

The Reporter

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The Benefits of Owner's Title Insurance



The unfortunate reality of owner's title insurance is that most buyers come to the closing table with little or no understanding of what it is. It is incumbent upon the closing attorney's office to be able to explain what title insurance is and why the buyer should purchase it.

An introductory letter to the borrower with an Old Republic Title brochure explaining the benefits of title insurance is a great place to start. Your staff should be comfortable explaining to your clients the benefits of an owner's policy and should be trained to do so. Here are some ideas on how to explain the importance of the owner's policy.

Many borrowers think that the lender's policy that they are required to purchase covers them as well. Nothing could be farther from the truth. The loan policy insures the lender's security interest in the property. It insures that the lien of the insured mortgage is enforceable and that the lender has a valid priority lien on the property. A loan policy does not insure the owner. Only an owner's policy insures the owner's interest in the property. The policy becomes effective as of the date and time that the deed is recorded.

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MARKETING TIPS/REMINDERS:

- ★ Call Old Republic Title or ask your sales representative to see a sampling of our brochures;
- ★ Send out brochures explaining the benefits of owner's title insurance to your clients before they come to close;
- ★ Follow-up with a phone call before the closing to answer any questions your client may have.

Borrowers often think that they do not need an owner's policy because they can sue the attorney based upon the certification of title. Title insurance covers matters that are covered by an attorney's certification as well as many that are not. The attorney is not responsible for pure title defects that are not discoverable by searching the registry records. Forged documents, incapacity of grantor or mortgagor, undisclosed or missing heirs, missing signatures, unknown creditors, defective recording and other mistakes made by the registries are all covered by title insurance, but are not covered by the attorney's certification.

An owner's policy is the owner's best protection against possible title defects. The title insurance company will either correct the problem or pay the owner for losses up to the amount of the policy and will also defend against any lawsuit attacking the title. An owner's policy provides coverage up to the amount of the purchase price or appraised value. The policy also increases in value for five years after purchase at the rate of 10% per year. When issued simultaneously with the loan policy, the owner's policy is substantially discounted, and the owners only have to pay a one-time premium.

When it comes time to sell or refinance, Old Republic will stand behind the marketability of the title and make certain that the closing will occur if the title is challenged. The owner's policy remains in effect for as long as the owners or heirs own the property. Considering that homes are the largest investment that people make during their lifetimes, title insurance is a great value.



AVOIDING FRAUD AND FORGERY CLAIMS

The real estate recession of the early 1990's led to a sharp increase in the number of fraud and forgery claims made against title insurance companies. While there is no doubt that desperate times create desperate people, such times also led to very creative schemes. We must regrettably concede that there is no way to avoid a well-perpetrated fraud or forgery scenario. There are, however, certain steps that you can take in order to lessen your possible exposure to loss.

◆ Always require photographic identification for any signatories at a real estate closing. Requiring the presentation of a Massachusetts Driver's License at a closing is not an unduly harsh burden to impose on the parties. While it is possible that an individual does not have a driver's license, a bell should certainly go off in the event that the individual refuses to produce such identification claiming that he or she "lost it" or does not drive. Always make a copy of the identification presented for your files.

◆ Beware of documents executed out of your presence. The classic example is the situation where one co-grantor appears at the closing to tender a deed, which has already been signed by the other co-grantors. If the other co-grantors' signatures have been acknowledged, it is wise to contact the notary who took the acknowledgements in order to make certain that the signatures are valid.

◆ Beware of "naked" mortgage discharges (*i.e.*, discharges that appear in the public records and do not relate to a particular closing). It is highly unlikely that an individual would come up with adequate funds to pay off an existing mortgage without the benefit of either a sale or a refinance. Be particularly alert for instances where a mortgage discharge or partial release goes on record only a few days prior to your contemplated transaction. There is a strong likelihood that such a document is a forgery. Any time you have a suspicion concerning a mortgage discharge or partial release, you should contact the mortgagee directly. Most mortgagees will be able to easily confirm whether the mortgage is still outstanding.

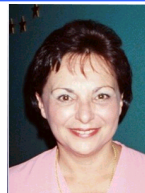
◆ Do not assume that mortgage payoffs have been made. If you are not the closing attorney, follow up on the file to make certain that all the funds were forwarded to their appropriate destinations. Devious attorneys who misappropriate mortgage payoff funds are capable of simply making monthly payments on those mortgages so that a seller and buyer are never even aware the seller's mortgage is still outstanding. Some attorneys have actually serviced mortgages in such a fashion for several years. Since the closing attorney is supposed to forward the mortgage payoff funds to the lender immediately after closing, you should create a "tickler system" that reminds you to contact the lender shortly after the closing to confirm that it has received the payoff funds from the closing attorney. If it has not, you should contact the closing attorney immediately and request documentation with respect to the payoff transmission.

◆ Beware of powers of attorney. While a power of attorney is a valid mechanism that allows an individual to act on behalf of another, it should always be viewed with suspicion. By its very nature, the document is both easy to forge and difficult to authenticate. In most instances, a power of attorney is necessary because someone is unavailable or incapable of executing documents. In our current world of fax machines and overnight mail delivery, it is becoming less likely than an individual is truly unreachable. Always attempt to verify the power of attorney (*e.g.*, you may wish to contact the attorney who drafted the instrument and/or who took the acknowledgment of the signatory).

◆ Beware of private mortgage discharges that are tendered to you by the seller. Always attempt to obtain a copy of the mortgage discharge in advance of the closing. Try to contact the mortgagee and obtain confirmation that the discharge is legitimate. Because private mortgagees are much harder to track down and tend to be less reputable than lending institutions, you must always use great caution when accepting such a document.



Employee Spotlight – Diane Genova



After many years in the teaching profession, Diane Genova made a career change by joining Old Republic Title in September of 1997. Beginning as a paralegal assistant, Diane quickly took over the role as "customer service

representative" dealing with agents and lenders. Her success in customer relations prompted her promotion to Policy Production Supervisor, where she oversees all aspects of title policies from agent supply orders to premium calculation, accounts receivable, data entry and upload, as well as policy scanning.

Diane also deals with lender referrals, policy endorsements and duplicate policies. Luckily, she enjoys a good puzzle and this helps her solve most title policy problems.

She has been married to her college sweetheart for 31 years this August (she was a "child bride"). She and her husband, Bob, have two lovely daughters, both of whom graduated from Syracuse University – the youngest just this past May.

As you read this article, Diane's entire family and a few friends (25 people total) will be returning from a trip to Disney World – the result of winning the Grand Prize in the Hallmark Birthday Magic Game. And you thought no one ever won those things!!

