

# **TITLE INSURANCE**

## **~~GOOD, BETTER,~~**

### **BEST: THE ONLY WISE CHOICE**

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In Maryland, as the buyer of residential real estate, you have the right to select the settlement services provider that will orchestrate the settlement process including the purchase of title insurance. So, take advantage of that privilege – shop around and find the vendors you want to work with.

Title insurance may be issued by specialty insurance carriers after they have completed a search of the history or “chain” of title and a check for any substantive liens or other encumbrances on the property. Coverage may then be available for the lender (assuming there is going to be a mortgage to help pay for the property). The lender will require that the insurance be purchased – at the expense of the buyer (mortgagee). Oddly enough, this type of insurance policy is called “Lender’s Title Insurance” and it covers up to the original amount of the loan – not the total current value of the property.

A Lender’s Policy typically provides coverage for potential claims arising out of: third-party interest claims that arise after settlement, improperly executed documents prior to or during settlement, pre-policy fraud or forgery, defective recordation of documents, and undisclosed restrictive covenants, liens, judgements, and some other charges. Generally, anything that would cause the property to have an unmarketable title should be covered – to the extent of the lender’s interest in the property. Typical one-time cost for this required insurance will vary with the loan amount. A cost range of about three to five dollars per thousand dollars is typical. There may be minimums, policy fees, deductibles and other costs. Shop around!

The buyer is not afforded any coverage by a Lender's Policy. Coverage for the buyer is available with an optional policy cleverly named "Owner's Policy". Some insurers offer two levels of coverages for buyers – standard and premium (or other trade names meaning the same thing). What each level of policy provides varies, but may include coverage for a myriad of risks:

- Forgery and impersonation;
- Lack of competency, capacity or legal authority of a party;
- Deed not joined in by a necessary party (co-owner, heir, spouse, corporate officer, or business partner);
- Undisclosed (but recorded) prior mortgage or lien;
- Undisclosed (but recorded) easement or use restriction;
- Erroneous or inadequate legal descriptions;
- Lack of a right of access; and
- Deed not properly recorded.
- Off-record matters, such as claims for adverse possession or prescriptive easement;
- Deed to land with buildings encroaching on land of another;
- Incorrect survey;
- Silent (off-record) liens (such as mechanics' or estate tax liens); and
- Pre-existing violations of subdivision laws, zoning ordinances or HOA and/or Condo Association covenants, rules and regulations.
- Post-policy forgery;
- Forced removal of improvements due to lack of building permit;
- Post-policy construction of improvements by a neighbor onto insured land; and
- Location and dimensions of insured land (survey not required).

As with any insurance contract, the insuring provisions express the coverage afforded by the title insurance policy and there are exceptions, exclusions and conditions to coverage that limit or narrow the coverage afforded by the policy. Also, some coverage may not be available in a particular area due to legal, regulatory or underwriting considerations. Typical cost: from four to six dollars per thousand dollars in coverage.

Yes, the buyer's policy is another big expense at settlement. Is it required? No. Is it a good idea? Yes – absolutely! Though the risk of any of the possible claims listed above actually surfacing is pretty low – it does happen. And when it does, it can be devastating and unbelievably expensive. Why? Because if any of those issues arise, you are going to need to hire a very specialized attorney. Need I say more?

For your protection, buy the best, premium, enhanced, upgraded policy that is available. If you don't have the cash, ask the lender to put that cost into the amount financed – it's still worth it. By the way, all this is just as true for new construction as it is for resale homes. And, oh yeah, read the policy.

Additional information is available online:

***Consumer Guide to Title Insurance*** – Maryland Insurance Administration

<http://insurance.maryland.gov/Consumer/Documents/publications/titleinsurancebrochure.pdf> - October 2016 Revision

**Title Insurance Fee Calculator** – First American Title Insurance Company

<http://www.firstam.com/title/md/resources/title-fee-calculator.html>

#### DISCLAIMER

John P. Hale is a licensed real estate agent in Maryland and Pennsylvania. He is affiliated with Coldwell Banker Residential Brokerage in Westminster, Maryland. John has been licensed since 2000 and also practiced in Tucson, Arizona for many years. Mr. Hale holds the following designations and certifications awarded by the National Association of REALTORS® (NAR) and other authorized institutions: ABR-Accredited Buyers Representative, AHWD-At Home With Diversity, CNE-Certified Negotiation Expert, CRMS-Certified Risk Management Specialist, CRS-Certified Residential Specialist, CTA-Certified Tourism Ambassador, e-PRO-Online Real Estate Practice, GRI-Graduate of Realtor Institute, MRE-Master of Real Estate, MREP-Mortgage Real Estate Professional, and MRP-Military Relocation Professional.

Please note that this article was written by John to provide objective information and to also reflect his opinion of good practice at the time of its' writing for the general benefit of those considering sale or purchase of real estate. It is not intended as definitive legal advice and you should not act upon it as such without seeking independent legal and financial counsel. Frequent changes in the law and standards of practice may cause this information to become outdated and no longer applicable or incorrect.