

Back to Basics:

Understanding the Title Insurance Policy

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Goals

Understand what title insurance insures against: adverse interests to the insured's legal interest in real property

Understand what a policy is: contract of indemnity (agreement to pay for certain losses)

Understand how the policy works: coverage, exclusions, exceptions, conditions, endorsements

- Coverage and Exclusions define the scope of Title Insurance
- Expand or modify coverage through Endorsements
- Limit coverage through Exceptions

What is Title Insurance?



731.102 “Insurance.” (1) “Insurance” means a contract whereby one undertakes to indemnify another or pay or allow a specified or ascertainable amount or benefit upon determinable risk contingencies.



731.190 “Title insurance.” “Title insurance” means insurance of owners of property or others having an interest therein or liens or encumbrances thereon, against loss by encumbrance, defective titles, invalidity or adverse claim to title. [1967 c.359 §42]

Policy Jacket, Condition 8:

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by an Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy. This policy is not an abstract of Title, report of the condition of the Title, legal opinion, opinion of the Title, or other representation of the status of the Title. All claims asserted under this policy are based in contract and are restricted to the terms and provisions of this policy. The Company is not liable for any claim alleging negligence or negligent misrepresentation arising from or in connection with this policy or the determination of the insurability of the Title.

What is Title Insurance?

Condition 8:

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by an Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

The policy is a contract between us and the buyer, lender or other named insured.

We, the insurer, agree to pay for or fix an actual loss or damage to our insured's legal interest in the property if the loss is covered by the policy.

In exchange, the insured pays us a premium.

What Title Insurance is Not

Condition 8:

This policy is not an abstract of Title, report of the condition of the Title, legal opinion, opinion of the Title, or other representation of the status of the Title.



Abstract



Legal Advice or Representations



Disclosure regarding title or property



Representation regarding property



Guarantee or Affirmative Promise



Insurance against problems with the closing transaction

Title Insurance Contract

Condition 8:

All claims asserted under this policy are based in contract and are restricted to the terms and provisions of this policy. The Company is not liable for any claim alleging negligence or negligent misrepresentation arising from or in connection with this policy or the determination of the insurability of the Title.

- Policy defines the rights and duties of the insured and insurer
- Recovery based on contract rights and not negligence
- Recovery limited to contracted for amount
- Insured only needs to file a claim and does not need to prove negligence**

Policy Structure

Coverage: Matters insured against

Exclusions from Coverage: Matters not insured against in the policy

Schedule A: What is insured

Schedule B: Exceptions from the policy's coverage

Conditions: "Fine Print"

Endorsements: Expands or modifies the policy coverage

Coverage – Insure against loss incurred by reason of:

Risk 1: Vesting

Risk 2: Defect in or lien or encumbrance on title, including but not limited to losses arising from:

- Fraud, lack of authority, problems with execution or notarization including RON, invalid Powers of Attorney, defective court proceedings
- Unpaid taxes
- Items disclosed by an accurate and complete survey

Risk 3: Unmarketable Title – title a reasonable person would accept

Risk 4: No right of access to and from the Land – legal access and not physical access

Coverage – Insure against loss incurred by reason of:

Risks 5 – 7: Government Police Powers if there is an Enforcement Notice

- Enforcement Notice: a recorded document that describes the property and the enforcement proceeding, violation, or right

Risk 8: PACA/PASA claims if there is an Enforcement Notice

Risk 9: Certain Preferential Transfers – Bankruptcy or similar proceedings

Risk 10: Gap Coverage – Any items that record after the policy is issued and prior to recording the documents

Coverage – Loan Policy

Invalidity or unenforceability of the lien of the Insured Mortgage

Lack of Priority of Insured Mortgage

Invalidity or unenforceability of an assignment of the Insured Mortgage if shown in Schedule A and failure of the assignment to assign the Insured Mortgage to the named Insured

Defense of Covered Claims

An insurer has a duty to defend the insured against any assertions of legal rights brought by a third party regardless of the merit or legitimacy of the assertion.

Exclusions – the following matters are excluded from the coverage

Exclusion 1 - 2: Government police powers with no Enforcement Notice

Exclusion 3: Any defect, lien, encumbrance, adverse claim, or other matter:

- Created, suffered, assumed, or agreed to by the Insured Claimant
- Not known to the company and not recorded in the Public Record, but known to the Insured Claimant
- Result in no loss or damage to the Insured Claimant
- Attach or created after the Date of Policy
- Would not have created a loss if the insured had been a bona fide purchaser for value

Exclusion 4: Preferential Transfers not included in the Covered Risk Section

Exclusion 5: PACA/PASA claims with no Enforcement Notice

Exclusion 6: Taxes not yet due and payable

Exclusion 7: Discrepancy in area or size of land or improvements

Loan Policy Exclusions: Certain items based on lender not complying with certain laws or regulations

Schedule A – What is Insured

Liability: Total amount of Insured's loss the Insurer will pay under the policy

Date of Policy: Date coverage begins and date that determines whether a matter is insured against

Insured: Person or Entity that the Insured has a legal obligation to under its policy; Insured is defined in Condition 1.g.

Estate: The interest the Insured owns in the subject property, *e.g.*, Fee, Leasehold, Easement

Vested Owner: The person or entity that owns the Estate in the Land

Land: The property the policy will insure against a loss of legal right in

Loan Policy: Insured Mortgage and its assignments

Schedule B – Exceptions from Coverage

Schedule B Exceptions limit the Coverage contained in the policy jacket

The title insurer lists the liens, encumbrances, and defects to title that the policy does not insure against

Two Types of Exceptions:

- Standard: Matters not disclosed in the Public Records that may affect the property
- Specific: Generally, matters disclosed in the Public Records that affect the property

Public Records: recording or filing system that State Statute establishes imparts “constructive notice of matters relating to the Title to a purchaser for value without Knowledge.” It does not include any other recording or filing system including planning, permitting, zoning, etc.

Schedule B – Standard and Extended Coverage

Standard Exceptions:

1. Undisclosed or pending taxes and assessments
2. Parties in Possession
3. Unrecorded easements; patent reservations; water rights
4. Items that would be disclosed by a survey
5. Unrecorded Mechanic's Liens

Charge an additional premium for extended coverage because we are insuring against additional risks

Loan Policy – Schedule B, Part II: Insure against lack of priority of the Insured Mortgage over the Items listed in Part II

Conditions – Contractual Rights and Obligations of Parties

Definitions

Claims Process – Rights and Obligations of the Insured and Insurer if there is a claim

Subrogation Rights and Recoupment Rights

Scope of Contract

Item	Coverage	Exclusion	Exception	Defense
Current Property Taxes – August Policy	Covered Risk 2.b: taxes due but not yet payable		Specific Exception for the Property Taxes	
Current Property Taxes – March Policy		Excl. 6: Taxes that are due and payable after the policy date		
Recorded Easement	Covered Risk 2: Any defect in or lien or encumbrance on Title		Specific Exception for the Easement	
Unrecorded Easement	Covered Risk 2: Any defect in or lien or encumbrance on Title	Excl. 3: If the Insured agreed to it	Standard Exception 3: Unrecorded Easements Standard Exception 4: Disclosed by Survey	Condition: Insured's defense as a BFP
Recorded Trust Deed	Covered Risk 2: Any defect in or lien or encumbrance on Title	Excl. 3: if the Insured assumes it	Specific Exception for Trust Deed	Condition: Recoupment against Seller

Item	Coverage	Exclusion	Exception	Endorsement
Property an illegal lot – Recorded Enforcement Notice	Covered Risk 5: Zoning matters – Enforcement Notice		Specific Exception for Enforcement Notice	
Property an illegal lot – No Recorded Enforcement Notice		Exclusion 1: Zoning Matter		
Property does not have legal access to street	Covered Risk 3: No Right of Access		Specific Exception for Lack of Access	
Property has physical access to a street				OTIRO 217 Access and Entry Endorsement
Fraudulent Deed	Covered Risk 1: Title not Vested Covered Risk 2: Defect in Title	Exclusion 3: Items created by Insured		

Questions?

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