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TITLE INSURANCE IN A NUTSHELL

What is title insurance? Title insurance insures the owner of real property against loss by reason of encumbrances, defects in title, or adverse claims against title, subject to the exceptions, exclusions, and conditions contained in the policy. Unlike most other types of insurance, which cover *future* events, title insurance covers unknown *past* events. It is important to understand that title insurance does not *prevent* an adverse claim from being made against the title, but rather indemnifies the owner against loss caused by a covered claim. The American Land Title Association ["ALTA"] has issued three types of owners policies available in Washington: homeowners, standard and extended coverage.

Homeowners Title Insurance Policy. Most standard residential purchase and sale agreements require the seller to furnish a Homeowners Policy of title insurance to the buyer. The ALTA Homeowners Policy is a "plain language" policy that provides coverages and additional benefits not included in the standard owners policy and affords substantial additional protection for homebuyers. The policy applies only to natural persons and improved one-to-four family residences, including residential condominiums. A Homeowners Policy typically costs 10% more than a standard owners policy. The Homeowners Policy does not replace the ALTA Residential Title Insurance Policy (6-1-87) or the ALTA Owner's Policy (10-17-92) (discussed below), both of which will still be available.

The Homeowners Policy covers the following risks:

1. Someone else owns an interest in Your Title.
2. Someone else has rights affecting Your Title arising out of leases, contracts, or options.
3. Someone else claims to have rights affecting Your Title arising out of forgery or impersonation.
4. Someone else has an easement on the Land.
5. Someone else has a right to limit Your use of the Land.
6. Your Title is defective.
7. Any of Covered Risks 1 through 6 occurring after the Policy Date.
8. Someone else has a lien on Your Title, including a:
    a. Mortgage;
    b. judgment, state or federal tax lien, or special assessment;
    c. charge by a homeowner's or condominium association; or
    d. lien, occurring before or after the Policy Date, for labor and material furnished before the Policy Date.
9. Someone else has an encumbrance on Your Title.
10. Someone else claims to have rights affecting Your Title arising out of fraud, duress, incompetency or incapacity.
11. You do not have both actual vehicular and pedestrian access to and from the Land, based upon a legal right.

12. You are forced to correct or remove an existing violation of any covenant, condition or restriction affecting the Land, even if the covenant, condition or restriction is excepted in Schedule B.
13. Your Title is lost or taken because of a violation of any covenant, condition or restriction, which occurred before You acquired Your Title, even if the covenant, condition or restriction is excepted in Schedule B.
14. Because of an existing violation of a subdivision law or regulation affecting the Land:
    a. You are unable to obtain a building permit;
    b. You are forced to correct or remove the violation; or
    c. someone else has a legal right to, and does, refuse to perform a contract to purchase the Land, lease it or make a Mortgage loan on it.

    The amount of Your insurance for this Covered Risk is subject to Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.
15. You are forced to remove or remedy Your existing structures, or any part of them - other than boundary walls or fences – because any portion was built without obtaining a building permit from the proper government office. The amount of Your insurance for this Covered Risk is subject to Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.
16. You are forced to remove or remedy Your existing structures, or any part of them, because they violate an existing zoning law or zoning regulation. If You are required to remedy any portion of Your existing structures, the amount of Your insurance for this Covered Risk is subject to Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.
17. You cannot use the Land because use as a single-family residence violates an existing zoning law or zoning regulation.
18. You are forced to remove Your existing structures because they encroach onto Your neighbor's Land. If the encroaching structures are boundary walls or fences, the amount of Your insurance for this Covered Risk is subject to Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.
19. Someone else has a legal right to, and does, refuse to perform a contract to purchase the Land, lease it or make a Mortgage loan on it because Your neighbor's existing structures encroach onto the Land.
20. You are forced to remove Your existing structures because they encroach onto an easement or over a building set-back line, even if the easement or building set-back line is excepted in Schedule B.
21. Your existing structures are damaged because of the exercise of a right to maintain or use any easement affecting the Land, even if the easement is excepted in Schedule B.
22. Your existing improvements (or a replacement or modification made to them after the Policy Date), including lawns, shrubbery or trees, are damaged because of the future exercise of a right to use the surface of the Land for the extraction or development of minerals, water or any other substance, even if those rights are excepted or reserved from the description of the Land or excepted in Schedule B.
23. Someone else tries to enforce a discriminatory covenant, condition or restriction that they claim affects Your Title which is based upon race, color, religion, sex, handicap, familial status, or national origin.

24. A taxing authority assesses supplemental real estate taxes not previously assessed against the Land for any period before the Policy Date because of construction or a change of ownership or use that occurred before the Policy Date.
25. Your neighbor builds any structures after the Policy Date – other than boundary walls or fences -- which encroach onto the Land.
26. Your Title is unmarketable, which allows someone else to refuse to perform a contract to purchase the Land, lease it or make a Mortgage loan on it.
27. A document upon which Your Title is based is invalid because it was not properly signed, sealed, acknowledged, delivered or recorded.
28. The residence with the address shown in Schedule A is not located on the Land at the Policy Date.
29. The map, if any, attached to this Policy does not show the correct location of the Land according to the Public Records.

Several of these coverages are subject to new Deductibles and Limits of Liability, expressed as the lesser of a percent of the policy amount or dollar amount. The coverage is also subject to exceptions, exclusions, and conditions.

"Standard coverage." Most standard purchase and sale agreements provide that if the Homeowners Policy is not applicable or available, the seller will furnish a standard form owners policy of title insurance to the buyer. A standard owners policy of title insurance indemnifies the insured (purchaser) against loss or damage resulting from:

1. title being vested other than as shown in the policy;
2. any defect in, or lien or encumbrance on title;
3. lack of legal right of access to and from the land; and
4. unmarketability of title.

A standard form owners policy does *not* cover:

1. taxes or assessments not disclosed of record;
2. rights of parties in possession not disclosed of record;
3. easements or encumbrances not disclosed of record;
4. encroachments and survey questions not disclosed of record;
5. reservations or exceptions in patents;
6. water rights; or
7. construction liens not disclosed of record.

In other words, standard coverage basically is limited to matters of record, which are not shown as exceptions to the policy or excluded from coverage. For example, a standard form owners policy *does* cover: forged documents in the chain of title, matters of record affecting the title of the insured not disclosed in the policy, breaks in the chain of title, legal capacity of parties in the chain of title, lack of legal access to the property, unmarketability of the title as insured, recording errors, incorrect legal descriptions, and certain other risks.

"**Extended coverage."** An extended form owners policy provides the same coverage as a standard form owners policy, *plus***:**

1. unrecorded construction liens;
2. boundary and survey questions;
3. easements not disclosed of record; and
4. claims of parties in possession not disclosed of record.

Because an extended form policy covers certain off-record matters, the title insurance company ordinarily inspects the property and sometimes requires a survey before issuing the policy.

Homeowner's Endorsements. Most title insurance companies automatically issue at no additional charge the homeowner's additional protection and inflation protection endorsements to standard form owners policies on owner-occupied, one-to-four family dwellings and condominiums.

Homeowner's Additional Protection Endorsement. This endorsement provides certain coverage against:

1. lack of legal access;
2. unrecorded taxes or assessments constituting liens;*
3. unrecorded construction liens;
4. enforced removal of the structure or interference with the use thereof due to:
    a. encroachment of the structure onto adjacent land;
    b. violation of recorded covenants, conditions, or restrictions, or
    c. violations of zoning ordinances (but not building codes); and
    d. exercise of mineral rights or reservations of record.

(* not all title companies cover this risk.)

Although not as comprehensive as extended coverage, the homeowner's additional protection endorsement provides valuable additional coverage at no additional cost.

Homeowner's Inflation Protection Endorsement. This endorsement provides increased coverage, not to exceed 150% or 175% of the original face amount of the policy, for inflation (adjusted annually according to the Commerce Composite Construction Cost Index).