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### ***WHAT IS TITLE INSURANCE?***

The process of buying a home has gotten pretty complicated, with mounds of paperwork and documents to sign. Fees show up at closing that can sometimes be a big surprise to the buyer, who often has no idea what they're for. Title insurance is one of those charges little understood by homebuyers, who often see it as just another fee they have to pay to buy a home. Title insurance protects against problems affecting the title to a home, which is probably your client's most valuable asset.

There are two types of title insurance policies. A **Loan Policy** is almost always required by the lender and insures the title for the amount of the mortgage loan. An **Owner's Policy**, on the other hand, insures the homeowner's investment, such as their down payment and equity. Both are needed. Having a problem with a title can seem rather remote because, historically, the title insurance industry has not had to pay a large amount in claims. This is due to the exhaustive due diligence work that is performed by the title company prior to closing.

The American Land Title Association estimates that one out of every four title searches reveals a problem with the title. Because of the corrective work that title professionals perform, most buyers are unaware of these problems and the closing goes smoothly. Few problems with title ever end up resulting in a claim. However, when it happens, not having the proper protection can be devastating to a homeowner.

Some title problems are easy to detect, such as prior tax liens or a lien from an unpaid subcontractor. But other problems can be more difficult to detect, such as forged signatures in the chain of title, recording errors, undisclosed easements or title claims by missing heirs or ex-spouses. For this reason, having both a Loan Policy and Owner's Policy ensures that you are fully protected.

For more information on the title insurance industry, please visit the American Land Title Association Web site at [www.alta.org](http://www.alta.org)

### ***REGARDING TITLE COMMITMENT***

The Title Commitment is one of the most important documents the buyer will receive during the escrow period. The Buyer must review it and within 5 days after receipt, notify the seller of any items disapproved – afterwards is too late! It is imperative that the buyer reviews all pages of the commitment as well as the Schedule B items to understand their impact on the ownership of the property, such as:

- Easements
- CC&R's and other deed restrictions
- Access problems
- Prior leases

The Title Commitment may also reveal problems that could delay the close of escrow, Schedule B Requirements section, such as:

- Court orders / divorce decrees
- Probate issue
- Foreclosures
- Bankruptcies
- Judgment liens
- State and federal tax liens
- Environmental liens

Check the policy to be issued in Schedule A, front page, of the Title commitment to insure that the best policy type available will be issued. Generally the ALTA Homeowners' Title Insurance Policy is considered the best available for residential transactions if Buyers intend to occupy as principal residence.

#### CHANGES DURING ESCROW MUST BE REPORTED

Advise your escrow officer of any of the following changes as they could affect closing:

- Changes in seller's vesting, such as divorce, death, name change
- Changes in Buyers lender, name, address, contact person, telephone number

#### ***COMMON WAYS TO HOLD TITLE TO REAL PROPERTY***

Title to real property in Arizona, may be held by individuals, either in **Sole Ownership** or in **Co-Ownership**. Co-ownership of real property is where two or more persons hold title. There are several variations as to how title may be held in each type of ownership. The following brief summaries are the more common examples of sole ownership and co-ownership. For a more comprehensive understanding of the legal and tax consequences, appropriate consultation is recommended.

**Sole and Separate:** Real property owned by a spouse before marriage or any acquired after marriage by gift, descent of specific intent. If a married person acquires title as sole and separate property, his/her spouse must execute a disclaimer deed.

**Tenancy in Common:** Two or more persons may hold title to real property as tenants in common. In Arizona, married couples must reject community property and specifically take title as tenants in common. Each owner has a distinct and proportionate interest without the right of survivorship. The only unity involved is possession. Their undivided interest need not be equal but in the aggregate cannot exceed 100% of the ownership interest. A tenant in common may transfer his undivided interest without destroying the co-tenancy estate.

**Joint Tenancy with the Right of Survivorship:** Two or more persons may hold title to real property as joint tenants with the right of survivorship. In the past it was required that all joint tenants share the four unities of time, title, interest and possession. As of July 20, 1996, the Arizona legislature effectively abolished the requirement of the "straw deed" and the necessity of joint tenants to all take their interest at the same time. The advantage of joint tenancy with right of survivorship is that upon death of one of the joint tenants, their interest is transferred outside probate to the surviving tenant(s). **\*\*NOTE:** Evidence of the intent of a married couple to hold title to real property as joint tenants with right of survivorship must be in writing so as to avoid the presumption of community property.

**Community Property:** Only persons married to each other may own real property as community property. Each spouse owns an equal interest in their community property. Each spouse may provide by will for the disposition of his or her community interest in the community real property. However, Arizona community property law requires both spouses to join in a conveyance or encumbrance of community real property. Property acquired by a spouse during marriage is presumed to be community property except that property acquired by gift, device or descent. A married couple seeking to hold title to real property located in Arizona in a form other than community property may do so by renouncing the community property form and specifically accepting another form of co-tenancy.

**Community Property with the Right of Survivorship:** Only persons married to each other may take title as community property with the right of survivorship. One spouse is entitled to the whole of the property upon the death of the other and both interests of the community property receive a new tax basis equal to the fair market value as of the date of death. Evidence of the intent of a married couple to hold title to real property as community property with the right of survivorship must be in writing in order to avoid the presumption of community property. When parties that hold property as community property with the right of survivorship dissolve or annul their marriage, the property converts to tenancy in common.

**General Partnership:** Title may be taken in the name of a general partnership duly formed under the laws of the state of Arizona or the state of the formation of the partnership. A partnership is defined as a voluntary association of two or more persons as co-owners in a business for profit.

**Limited Partnership:** A partnership formed by two or more persons under the laws of Arizona or another state and having one or more general partners and one or more limited partners. A certificate of limited partnership must be filed in the Office of the Secretary of State.

**Limited liability Company:** Title may be taken in the name of a Limited Liability Company by properly filing articles of Organization for a Limited Liability Company with the Arizona Corporation Commission or under the laws of the state of formation.

**Corporation:** Title may be taken in the name of a corporation provided that the corporation is duly formed and in good standing in the state of its incorporation.