FLORIDA DEPARTMENT OF FINANCIAL SERVICES

Division of Consumer Services

a guide to

# TITLE INSURANCE

# TABLE OF CONTENTS


Introduction ____ 1

Your Closing ____ 2

Title Insurance ____ 3

Title Agents ____ 4

How to Select a Title Agency ____ 4

Title Insurance Tips ____ 5

Common Title Insurance Terms and Definitions ____ 5

Frequently Asked Questions ____ 7

For More Information ____ 8

# INTRODUCTION

Home ownership represents the biggest financial obligation most people will incur. In fact, home ownership is considered a fundamental part of wealth building.

During the home buying process, and particularly during closing, many of you are faced with a barrage of terms and procedures you have never heard of, especially if you are a first-time home buyer. The closing process is often shrouded in mystery and many home buyers face it with only a minimal understanding of what will happen or what their rights and obligations are.

In Florida, your closing transaction will typically be handled by a title insurance agent, or attorney accompanied by a notary, or simply by a notary. In addition to ensuring title insurance is purchased, when required, your title insurance agent or attorney will facilitate the entire closing process. The representative or agency handling your closing will hold any funds, such as earnest money, in escrow until disbursed. But who are these professionals and what exactly are their responsibilities? What is your role as the home buyer or seller? And most importantly, how can you save money in this process?

This publication will help demystify the process for you.

# YOUR CLOSING

During closing, the title to real estate is transferred from the seller to the buyer. This process generally includes the collection of all necessary funds and the completion of all required paperwork. If you are closing with a mortgage on residential owner-occupied property, you should be signing a Closing Disclosure form. If you are closing on a Reverse Mortgage, investment property, commercial property, commercial residential property or with a cash settlement, you may sign the HUD-1 Settlement Statement, because it details the key elements of the transaction, though the HUD-1 Settlement Statement is no longer required. You should not sign a Closing Disclosure or a HUD-1 Settlement Statement unless you understand and agree to all of the terms. Be sure to also review the Loan Estimate, which is used in connection with the Closing Disclosure. Once these documents are signed, they become legal documents and it could involve a lengthy court process should any changes be required.

For many years, closings took place in a title agency or in an attorney's office. Today, however, closings may take place in any location, as long as a notary is present. In Florida, an attorney or a licensed title agent may facilitate real estate closings. However, the Department of Financial Services (DFS) only regulates real estate transactions in which title insurance is issued and the Office of Financial Regulation regulates any real estate transaction in which a state-regulated lender is used to provide the funds for the real estate purchase. All other parties to the transaction, such as the attorney, notary and real estate agent(s) are regulated by a variety of different state and federal authorities.

For most buyers, the following activities are included in a typical closing:

- You will sign a mortgage note, your loan, which is your commitment to repay the money you borrowed;
- You will sign the mortgage, which is a lien against the property's deed that gives the bank an interest in your home as collateral for the loan;
- You will receive inspection reports and warranties;
- You will receive a commitment to issue a title policy. Be sure to review and check any exceptions listed on the commitment under Schedule B.

Once the existing mortgage and any other known liens from the seller have been satisfied, the deed transferring title to the buyer will be recorded with the County Clerk of Court, who maintains the official county records. Once the deed is recorded, the new mortgage, if any, is recorded. When the recorded documents are later returned to the title agency or attorney's office, the title policy will be delivered.

# TITLE INSURANCE

A title is the foundation of real estate ownership and refers to your legal right to own, use, control, possess or dispose of the home.

Before issuing a title insurance policy, a title agent will check for any defects in your title. Your free and clear ownership could be jeopardized if there are any problems with the title, such as a lien filed by someone who worked on the property, unpaid taxes, an easement, an undisclosed claim from an heir of a previous owner or any number of other possible title defects.

Title insurance helps protect you or your lender from prior rights or claims other parties may have to the property, as well as from any outstanding debts of previous property owners. Title insurance is based upon a public records search, which is evaluated to determine the state of the title at the time of your purchase. In the event someone challenges your title, the title insurance underwriter (not the title agent or agency) will defend your title and pay all related costs and loss in property value that might ensue, up to the limit of your policy. What exactly is the policy limit on a title policy, you may ask? The policy limit for title insurance is the amount of the sale price of the property.

There are two primary types of title insurance - a **lender's** policy and an **owner's** policy. Your lender may require its own title insurance as a condition of your mortgage loan. A lender's policy insures the lender's interest in the title to your home. It provides protection to the person or firm that loaned the money to the new owner. An owner's policy will insure you as the property owner against the specific kinds of claims listed in the policy. The owner's policy helps protect the new property owner from a previous owner's debts, such as being required to pay a lien placed against the property due to the actions or inactions of a prior owner.

In Florida, the buyer or seller may purchase both the lender's policy and the owner's policy. Title agents and title insurance companies may sell title insurance. Attorneys in good standing with the Florida Bar Association may also sell title insurance.

Unlike other types of insurance, you pay a one-time premium for your title policy, which remains in effect for as long as you or any heirs, own the property.

# TITLE AGENTS

You have the right to choose your title agent or attorney. You are not obligated to use the services of any title agency suggested by your real estate agent, mortgage lender or attorney, though you may certainly choose to do so. A title agent may represent one company or several.

The role of the title agent in the purchase of your home is to:

- Prepare and obtain title searches;
- Examine the property title;
- Prepare closing documents;
- Prepare and issue title insurance;
- Conduct closings; and
- Disburse funds.

But how should you go about selecting a title agent?

# HOW TO SELECT A TITLE AGENCY

- Ask people you know who have recently purchased property if they were satisfied with their title agency and get a referral.
- Your real estate agent or lender may recommend one or more title agencies they are familiar with (though they cannot require you to use any particular title agency).
- Contact more than one title agency to compare costs and services. Title insurance premiums are set by the state of Florida. However, the agent's portion of the premium, as well as title agency fees, may be negotiated. Compare these costs among various title agencies.
- Make sure any title agency you are considering is licensed. You can check by visiting the Department of Financial Services' website at https://licenseesearch.fldfs.com, or by calling the Department of Financial Services' Insurance Consumer Helpline toll-free at 1-877-MY-FL-CFO (1-877-693-5236). If you need the assistance of an attorney, contact the Florida Bar Association at (800) 342-8060 or www.FloridaBar.org to determine if the attorney is a member in good standing.
- Be sure to consider the experience of the agency you choose and its reputation for fairness. If possible, talk to other consumers about their experience with the agency, and be sure the agency professionals are able to answer all of your questions about the policy you are buying and about all of the fees required for the closing transaction.

# TITLE INSURANCE TIPS

- Shop around. Negotiate the fees, which may vary by title agency. Closing costs are negotiable. You may ask your agent for a rebate on their portion of the premium. Also, ask whether you qualify for any discounts. You may qualify for a 'New Home Purchase Discount' if the seller has not leased or occupied the premises. The title insurance premium is not negotiable.
- Make sure you know what your title insurance policy does and does not cover before you purchase it. Coverage changes may result in premium changes.
- If your real estate agent, mortgage broker, etc., recommends a title agency to you, ask if they have a financial interest in the agency.
- Be sure to read and understand all of the documents you sign at closing.
- Be sure the policy properly describes all of the property and interests you are acquiring.

# COMMON TITLE INSURANCE TERMS AND DEFINITIONS

**Abstract of Title** is a compilation of instruments dating back to the earliest public records and includes physical copies of all recorded instruments affecting title to lands being searched. An alternative method involves searching the records for 30 years from the date of a valid root of title.

A **Clear Title** is a title free from defects which may encumber the owner's right to the peaceful enjoyment of the property, or which may cause the owner to lose any portion of it.

A **Cloud** exists on the title when there is reason to believe there could be a future claim against the title to the property.

A **Closing Disclosure** form is a document that replaced other closing forms beginning August 1, 2015; specifically, the HUD-1, Good Faith Estimate (GFE) and the Truth in Lending Act (TILA) forms for some closings. This form will display the monetary amounts related to the closing.

**Earnest Money** is usually required from the buyer in order to show their sincerity in entering the contract to purchase property.

**Easements** are the right to use the real property of another for a specific purpose. The easement is itself a real property interest, but legal title to the underlying land is retained by the original owner for all other purposes.

**Eminent Domain** is the government's constitutional right to take private property for public use and reimburse the record title holder for the reasonable cost of the land.

**Good Faith Estimate (GFE)** provides an estimate of your settlement costs and loan terms.

**HUD-1 Settlement Statement** is not a statute-required document for real estate closings, but is a document quite often used in closing when there is an investment property involved, for commercial property closings, and for commercial residential property closings as well as Reverse Mortgages.

**Lis Pendens** is a formal notice of a pending lawsuit.

**Loan Estimate** is a form you will receive that details important information about the mortgage loan you requested. For example, you will see the loan amount, the interest rate being offered, what the monthly payment amount would be, and even whether or not there is a penalty to prepay the loan.

**Primary Title Services** should be recorded on the Closing Disclosure and include evaluating the title searching records; clearing underwriting obstacles; determining insurability; preparing and issuing the title commitment and title insurance policy. These charges are included in the title insurance premium.

**Property Encroachment** occurs when one person's property extends onto the property of another. This can include fences, bushes, sheds, etc.

**Related Title Services** are commonly referred to as closing services and should be recorded on the Closing Disclosure. The examination of records is no longer a part of closing services as it is considered part of the primary title services. Closing services include services performed by the licensee; preparing the documents for the closing; conducting the closing and disbursing the funds from the closing.

**Restrictive Covenants** prohibit, limit or regulate the use, character, kind, dimensions, specifications and locations of the buildings and structures that may be erected and maintained on the land.

**Simple Escrow** is a closing in which no title insurance is issued.

**Title Commitment** is a binder for title insurance.

**Title Defects** are competing or adverse interests in the property's ownership, usually found upon an evaluation of the documents from the title search.

**Title Search** is the compiling of title information from official or public records. The title search provides a summary listing of all of the past documents affecting title to the land being purchased.

**Truth in Lending Act (TILA)** is a United States federal law designed to promote the informed use of consumer credit. It requires disclosures about its terms and cost to standardize the manner in which costs associated with borrowing are calculated and disclosed.

**Writ of Interpleader** is a court order that directs a title company how to disburse the escrowed funds in question.

# FREQUENTLY ASKED QUESTIONS

### Why is it taking so long to get my Deed?

The Deed is the actual document that transfers title from one person to another. The deed must be recorded by the Clerk of Court's office and can take time. After the prior mortgage and known existing liens have been satisfied, the original deed is sent to the Clerk's office and recorded in the official county records. Once the new deed has been recorded, the new mortgage is recorded. Once recorded, the deed is mailed back to the title agency where the agent will issue the title insurance policy if the company requires the Deed to be recorded prior to issuance. Some companies don't require the deed to be recorded prior to the issuance of the policy and will issue the title policy on the actual closing date. Once the original deed is recorded and the title insurance policy is issued, the two documents are mailed to the new owner.

When purchasing a mobile home, ownership is evidenced by a title similar to an automobile title rather than a deed. These titles are regulated and issued by the Department of Highway Safety and Motor Vehicles.

### When should I receive my title policy?

If Title Insurance is required or requested, you should get a Title Commitment at the time of your closing. The actual policy may not be issued for some time depending upon the prior mortgage satisfaction being received and recorded along with the new property deed.

### Is my title agent or agency licensed in Florida?

You may access the Licensee Search to verify an agent's license status with the Florida Department of Financial Services, Division of Agent & Agency Services.

### Is the title company licensed in Florida?

You may access the Company Search to verify a company's license status with the Department of Financial Services.

**My title agent was supposed to provide me with a gift card for referring business to them.**

Title agents are prohibited from:

- Providing or paying for food, drinks or room rentals at events designed to promote their business.
- Paying advertising costs of real estate brokers, etc. for business referrals.
- Sponsoring and hosting any open houses for real estate brokers etc. for business referrals.
- Providing or paying for gift cards or gift certificates for referral of business.
- Providing or paying for cellular contracts for business referrals.
- Offering any discount or reduction of any fee of the cost of an inspection, inspection report, appraisal or survey, including wind inspections, to a purchaser or prospective purchaser of title insurance.

For a complete list of prohibited activities, please review Rule 69B -186.010(4), Florida Administrative Code.

# FOR MORE INFORMATION:

**Florida Bar Association**
(850) 561-5600
www.FloridaBar.org/public/

**Florida Department of Business & Professional Regulation**
(850) 487-1395
www.MyFloridaLicense.com/DBPR

**Florida Department of Financial Services**
1-877-MY-FL-CFO (1-877-693-5236)
www.MyFloridaCFO.com
File an insurance complaint online through the: Get Insurance Help

**Florida Office of Insurance Regulation**
(850) 413-3140
www.FLOIR.com

**Florida Office of Financial Regulation**
(850) 487-9687
www.FLOFR.gov

**U.S. Department of Housing and Urban Development**
(202) 708-1112
www.HUD.gov

Please note: This publication is not a substitute for legal advice. If you believe you need an attorney, please contact the Florida Bar Association at (800) 342-8060 or www.FloridaBar.org.

FLORIDA DEPARTMENT OF FINANCIAL SERVICES

Division of Consumer Services

December 2022