



What is “Title?” What Does It Mean to the Prospective Property Buyer or Seller?

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What is title and why is understanding it important? “Title” is a term broadly used to describe matters affecting your legal rights to own, possess, use, control or sell your property. Many types of matters can adversely affect your property’s title. It is very important as a buyer for you to identify and understand all title issues affecting your prospective property before you buy and also to understand what title insurance is, if you obtain it as part of your purchase. There are at least two important parts of title evaluation; (1) obtaining and understanding all title information affecting your property, and (2) getting as much protection as you can from problems which might develop from title matters, including those which you identify. If you are selling, it is also good to understand why your title is important to the buyer.

What is the difference between a title company and a title agent? A “title insurance company”, as defined by C.R.S. 10-11-102(10), is any domestic company organized under the provisions of Article 11 of Title 10 for the purpose of insuring titles to real property; any title insurance company organized under the laws of another state or foreign nation and licensed to insure titles to real estate within this state; and any domestic, foreign, or alien company having the power and authorized to insure titles to real estate within this state on or before July 1, 1969, and which meets the requirements of Article 11 of Title 10. A “title insurance agent” is a person authorized by a title insurance company to solicit insurance or to collect premiums or to issue or countersign policies on its behalf. A “title entity” is the term used to reference title insurance agents, title insurance agencies and title insurance companies.

How do I get title information? During the contract period before closing, the title insurance company selected in the contract by the parties will perform a type of “title search,” and provide you with a “title commitment” (the commitment to issue a title policy upon closing). Who selects the company and who pays for the title commitment usually is determined by the contract. That title commitment generally will disclose (and provide you copies of) recorded title matters, claims or encumbrances which are found by the title company. Such title matters, some of which you might determine are actually title problems or “defects”, might involve such things as unpaid taxes, a previously undisclosed claim from an heir of a previous owner, a restrictive covenant or agreement affecting the use of the property, or perhaps an easement, such as to the local power company to install or keep a power line on your property or even creating rights for someone else to use or cross the property. You may find mineral or water rights reservations or even transfer or other required fees that might affect your purchase (or later sale) economics. Title documents also might disclose a previous mortgage or undischarged lien on the property. There are many different kinds of title matters that might be recorded against your prospective property’s title. You should look carefully at all matters disclosed in the title commitment as soon as you receive it. You usually have only a short time to review and object based on title concerns if you so choose.

What if I see title matters that concern me? If you see problems or concerns in your “title documents” that are identified in your title insurance commitment, you may want to get legal assistance to help you understand and evaluate them. You also may want to raise those concerns as objections right away with the seller and seek to correct them, before you buy. How and when you do that is usually specified in your contract. Remember, someday you will be a seller of your property, so before you agree to buy your property, know exactly what you are buying, and get as many title protections as you can before you close. If the title issues cannot be resolved before you buy, or if you determine that they are serious enough, you may decide not to buy the property at all.

What is title insurance? Title “insurance” is actually an agreement of “indemnity” between the title company and the named insured owner/buyer/lender, by which the title company agrees to protect you against certain challenges to your title by third parties, which agreement is subject to certain exceptions, conditions, exclusions and stipulations which are set forth in the title commitment and policy. Understand what those are before you close since they can limit or

preclude your getting coverage for potential claims. Should you suffer an adverse claim or loss due to a title matter which was not disclosed to you, or which otherwise is within the scope of coverage in your title policy, your insurer may, if you request it, under certain circumstances, be required to try to fix the problem, defend you against it, or if the company cannot fix it, compensate you for allowed losses which fall within the policy limits, if any.

There are two basic forms of title insurance: "Owners" and "Lenders":

- Owner's title insurance is issued to you once you become the owner of the property, based on the initial commitment. It can compensate you for losses up to the amount you paid to purchase the property, under certain conditions. Owning a property can be your biggest asset and an owner's title insurance policy is one way to help protect your investment from undisclosed title problems, within the scope of the title policy that you get.
- Lender's title insurance is typically purchased by the buyer for the lender, in the amount of the loan, for as long as the loan is outstanding, to cover your lender's (possible future) interest in your property in case the lender ends up owning the property through foreclosure. An owner should not rely on a lender's title policy since the lender's policy does not cover or protect the owner, who must get a separate owner's title policy to get protection. Frequently, the lender's title policy coverage has different terms and types of coverage than the owner's, if the lender has requested it.

What else should I ask about?

Following are some questions you should ask and things you should do about title issues before buying a property:

- Right after you receive the recorded title documents in your title commitment, ask your lawyer to help you determine if there are any title issues that might affect your property. Keep track of the "deadlines" in your contract during which you can review, and if you choose to, object to any title matters you find objectionable. If you do not object before any deadline, you may be left with no ability to correct any of the title matters identified before you close.
- If you do discover adverse title matters, ask if there are any title endorsements which the title company might issue to you (and how much they cost) to help insure against some or all of risks that might develop from those title matters.
- Find out who will underwrite the insurance. Often, the company whose name shows on the commitment is a title agent, not the title insurance company which would respond to any claims you later might have. There may be a significant difference in the cost and scope of coverage of title insurance amongst the various companies authorized to do business in Colorado. Some companies may have more assets to cover claims than others.
- Ask prospective title entities for references. You may also want to inquire as to whether the title company has any of the following types of insurance coverage: errors and omissions; general business liability; fidelity; crime; or an institutional bond.
- Understand what all of the "exceptions" (to the title coverage) on Schedule B-2 of the commitment mean to you and how, if at all, they might limit or qualify the scope of coverage under the title insurance policy. Confirm that the ("non-standard") exceptions are specific and refer to recorded documents that you can look at yourself; they should never list generic exceptions.
- For properties in a mountain community, for example, you might want to look into a title company that specializes in mountain properties, since they may be aware of special circumstances that relate to mountain properties.

- If you are planning to invest more money into the property, or to transfer title to someone else soon after you buy, remember that your title coverage will be limited to you as the “named insured” and that the amount of the policy that you bought initially (with possible inflation coverage) will not cover the value of later improvements, unless you get additional title insurance coverage . Ask for help if these apply to you.

The Division of Insurance, which regulates the title industry in Colorado, has a website with more resources and information about title insurance. Go to <http://www.dora.state.co.us/insurance/consumer/consumermainpage.htm> and click on “Title Insurance.”