title policy?

You also can choose to add coverage to an owner's title insurance policy with ***endorsements***. Endorsements change the policy by adding, removing or changing coverage on the policy. For example, one endorsement provides coverage for a condominium. There is usually, but not always, an extra charge for endorsements.

You'll almost always see endorsements on the lender's policy. Ask what they cover, why they were added and if they're required. You may have no choice but to pay for the endorsements on a lender's policy.

How can I find out if there have ever been consumer complaints or if a regulator has taken action against the title insurance agent or title insurance company for unfair or illegal practices?

Your state insurance department may have information on complaints. Use this link to find your state insurance department web site. http://www.naic.org/state_web_map.htm

You can also search your insurance department's web site for enforcement actions and market conduct examinations (a review by the insurance department of the insurance company's compliance with state laws).

The Consumer Financial Protection Bureau: The CFPB accepts consumer complaints. You can search the complaint database for your agent or insurer. <http://www.consumerfinance.gov/complaintdatabase/>

The CFPB took over enforcement of the Real Estate Procedures and Settlement Act from the Department of Housing and Urban Development in 2011. There have been a number of enforcement actions by HUD and CFPB over the years that involve title agents, title insurers and other real estate professionals. A list of HUD regulatory settlements is found at http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/rmra/res/resetagr. For

enforcement actions after 2011, go to the CFPB web site and search for the name of the agent, insurer or real estate professional you want to find out about.

How can I learn more about title insurance?

State insurance departments regulate title agents and title insurers so that is the place to start. Each state insurance department has a web site (http://www.naic.org/state_web_map.htm) and most states have information about title insurance.

You can learn more about the entire process of buying a home and mortgage lending from the “Know Before You Owe” tool from the United States Consumer Financial Protection Bureau here (<http://www.consumerfinance.gov/know-before-you-owe/>). You can learn more about title insurance at <http://www.consumerfinance.gov/askcfpb/164/what-is-owners-title-insurance.html>

You can also learn more from title agents, title insurers and their trade associations. The American Land Title Association has information for insurers at <http://www.alta.org/consumer/index.cfm>. Remember, ALTA isn’t a government agency.

What if I have a complaint about title insurance?

If you believe you’ve been treated unfairly, contact your state’s insurance department (<https://eapps.naic.org/cis/fileComplaintMap.do>) to file a complaint.

You also can file a complaint with the Consumer Financial Protection Bureau (<http://www.consumerfinance.gov/complaint/>).