

## NE COMMENT 10.3.19

### Chapter 29

#### Title Insurance Agents

Title insurance is insurance indemnifying against financial loss from defects in title of real property arising from conditions of title that exist on the date of issuance of the policy. While most insurance coverage indemnifies insureds against loss caused by future events, title insurance is unique as it focuses on the elimination of risk before the policy is issued. Title insurance policies are typically purchased when real property is conveyed or financed. Insureds pay one premium for coverage that has no expiration. In many states, title insurance has essentially replaced abstracts of title, and it is often required as a condition for obtaining a loan secured by a lien on real property.

Title insurance policies commonly guarantee or indemnify the fee title of owners or the lien priority of a lender from losses or damages from liens, encumbrances, defects or unmarketability of title, or adverse claims to title in the real property, and defects in the authorization, execution or delivery of an encumbrance on the real estate. Coverage is subject to standard exceptions, as well as specific exclusions listed on a schedule attached to the policy limiting the extent of the insurer's liability. Coverage is often expanded or amended through endorsements attached to the policy.

Two types of title insurance policies are commonly issued: the owner's policy and the loan policy. The owner's policy ensures that the title to the real property is vested as described in the policy, that the title is marketable, that there is a right of access to the property, and against defects in or lien or encumbrances on the title. Title insurance does not require a written application. Policies often are ordered by real estate agents or lenders. The title insurance agent issues a commitment or binder basically revealing the current state of title to the property and agreeing to insure the property, provided that the requirements in the commitment are met to the satisfaction of the title insurer.

The effective date of the policy is typically the date that transactional documents (deed, deed of trust, etc.) are recorded in the public real estate records. Losses under the policy are subject to the limits listed on [Schedule A of the Policy](#), plus any costs of defense. The policy limit of an owner's policy is generally the purchase price of the real property, and the policy limit of a lender's policy is generally the original amount of the loan. Losses from title defects are rare, and loss ratios for insurers are relatively low. The goal of a title insurer is to find defects in title prior to issuing a policy; consequently, expense ratios are fairly high due to the cost of title research.

Most states place monoline restrictions on title insurers. Monoline restrictions prohibit title insurers from issuing any line of insurance other than title insurance. Rates and rate setting processes vary by state. Some states regulate only the risk premium, while other states regulate an all-inclusive premium, which generally includes all costs of issuing the policy, search expenses and the risk premium.

Functions of title insurance agents include conducting title searches, performing underwriting functions, preparing and issuing title insurance commitments and policies, maintaining policy records, and receiving premiums. In addition, many title agents perform real estate closings, and provide settlement and escrow services.

Many activities of state licensing divisions with regard to title insurance are the same as in other lines of insurance. In most states, agents are required to pass a licensing exam and fulfill ongoing (CE) requirements. In some states, the licensing division also will be responsible for receiving and filing agency appointments with insurers, bonds or letters of credit (LOCs), proof of errors and omissions (E&O) coverage, and forms disclosing controlled and affiliated business relationships. The NAIC has adopted the *Title Insurance Agent Model Act (#230)* to give guidance to state licensing directors.

Title insurance creates some unique regulatory issues, primarily due to the risk elimination nature of the insurance coverage, and the business relationships between title insurance agents and those who refer title insurance business. The entity referring the title insurance business often is viewed as the customer rather than the insured due to the nature of real estate transactions. Entities that regularly refer title insurance business—such as mortgage brokers, lenders, realtors and attorneys—are referred to as producers of title insurance business. Note that "producer of title insurance" as used in this context carries a very different meaning from "insurance producer."

Controlled and affiliated business relationships refer to business relationships between title insurance agents and producers of title insurance business. Many states require that controlled and affiliated business relationships be disclosed both to the insured and to the insurance department in writing. Many states also prohibit title insurance agents from providing rebates, referral fees, inducements or financial incentives to producers of title insurance business. In addition to state laws, rebates and referrals related to most residential real estate transactions are prohibited under the federal Real Estate Settlement Procedures Act (RESPA).

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**Commented [LGK1]:** Why didn't this article discuss the loan policy coverages like it did for the owner's policy?

**Commented [LGK2]:** A few other important things to note are that the buyer or borrower typically pays for the loan policy, but the buyer/borrower is not covered under the loan policy—only the lender is covered.

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**Commented [LGK3]:** This is not a true statement. The day the policy is issued, the face amount of the policy will be that of the original amount of the loan. However, as the loan is paid down, the policy limits are reduced accordingly. Example: In 2009, I execute a deed of trust in favor of US Bank for \$140,000. The Loan policy is issued as of the loan date for \$140,000. In 2019, US Bank makes a claim on the policy for a prior lien. I have paid my loan down so the balance due on the loan is now \$110,000. The loan policy limit is now \$110,000.

**Commented [LGK4]:** Some states also set the rates

**Commented [LGK5]:** Some states also separately license escrow agents

**Commented [LGK6]:** There should also mention the TRID (TILA-RESPA Integrated Disclosure) Rule.