

What makes title insurance indispensable

INSTRUMENT PLAGUED BY PERCEIVED TAINT, MISUNDERSTANDING

by Catharine B. LaMont, LaMont Title Corp.

Despite nearly 20 years in the industry, I continue to be puzzled by the misinformation and even lack of information associated with title insurance. Outside of the real estate industry, title insurance rarely rises to a residential consumers' consciousness except when refinancing a home. Then, many believe it is only a necessary evil that adds time and expense to the transaction.

Why is there a perceived taint to title insurance? It is asserted that it is a time-consuming and costly business, with a small payout of the premium dollar for claims. Further, it is argued that there are alternative systems that are cheaper and more efficient. On the contrary, title insurance is a valuable component of our society and economy, an essential part of a working, thriving American system of land ownership.

In many ways, a title insurance policy is like traditional casualty insurance products. It insures against unknown risks such as fraud, misrepresentation, incompetence or forgery. In other ways, title insurance is a risk management product. For example, construction loan coverage is usually managed with a review of sworn statements and waivers in addition to a traditional title search.



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transaction as possible. It is this aspect of title insurance that establishes its nature as both a process and a product. As title passes from insured to insured, each transaction has been managed in accordance with guidelines established by a title insurer. With a title insurance commitment in hand, the parties to a transaction evaluate the condition of title and clean it up as necessary. In this way, title is continually cleansed over time, ensuring that preventable title losses are discovered and eliminated.

At the conclusion of each transaction, a policy of title insurance is issued to lend credibility to the transaction and protect against those remaining risks that haven't been eliminated by the transactional process. A lender has confidence that its

ultimately, a title insurance policy is a risk prevention product. Following a title search, a title insurance commitment will set forth the necessary steps to effect as close to a risk-free

investment in the title will be protected. This investment can now be traded in the secondary market because title insurance provides assurance that the investment will be protected.

The title process has become the prevalent method of conveyancing in America and is growing in prominence internationally. Because of title insurance, American landowners have long benefited from the ability to use real estate as a financial asset, not unlike stocks or other investments. As the world economy becomes more unified, and as capitalism expands globally, more countries such as Canada are beginning to convert to a title insurance system as the primary means of conveyancing.

At the same time, alternative products have been proposed in the United States. These "lien protection" products do a much more limited search together with a more credit-oriented investigation of the borrowers. They don't provide the title cleansing opportunities at the time of the conveyance. By eliminating the title cleansing process inherent in the title insurance system, potential defects in title may go undiscovered until a loss is sustained. This may result in significantly more claims than are currently suffered. Furthermore, it is the search and examination process of title insurance that is costly. By eliminating or minimizing title examinations, these alternative products can be much less expensive. The irony however, is that by reducing the title search and eliminating the cleansing process, the existence and cost of claims will increase.

Many critical real estate issues are not covered at all by the "lien protection" products, such as matters not recorded in the public records, incompetence or lack of capacity of the parties, or fraud or forgeries. Claims arising from such matters are much more frequent than is commonly known. Such claims consisted of more than one fourth of one

title company's claims paid last year, for instance

The title insurance industry is also taking steps to expand the coverage of its policies, particularly in the areas of casualty coverage. Thus, new policies include coverage for loss sustained as a result of post-policy encroachments of improvements on easements or lot-lines, post-policy forgeries and even building permit violations. At the same time, title insurance companies are taking advantage of new technologies to speed the process.

The confidence in a conveyance afforded by the existence of a title insurance policy and the process inherent in its issuance is unparalleled by any other system. The American economic system, premised on private ownership of real estate, is the most effective and efficient in the world, and title insurance will rightly continue to play a fundamental role in this system long into the future.

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