

THE ARIZONA INVESTOR

- A LEGAL NEWSLETTER FOR ARIZONA'S REAL ESTATE INVESTORS -

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Are All Title Insurance Policies The Same?

By Marc Maher, Esq.



Like health insurance and auto insurance policies, title insurance policies offer varying degrees of coverage with differing exclusions, exceptions, and endorsements.

What is Title Insurance?

Title *insurance* is one of the most common forms of title *assurance* used in Arizona. A.R.S. § 20-1562 defines title insurance as, in part, “insuring, guaranteeing or indemnifying owners of real property... against loss or damage suffered by reason of liens, encumbrances upon, defects in, or the unmarketability of the title to such property...” Unlike auto insurance, title insurance insures against events that occurred in the past.

Why is Title Insurance Important to Investors?

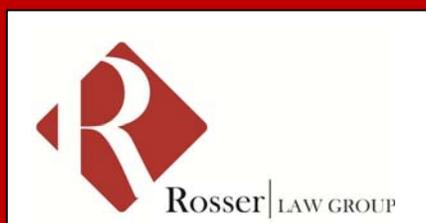
During your purchase, and as part of your due diligence, it is prudent to review the title commitment. Doing so will enable you to review important information effecting title to the property that you seek to purchase. An example may be recorded easements across the property, liens against the property, or unpaid real estate taxes. However, the title commitment may contain mistakes, or may omit other information that may effect the integrity of the title you will be receiving. An example is an as-of-yet unrecorded mechanic's lien that may be recorded *subsequent* to the close of escrow, yet whose lien priority may be deemed as relating back to the date on which the mechanic's goods or services were provided in the *pre*-close of escrow period.

How would you react if you learned that two weeks after closing the transaction the HVAC installer recorded a [senior-position] lien for \$17,000 against your new property because, prior to closing, and at the former owner's request, new a/c condenser units were installed on the property, but the bill was never paid by the former owner? Are you willing to cough up \$17,000 to get such a lien released?

Title insurance provides you with an additional level of confidence in the quality of the seller's title, and with another avenue for recourse in the event any problems arise with the quality of title that you received.

What Is Not Covered?

The majority of title insurers in Arizona offer the “ALTA 2006 Owner's Policy”; “ALTA” stands for American Land Title Association. This policy is offered with “standard coverage” or “extended coverage.” The standard and extended coverage policies each come with five *exclusions* from coverage which may be generally categorized as follows: (1) land use laws (including zoning and environmental regulations); (2) eminent domain (unless notice of such rights is publically recorded); (3) defects or claims



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known to the insured and not known by the insurance company; (4) bankruptcy claims relating to fraudulent conveyances and preferential transfers; and (5) real estate tax liens created between the date of the policy and the date of recording the deed.

The distinguishing features between the standard policy and extended policy is that the former has various *exceptions* to coverage that the latter may not have, including, but not limited to, the following: (1) taxes that are not shown as existing liens; (2) facts or interests not reflected in the public record but which are ascertainable by inspecting the property; (3) easements, liens, or encumbrances not shown in the public record; (4) encroachments that would be disclosed through a survey of the property, and (5) unpatented mining claims.

What Is Covered?

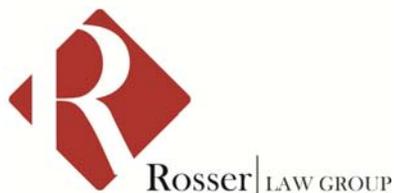
Most often, the [dollar] amount of insurance coverage is equivalent to the purchase price of the property. Covered items include the following: (1) title being vested in someone other than as stated in the commitment; (2) defects in or liens on title; (3) unmarketability of title; (4) no legal right of access to/from the property; (5) violations of certain land use laws and other publically-recorded government actions; and (6) any defect on title that arises subsequent to the date of the policy but prior to the date of recording the deed. In addition to the above, the title insurer will pay the costs and attorneys' fees incurred to defend you (as the insured) against legal claims which are covered by your policy.

In addition to the covered items specified above, there is a plethora of additional coverage that may be available. These additional items of coverage are known as *endorsements*. Endorsements may pertain to utility access, indirect access and entry, location and mapping, additional easements, and encroachments, amongst many others.

When acquiring investment grade real estate it is not only important that you closely examine your title commitment during your due diligence period, but that you also purchase a title insurance policy that provides you with a suitable level of coverage for the particular asset that you seek to acquire. As transactional real estate attorneys, we can help you to understand the type of title insurance policy that would be adequate to protect your interests. Please do not hesitate to contact us if you would like to schedule a consultation to discuss how we may be of service.

This article is of a general nature and reflects current statutory and case law as of the date of first publication. Further, this article reflects only the opinion of the author, and is not intended as definitive legal advice; you should not act upon it without seeking independent legal counsel.

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