WHY BUY TITLE INSURANCE?

Let's name the parties:

1. *Borrower* - We refer here to person(s) borrowing money to purchase real estate. A Borrower can also be a person(s) refinancing his and, or, her real estate. Often title insurance is required by the Lender in a refi situation. Seldom is an Owners' Policy purchased at the time of a refinancing. The Borrower also becomes a "mortgagor" upon closing the transaction.
2. *Buyer* - He or she can be a Borrower at the same time. Buyers can be cash buyers where no mortgage is involved.
3. *Lender* - any entity lending the money to the Borrower; banks, mortgage brokers, venture capitalists, building & loan associations, etc. After closing the lender becomes the "mortgagee."
4. *Seller* - the owner of the property being purchased.
5. *Title Insurance Underwriter* - these are large companies, licensed in Ohio, who supervise their title insurance agents, work with the State of Ohio Division of Commerce, Department of Insurance. They insure the policy, defend claims made and pay or settle claims covered under their title insurance policies. The Ohio statutes call them, "title insurance companies."
6. *Title Insurance Agents* - These are the folks the Borrower / Buyer / Seller deal with. There must be at least one title insurance agent in each title insurance company. The agent need not be an attorney. He or she may be an attorney and most law firms have a title insurance agent and agency as part of their firm. "Agency' or "Agent" will appear somewhere in their name. Our official name is "Riverside Title Company Agency, Inc."

Lender Requirements:

The first reason to buy title insurance is your lender will probably require it. What the lender requires protects the lender. His title policy (called, a Lender's Policy) provides you **NO** protection at all. But you pay for it. The rate for a Lender's Policy is less than for an Owners' Policy so it is cheaper to pay for the lender's protection but, again, no protection for you if the title has a defect.

The are several reasons for this.

Owners' & Lender's Policies - the Difference

The first difference is that the lender's policy only cover the period the loan is in effect. Once it is paid off the policy terminates.[1] National statistics show people move and pay off their mortgage in a period of between five and 10 years. Another reason is that as the mortgage is paid down the coverage is reduced. A third reason is that the amount being borrowed for the purchase of a home is less than the purchase

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1 There are exceptions but they are rare.

price.[2] The lender's title insurance policy is only for the mortgage amount whereas the owners policy is for the full amount of the purchase price.

An owners policy on the other hand lasts for the life of the individual purchasing the policy. That is a substantial increase in coverage.

There are differences in the rates. Elsewhere on this webpage you can read the entire rate manual.[3] As an example, the rate on an owners policy on a purchase price of $250,000 is calculated at $3.50 per $1000 of coverage. A loan policy for the same amount is calculated at $2.50 per $1000.[4]

There is an advantage in purchasing an owners policy at the same time that a lender's policy is required. You get credit for the amount of the loan policy when you purchase an owners policy, plus $100. If you do the math you will see that it is advantageous to purchase the owners policy at this time.

If you read the 25 pages of the Ohio Rate Manual on this webpage you'll see some other advantages. The ones stated above are the principal differences.

HOW AM I COVERED?

In my opinion the biggest advantage of purchasing owners' title insurance is **the title company pays for the lawyer** in the event there is a claim. I have attended many seminars where title insurance underwriters have shown examples of claims. In many cases, if not most, the attorney fees exceed the amount paid on the claim. Anyone who has been involved with litigation realizes the expense of a lawyer. I am one and have been for many years. I know what the expenses are. They are horrendous.

The whole idea in issuing title insurance is that the insuring company wants to make sure there is nothing of record that is not cleared up before closing or disclose any potential defects in the title. However, at the time of closing not all potential liens need to have been filed. An example of this is a mechanics lien on work done on the premises or material delivered to the premises within a specified time, which deadline may be after the closing. The title company takes the risk on this but they will make the

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[2] It is not my intention to get into "flips" and other illegal activities where the purchase price is the same or less then the mortgage. If that is happening in your transaction, stop reading, wipe this web site off your favorites list and never come back.

[3] Few, if any, titled company employees have read the Rate Manual. I have not read it in its entirety.

[4] This is not a straight line rate as lower rates are calculated first. That is why we use the tables which are attached to this website.

seller, or the borrower in a refi situation, sign an affidavit that no work has been done on the premises within the last 90 days. There are many other risks that the title company assumes although they will make every effort to reduce those risks to as close to zero as possible.[5]

OPENING PROCEDURE:

If a lender is involved the lending officer must inform you that you are entitled to an owners policy and that you may choose the title insurance company.[6] As many lenders and real estate brokers have their own title companies you can imagine that they will recommend that company. I believe it is always wise to choose your own title company. Here's why.

Who has your best interests at heart? The real estate agent obviously wants the deal to close. I have personally had agents try to have me overlook substantial title defects in order to close the deal. The lender likewise wants the deal to close. I'm afraid that in many instances the buyer/borrower may be in third place as far as loyalties are concerned. If you choose your own title company your interests are going to be at the top of the list. Numero Uno!

Who has the most skill? Most of the real estate agents and lender title insurance employees are skilled. But few of them have a lawyer that reviews each closing in any detail. Of course, being a lawyer, I believe that is a mistake – old-fashioned but a mistake nevertheless.

TITLE COMMITMENT

This document is created after the completion of a title examination. When I started practice every lawyer learned to examine titles. Not anymore. The better title examiners are lawyers who do that work exclusively. My company does you use one non-lawyer to examine titles but she has close to 30 years experience. She makes no decisions as to whether something unusual is OK or not - she reports it and I make the decision. It seems ever title I review these days has problems. The biggest headache is improper cancellation of prior mortgages. Other problems that can arise are myriad and various.

If you just buy a Lender's policy you will probably never see the Commitment. In fact, in many cases the Commitment has not even been typed by the time of closing. You should look at it. You are entitled to see it; you are paying for it. If you have

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[5] The 2006 policy form protects the buy from a lien being filed from the time of the closing until the mortgage is filed (the "gap" period).

[6] As of January 1, 2007 the title company issuing title insurance has to provide you the option of buying a "Closing Protection Letter." This protects the buyer / borrower if the title company agent runs off with your money. The cost is $35.00 or less for each party.

purchased an Owners' policy you should get a copy.[7] Schedule B, Section I is a list of what needs to be accomplished before or at closing. Go to Schedule B, Section II to see defects or even routine matters, such as utility easements. It lists all the items that are *not* covered. Have them explained to you if you don't understand them.

OWNERS' TITLE POLICY

If you have ordered and paid for an Owners' policy you should receive it in about 90 days. If there is mortgage being paid off the mortgagee (the Seller's mortgage company) has 90 days to cancel the mortgage of record. Most underwriter allow the policy to issue once the mortgagee's check is cashed. This can be a problem unless the title insurance agency keeps following up to be sure the mortgage is canceled.

RATES

Unlike other types of insurance, the premiums is only paid once. Title insurance agencies get the major cut from the premium - anywhere from 70% to 90%. Riversides' is right in the middle of this even though we have never had a claim. Don't get me wrong, we have made mistakes, which we have had to correct but not many, and most of those are ones we found ourselves.

In every transaction there are other costs to the parties. The Seller gets slammed with $4.00 per $1,000 Auditor's transfer fee and deed preparation. The Buyer \ Borrower has attorney fees, courier costs, recording costs, appraisal fees, escrow costs and all other Lender costs and fees whether in a sales or refinance transaction..

Remember that the rate for title insurance is set by the Ohio Department of Insurance. The charge is for the insurance, not the work the agent does to close the deal.

CONCLUSION

The above is a broad overview of title insurance benefits and lack thereof. Effective January I, 2007 what is known as Ohio SB 185 went into effect. It is a consumer protection act. However, one of the consequences may be attorneys getting out of the title agency business. The underwriters are upset about this as they have much less trouble with attorneys as agents than agencies without lawyers in charge. The new law encourages large agencies to the detriment of small ones. The expenses required to comply with the law can only be afforded by agencies writing a large volumes of title policies. We all know the treatment of customers by large companies.

Real estate transactions are what our law firm and Riverside Title do and have

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[7] It is my opinion you should even be given a copy of the Loan Policy Commitment if you request it. Denying you this right and if a later problem arose could be considered deceptive practice by the Lender. *See*, Ohio SB 185 or RESPA.

done for over 50 years. We have insured $10,000 deals and we have insured $10,000,000 deals. We stand ready to do your deal.

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