



nerej

Title agents' role is unique but critical to the successful completion of a real estate sale

June 18, 2008 - Front Section

Few business or personal transactions have the complexity of a real estate sale. Much of this has to do with the many professionals who are involved in the process - real estate agents for the buyer and seller, home inspectors, appraisers, attorneys and mortgage brokers. Then there are the mountains of documents to be prepared, reviewed and signed. At the center of this process is the Title professional; the Title Agent, Escrow Agent and/or the Abstractor. In a real estate transaction, the Title Agent's role is unique, but critical to the successful completion of a real estate sale. Multiple responsibilities fall to the Title professional, including the preparation and review of the escrow document, properly handling any deposit check, the title search itself, the examination and preparation of the title commitment documents, and all the other tasks required to identify and resolve discrepancies and problems that may force the closing to come to a screeching halt. When all is completed and the Title Agent signs off on the work, he or she is professionally guaranteeing that the property is free to be transferred to a new owner. No liens or hindrances exist, even if the property is decades old and has had multiple owners.

In today's litigious times, however, any error or problem in this complicated process can lead to costly lawsuits and request for damages. Though the Title or Escrow Agent may have proceeded in the most careful and professional manner, hidden issues or errors of omission can occur and result in serious and expensive problems for the Agent. The list of things that could go wrong is long, and could include a previously forged deed, conflicting wills or undisclosed heirs with claims against the property, mechanics liens that may have been attached without public notice or errors in public records.

These are just a few of the many challenges facing today's Title or Escrow Agent. The path to the closing is highly technical and the Agent must rely on the accuracy of public and private documents and his or her own detailed review of these, plus many other pieces of information to grant a clear title and right to close, while avoiding the dozens of hidden traps along the way.

An important protection for a Title Agent can be Professional Liability, or Errors and Omissions insurance. This type of insurance protects a professional should someone claim the Agent acted in error by failing to identify an issue that hindered the transfer of a property (a hidden lien, for example), prepared documents inaccurately or in an untimely manner, or otherwise acted (or failed to act) in a professional capacity that might have caused harm to the buyer or the seller. Similar to a doctor's or attorney's malpractice insurance, professional liability insurance is the only type of insurance that protects a business person in their professional capacity. Typically, the coverage will provide a legal defense for the Agent, and pay any damages that the Agent might be deemed responsible for. Such policies are written on a "claims -made" basis. This is a very important feature of Professional Liability insurance. Claims - made insurance means that the Agent would have

retroactive protection back to the date of the original and uninterrupted coverage. For example, assume that a Title Agent took out a Professional Liability policy on January 1, 2003. The Agent performed and signed off on a title search in July of 2004 and the property was then transferred at the closing to new owners. In the year 2007, a claim is made against the Title Agent by heirs of the previous owners, stating that they held a lien on the property, but never recorded it. Now they are seeking damages, even though the alleged error took place over three years ago. Because the Title Agent held a claims - made professional liability policy with a retroactive date of January 1, 2003, they would be covered for the claim from the error said to have occurred in July of 2004. It is an important reminder that there can be no gap in coverage for the retroactive date to stay in effect. Coverage must be continuous and renewed every year.

The path to a real estate closing is a complicated one indeed, and full of potential pitfalls for any Title Agent. In truth, it is the Title professional's responsibility to clear that path for all the other parties. Diligence, skill and Professional Liability insurance coverage can help keep the path clear for today's Title and Escrow Agent, and deal with the hidden traps along the way.

John Torvi, director of marketing and sales, Herbert Landy Ins., Needham, Mass.

New England Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540