

Real Estate

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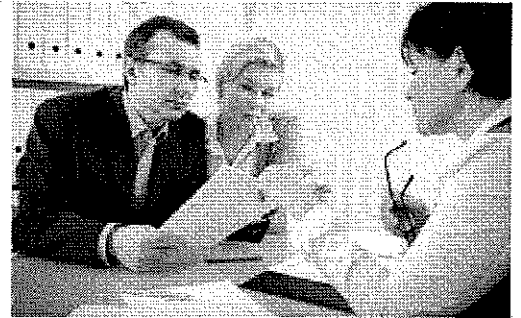
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Title insurance issues are important, but can be confusing

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Title insurance may be one of the most misunderstood aspects of a real estate closing, but one way to clear up confusion is for homebuyers to realize what it is they really are purchasing, experts said.

"I usually start by telling people you're not buying a house, you're buying the dirt the house is attached to," said Nancy Gusman, a real estate attorney with Washington-based BuckmanLegal and Palisades Title. "Somebody owned the dirt before that developer did. Title insurance ensures you that you own that piece of ground free and clear of any of the prior owner's stuff."



Liens against the property's former owners by the government, a legal judgment, errors or omissions in deeds, mistakes in examining land records, forgery or undisclosed heirs are some of the "stuff" that can make life miserable for those who do not have title insurance.

"In my estimation, maybe 10 percent of all the policies have claims on them at some point in time," Gusman said. "In general, if it's a valid claim, most cost a minimum of five figures to correct. It could be a lengthy process, but for a few hundred extra dollars at closing, it's nothing out-of-pocket to the owner."

When a buyer enters into a contract with a seller on a home, the closing process includes ordering a title search to ensure the seller actually owns the property and is able to transfer a clear title.

"The buyer of the property has the right to retain their own title attorney," said Harvey Jacobs, a partner at Joseph, Greenwald and Laake and owner of Rockville-based Stress-Free Settlements. "Too often we see lenders steering people to a particular attorney as part of closing, and I believe that's a mistake."

The title attorney searches court and land records, orders a survey if necessary and generally works to confirm there are no outstanding questions as to who owns the property.

"We do an extensive amount of research before we issue the [title insurance] policy," Jacobs said. "We spend hundreds of dollars to understand the risk."

Still, there is no guarantee the attorney didn't miss something or that a past document was not forged. That's why the majority of buyers purchase title insurance, which is paid for at closing by a one-time premium good for the life of the property.

"Once you settle, your risk stays the same," Jacobs said. "If there is a problem, a wife comes forward who says she was in a divorce and her name was forged and she wants to move into your house -- the title company pays up."

While a homebuyer has the option to purchase owner's title insurance, lenders require buyers to purchase lender's title insurance. The lender's policy, sometimes known as the loan policy, is based on the value of the loan. It only protects the lender's interests in the property should there be a problem with the title.

A lender's policy also is a one-time premium paid by the purchaser at closing, and the policy amount decreases each year and eventually disappears as the loan is paid off.

It does not protect the buyer, which is why Washington Realtor Tom Murphy always urges his clients to purchase owner's insurance as well.

"You'd be crazy not to get it," said Murphy, a Long & Foster agent. "You've seen over the last two or three years how many things can go wrong with the title, not to mention fraud. Almost all my clients get it."

Title insurance companies paid out \$970 million in claims in 2009, according to the American Land Title Association. In 2008, they paid \$1.07 billion.

In Maryland, and beginning Jan. 1 in Washington, title insurance rates are set by the government. Virginia does not lock in rates.

In recent years, the biggest problems surrounding titles have come during foreclosure transactions.

"The robo-signings and the mistakes being made in the foreclosure process create many title problems," Gusman said. "The previous homeowners can come back and challenge the foreclosure. When you buy a bank-owned property, most of the time the bank is going to try and give you incentive to use their title company. Some of these bank title companies are failing to clear some of the title issues, and then taking exceptions in the title insurance. Just like any insurance, the title policy can have exceptions."

Topics

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