

# Title Opinion vs. Title Policy

## DEFINITION

- > Formally expressed professional opinion of an attorney regarding the marketability of title to a specific parcel of real property.
- > Insurance against loss or damage resulting from defects or failure of title to a particular parcel of realty; or from the enforcement of liens existing against it at the time of the insurance.

***Relationship: Both of these products are the result of a search or examination of the “title” to the property evidenced by the public records and/or a survey and inspection of the property.***

## LIABILITY

- > An attorney is not liable for his honest mistakes or errors of judgment unless proven negligent.
- > An attorney is not liable for losses resulting from errors or omissions made by recorders or other public record keepers.
- > An attorney is not liable for hidden hazards which are not indicated or disclosed by a search of public records.
- > An attorney is not liable for erroneous surveys upon which they have relied.
- > A title policy covers hidden hazards which are not indicated or disclosed by a search of the public records. (See attached list of hidden hazards covered by title insurance.)
- > The title company pays costs of cure, defense and loss, if incurred.

## DURATION OF PROTECTION

- > Liability of an attorney due to negligence or lack of skill rests with the individual attorney.
- > Liability of an attorney for loss caused by his negligence or lack of skill is limited by the statute of limitations, which varies from state to state.
- > The title company is required by law to maintain reserves based on exposure to claims.
- > Coverage afforded by title insurance for an owner continues for the rest of the owner's life -- even after one sells the property in the event his warranties of title are attacked in the future by his purchaser or a successor in interest.
- > Coverage afforded by title insurance for a lender continues to protect the lender even if the lender should have the unfortunate experience of becoming a lender in possession as a result of exercising its rights to foreclose upon the default of the borrower.
- > Title coverage enhances marketability of loans on the secondary market because a lenders policy insures not only the original beneficiary under the deed of trust, but also, (1) any and each successor in interest to the original beneficiary, and, (2) any governmental agency which is an insurer or guarantor of the indebtedness secured by the insured deed of trust.

***In conclusion, both the liability and duration of protection provide a distinct advantage to obtaining a title policy.***



# Hidden Defects

- > Forged deeds, mortgages, satisfactions or releases of mortgages and other instruments.
- > False impersonations of the true owner of the land or of his consort.
- > Instruments executed under fabricated or expired power of attorney.
- > Deeds apparently valid but actually delivered after death of grantor or grantee or without consent of grantor.
- > Deeds by persons of unsound mind.
- > Deeds by minors.
- > Deeds not properly delivered.
- > Break in chain of title beyond period of examination of public records where running of adverse possession statute has been suspended. (True owner is incompetent, absent or incarcerated or title is held by the sovereign.)
- > Descriptions apparently but not actually adequate or accurate.
- > Duress in execution of instruments.
- > Defective acknowledgment due to lack of authority of notary. (Acknowledgment taken before commission or after expiration of commission.)
- > Deed of property recited to be separate property of grantor which is in fact community or joint property.
- > Deeds by persons apparently single but actually married.
- > Deed from bigamous couple - prior existing marriage in another jurisdiction.
- > Undisclosed divorce of spouse who conveys as sole heir of deceased consort.
- > Undisclosed heirs.
- > Misinterpretation of wills, deeds or other instruments.
- > Birth or adoption of children after date of will.
- > Children living at date of will but not mentioned in will.
- > Discovery of will of apparent intestate.
- > Discovery of later will after probate of first will.
- > Administration of estates and probate of wills of persons absent but not deceased.
- > Conveyance by heir, devisee or survivor of a joint estate who murdered the decedent.
- > Deed from Trustees of purported business trust which is in fact a partnership or joint stock association.
- > Deed of executor under non-intervention will, when order of solvency has been fraudulently procured or entered.
- > Deeds to or from corporations having been incorporated after surrender or forfeiture of charter.
- > Claims of creditors against property conveyed by heirs or devisees within prescribed period after owner's death.
- > Mistakes in recording legal documents. (For example, incorrect indexing, errors and omissions in transcribing and failure to preserve original instruments.)
- > Want of jurisdiction of persons in judicial proceedings.
- > Recorded easement, but erroneous ancient location of pipe or sewer line which does not follow route of granted easement.
- > Special assessments where they become lien upon passage of resolution and before recordation or commencement of improvements for which assessed.
- > Failure to include necessary parties in judicial proceedings.
- > Federal estate and gift tax liens.
- > State inheritance and gift tax liens.
- > Errors in tax records. (For example, listing payment against wrong property.)
- > Ineffective waiver of tax liens by tax or other governing authorities repudiated later by successors.
- > Corporation franchise taxes as lien on all corporate assets, notice of which does not have to be recorded in the public records.
- > Erroneous reports furnished by tax officials, but not binding on municipality.
- > Tax homestead exemptions set aside as fraudulently claimed.
- > Lack of capacity of foreign personal representatives and trustees to act.
- > Deeds from nonexistent entities.
- > Interests arising by deeds to fictitious characters to conceal illegal activities.
- > Deeds in lieu of foreclosure set aside as being given under duress.
- > Ultra vires deed given under falsified corporate resolution.
- > Conveyances and proceedings affecting right of servicemen protected by Soldiers and Sailors Civil Relief Act.
- > Federal condemnation without filing of notice. (Federal law does not require filing of notice of taking in local recording office.)
- > Deeds which appear to convey title but are really mortgages.
- > Outstanding prescriptive rights not of record and not disclosed by survey.
- > Deed from record owner of land where he has sold property to another purchaser on unrecorded land contract and the purchaser has taken possession of premises.
- > Void conveyances in violation of public policy. (For example, payment of gambling debt, payment of contract to commit crime or conveyance made in restraint of trade.)

 Investors Title Insurance Company

