

Do you need title insurance?

How to protect your real estate investment from title issues

Amid the turmoil in the real estate industry, it is important for every prospective buyer to consider the often-undervalued concept of title insurance. Title insurance can reduce a buyer's risk and bring peace of mind during the often-stressful closing process.

"Some people are skeptical about title insurance and view it as an unnecessary expense. I believe the exact opposite," says Catherine Marriott, a member of Semanoff Ormsby Greenberg & Torchia, LLC. "Without title insurance, a buyer could find him or herself dealing with unexpected, but avoidable issues."

Smart Business spoke with Marriott about title insurance and the importance of title due diligence before a deal is consummated.

What is title insurance?

Title insurance is an insurance policy purchased at the time of closing on the purchase of a property that insures that no other parties have an interest in the property, other than those that a buyer accepts. An 'interest' can be anything that would affect title to the property, such as unpaid real estate taxes or lienable utilities, tax liens, mortgages, judgments, utility easements or rights of adjacent landowners. The goal is to make sure that a buyer is getting title to the property free of all monetary liens and any restrictions that could affect its use.

Where there is a mortgage loan, a lender will require title insurance insuring the priority of its lien, so most buyers will likely not have a choice regarding title insurance. Regardless, it is undoubtedly a benefit to a buyer, and should not be viewed as an unnecessary expense.

Why do buyers need title insurance?

Buyers need title insurance so no other party

CATHERINE MARRIOTT
Member
Semanoff Ormsby Greenberg & Torchia, LLC
(215) 887-3753
cmarriott@sogtlaw.com



Insights Legal Affairs is brought to you by **Semanoff Ormsby Greenberg & Torchia, LLC**

can claim an interest in their property. A title company will search for, among other things, tax liens, judgments, and easements and restrictions recorded in the land records of the county where the property is located. If not resolved, any lien that is recorded against the property or judgment against the seller that have 'attached' before closing, would continue to encumber the property after closing. Title insurance protects a buyer against these matters because the title company will make sure these liens will be paid or otherwise resolved before closing. A title insurance policy will insure that real estate taxes are current, all lienable utilities are paid as of the closing date, and that there are no mortgages from a prior owner — all of which would become the responsibility of the new owner if not paid at closing.

It's important to have title insurance because buyers need to know what other parties have an interest in the property, or if there are any recorded restrictions on the use or development. A buyer needs to know of any such restrictions before they purchase the property when there is still an opportunity to cause a seller to resolve the issues.

How can buyers protect themselves?

At the beginning of a transaction, when an agreement of sale is prepared, an

attorney can make sure that there is an appropriate contingency for title matters that will protect a buyer from unknown title encumbrances. An attorney who specializes in real estate matters can prepare and negotiate a contingency that describes exactly what title matters will be acceptable. After a title commitment is prepared, a thorough examination of the commitment, along with a comprehensive review of the recorded exceptions to title, is necessary.

How should a buyer proceed if there is a title problem before closing?

If there is an objectionable title matter discovered through a title search, a buyer who has an appropriate title contingency has options. If a buyer objects to an item that a seller can and does resolve, closing can proceed as planned. If a seller cannot resolve any objectionable title matters, a buyer will have the right to terminate his or her obligation to purchase the property, thus avoiding problems that could be costly or prohibitive of the buyer's intended use of the property.

Buyers who do not conduct appropriate title due diligence could face significant financial consequences. Protection from title matters should start before an agreement of sale is in place, continue with a thorough review and consideration of such matters, and conclude with a clean title policy. ●