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## **What is a Title Insurance Policy? - by Elizabeth Young**

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A title insurance policy is a contract of indemnity that protects against loss or damage from certain risks when purchasing a home or loaning money to finance the buyer's purchase. The covered risks include the title being vested in the owner listed on the title insurance policy, no liens prior to the policy, marketable title, and access to the property. All of the covered risks are listed on the policy jacket. Exceptions and exclusions to the policy include governmental regulations, eminent domain, and defects created by the insured, are also listed in the policy.

A title insurance policy is not a title examination, and it should not be used as one. A title examination must be done at the Registry of Deeds where the real property is located to produce a title insurance policy for the owner or the lender.

The title insurance policy protects the insured party, the owner or the lender, from loss or damage that the insured might sustain as a result of the failure of their interest to be as insured under that policy.

The lender's title insurance policy ensures that the insured mortgage is the first mortgage in line and nothing has priority over that mortgage as of the date of the policy.

If the lender forecloses on the mortgage due to lack of payment, and discovers a prior mortgage whose claim is in front of the foreclosing lender's mortgage, the foreclosing lender has a claim against the policy. The title insurance company will have to resolve that claim so that the lender does not suffer a loss because of the claim.

An owner's policy states that there are no outstanding mortgages, except for the purchase money mortgage. If the owner goes to re-finance or sell and the new title examination reveals that there is a prior owner undischarged mortgage, the insured owner is protected by the owner's policy and has a claim against the policy. The title insurance company will have to resolve that claim so that the owner can refinance or sell without a loss.

If the owner does not have an owner's policy, she is not protected. The loan policy protects ONLY the lender, and if there is no loss to the lender, there is no claim. Unless the lender forecloses on its loan, the lender will never have a loss, and there will be no claim on the policy. The owner is not protected by the lender's title insurance policy.

Institutional lenders always require that their loan have a title insurance policy. The coverage under a lender's policy extends to the lender's assigns or successors in interest, if the mortgage is assigned.

The coverage under an owner's policy does not extend to the owner's assigns or successors in interest.

Title insurance is the only protection against adverse claims to the title that an owner or a lender has in many jurisdictions. In Massachusetts, the lender and the buyer also have the protection of a title certification, which an attorney issues when there is a purchase money mortgage in the purchase of the home. There are limits to the protection provided by the title certification which title insurance does cover. Examples of title insurance protection that are not included in the title certification: forgery, matters that arose prior to the title certification (50 years), and mis-indexing of documents by the Registry of Deeds.

#### The Insuring Provisions:

Title insurance is "risk elimination:" a title examination has been done prior to the transaction and any title problems have been resolved before the title insurance policy is issued. The coverage under the policy is for the state of the title on the date of the policy, which is the date and the time that the deed or the mortgage was recorded at the Registry of Deeds in the county where the property is located.

An exception to title insurance is something that is not covered by the title insurance policy. There are Standard exceptions which are pre-printed in the policy and these are not covered by the policy:

1. Rights of parties in possession.
2. Discrepancies, conflicts in boundary lines, shortages in area, easements not shown by the public records, encroachments, and facts which an accurate survey and inspection of the premises would disclose.
3. Unrecorded mechanic's liens.

The other exceptions to a title insurance policy are the items found in a title examination at the Registry of Deeds, such as easements, takings, and other rights that have been granted in the property. If there is recorded notice of the grant of a right in the property, it must be included in the special exception portion of the policy. Special exceptions include easements, rights of way, takings

for street layouts, drainage rights, sewer takings, boundary line agreements, rights of others in waterways, paper streets on a plan, etc.

## Forms and Rates

In some states, the Commissioner of Insurance regulates the rates charged for title insurance. That is not true in Massachusetts.

The individual title insurance companies in Massachusetts choose their own forms and rates. The forms are American Land Title Association forms.

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