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**TITLE INSURANCE --
WHAT DOES IT REALLY PROVIDE?**

Every real estate loan needs title insurance. But, what does it really cover and how do you collect? Failure to understand how title insurance works may result in obtaining a defective policy. Even a good policy can take months or years to collect on.

What Is Not Covered

There are numerous ways that a policy may NOT cover a title claim. These include:

1. Any encumbrances disclosed in Schedule B-II are not covered by the policy. The title company discloses the existence of these encumbrances and it is up to the lender to evaluate the potential effect on title. Schedule B-II items include the standard exceptions (mechanics liens, survey exception, parties in possession) and recorded liens, easements and other encumbrances. **THE STANDARD EXCEPTIONS SHOULD ALWAYS BE EXCLUDED BEFORE CLOSING.**
2. Failure to comply with the conditions for issuance of the policy contained in Schedule B-1. **AT CLOSING ALWAYS HAVE THE TITLE COMPANY CONFIRM THAT THE CONDITIONS HAVE BEEN SATISFIED.**
3. Any new encumbrances that occur after the effective date of the commitment and before closing. **ALWAYS HAVE THE COMMITMENT UPDATED TO THE DATE THE DEED OF TRUST IS RECORDED TO ELIMINATE THE GAP PERIOD.**
4. Reduction of coverage in revolving lines of credit. Under the standard policy, coverage reduces with each payment on the loan, even if the borrower obtains new advances under a line of credit or a new loan pursuant to a future advance clause. **ALWAYS HAVE THE TITLE COMPANY ADD A FUTURE ADVANCE ENDORSEMENT TO THE POLICY SO THE POLICY COVERS ALL ADVANCES.**

When Does the Title Policy Pay Off

A title policy is an indemnity policy. That means that the title company does not have to make payments under a policy until the lender has actually incurred a loss due to something that is covered by the policy. Determining whether the lender has been harmed can take a long time. This has been clearly demonstrated in the recent mortgage fraud cases in the St. Louis area. If the lender claims that there is an encumbrance on the mortgaged property that was not disclosed in the title commitment, the title company has the right to file a suit to try to eliminate the

encumbrance. Such a suit can take months or years to complete and, in the meantime, the property cannot safely be sold by the borrower or foreclosed by the bank. Only if the title company cannot prove that the encumbrance is invalid does the title company owe anything to the lender.

How Much is Paid on a Title Policy Claim

If there is a valid claim by the lender under the title policy, the title company is required to pay the LESSER of the following amounts.

1. The face amount of the policy.
2. The unpaid balance of the loan.
3. An amount equal to the difference between the value of the property without the insured defect and the value with the insured defect.

The title company will always attempt to pay the third amount, arguing that the decrease in value of the property resulting from the insured defect is less than the face amount of the policy and the balance of the loan. What does the third option mean? It means that if the title company and the lender cannot agree on how much the insured encumbrance has decreased the value of the property, the lender will have to litigate with the title company to determine how much the lender must be paid. This means another delay of months or years before the claim is finally paid.

A title insurance policy is a backup for unforeseen title defects. It is not a first line of defense. If a lender is aware of potential title problems before the loan is closed, the defect should be resolved before closing instead of assuming that the lender will be compensated from the title policy.

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