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[Nuts and Bolts of Title Insurance](#)

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Title insurance is deemed a prerequisite in myriad of real estate transactions including but not limited to purchasing a real property. Buyers must usually acquire title insurance as lenders require acquisition of such insurance before approving a loan. In addition, for long-term commercial leases, tenants should often demand title insurance from owners. In this article, we explore, to some extent, some of the preliminary questions confronting an average title insurance consumer including: What does title insurance do? What are some limitations to title insurance? How to select a title insurance company? What are some important items to look out for in a title insurance product mainly the Preliminary Report? And, what are some salient points in selection of title insurance companies?

SOME BACKGROUND ON TITLE INSURANCE

It is extremely important and useful to ascertain the nature of title insurance. Title insurance is not casualty insurance. For casualty insurance consumer pays the insurer for some casualty the policy is designed to cover. The casualty premiums are collected and accumulated for such eventuality. On the other hand, the amount paid to a title insurance company is mostly used by the title insurance company to underwrite the insurance, to find and if possible redress any risks. Accordingly, if title insurance company fails or refuses to insure a property, this might forebode some serious risks with the property which parties must earnestly and urgently address.

WHAT DOES TITLE INSURANCE DO?

The most intelligent question to pose in insurance context, including, title insurance is what DOES NOT title insurance do? As indicated previously, title insurance is not casualty insurance and hence it does not protect real property against fire, earthquake or theft. As the name



signifies, title insurance protects title to the property. This protection encompasses only problems affecting title or improvements on the property. In addition, title insurance does not cover future title problems. Hence, title insurance ONLY covers past events affecting title or improvements to the real property. Certainly, the title insurance policy may not even cover some past events affecting title or improvements as the policy contains some exceptions.

WHAT ARE SOME LIMITATIONS TO TITLE INSURANCE?

There are some misconceptions as to the coverage of title insurance policies. Some of the restrictions include but are not limited to:

1. Public Records Not Equal To Chain of Title: Public records provide constructive notice. Only because a document in the chain of title has been recorded does not mean such document provides constructive notice. A document recorded in the office of county recorder's office to provide constructive notice must, among other things:

- Contain the names of all parties affected
- Contain "sufficient" description of the real property
- Contain "proper" execution (signature) and acknowledgment by affected parties

2. Preliminary Report Not Equal to Current Status of Title: Preliminary report does not reflect the current status of the title. On the other hand, preliminary report represents an offer by title insurance company to issue insurance. In other words, the preliminary report is an indication of whether the real property is insurable by the title insurance company and if it is insurable, what the exclusions and exceptions are for such issuance of title insurance. Hence, buyers and their representatives could use the preliminary report as a roadmap for their decision making process and whether they could secure a better deal.

3. Title Insurance Not Equal to Full Disclosure of Defects or Encumbrances: No matter what type of title insurance policy is obtained, title insurance policy might not disclose all of defects or encumbrances in a property. There are several reasons for such reality, among which are:

- The title insurance industry has standardized its forms through California Land Title Association (CLTA) or American Land Title Association (ALTA)
- Such standardization by CLTA and ALTA may not encompass some off-record information or indemnity agreement. For instance, if the seller provides indemnity for a recorded lis pendens to the title insurance company, the title insurance company may not disclose the existence of the lis pendens as an exception or an abstract of judgment. Nonetheless, a more prudent title insurance company should disclose it and insure it by using an endorsement.
- The title policy may be standard coverage or extended coverage.
- There might be mere error or failure to add certain facts



WHAT ARE SOME IMPORTANT POINTS TO LOOK FOR IN A PRELIMINARY REPORT?

It is incumbent upon buyer and the buyer's representatives to carefully peruse the preliminary report for any exclusions and exceptions. The buyer and the buyer's representatives should adamantly seek such exceptions and exclusions removed or demand addition of satisfactory adequate endorsements to address such problems.

Accordingly, the following contains SOME of the salient considerations:

1. **"Minor" Exception or "Major" Exception -Need to Narrow Down the Scope of Exception:** The preliminary title report may contain "minor" exceptions. Such exceptions may not reduce the value of the property and interfere with the current or intended use of the property. Nonetheless, to the extent possible, the buyer could obtain an endorsement to address such "minor" exceptions. Issues of potential concern include but are not limited to restrictions limiting the use of property, affirmative payment and indemnification obligations binding subsequent owners, long-term leases and third-party occupancies. As importantly, most of the exceptions contained in the preliminary report are very broad in scope. The buyer's representatives should inquire into such exceptions and narrow, to the extent possible, such scope.
2. **"Minor" Exception or "Major" Exception - Need to Conduct Careful Review of Coverage:** Regardless of the type of exception or exclusion contained in the preliminary report, the buyer's representatives need to carefully peruse the preliminary report to intelligently and prudently advise the buyer. The buyer's representative, mostly attorneys, should parse the preliminary report and make the title company, to the extent possible and feasible, to clarify definitions and request necessary and adequate endorsements.
3. **EASEMENTS:** To discover easements and avoid any problems as to future problems arising out of who owns what or who is responsible for what, buyer's representative should negotiate and execute an easement maintenance agreement in which the rights and obligations of the parties are articulated including but not limited to obligation for conducting maintenance and providing a mechanism for dispute resolution.

WHAT ARE SOME SALIENT POINTS IN SELECTION OF TITLE INSURANCE COMPANIES?

SOME BACKGROUND: There are two types of title companies in California: title insurance companies and underwritten title companies. Title insurance company is an insurer with specialty in real property ownership and liens. On the other hand, underwritten title company is an agent of title insurance companies. Underwritten title company countersigns and issues title insurance company's title insurance and does title search, among other related duties. While title insurance company may issue its own insurance, underwritten title company may not issue its



own insurance because it is not an insurer. Note, underwritten title companies MAY NOT have the word insurance in their name.

As importantly, some of the salient points to consider before selecting a title insurance company include, but not limited to:

- The Insurer's Financial Stability
- The Cost of the Underlying Insurance
- The Insurer's Flexibility In Making Decisions
- The Insurer's Flexibility and Ability to Perform Within a Prescribed Time Frame
- The Insurer's Customer Service, Especially the Responsiveness and Professionalism of the Staff and Decision Makers
- The Insurer's Quality of Work

DISCLAIMER

This Article Neither Supplants Nor Supplements the Breadth and Depth of Such Esoteric Topic. In fact, This Article ONLY Provides a Rather Rudimentary Synopsis of Such Esoteric Expansive Subject Matter.

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