

A CONSUMER GUIDE TO **TITLE INSURANCE**



**INSURANCE
ADMINISTRATION**

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INTRODUCTION

The Maryland Insurance Administration (MIA) is an independent state agency that regulates Maryland's insurance marketplace and protects consumers by ensuring that insurers and insurance producers (agents) act in accordance with insurance laws. We produced this guide to help educate Maryland residents about title insurance.

The Insurance Administration is also responsible for investigating and resolving complaints and questions concerning insurers that do business in Maryland.

WHAT IS TITLE INSURANCE?

Title insurance protects real estate purchasers and/or lenders from losses that arise after a real estate settlement, but result from unknown liens, encumbrances or other defects upon the title that existed prior to settlement. Examples of title defects include outstanding property taxes not paid by a previous owner, fraud or forgery of a prior deed or transfer, or a spouse or unknown heir who steps forward to make a claim against the title. If a claim were made, defending the claim could cost thousands of dollars in attorney fees and, if the claim were valid, could even cause you to lose the property itself. A title insurance policy provides coverage for legal defense, as well as the coverage amount listed in the policy, which usually equals the purchase price of the real property.

WHO IS PROTECTED BY TITLE INSURANCE?

For most Americans, purchasing real estate represents the largest single investment we will make. Given the cost of real estate, very few of us can purchase our homes, vacation or investment properties by paying cash. Instead, we borrow the funds from banks, saving and loans, mortgage companies or other lenders, granting them a secured interest in the property. One of the conditions that lenders place on the buyer is that a lender's title insurance policy be purchased in an amount equal to the mortgage loan. A lender's policy only protects the financial institution in the event that a valid title claim arises. In a worst case scenario, a buyer could make mortgage payments for 20 years when an unknown title defect comes to light, creating a valid claim that causes the buyer to lose the title. The lender would be covered, to the extent of the outstanding mortgage, and the owner could lose the property and all equity acquired over the 20 years that he "owned" the property.

There is an option available to the buyer to avoid the scenario outlined above – the purchase of an owner’s title insurance policy to protect your interest in the real property. If the decision is made to purchase an owner’s policy and a lender’s policy at the same time, there may be considerable premium savings. In the title insurance business, this is known as a “simultaneous issue” and the premium rates charged for the owner’s policy will be calculated on the difference between the amount of coverage provided to the lender (amount borrowed) and the amount of coverage provided to the owner (purchase price).

HOW IS A TITLE INSURANCE POLICY DIFFERENT FROM OTHER TYPES OF INSURANCE?

Before real property is transferred from the seller to the buyer, a title search must be conducted. Title searches are usually conducted by an attorney, abstractor or title examiner who researches the land records in the county court house and documents the chain of ownership of the property. The purpose of a title search is to identify all prior owners, outstanding liens, encumbrances, encroachments, rights of way, easements and the like associated with the real property, so that the buyer is aware of them prior to settling on the property. As such, the title search can eliminate most of the risk from the transaction. Anything that is identified during the search will generally be excluded from coverage under the title insurance policy, since these liens, encumbrances, etc. are now known and should be satisfied at the time of settlement so legal title can be transferred.

However, something may be missed during the search process, which could result in a claim being presented at a later date. Since the defect was not known at the time title was transferred, coverage would be provided by the title insurance policy. In this respect, title insurance is different from all other types of insurance coverage. It protects you against events that occurred before the policy was purchased as long as the title defect was not discovered at the time of the title search, whereas property, casualty, life and health insurance policies protect you against events that occur after you purchase the policy.

HOW DO I PURCHASE A TITLE INSURANCE POLICY?

Title insurance policies are paid for at the time of closing through a one-time premium charge. The premium for title insurance is typically based upon the contract sale price. Although an owner's policy is not typically required by lenders, Maryland law gives buyers the right to purchase an owner's policy at the same time that the lender's policy is purchased. This is called "simultaneous title insurance". If the buyer buys simultaneous title insurance, the premium for the owner's policy is typically discounted and will be combined with the charge for the lender's policy in a single charge called a "simultaneous issue" charge. In Maryland, all insurance companies must possess a certificate of authority from the MIA to conduct insurance business lawfully in the state. Title insurance companies are subject to all capital and surplus requirements, as well as laws that require them to submit their policy forms and rates for approval by the MIA prior to issuing a policy in the state. Most title insurance companies appoint producers (agents) to underwrite the risks, collect the premiums and issue the title insurance policies. These producers also conduct the settlements or closings, and escrow funds for mortgage payoffs, taxes, closing costs, realtor commissions, etc. The producers must be licensed by the MIA as well.

Some title insurance companies also will provide escrow or closing services directly, as well as underwrite and issue the title insurance policy.

The buyer decides who will conduct the closing and issue the title insurance policy. While the real estate agent or broker may suggest or recommend a title insurance producer, the buyer does not have to hire that company. Additionally, some real estate firms or mortgage companies have "affiliated business arrangements" with certain title insurance producers or insurance companies. If one of these arrangements exists, it must be disclosed to the buyer in writing so that the buyer can make an informed decision. The federal Real Estate Settlement Procedures Act (RESPA) prohibits kickbacks and referral fees among persons involved in real estate settlements.

Before choosing any firm to conduct the settlement, the buyer should contact the Maryland Insurance Administration to verify that the firm and/or insurer is licensed to conduct business in the state. Only licensed producers can conduct settlements, so the buyer can also check to see if the individual settlement officer possesses a valid license, as well. This information is available on our website, www.insurance.maryland.gov or you can also call us at 410-468-2000 or 1-800-492-6116 to check the licensing status of a producer or insurance company.

The premium(s) owed for title insurance, along with any other fees the title insurance producer or insurer will charge you at closing, will be listed on the settlement sheet the lender or closing company provides you. Please note that the premiums charged for the title insurance policy must be on file and approved by the Maryland Insurance Administration. However, many of the fees, such as courier fees and document preparation fees charged by the title insurance producer or insurer at closing are not regulated by law or regulation. As such, the companies are free to charge whatever fees the market will bear. So, it may pay to contact more than one title insurance agency or producer to ask what the fees will be for the services provided and whether any fees can be waived. Depending upon the type of loan you have, the settlement sheet will either be a HUD-1, or a “Closing Disclosure” (which is another name for the TILA-RESPA Integrated Disclosure “TRID”). You may obtain a sample Closing Disclosure by accessing this website <http://www.consumerfinance.gov/know-before-you-owe/>. To view a sample HUD-1, visit the federal Housing and Urban Development’s website, <http://www.hud.gov/offices/hsg/rmra/res/hud1.pdf>.

Additionally, the buyer should always ask the seller if he or she purchased a title insurance policy when the property was purchased, and if so, the name of the company issuing that policy. Many title insurance companies include in their rate filings premium discounts commonly referred to as “reissue rates.” If the same insurance company has already underwritten the risk and has issued the prior policy, the title search can be shortened, since the chain of title has previously been researched and documented. In that case, the attorney, abstractor or title examiner would only need to “bring to date” or search the title from the current owner through the date of settlement. Since most of the work was done previously, the cost to underwrite and issue a new policy for the buyer and/or lender is much less and will be reflected by discounting the premium.

If you are refinancing your principal mortgage, reissue rates on the lender’s policy may also be available provided you purchased an owner’s title insurance policy when you purchased your property.

THE TITLE INSURANCE CONSUMER'S BILL
OF RIGHTS - 9 THINGS YOU SHOULD KNOW
BEFORE SIGNING A CONTRACT OF SALE OR
REFINANCING YOUR PROPERTY

1. You have the RIGHT to choose your settlement agent and title insurer.
2. You have the RIGHT to receive settlement cost information early in the real estate settlement process, allowing you to shop for the settlement services that best meet your needs.
3. You have the RIGHT to receive an itemized settlement statement from the settlement agent detailing all fees paid to the settlement agent before you agree to use that settlement agent.
4. You have the RIGHT to be informed about the total cost being paid by you to the settlement agent.
5. You have the RIGHT to ask and receive accurate information from your settlement agent about whether there is a ground rent, lien, judgment, or any other impediment to outright ownership of the property.
6. You have the RIGHT to request and receive from your settlement agent the Closing Disclosure three (3) business days before settlement or HUD-1 one business day before the date of settlement.
7. You have the RIGHT, before you sign, to ask the settlement agent questions and receive clear and complete answers about charges and documents that you do not understand.
8. You have the RIGHT to receive copies from the settlement agent of all documents you signed at the time of closing.
9. You have the RIGHT to have all funds disbursed timely and properly by the settlement agent in accordance with the Closing Disclosure or HUD-1 you signed at closing.¹

¹ Source: The Real Estate Settlement Procedures Act (RESPA) of 1974, 12 U.S.C. §2601 et seq.

OTHER INFORMATION THAT YOU NEED TO KNOW ABOUT THE SETTLEMENT PROCESS

REQUIRED DISCLOSURES

In October of 2015, new federal laws governing the lending and closing process came into effect. This new rule is referred to as the TILA-RESPA Integrated Disclosure Rule and is designed to make it easier for consumers to understand and locate key information.

Under federal law, a borrower must be given a copy of the settlement statement prior to settlement; depending upon the type of transaction, the settlement statement will be called a HUD-1 or a Closing Disclosure. Federal law also gives the borrower the right to request that a copy of the HUD-1 settlement statement be provided one business day before closing for non-covered transactions and the Closing Disclosure three (3) business days prior to closing for covered transactions. We encourage you to exercise this right so that you will have time to look over the numbers and make sure that everything is in order before you appear at the settlement table. You should advise your title insurance producer, insurance company or lender that you want a copy of the HUD-1 or Closing Disclosure early in the process so that they are able to comply with the request. For information regarding your type of transaction and which forms are required, please see <http://www.consumerfinance.gov/>.

The new federal laws change the disclosure of title insurance premiums and fees. Under the new rule, settlement fees are divided into two (2) categories: (1) services the “borrower did not shop for”; and (2) “services the borrower did shop for.” In the case of a lender’s title policy, since the lender requires the purchase of the policy as a condition of the loan, the lender’s policy is listed as a service the borrower did not shop for. But since the purchase of the owner’s policy is typically not required as a condition of the loan and is listed as optional, it is disclosed as a service the borrower did shop for. If the buyer buys simultaneous title insurance (buying an owner’s policy at the same time a lender’s policy is purchased), the settlement sheet will include the simultaneous issue charge (i.e. the charge for the lender’s policy and the owner’s policy together). The sample Closing Disclosure forms on the Consumer Financial Protection Bureau’s website, <http://www.consumerfinance.gov/owning-a-home/closing-disclosure/>, show how these charges will appear on your Closing Disclosure.

Maryland law requires the title company is to notify buyers in writing of their right to purchase an owner’s policy and view a sample copy of the policy. The buyer must also indicate whether or not owner’s title insurance is desired and sign the form. This form (“Statutory Notice”) is required when a real estate transaction involves a purchase money deed mortgage or deed of trust unless it is a purchase money mortgage which is granted solely to acquire an interest in or to carry on a business or commercial enterprise, or any purchase money mortgage granted to any business or commercial organization.

If you elect to purchase an owner's policy, the MIA strongly recommends that you also review a sample copy of the policy including a review of all exceptions which are listed on the policy. The settlement agent can direct you to the proper portion of the policy. (Providing the buyer with a copy of the title insurance commitment also satisfies the requirements of this statute.) This is important because it allows a purchaser to verify if there are any exceptions, restrictions, encumbrances or other matters not covered by the owner's policy.

Note that the title company is not required to separately notify buyers of any exceptions and their impact upon the purchase of the property. However, if a buyer asks, the title company may explain any exceptions in the policy.

ADDITIONAL QUESTIONS ABOUT BUYING A HOUSE AND SETTLEMENT PROCEDURES

Additional information regarding buying a house and settlement procedures can be found on the Consumer Financial Protection Bureau's web site at <http://www.consumerfinance.gov/>. This web site provides helpful information regarding loan options as well as the closing process. Please review the ***Know Before You Owe / Mortgages*** section under Consumer Tools prior to applying for a loan and choosing a settlement or title agency. This area provides a sample Loan Estimate and a sample Closing Disclosure as well as many other tools to assist you in the loan and closing process. You can also learn more about buying a house on the Department of Housing and Urban Development's website, http://portal.hud.gov/hudportal/HUD?src=/topics/buying_a_home.

PROBLEMS THAT ARISE AFTER CLOSING

The Maryland Insurance Administration only has authority to regulate the business practices of the title insurance producers and title insurance companies. The majority of producers and insurers follow the insurance laws and regulations; however, from time to time, problems arise after a settlement is conducted. Examples include the failure to pay off a prior mortgage, other lien or encumbrance; record the deed, deed of trust, mortgage or mortgage release; charge and collect the appropriate premiums; issue the title insurance policies; and provide copies of legal documents to the buyer. In other cases, there may be a theft of escrow funds or a falsification, or forgery of closing documents. If you believe that anything like this has occurred, please contact the Maryland Insurance Administration's Enforcement Tip Line at 410-468-2200 or toll free at 1-800-492-6116 and ask to speak to an enforcement officer in the Compliance & Enforcement Unit. You may be asked to mail a letter that explains your concerns and attach all documents related to your concerns. You can also email the complaint to www.enforcement.mia@maryland.gov and attach any documents.

CONTACT INFORMATION FOR MARYLAND CONSUMERS

There are many other players in any real estate transaction, such as real estate agents or brokers, buyer's agents, attorneys, mortgage brokers, banks, lenders, loan officers (mortgage originators) and sellers. If you encounter any problems with those entities, there may be other state and federal agencies that can assist you. You may also contact a lawyer to learn about your specific rights.

The Consumer Financial Protection Bureau (CFPB) provides general information about a wide variety of consumer financial products, including, for example, mortgage loans, and enforces RESPA and other federal consumer financial laws. CFPB also investigates consumer complaints about federal financial products or services, including, for example, complaints that: a settlement service provider has violated RESPA by engaging in kickbacks, fee-splitting or charging unearned fees; a seller required a particular title insurer as a condition of sale; or a lender charged excessive amounts for the escrow account. If you have questions about a federal consumer financial product or service, or you want to submit a complaint, you can contact:

Consumer Financial Protection Bureau

Headquarters address

1700 G Street, Washington, DC 20552

Mailing address

P.O. Box 4503, Iowa City, IA 52244

(855)729-2372

Fax: (855)237-2392

TTY/TDD: (855) 729-2372

Web site: www.consumerfinance.gov/

The Department of Labor, Licensing and Regulation regulates Maryland's financial services industry, as well as the real estate industry. For information on, or to file a complaint against state chartered banks, credit unions, mortgage brokers, lenders and loan officers (mortgage originators) you can contact:

Department of Labor, Licensing and Regulation

Commissioner of Financial Regulation 500 North Calvert Street, Suite 402

Baltimore, MD 21202

(410) 230-6100

Fax: (410) 333-3866 or (410) 333-0475

E-mail Address: finreg@dllr.state.md.us www.dllr.state.md.us/finance

For information on, or to file a complaint against Maryland real estate agents or brokers, you can contact:

The Maryland Real Estate Commission

500 North Calvert Street Baltimore, MD 21202-3651
(410) 230-6230
Fax (410) 333-0023
E-mail Address: mrec@dllr.state.md.us
www.dllr.state.md.us/license/mrec

If your problem involves a federally-licensed lender, you must determine which agency has jurisdiction. If the lender is a national bank or a federal savings association, you may contact:

Office of the Comptroller of the Currency

Consumer Assistance Group
1301 McKinney Street, Suite 3450
Houston, TX 77010
1-800-613-6743
Fax: (713) 336-4301
www.occ.treas.gov or www.HelpWithMyBank.gov

If the lender is a federal credit union, you may contact:

National Credit Union Administration

Consumer Assistance Hotline 1755 Duke Street, Suite 6043
Alexandria, VA 22314-3428
(800) 755-1030
www.ncua.gov or www.MyCreditUnion.gov

If you are unsure which agency regulates your lender, you may be able to determine this by going to the Federal Deposit Insurance Corporation's web site at www2.fdic.gov/idasp/main.asp and entering the name of the institution into its bank finder search. You can also contact one of the above agencies, and a staffer may be able to direct you to the proper agency.

FILING A COMPLAINT

The Maryland Insurance Administration's primary role is to protect consumers from illegal insurance practices by making certain that insurers and producers doing business in Maryland act in accordance with State insurance laws. You may contact the Insurance Administration to file a complaint against an insurer or producer who you believe is not acting in accordance with Maryland law.

Maryland's insurance laws not only govern insurers' conduct – they also protect Maryland consumers. Insurers are prohibited from settling claims in an arbitrary and capricious manner. This means that insurers' claim settlement practices must be fair, nondiscriminatory and adhere to Maryland insurance laws.

If you feel that your insurer has acted improperly, you have the right to take action by filing a complaint with the Maryland Insurance Administration. However, some disputes may be governed by your policy's terms and may not be a problem the Insurance Administration can resolve for you.

Complaints must be received in writing. Please provide as much detail as possible, including copies of pertinent documents. A trained, professional investigator will handle your complaint. The investigator will contact the insurer/producer to try to resolve the issue. Meanwhile you will be advised of the steps being taken on your behalf. Complaint files are not closed until the Insurance Administration has made a determination regarding the complaint.

To request additional information or to file a complaint, please contact the Maryland Insurance Administration's Consumer Complaint Investigation Division at 410-468-2000 or toll-free at 800- 492-6116. Consumers also may file their written complaint in person, by mail or on-line at www.insurance.maryland.gov. Under "Consumers," click on "File a Complaint."

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INSURANCE ADMINISTRATION

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