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.