

Paugh's Laws | Is it Smart to Pass on Owner's Title Insurance?

A refresher on owner's title insurance and why you should think twice before declining it

Recently, I have noticed that more Buyers are declining owner's title insurance coverage on what is likely the largest transaction of their lives. In some cases, when a Buyer was trying to reduce the funds necessary to bring to the settlement, their lender suggested that the owner's title insurance premium be eliminated. In other cases, Buyers were told by their agent or lender that they simply did not need the owner's title insurance. By this assertion, the agent or lender is, in essence, representing that title is and will always be without issue, or clear, which Buyers may rely on to their detriment.

Consider that lenders always require that a borrower purchase, as a closing cost, a title insurance policy insuring the lender against title defects in the borrower's property. If the lender requires this protection as a condition of the loan, why would the concern of potential title claims and unanticipated liens, to name a few, be any less for a Buyer, the owner of the property? In fact, a Buyer bears risks that the lender does not—potentially losing their home and money spent in legal fees defending and sometimes paying out a title claim, not to mention losing their financial investment and equity in the home. Before you take the opinion of another as fact or decide for yourself whether to purchase owner's title insurance, below is a must-read.

Where The Title Search Ends And Owner's Title Insurance Begins

I've heard on a number of occasions: "The house is a new construction" or "The property has been owned by our family for generations", followed by, "What could possibly be wrong with the title?"

My answer? Plenty.

As part of a financed purchase transaction, a lender requires a title search is performed on the property going back sixty (60) years. The title search, commonly referred to as a title abstract, is a compilation of all pertinent instruments affecting the title of the property, as recorded among the various records of the County in which the property is located. This title search, which should always be examined by an attorney, will reveal the chain of property ownership, whether any outstanding lawsuits, judgments, or liens (claims to property), exist and will state whether any easements, rights-of-way, covenants, or restrictions affect the property. An attorney can determine what liens if any, need to be paid prior to the Buyer taking title, and assist in coordinating payoffs and releases of liens.

The abstract, and an attorney's examination of it is limited to those instruments found in the public records at the time the property is purchased; therefore, it does not, and cannot eliminate all future risks to the title and the ownership of property. Any home, regardless of its age, is built on land as old as the earth itself. Undoubtedly, the land has had many previous owners. Claims against any of these persons, such as for unpaid loans, mechanic's liens, taxes, homeowner's association dues, and personal injury judgments, to name a few, can be filed against the property and against the present owner.

Unfortunately, no examination of the title, no matter how complete or how expertly accomplished, can protect a purchaser against hidden defects which are not a part of the records. What if the records have been forged or a minor has attempted to convey his title? What if a claim is made against ownership which is not valid? Without title insurance, the property owner must bear the cost of legal fees in defending the claim.

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The following are listed as some of the more common "hidden defects" which occur in title insurance claims:

- **FORGERY:** Forgery, often expertly done, when revealed, has clouded title to thousands of properties. It happens with alarming regularity and quite often involves the most unlikely people, which is why it is often undetected for a long time. An unlikely forger may be that nice person who is really a disgruntled spouse and forges the name of an estranged husband or wife on a deed. And, of course, the forgery may have occurred a long time ago, involving people a Buyer did not know existed. A forged deed conveys no valid title to your home.
- **THE MISSING SPOUSE:** Many people have innocently bought homes from a man or woman they thought was "single," only to have an estranged, separated, or missing spouse later reappear to claim his or her ownership rights in your home.
- **THE MINOR OR MENTAL INCOMPETENT:** A deed from a minor or mental incompetent will cloud the title to your home, although this could not be detected from a title examination.
- **MISSING HEIRS:** Missing heirs and vague or incorrectly drawn wills are a fruitful source of headaches for innocent home buyers. A person thought to have no living relatives may die and have their property sold in a seemingly legal manner, only to have a long-lost relative turn up years later to claim a whole or part interest in the home.
- **SIMILARITY OF NAMES:** Let's say you are buying a house from someone named Johnson. There are thousands of Johnsons in your community, many with identical first names or initials; and when there are judgments, liens, or divorces involving dozens of people by the same name, the title search is no easy matter. To make it still harder, members of the same family may spell their names differently or one may use several spellings in his lifetime. A wife and husband may divorce and the husband may marry another woman with the same first name as the first spouse. The second wife's signature might then appear to dispose of the first wife's legal rights, although, of course, it could not do so. Two members of the same family often have the same name, as in the case of

father and son, and title may be held by one, while the Deed is executed by the other who has no ownership interest.

- **IMPROPER DEEDS:** A deed may have been delivered without consent of the owner or after the owner's death. A document may have been executed under an expired or improperly drafted power of attorney. The name of the grantee may have been inserted in the deed after its delivery. The officer of a corporation may not have been properly empowered to act. In any case, the action may result in loss of title.
- **MISTAKE:** One of the most common title claims results from a simple mistake in the Courthouse land records. A lien may be improperly filed or a judgment may have been incorrectly indexed.

What Is The Cost Of Owner's Title Insurance?

Title insurance premiums are based on rates filed with the Maryland Insurance Administration. The State Insurance Article prohibits an insurer or title company from giving a rebate, discount, or credit that reduces the premium paid or offering any valuable consideration or inducement to encourage a Buyer to purchase owner's title insurance. The rates are based, in part, on the purchase price of the property and loan amount (if any). Unlike other insurance, the owner's title insurance premium is paid once at the time of settlement, as part of the Buyer's closing costs. The policy is issued by the title company, who is typically an agent of the title insurer. An estimate of an owner's title policy premium can be found here: <https://www.villagesettlements.com/md-title-insurance-calculator/>.

BOTTOM LINE

While the purchase of an owner's title insurance policy is indeed optional, it is the only way for purchasers to protect their investment, and thus, their ownership of property against claims that arise after settlement. The owner's title policy will guarantee that the title is free from defects and from any lien or encumbrance unless specifically set forth in the policy as an exclusion.

In addition, the policy insures against the possibility of human error in either the abstracting or examination of the title. When one considers the limitations of a title search, the multitude of claims that can be brought against property and the owner of the record, and unlimited financial exposure as a result, the purchasing of owner's title insurance deserves serious consideration.

If a title claim is filed or a lien relating to a prior owner is filed after a Buyer takes the title, the promises of good and clear title made by an agent or lender are of no help, and certainly no defense. In the alternative, if a Buyer purchases an owner's policy at settlement, they can move into a home with confidence that their ownership of the property is secure and that coverage is in place to defend against future title claims.

Readers with questions about this or any real estate legal matter can reach Brianne at 301-698-9300.

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