

THE C & D NEWSLETTER



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A LAW CORPORATION

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WHAT IS TITLE INSURANCE AND WHY SHOULD I GET IT?

Most people know that when you are buying a house or commercial property, you should get "title insurance," but many people are not sure exactly what title insurance is or what title insurance covers.

Purpose of Title Insurance. Title insurance protects the purchaser and the lender involved in a real property transaction against claims by third parties against the title. The title insurance company also assumes the obligation to defend any actions challenging title to the property. A title insurance policy insures only the person named in the policy and those who succeed to the interest of the named insured by operation of law. As opposed to most insurance policies, a title insurance policy insures against conditions that already exist, rather than against events which may occur in the future. Title insurance is not a guarantee that the insured will always be entitled to retain possession of the premises; it protects the insured only against loss or damage incurred because of a defect in or lien upon the property.

Types of Title Insurance Policies. A California Land Title Association ("CLTA") standard policy of title insurance generally protects the owner and/or lender against those matters which are disclosed in the public records. In August 1998, a new CLTA homeowners policy of title insurance was adopted providing for significant new coverage previously available only for an additional premium. An American Land Title Association ("ALTA") policy provides additional insurance coverage for matters that would be disclosed by a physical inspection of the property, such as an encroachment, a discrepancy in boundary lines, an interest of a party in possession of the property, or other matters which are disclosed by a survey of the property. An ALTA lender's policy insures that the lender's deed of trust is valid and enforceable, and that the deed of trust is a first lien on the property, unless otherwise stated in the policy.

How Much Title Insurance Should I Get? The buyer should have a policy for the full amount of the purchase price of the property; the lender should have a policy for the full amount of the loan. If there is a claim against the policy, the title insurance company will pay the lender first, so unless the policy is for more than the loan amount, the buyer will end up with nothing.

How Much Does Title Insurance Cost? Title insurance premiums are based on the type and amount of the coverage provided. The premium is paid only once, when the property is purchased or when it is refinanced. Title insurance premiums are not set by law. Rather, each title insurance company sets its own premiums. So, it can pay to shop around. Most title insurance companies have a discounted "short-term" rate for property which has been insured within the previous two years.

Who Pays for Title Insurance? Usually, the buyer pays for title insurance. In some areas, however, the seller pays for title insurance for the buyer, and the buyer pays for title insurance for the lender's policy. As with many things, who pays for title insurance is negotiable.

Is Title Insurance Mandatory? Title insurance is not mandatory; however it is almost always required by a lender loaning money secured by the property. In any event, title insurance provides important protection and it is always advisable when purchasing real property.

This complimentary newsletter is intended to provide general information. Because of the complexities and constant changes in the law, it is important to seek professional advice before acting on any of the matters covered herein.