

Who Chooses the Title Company?

The choice of a title company is a purchase agreement item. Here's why. Most buy/sells require two types of title insurance policies. Generally, the Seller pays for an Owners Title Policy that covers the Purchaser against any defects in title. The Purchaser normally pays for a Mortgage Title Policy that insures the lender.

According to the Office of Financial and Insurance Services for the State of Michigan, "usually the Purchaser of the property is required to buy the lender's title insurance policy. This policy only protects the lender's interest. Either the Seller or the Purchaser can buy the owner's policy. The party who will pay for the owner's policy can be negotiated during the purchasing process." (Source: Title Insurance FIS-PUB 0218 – www.mi.gov)

According to the U.S. Department of Housing and Urban Development (HUD), "Under RESPA, the Seller may not require you (a Purchaser) as a condition of the sale, to purchase title insurance from any particular title company. Generally, your (the Purchaser's) lender will require title insurance from a company that is acceptable to it. In most cases you can shop for and choose a company that meets the lender's standards." (Source: Securing Title Services - www.hud.gov)

Generally, a real estate professional or lender will choose a title company for you. There is something to consider when this happens to you. That consideration concerns the closing or escrow side of the transaction.

Title companies charge a closing fee to close your transaction. Normally a Purchaser pays this fee, however, it is a purchase agreement item as to who pays. Compare costs. Closing fees can vary by hundreds of dollars. Ask for all closing costs from the title company in advance. Some title companies over-charge Sellers and Buyers fees. Others may charge fees for costs that do not exist or for services that have not been performed. These are phantom fees.

Examples of phantom fees might be:

Transaction Coordination Fee **Excessive Closing Fee** **Chain of Title or Search Fee**
Title Examination or Review Fee **Closing Coordination Fee** **Transaction Disclosure Fee**
Document Preparation Fee

Another issue you need to be aware of is what the State of Michigan calls **Illegal Rewards and Remuneration**. In 2001, Frank M. Fitzgerald, Commissioner of Financial and Insurance Services issued Bulletin No. 2001-07-INS concerning, among other things, a statement about Illegal Rewards and Remuneration. It reads in part;

"Several methods for illegally rewarding or remunerating brokers for referrals have been reported to the Office of Financial and Insurance Services (OFIS). These methods include: 1) agencies giving brokers equipment, such as fax machines, car phones, and computers; 2) agencies leasing space from brokers or renting conference rooms from the brokers for closings in order to induce referrals; 3) agencies performing services previously performed by brokers, including holding escrow deposits and hiring delivery persons for brokers; 4) agencies have, to secure the business of a broker, hired the broker's secretary and left the secretary in place to do closings and other work for the broker.

The rewards or remunerations described above, and similar rewards or remuneration, are prohibited by Section 1207 (3) above." Source www.michigan.gov Bulletin No. 2001-07-INS

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There are many other ways *Illegal Rewards and Remuneration* is happening. It probably is not in your best interest to use a title company or real estate professional who is involved in this practice. As their client, you will probably be paying for these services through excessive fees as mentioned above.

Another thing to consider is whether the title company has an affiliated business arrangement with a real estate professional or lender. *An affiliated business arrangement (ABA) is where one or more real estate professionals or lenders own an interest in a title company. If this is the case, they need to disclose this fact to you.*

This is often done in small print on a listing agreement or a purchase agreement. HUD recommends a separate Disclosure Statement that among other things discloses the percentage of ownership they may have. They also recommend you sign an acknowledgment that you have read the form and understand that they may "receive a financial or other benefit as a result of this referral." Often Seller's and Purchaser's agree to use a title company without realizing what they are doing. (see www.hud.gov - appendix d to part 3500 affiliated business disclosure statement format)

Be informed. Be alert. Ask questions. It's your money.

What is an Affiliated Business Arrangement?

The American Land Title Association released a statement dated April 26, 2006 which reads in part:

"In 1983, Congress amended Section 8 of RESPA (Real Estate Settlement Procedures Act) to make clear that persons in a position to refer settlement service business (e.g., builders, lenders, and real estate brokers) can establish or own title companies and other settlement service providers to which they refer business provided that three conditions are met:

- the person making the referral provides an Affiliated Business Disclosure Statement to the consumer explaining the nature of the affiliation between the person making the referral and the affiliated business entity, and an estimate of the charges to be made by that entity;
- the person making the referral has not required the use of that provider; and
- the only thing of value to the person making the referral is a return on the ownership interest in the affiliated business entity."

"In 1996, HUD promulgated regulations implementing these statutory provisions that provided further guidance on what parties needed to do to avoid their affiliated business arrangements being considered "sham arrangements" that would not fall within the statutory safe harbor. These requirements, which apply to the establishment of affiliated title insurance agencies, basically require that the affiliated provider be a *bona fide* business entity, with sufficient capital and employees to manage its own affairs, and must provide substantial services."

"When the arrangement reflects reasonable payment for real services provided by the entities owned by those real estate professionals, there is no violation of RESPA or comparable state law provisions. When the arrangement does not reflect reasonable payment for real services, but payment for the referral of business, there is a potential RESPA problem."

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“The problem is, title insurers have entered into agency arrangements with title insurance agencies owned by builders, lenders, or real estate brokers, where the affiliated agency obtains most or all of its business from referrals by its owners but does not perform many, or perhaps even any, of the customary functions performed by independent title agencies, yet receives a substantial commission similar to the commission received by a full service agent. The entities in this second example have been referred to as “sham affiliated title insurance agencies.”

“Thus, while there is no need for the establishment of “sham” agencies when a lawful and appropriate vehicle exists for builders, lenders, and brokers to offer title insurance through a legitimate affiliated business title agency, these kinds of agencies do exist, primarily in order to avoid the costs of providing real title agent services while still realizing for the owners much of the revenue that a legitimate agent would realize. Whether the impetus for the establishment of such “sham” arrangements come from the party controlling the business or from the title insurance company who is seeking the additional business is irrelevant.” (Source: American Land Title statement before the Subcommittee on Housing and Community Opportunity of the House Committee on Financial Services, April 26, 2006)

Be informed. Be alert. It's your money. An Affiliated Arrangement may not be in your best interest. You have the right to choose.

What is Title Insurance?

For most people, a home represents the single largest investment they will make in their lifetime. Thus it is only natural that an owner will want to make that investment secure by protecting the basic proof of ownership. Title insurance is the most effective and lowest cost way of doing just that. As a Seller, you generally agree to provide proof of marketable title to your Purchaser. Title insurance fees are based on the sale price of your property. Depending on the age of your existing title policy, you can save up to 60%. We can also give your Purchaser a discount on their Mortgage Policy that their lender will require.

The cost is directly related to the value of the property. The higher its value the more coverage is needed. The premium is small compared to the total purchase price. The premium is paid only once and remains in force for as long as the property is owned by your buyer. It continues to protect your buyer on warranties after it is sold.

What Can Make a Title Defective?

There are many possible causes of title defects that no examination can disclose. That is because they have never been recorded and do not appear in the history of a title. A title insurance policy protects the owner or lender against all these hidden risks such as:

Fraud. – False claims of ownership, forged deeds, wills, signatures, false representations, false records of all sorts, illegal acts of trustees, guardians, personal representatives and attorneys. – Errors in copying, indexing, recording; errors by personal representatives, trustees, guardians and attorneys; destruction of records. – Improper deeds, wills or trusts. – Deeds by persons of unsound mind, or minors; deeds delivered after death or without the grantor's consent; invalid, suppressed, or erroneous wills, missing heirs, unsettled estates. – Liens and other rights. – Liens for unpaid estate, inheritance, income, property and gift taxes; Homestead rights, community property rights; Irregular court proceedings, court opinion reversals, lack of court jurisdiction; Defective foreclosures.

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According to a 2005 Survey by the American Land Title Association (ALTA) "title problems were found in 36 percent of all residential real estate transactions (new and resale homes, and refinances), up from 25 percent in 2000." "The most frequent curative action taken last year (2005) was obtaining releases and/or obtaining pay-off for discovered liens, such as prior or existing first or second mortgages, unpaid child and spousal support, outstanding taxes, and other judgements against the property." "The next most common curative action was obtaining releases for assignments on deeds of trust/and or mortgages, followed closely by recording errors of names, addresses, or legal descriptions of the property."

"According to ALTA, homebuyers and regulators alike have recently questioned the value and cost of title insurance. A Loan Policy of title insurance is required by lenders prior to the issuance of a loan, even on a refinance, to assure that the title is clear. Before a policy is issued, an extensive search is conducted to locate problems so they can be rectified and the transfer of property and/or loan can proceed." (Source: ALTA News, April 13, 2006) www.alta.org)

Closing The Transaction

Selecting the right title company is extremely important when it comes to closing the transaction. You should make this choice carefully. This is the most important step in the process as you will be working closely with this company, often daily. Whoever you choose, that company will become your "personal secretary" as they comply with the terms and conditions of your purchase agreement. They will assist in clearing up any title problems that may arise. They will strive to be as confidential as possible and to answer all of your questions. More importantly, they will keep your funds safely deposited in an escrow account.

Let us look at a few important criteria, from a closing point of view, to consider when choosing a title company. The first is the reputation of the company in the community. How long have they been in business? Do they have an office in your community. Ask your friends and acquaintances to recommend a company they have dealt with. Ask your friends if the company they recommend returns phone calls promptly, explains details in everyday, understandable language, inspires confidence, and is knowledgeable and acts in a professional, courteous manner.

Another criteria to look at is the managerial experience of the company's employees you are choosing. Look at their professionalism. Your closing officer should be knowledgeable, efficient, friendly, and confidential. Interview the employees who will be doing your closing. Ask a lot of questions. Ask about their previous experience. Have they handled many FSBO (For Sale By Owner) transactions? Do they have a good working relationship with lenders and are they experienced in handling loan documents? Do they have experience in handling possible title problems that may be found in the title report?

Another criteria to consider is the fees that your title company is going to charge to close the transaction. Fees do vary, and the decision on who pays which fees will also vary. Whoever is responsible for paying for each individual fee should be determined well ahead of the closing.

You will want to try to select the most reputable and professional title company you can find, combined with the one who also charges the most reasonable fees. Several fees, such as recording fees, transfer tax fees, are non-negotiable and will be the same statewide. Title insurance fees and closing fees can vary from company to company.

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