

5 Home-Buying Nightmares

Your Title Insurance Could Prevent

Imagine that you have found your dream home. Your offer is accepted, you close the deal, you move in. Then, just as you've started to make the house your own, the mail carrier delivers news that turns your world upside down: There was a lien against a previous owner, and now it's been passed on to you.

That's exactly what happened to **Susan Buyer** and her husband.

"We had barely gotten everything settled in the house when two weeks later we received a letter from an attorney about a pre-existing lien on the house against the prior owner that now carried over to us as the new owners," says the California resident. The lien had been missed during the title search process because, Buyer says, "the county clerk had filed it in a way that made it hard to find."

At first, Buyer says, they weren't too concerned.

"We remembered paying for title insurance, but our REALTOR® explained that the policy that we purchased only covered the lending institution for any title problems, not us as the homeowners."

The Buyer's were left holding the bag for \$2,000 to pay off the lien and attorney costs.

"If we would have bought [owner's] title insurance to protect us, we wouldn't have had to come up with that money as newlyweds and new homeowners," Buyer says.

As Susan and her husband learned the hard way, there are two types of title insurance policies. Title insurance, in general, offers protection against any problems with the title, or legal ownership status, of the home. Any lien against a home or competing claim of ownership could jeopardize your financial stake in it, as well as your mortgage lender's. So the **lender's policy** covers the lender's stake, while the **owner's policy** covers your own. Here in California, the California Association of Realtors (CAR) Purchase Contract (13E) states the buyer shall receive a CLTC/ALTA "Homeowners Policy of Title Insurance," if applicable to the type of property and buyer. If not, Escrow shall notify Buyer.



A title company will do a **title search** as part of the process to determine what, if any, legal claims and rights are attached to the house – and, ideally, prevent these kinds of problems. But no matter how thorough, a title search can't rule out a relative or heir of a seller popping up with paperwork that appears to give them claim to a property. And sometimes, as in the Buyer's case, there are paperwork snafus. Hence the insurance. The CAR contract also requires a Statement of Information.

This also shows the importance of getting the Statement of Information into the title company ASAP. The (CAR) Purchase Contract (13A) states that the seller shall within 7 days after acceptance, give Escrow a completed Statement of Information.

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Below are some common situations where you would need title insurance:

1. Second Sellers

Sometimes a distant relative—or an ex-spouse—may surface with a claim that they actually own the property, in whole or in part, and that the seller had no right to sell it to you.

If that happens, a judge could confirm the party's claim, which means you could be faced with buying them out or having to negotiate. Also, the buyer could be out of their down payment and any principle paid toward the house.

If a judge rules in favor of someone staking claim to a house, the lender's title insurance policy will only pay for court costs incurred by the bank, and it will reimburse the bank for what you owe on the mortgage if the sale is deemed null and void. An owner's title insurance policy may cover your financial losses, such as attorney's fees and court costs, even if you have to move out of the house.

2. Nudging Neighbors

The adage that good fences make good neighbors holds true...until it doesn't. If your neighbor builds any structure that encroaches after closing (policy date), other than boundary walls or fences, your title company may pay to rectify the issue.

3. Hidden Mortgages

Just as with liens, it's possible a title search might not uncover a mortgage until after closing because it was posted incorrectly with the county recorder.

Because the buyer received a clear title at closing, if an owner title insurance policy is in place, the buyer should file a claim and the policy may pay off that lingering mortgage.

4. Unpaid Taxes

Even though a tax search might come up with no delinquent taxes on a property, that doesn't mean a buyer couldn't subsequently receive notification of delinquent back taxes after closing. And that bill could be heavy—unless the buyer has owner's title insurance.

An owner's title insurance policy may pay for this because the buyer was given paperwork that indicated taxes were paid.

5. The Point of Purchase

A title insurance policy goes into effect the day of closing, and has a one-time premium cost.

Every state regulates the price of title insurance, which is always tied to the purchase price and/or mortgage amount.

Even if the chances are low that past owners or old tax bills might surface, it's worth it to at least have a conversation with your realtor, escrow and/or title company about title insurance. If you're on the fence about spending the money, ask yourself how you would handle the financial and possible relocation expenses if you were to suddenly awaken to a title-related nightmare.

Please call your Equity Title Sales Representative for more information regarding the common situations discussed above and other possible title issues that may arise.