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### Title Insurance in Real Estate Purchases, Part I

Title insurance in real estate purchases has always struck me as a mysterious and subtle thing. I remember reading a title policy for the first time and asking, what coverage is the buyer really getting? Judging by the comments I've heard over the years, most buyers and sellers don't seem to know either. They don't understand how title policies really work.

In this Part I and next month's Part II, I'll briefly explain how title policies work and how to use them. In this Part I, I discuss the basic concept of a title policy and how to review a preliminary title report. In Part II (which I promise to send out in February) I'll finish the discussion of title.

#### **The Basic Concept.**

Before I get into the details, let me explain the heart of the CLTA Standard Coverage Policy. I'll focus on the CLTA (as opposed to the ALTA) because most buyers purchase a CLTA policy.

CLTA title insurance insures title as shown in the public records. Unrecorded liens generally are not covered (as a bona fide purchaser, however, you frequently will take free of unrecorded liens). You also have no coverage for the recorded liens that are listed in the policy. The policy discloses these liens to you and you buy the property subject to them.

Hence with a CLTA you get no coverage for unrecorded liens and no coverage for all recorded liens as listed in the policy. If the policy lists all liens of record, then you get zero coverage for liens of record and zero coverage for liens not of record. That about sums up all possible liens out there.

So what are you buying? You, the insured, are buying peace of mind that the disclosed lien situation is correct and complete, and *there are no other liens of public record*. You are insured that there is nothing else of record out there, that is, you've seen all recorded liens in the policy. Once you understand this basic concept, you can understand how to use a title policy.

#### **The Preliminary Report.**

The preliminary report (the "prelim") is usually the first step in understanding title. A prelim shows you the status of title for your property. The liens listed in the prelim are then carried over into the policy. Remember that you will *not* be covered for the liens listed in the policy.

Given all this, your job is to review the prelim and either accept the liens listed in the prelim or try to remove some of them. If the title company removes a lien from the prelim (and the policy), you then receive insurance coverage for the lien.

To review a prelim, focus on the following: (i) Verify that the seller holds fee title to the property, and that your name, as the buyer, is exactly correct; (ii) Be sure that the legal description of the property is identical to the description shown on any survey; and (iii) Review the liens and other title problems listed in Schedule B for anything that you cannot live with, for example, encumbrances that affect your desired use or onerous CC&Rs; be sure to get copies of and read all documents referenced in Schedule B. You will not be covered for any listed title problems.

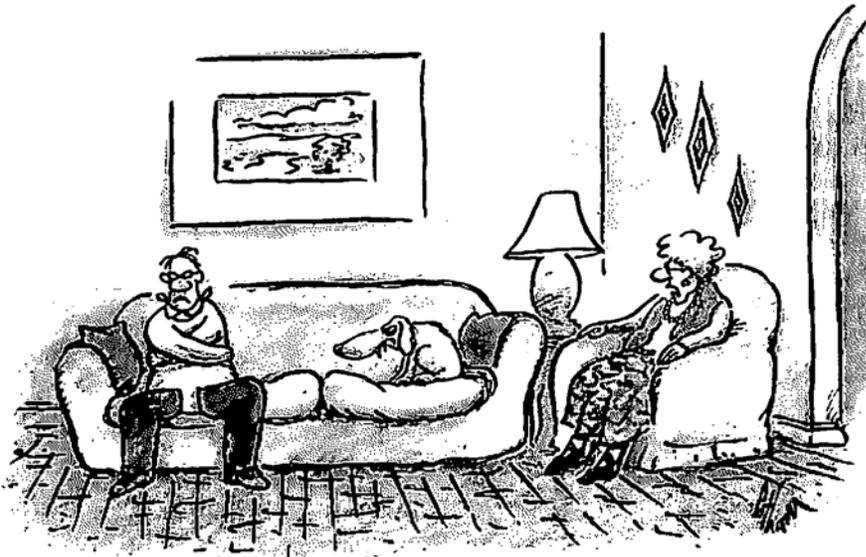
As a last note, a few minor title exceptions show up in all prelims. Ordinarily you don't need to worry too much about these exceptions, namely: (i) General and special city and/or county taxes which are liens not yet payable; (ii) Liens of supplemental taxes; (iii) Utility easements (depending on their location); and (iv) CC&Rs, unless they affect your intended use of the property.

### **Conclusion.**

Title insurance is complex. Don't worry if you always have to remind yourself of the basic concept. I'm no different – whenever I review title, I always go back to the basics. I remind myself of the risks that I am covering and the real world value of the insurance coverage vis-à-vis the risks.

For those of you still awake, thank you, and I hope this article has helped you. I'll send out Part II next month. As always, remember there is a lot more to title than I discuss here. Please get competent legal counsel for your real estate transactions.

**Funny Papers.** Yes, 2008 was bad. But it could be worse:



*"How dare you—in a straitjacket, no less—psychoanalyze me."*

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