

Frequently Asked Questions

Title Questions

What is a Title?

A title is the basis of property ownership. It is the owner's right to possess and use the entirety or a portion of a property.

Why is Transferring the Title to Property Different than Transferring the Title to a Car?

Unlike a vehicle or any other form of property, land is permanent and will have many owners. There are a variety of different rights associated with the property (such as mineral, air, or utility rights) that may have been acquired by others before you come into possession of it. This is true even if you are purchasing undeveloped land. It is therefore necessary to thoroughly inspect the history of a title through a title search.

What is a Title Search?

When you purchase a piece of property, you are not purchasing it in the same way that you purchase many other things in life. Unlike a car, you cannot take this land with you when you move. What you are purchasing are certain rights as they relate to the property; another party's rights to the same parcel of land may infringe upon these rights.

A title search is a detailed examination of all public records relating to a specific piece of property. The goal of a title search is to make certain that you are receiving all of the rights you are paying for. The title examiner, who is licensed by the State of Utah, will review deeds, court records, property and name indexes along with many other documents.

What Does a Title Search Uncover?

A title search may show a variety of title defects and liens in addition to other encumbrances and restrictions. Unpaid taxes, unsatisfied mortgages, judgments and liens against the seller and restrictions against the usage of the land are just some of the specific items that may be revealed during a title search.

What is Title Insurance?

Title insurance is a policy of protection, issued by the title insurance company, insuring the owner against losses due to any defect in the title. The policy pays for defending against any lawsuit attacking the title as it has been insured. Title insurance will either clear up any title problems or pay the insured's losses, up to the value of the policy.

Unlike traditional insurance, which protects against future problems and is paid regularly, title insurance protects the policy holder against any past problems and the premium is only paid once.

After payment of the one-time premium, title insurance protects against any problems that arise at any time during which the insured, or the insured's heirs, retain an interest in the property or have any obligations under a warranty in conveyance of that property.

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There are a variety of problems with the title to your land that may not be uncovered, even by the most diligent and thorough title examiner:

- Documents executed by a forged or expired power-of-attorney;
- Undisclosed heirs;
- Improperly recorded legal documents;
- Property tax record errors;
- Execution of documents with mistaken marital status;
- Issues relating to community property;
- Documents being improperly modified;
- Wills and deeds by person without sufficient legal capacity;
- Deeds executed by minors;
- Mortgages, deeds, wills, releases of mortgage or other legal instruments that have been forged;
- Legal instruments executed under duress;
- Mechanics and/or other construction liens; and/or
- Issues of rightful land possession.

This is a minor and wholly incomplete list of possible issues that may arise after conveyance of a property that may not be uncovered during a title search.

Do I Really Need Title Insurance?

Title insurance is as necessary as health or automobile insurance, as it protects the insured from events that are likely to be very expensive. In many ways, title insurance is more important than automobile insurance as your home is the greatest single investment you are likely to make in your lifetime.

Once you understand the full scope of the protection afforded by title insurance, you will agree that the one-time premium payment is minimal in comparison with the associated risk of not having it.

What Can Happen if I Don't Have Title Insurance?

Simply put, you can lose your home (or the value thereof). Consider the following example:

You have purchased your dream home and have lived in it for 3 years. Suddenly, you are served with a lawsuit regarding your right to the title of the land that your home is built on. It seems that, 50 years ago, Mr. Smith bought and sold this property without informing his wife; in fact, he lied and stated that he was single. Due to community property laws, despite what Mr. Smith said during the process, Mrs. Smith was still a joint owner on the title to that land. Mrs. Smith's daughter has discovered this fact and realized that Mrs. Smith was entitled to a portion of the



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proceeds from that land and she has never received them. In fact, because Mrs. Smith never conveyed her ownership in the property, she still owns it and has passed it to her daughter...

After this, your ownership of the title to this land is now in question and will not be resolved without involving lawyers and incredible costs. At best, you may be forced to pay Mrs. Smith's daughter for her interest in your property...at worst, you can lose your home.

If, however, you had title insurance then the issuing company would take care of all the costs, up to the policy value, associated with clearing up this problem and it would cost you nothing.

What Types of Title Insurance Exist?

There are two main forms of title insurance: the owner's policy and the lender's policy. Each protects the insured's interest in the title of the property. The owner's policy has been discussed above. The lender's policy protects their investment in the title and ensures that they are in the proper position on the title and protects them against unforeseen title issues. Because the lender's investment in your property decreases as you repay your mortgage loan, the amount of their coverage also decreases. If the lender is forced to foreclose on your property, their mortgage policy then becomes an owner's policy.

The lender's policy does not protect you. Only the purchase of your owner's policy will afford you protection of your rights.

There are different forms of owner's insurance, with varying levels of protection. Just as in other forms of insurance, the higher the level of coverage, the higher the cost of the premium and better the protection of the insured.

How Much Does Title Insurance Cost?

The cost of the one-time premium for your title insurance policy is directly related to the value of the property; compared to the total cost of your property and the potential cost of a lawsuit, the premium is actually quite small.

How Does Title Insurance Protect Me in the Event of a Claim

If a claim is made against your property, your title insurance will (according to the terms of your policy) pay for your legal defense, court costs and related fees. If the claim proves to be valid, you will then be reimbursed for your actual loss up to the amount of the policy.

Do I Have to Lose My Home or Go to Court Before Making a Title Insurance Claim?

Absolutely not! At the first sign of a claim, you should contact your title insurer or an agent of the company that issued your policy. Title insurance includes coverage for legal expenses that may arise while investigating, litigating or settling a claim.

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What is a Chain of Title?

This is simply the history of the ownership of a particular piece of property, showing who bought it and/or sold it and the dates of each transaction. The information may be obtained from public records, generally the County Clerk or Recorder's Office, or obtained from title plants that are privately owned and maintained by title companies. Though the types of plants vary, they all contain essentially the same information from which a chain of title can be procured.

What is a Judgment and Name Search?

This is one of the most important parts of a title search, used to determine if any unsatisfied judgments exist against either the seller or previous owners. A judgment is a general type of lien against the real estate of a debtor; it serves as security for any money owed. The real estate can then be sold to satisfy the judgment.

A name search is important because, for instance, a judgment against a person named Smith may affect the title of a seller named Smith, depending on whether or not they are the same person. A judgment may be mistakenly entered against someone with the same or similar name (i.e., Schmidt, Smythe, Schmeit, Schmeit, Schmidtt, etc.) It is for this reason that a thorough name search is completed. If a judgment is discovered it is considered a title defect and is pointed out so that the seller can correct this problem prior to completing the transaction so that you, the buyer, are free of the judgment on the property.

What is a Commitment

After completing a title search, the title company then issues a commitment to insure, stating the conditions under which it is agreeing to insure the title. After clearing up any defects in the title, the parties can then proceed to closing and complete the transaction.

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Escrow Questions

What is an Escrow?

An escrow is just an arrangement in which an uninterested third party, referred to as an escrow holder, holds legal documents and funds on behalf of the buyer and seller. These are then distributed according to the instructions of the buyer and seller.

Consider a simple example: You have a guitar for sale and you have an interested buyer. You agree to sell the guitar for \$1,000.00 and the buyer agrees to pay you \$1,000.00. Now, he can send you the cash and simply hope that you, in return, send him the guitar. Or you can send him the guitar and simply hope that he sends you the cash. The best solution is for you to provide your guitar to a third-party who has no stake in the transaction. The buyer will then provide the cash to the same third-party. The third party, upon verifying that the guitar is as promised and that the payment is as agreed upon, then disburses these items appropriately: the seller receives the money, the buyer receives the guitar.

People generally open an escrow during a real estate transaction for a variety of reasons. Because the escrow holder has no actual interest in the terms or outcome of the transaction, they take the instruction of the buyer and seller and follow them to the letter. The seller, for instance, can instruct the escrow holder not to release the deed to the land until all of their provisions have been met. Conversely, the buyer can instruct the escrow holder not to release their funds until all of their instructions have been met.

These instructions must be mutually consistent: if the seller instructs that the deed not be released until a certain condition is met, the buyer cannot also instruct the escrow holder to release the deed without meeting those same conditions. It is the duty of the escrow holder to ensure that there are no conflicts between the buyer and seller or to alert each party if a conflict arises.

Why Should I Use a Licensed Escrow Officer?

Ensuring that your transaction proceeds smoothly (and legally) is a highly technical job and requires a large amount of knowledge and experience, both of which a licensed escrow officer will possess. They are also regulated by the state and required to attend continuing education classes.

In the above example of the guitar sale, there is only one possible snag in the transaction: what if the third party were to keep either the guitar or the money; worse, what if they kept both? In a real estate transaction, it is not truly possible for the escrow holder to keep the property...the money, however, is a different story. By utilizing a licensed escrow officer, working for a reputable title and/or escrow company which is regulated by the state, you minimize that risk.

What Does "Disinterested Third-Party" Mean?

The escrow officer remains completely impartial throughout the entire escrow process, following only the written instructions that they have been provided.

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They cannot dispense advice in any matter, they simply follow instructions and explain their process. For this reason, escrow officers frequently adopt a formal and professional demeanor in their closings, so as not to appear to be favoring one of the parties involved in the transaction.

What are Escrow Instructions?

Escrow instructions are written documents, signed by each party involved in creating them, which provide direction to the escrow officer and provide specific steps to be completed prior to the closing of escrow. Usually, the instructions include the following items:

- The method by which the escrow officer is to take receipt of and hold the funds provided by the buyer;
- The conditions relating to a lapse of time or breach of purchase condition that will terminate the escrow without a closing; and
- Instruction to the escrow officer regarding the payment of prior liens and charges against the property and distribution of the new sale proceeds.

The escrow officer can *only* follow the instructions that they are provided, they may not exceed or modify those directions independently, so it is imperative that the instructions be clear and accurate.

What Does Each Party Do in the Escrow Process?

The Seller

- Gives to the escrow holder the deed executed to the buyer;
- Gives evidence of any and all required repairs and inspections to escrow officer; and
- Gives any other required documents to the escrow officer (such as tax receipts, addresses of mortgage holders, insurance policies, equipment warranties, home warranty contracts, etc.); and
- Fulfills any other conditions required by the escrow instructions.

The Buyer

- Deposits the funds required, in addition to any borrowed funds, to pay the purchase price with the escrow officer;
- Deposits the funds required, in addition to any borrowed funds, to pay the purchase price with the escrow officer; Deposits funds necessary for home and title insurance;
- Makes arrangements to deliver borrowed funds to the escrow officer;
- Deposits any deeds of trust or mortgages necessary to secure loans;
- Approves any inspection reports, title insurance commitments, etc., required by the purchase and sales agreements; and
- Fulfills any other conditions required by the escrow instructions.

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The Lender (where applicable)

- Deposits proceeds of the loan to the purchaser;
- Gives instructions to the escrow officer on the conditions under which the loan funds may be used;

The Escrow Officer

- Opens the order for title insurance;
- Obtains necessary approvals from the buyer regarding the title insurance report, inspections, etc.
- Receives the funds from the buyer and/or other lender;
- Prorates insurance, taxes, rents, etc.
- Disburses funds for title insurance, recording fees, commissions, lien clearance, etc.
- Prepares the final statements for each party that indicate the amounts being disbursed for services and any other amounts necessary to close and complete escrow.
- Records the deed and loan documents, delivers the deed to the buyer, loan documents to the lender, funds to the seller; these actions close the escrow.

What Does Closing the Escrow Mean?

When all the terms, conditions and instructions have been fulfilled the escrow is closed and the transfer of property and money has been accomplished.

Are All Escrows This Simple?

No, these examples and explanations are provided so that you can develop an understanding for what is going on during the escrow process. Truthfully, most escrows are much more complex, which is why it is important to use a licensed escrow officer and a reputable title/escrow company.