

# Property Ownership

## A Question of Title?

The aim of this document is to try to introduce and familiarise you briefly with the subject of Title Insurance/ Indemnity.

Title Insurance facilitates the creation by countries with economies in transition to market orientated, of the institution required to underpin a more liquid market and property. Such a process is valuable for transition economies.

Title Insurance can assist the process of property investment/ purchasing and help the rise of any unexpected surprises.

Property has always been considered to be one of the most valuable assets owned by individuals and companies. Therefore it needs to be protected.

It is a basic form of wealth and because of the complexities of laws appertaining to ownership great care is needed to secure your **Title**.

A title, as used in **PROPERTY** law, is the means by which an owner of property has just and legal possession of that property. Different types of title on property can be held for example, a **MORTGAGE** held by a bank on property owned by a person with a legal title to that property is an equitable title that expires on final payment. A **DEED** to a property is the legal evidence of the title and thus of the holders right to possess such property. The term clear title or good title means that the land is free of any or all encumbrances. A purchaser would seek to obtain a 'clear title' or 'good title' to the property, which would mean that the property is free from any or all encumbrances such as an **EASEMENT** that could allow a neighbour the right to cross a property to reach a highway or a **LIEN** (debt claim). A good title is one that courts recognise as valid and thus free from doubts and ensures that the holder is the sole, legitimate possessor, without fear of any challenge being made to ownership. Once full claim to the property is established, a prospective purchaser will be more willing to buy because no encumbrances can weaken an owner's clear title to the property. The danger, however, that a title to the property could be marred by unknown facts/ situations and which could be successfully challenged has led to the development of title insurance in numerous countries around the world.

### **Background**

It has recently been estimated that Title to as much as two-thirds of the land and property in the world is unregistered, or is at best merely recorded. Legal Title is, thus, uncertain and any Legal opinion given as to rights of ownerships is often suitably qualified. Unregistered real estate can be difficult to trade or to use as security for borrowing. Once an owner acquires clear Title to their property then a more liquid real estate market can develop, in which buyers and sellers will have confidence that full rights can be legally transferred. At that point mortgage lending becomes more widespread and a fundamental change is given to an emerging market economy as property finds it's natural market value.

Confidence in Title is one of the basic needs for a flourishing real estate market. Achieving confidence is a multi-staged process. One stage may involve the establishment of a system registration, a task which goes hand in hand with formulating laws establishing rights of ownership. Another stage, which may endure until an authority is prepared to guarantee Title to owners, is a mechanism for insuring Title.

We are aware of countries in many parts of the world which are in the process of formulating Title registry in which, we believe, share our view that insuring Title is the best way forward for the foreseeable future.

## **A. What is Title Insurance/ Indemnity?**

Most kinds of insurance are self-explanatory. Fire insurance protects against losses from fire. Collision insurance guards against the cost of a crunched car. Theft insurance, -well you get the point.

But Title Insurance? What does it mean to insure your title to real estate? And what are the risks that make title insurance important? We have been asked these questions before. Here's how we answer them.

TITLE INSURERS, unlike property or casualty insurers operate under the theory of *risk elimination*. They spend a high percentage of their operating income each year analyzing official records for information that affects title to real property. Their technical experts are trained to identify the rights others may have in your property, such as recorded liens, legal actions, disputed interest, rights of way or other encumbrances on your title. Before closing your transaction, the title insurers will proceed to "clear" those encumbrances which you do not wish to assume.

This theory is different from that of most other insurance where, for example, rates and anticipated losses are based on actuarial studies and premiums are pooled on the assumption that a certain number of claims will be made. The distinction is important: title insurance premiums are paid to identify and eliminate potential risk and claims before they have happened. Medical and casualty insurance premiums, for example, are paid to insure against an unpredictable future event, knowing that risk exists and claims will occur.

## **B. Title Insurance - Preserving the past, insuring the future.**

Title Insurance indemnifies against loss resulting from problems that may occur from undisclosed facts affecting the property and from actions, errors or advice, professional or otherwise, in the conveying process.

Title Insurance provides protection for the financial investment made in purchasing a property.

A title insurance policy promises to protect the owner of property or estate against loss as incurred in respect of claims against the title to the property, not exceeding the amount stated in the policy. Such policies protect only against loss arising from defects in Title which existed prior to the issuance of the policy, and do not cover defects originating subsequently to the date of the policy. This condition generates the description that supposedly describes **the major difference** between **title insurance** and **all types of insurance**, the saying is "*TITLE insurance insures against future losses which are a result of things which occurred in the past*".

**In more simplistic terms: "Title Insurance is to insure the possibility of you not having a title to property, which at the time of acquiring the said property you thought you did have". Title insurance protects buyers against defective property title.**

Title insurance protects and guarantees the insured purchaser and/ or lender from economic loss if hidden risks are found in a particular property transaction with land and buildings. The Title insurance product is aimed at providing protection for domestic and foreign buyers of land and property against the possibility that their ownership rights could in a certain way be defective because the land and property mapping and registration system in those countries are not yet fully developed.

### **C. How does Title Insurance work?**

*When a legal action results from title defects or encumbrances, the Title insurer takes over the litigation process on behalf of the policyholder and assumes all legal costs.*

There is a maze of complex laws and practises effecting ownership rights and interests to real estate around the world and especially in the new market oriented economies. The transfer of property rights from the State control to the private sector is well underway in all newly emerged Eastern European States. However, doubts linger over the ability of those establishments confirming title to property to meet losses arising from any errors made as they may not always have sufficient resources at their disposal and this can affect their credibility. Lack of sufficient transparency is one of the main risks, the less transparent is the property market, and the bigger is the risk for the investor.

The growth of cities, the rise in land value and the attraction for foreign investors has driven the development of the Title insurance. All the parties involved in the buying, selling, leasing and, now, mortgaging of property in these parts of the world are vitally concerned with efficient conveyancing and the acquisition of secure ownership rights and need to be assured that their respective interests are protected to as high a degree as possible.

### **D. Investing in Property!**

**Will you get a clear Title? – It is of greatest importance that you do!**

#### **You must!**

- be informed about any claims against your property so that you can make certain they are cleared up before you buy.
- be protected against any undiscovered claims that may arise in the future to possession of your property.

**Title Insurance provides this two fold protection.**

## **E. Insuring Risks – What does the Title Insurance Cover?**

Although there are different types of policies the most common are for the protection of the **owners** and **lenders** or **named insured** against loss due to:

- **Forgery**
- **Fraud in connection with the execution of documents**
- **Undue influence on a Grantor or Executor**
- **Impersonation by those purporting to be owners of property**
- **Incorrect representation of marital status of Grantor**
- **Undisclosed or missing heirs**
- **Wills not properly probated**
- **Mistaken interpretation of Wills and Trusts**
- **Mental incompetence of Grantor**
- **Conveyance by minor**
- **Incorrect legal descriptions**
- **Non delivery of Deeds**
- **Deeds executed under expired or false powers of attorney.**
- **Delivery of Deed after death of Grantor**
- **Deeds by Corporation or partnership without proper or legal authority**
- **Clerical errors in recording legal documents**
- **Record defects, liens, encumbrances, adverse claims or other matters not known or disclosed to the new owner that attach before date of policy**
- **Legal access**
- **Unrecorded liens**
- **Survey and boundary questions**
- **Claims of parties in possession not disclosed by the public records**
- **Easement or claims to easements not disclosed by public records**

*The policy is issued to the purchaser upon acquisition of the property and includes legal expenses incurred in handling a claim.*

*This coverage can be extended to include any mortgagees.*

## **F. Who can use Title Insurance/ Indemnity?**

- ❖ **Investors**
- ❖ **Developers**
- ❖ **Corporate end users**
- ❖ **Real estate funds**
- ❖ **Bank operating outside their borders**
- ❖ **Property Sellers**

## **G. Why buy Title Insurance/ Indemnity in addition to a legal opinion?**

Lawyers provide **OPINION**. Title insurance provides a **GUARANTEE**. A legal opinion, especially in a large commercial transaction, is fundamentally a disclosure document, in which counsel carefully defines the state of title and related issues, identifying any areas of uncertainty or defect, and carving out exceptions, e.g. fraud, thus putting the investor or lender in the position of having to self-insure such risks.

## **H. Will it change the role of lawyers and notaries?**

Their role remains unchanged. The underwriters issue policies and guarantees based on the due diligence and legal opinion provided by lawyers or notaries in each country. Title insurance can, in fact, be valuable for legal professionals since it allows deals to move forward that might otherwise be considered too risky.

## **I. How important is Title Insurance for securitized mortgage transactions?**

Title insurance is essential for securitized mortgage transactions, both the commercial and residential, because it gives investors confidence that the borrower owns the property. It also protects the interest of the mortgagee in the property.

Title Insurance and the assessment reports service make international real estate transactions safer and faster with enhanced liquidity: It helps:

- *facilitate mortgage and equity financing, as well as property disposition and mortgage*
- *securitisation for corporate and private clients as well as mergers and acquisition*

## **J. How big is the European Market and what about the US market?**

Protection for various problems with property ownership is well established in the U.K. and has been available for over 40 years but it is not as common in other European countries where there is now an emerging market.

In 2004, the Title Insurance in the US industry generated premium range revenues of \$15 billion dollars.

## **K. Why have American buyers used this instrument for over 100 years?**

Title Insurance was created to allow banks to provide the same mortgage conditions nationwide, despite laws and regulations that vary from state to state, and even from country to country.

## **L. Risk Mitigation**

In the United States, real estate investors, corporate end-users, and their mortgage lenders have come to require Title Insurance's on a virtually every property acquisition and financing. And with securitisation of mortgage finance driving the real estate capital markets in the U.S., the credit rating agencies have come to rely on Title Insurance for legal due diligence. Similarly, equity markets properties are covered by Title Insurance.

Outside the U.S., real estate owners and lenders have had to rely on opinions from local counsels and notaries to address the potentially costly risks of faulty records, ambiguities, negligence, fraud, or simple mistakes. These legal opinions essentially are disclosure documents, identifying – but not eliminating – **risk**.

Title insurance and Title indemnity policies go beyond legal opinions to **underwrite these risks and assure legal title, right of access, and the absence of defects, liens and encumbrances.**

These policies are particularly important today, when property owners and mortgage lenders typically are financial institutions and corporations, managed by professionals with fiduciary obligations to protect their investors against the legal risks inherent in real estate transactions.

## **M. Property Sales, representations and Warranties of Title**

On dispositions of properties, particularly multi-property portfolios, the vendor's typically is asked by the buyers to provide representations and warranties of title, which can lead to contingent liabilities on the vendor's balance sheet and escrow of proceeds. Alternatively, the vendor can arrange Title Insurance and Title Indemnity policies, for the benefit of the buyer, to relieve the seller of the onerous burdens of representations or of warranties and escrow.

## **N. Corporate Finance**

- Increasingly, real estate transfers and financing are affected through corporate transactions:
- Purchase of shares in property owning corporations
- Purchase of interests in property owning partnerships
- Purchase of units in real estate funds
- Mergers & Acquisitions or property owning companies
- Financing of property portfolios

Unlike traditional real estate transactions, these do not involve any transfer of the underlying property. Therefore, there may be no new entry on land registers, no action by notaries, and no legal due diligence on the property title. However, Title Insurance and Title Indemnity policies provide title coverage in such cases, assuring investors and lenders that their interests in the properties are protected.

## **O. Securities, Markets, Mortgage- Backed Bonds**

As securitisation of mortgage finance and equity structures become more important factors in the international capital markets, real estate professionals are increasingly aware of the role that Title Insurance and Title Indemnity play in making these markets safer and more efficient.

- Title Insurance and indemnity help facilitate submissions for mortgage – backed securities to the credit rating agencies and attract buyers of junior level debt trenches.
- Across the European Union, Title Insurance and Title Indemnity Policies provide a private solution to harmonize legal due diligence across different countries with different laws, regulations and languages, and become particularly useful in multi-county transactions.
- Title Insurance and Title Indemnity Policies provide standardised coverage and enhanced due diligence to meet investment and credit committee fiduciary obligations.

Thank you very much for your time and I shall be happy to answer any of your questions.

***Our Message to you!***

***Title insurance can help you by removing the risk. We have developed a solution that makes the whole process of purchasing property safer and helps to combat the risk of any unexpected surprises. For more information **please contact*****

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