Title Insurance

In most parts of the United States, land titles are recorded in a governmental office without any government official determining who owns the title or if any encumbrances (limitations) against that title exist. Each land title transaction is recorded in the jurisdiction where the land is located. Transfers are indexed according to the name of the seller or buyer and photographed so it can be found and examined by interested parties.

A real estate purchase contract generally requires sellers to provide buyers with good (marketable) title to the property at closing. If a buyer takes out a mortgage, the lender will require evidence of a clear title. It's provided in the form of a title insurance policy purchased by the buyer. Title insurers in the United States use the recording system to search public records to determine who owns the title and what other interests exists.

Title insurance guarantees that the title for newly purchased or newly financed property is free from the problems of hidden liens and claims. It is different from other types of insurance because it protects against possible past occurrences rather than future events. When problems are found with the property title, the defects need to be fixed (cleared) before the property can be legally transferred to a new owner.

Clearing a property title can be time-consuming, expensive, and may require referral to a court for final determination, with appeals possible. Alternately, a title insurer may issue a title insurance policy but "except" items that cannot be cleared from the title, listing these as specifically not covered by the policy. After the property is transferred to the new owner, if later there is a lawsuit over ownership of the property because the title search was faulty, the title insurer pays the legal fees and any settlement amount.

There are three types of title insurance:

1. A Lenders' Policy is issued only to mortgage lenders. This type of policy does not cover the owner's interest in the property. The initial policy limit is the amount of the mortgage. This limit decreases each year, and disappears when the loan balance is paid off.
2. An Owner's Policy protects the owner's interest for the full purchase price of the property. Most sellers pay for this policy as part of their obligation to deliver a clean title to the buyer. The owner's policy insures:
    - That the title is free from all defects, liens and encumbrances except those listed as exceptions in the policy or those excluded from the scope of the policy's coverage
    - Losses and damages suffered if the title is unmarketable
    - Loss if there is no right of access to the land

    The policy limit on an Owner's Policy is usually the purchase price paid for the property. The coverage is in effect as long as the insured or heirs retain an interest in the property. One premium is paid at the time of the closing.

    If the property owner later refinances, they will be required to purchase a new title insurance policy that protects the new lender from any encumbrances that may have arisen since the original purchase of the property. In a refinancing situation, the owner should not need a new Owner's Policy since the one issued when they first bought the property protects them as long as they or their heirs have an interest in the applicable property.
3. A Construction Policy can be purchased when land is being developed for the first time, as the land is likely to have had prior owners. A title search will uncover any existing liens, and a survey will determine the boundaries of the property being purchased. If the builder fails to pay subcontractors and suppliers, title insurance covers the new owner against any lien on the property.