

Title Insurance - Tips for Consumers

What Is Title Insurance?

Title Insurance is a reimbursement policy that protects against loss arising from undetected or undisclosed defects in the past chain of title for real property. It is officially defined as “insuring, guaranteeing, or indemnifying owners of real property or others interested therein against loss or damage suffered by reason of liens, encumbrances upon, defects in, or the unmarketability of the title to said property.” NH Statute RSA 416-A:2.

What Companies Are Allowed To Market Title Insurance?

Title Insurance Companies are unique in that they are only licensed by the State of New Hampshire to sell Title Insurance. They are organized to fully meet the requirements of NH Statute RSA 416-A. At this time, Title Insurance Companies, or their agents (including approved attorneys, if any) are required to maintain records that are the basis of any contract of Title Insurance for 20 years.

No Property & Casualty Insurance Company may sell Title Insurance.

Who May Sell Title Insurance To A Consumer

The sale, solicitation, or negotiation of Title Insurance may only be conducted in New Hampshire by an agent who is specifically licensed for that purpose by the Insurance Department of the State of New Hampshire.

Who Issues A Title Insurance Policy?

Owner Policies or Lender Policies may only be issued by the Title Insurance Company and by persons who hold a valid NH Insurance License and are an appointed agent of a specific Title Insurance Company. Some Title Insurance Companies only issue policies through attorney agents and some issue policies through non-attorney agents.

Who Researches The Title To A Property?

Research of title to property referenced in the registry of deeds and other public records deemed necessary must occur before a Title Policy is issued. A title search conducted with the intent to issue a Title Policy may be conducted by an Attorney-at-Law who is in good standing and admitted to practice before the Supreme Court of New Hampshire, by an attorney admitted in another state, or by non-attorney abstractors used by a Title Company. The simple act of

researching title by an Attorney-at-Law does not require licensing as a Title Insurance Agent.

How Does Coverage Apply?

Unlike other Property & Casualty Lines of Business (Auto, Home, etc.), Title Insurance insures against what has occurred in the past, not what might happen in the future. The premium is paid only once, usually at the time a property is purchased for an Owner Policy and, for the lender, at the time of the financing or refinancing of a mortgage.

Companies that sell Title Insurance obtain the history of the title to the property researched and then assume the risk that the title to a parcel of real estate is as they found it to be and which is stated in the policy. An Owner Policy or Lender Policy will reflect the status of the title that the owner or lender acquired and will not cover matters occurring after that time (unless the policy specifically provides for such 'post-policy' coverage).

A Title Insurance Policy indemnifies the owner or lender against losses suffered if the title contains matters other than is shown in the policy such as a matter that creates a cloud or defect on title. If the owner or lender are sued in regard to a cloud or defect affecting the policy coverage (which are not otherwise excluded or excepted), the policy provides defense costs by an attorney selected by the Company to defend the owner or lender. .

Borrowers are generally required to pay for a Title Insurance Policy when they borrow money from a lender for each mortgage. This policy, known as a Lenders Policy, protects only the lender for coverage limits equal to the amount of the mortgage and does not protect the borrower.

Borrowers can not be required to obtain a Title Insurance Policy which is referred to as an Owners Policy. They are often offered an opportunity to purchase one at, or around, the time of closing the mortgage, however. Coverage offered under the Owners Policy would be limits equal to the purchase price of the property or the appraised value. A separate premium charge would be made directly to the borrower for this coverage. The Owners Policy would protect only the borrower not the lender.

Consumer Tips

If you are preparing to sell, buy, or refinance property, it may be helpful to know:

- As a borrower, you should consider purchasing your own Owners Policy to provide you with adequate protection up to the purchase price of your property should any complications ultimately occur in regard to the ownership rights to the title on your property.

- As a borrower, it is less expensive to purchase an Owners Policy at the same time as the borrower is required to purchase the Lenders Policy. However, an owner is reminded that:
 - The policy that a lender requires covers only the amount of the mortgage, not the purchase price, and insures only the lender.
 - Despite the fact that a borrower pays for the Lenders Policy, the borrower is not protected.
 - In the case of refinancing the loan, a new Lenders Policy is required to protect the new lender for its new lien position which is the amount of the mortgage as of the date of the recording of the new mortgage.
 - The New Hampshire Insurance Department may not be able to assist you if you, the owner of the property, do not hold an Owners Policy.

- Title Insurance premiums vary from one Title Insurance Company to another, so you may wish to shop before purchasing your Owners Policy. No one may coerce you in regard to selection of any particular company. The choice is yours. The premium charge for an Owners Policy is a one time only premium and the Owners Policy is effective as long as the owner named on the Owners Policy owns the property. Changes in financing do not affect an Owners Policy. Each time an owner chooses to take out a new mortgage, the new lender will likely require a Lenders Policy so that the changes will be insured, but there is no need to obtain a new Owners Policy as the existing policy provides coverage so long as you own your property.

- When purchasing property, substantial discounts may be available if the Lenders Policy and the Owners Policy are issued at the same time for property that involves the same real estate transaction are purchased through the same Title Insurance Company. The Owners Policy may be available for an additional nominal premium above the cost of the Lenders Policy provided that both policies are based on the same property, same borrower, and same research information.

- Keep your Owners Policy in a safe place such as a safety deposit box so that you can readily produce it in the event that a loss occurs. If you sell your property by Warranty Deed, keep your Owners Policy in a safe place as it can provide coverage for defense and loss if you are ever sued on warranty covenants by a subsequent purchaser.

- The premium rates charged by a Title Insurance company are filed with the New Hampshire Insurance Department. The rates and fees are available for public inspection at the Insurance Department.

- Some property sellers may include a provision in their purchase-and-sale contracts whereby they may offer to pay for only a Lenders Policy, an Owners Policy or an Owners and Lenders Policy on behalf of the buyer in exchange for the buyer's consent to use the seller's specific Title Insurance Company. Prior to signing such an agreement, it is suggested that a buyer seek independent legal advice. To establish the true value of such a provision, borrowers should first ask the seller to furnish a Commitment of Title Insurance showing the terms of the coverage offered; the estimated cost of the coverage and the name of the Title Insurance Company. Also, the borrower should check with their lender or its' closing attorney or closing agent to determine whether the seller's offer for a new Lenders Policy, an Owners Policy or an Owners and Lenders Policy can be provided for the same policy terms and at the same or a lower cost.
- If you are sold a Title Insurance Policy, make sure that the person selling it to you is properly licensed to sell Title Insurance on New Hampshire property. This information can be found on the New Hampshire Insurance Department web-site (address displayed below) in the Consumers Section under "producer license look-up service" (all you need is the name or license number).
- If you wish to verify that the company issuing the Title Insurance Policy can legitimately provide coverage in New Hampshire, this information can be found on the New Hampshire Insurance Department web-site (address displayed below) in the Consumers Section under "company lists".

IF YOU HAVE A LEGITIMATE COMPLAINT THAT YOU WISH TO MAKE AGAINST A TITLE INSURER OR A TITLE AGENT, THESE MAY BE SUBMITTED TO:

The New Hampshire Department of Insurance
21 South Fruit Street
Concord, NH 03301
Web-site – www.nh.gov/insurance/