

TITLE INSURANCE PRIMER



What is a title?

A title is the right to ownership and possession of property. It is possible that someone other than the owner has a legal right to the property. If that right can be established, that person can claim the property outright or make demands on the owner as to its use.

What can make a title defective?

Any number of problems that remain undisclosed after even the most careful research of the public records can make a title defective. The new owner may not learn about these hidden defects for many months or years.

What is title insurance?

Title insurance is the application of the general principles of insurance to real estate titles. It is a contract of indemnity. Unlike other types of insurance which protect the insured against loss due to unexpected future events, title insurance protects against loss which may occur due to events that took place in the past. Title insurance protects the buyer against loss resulting from previously unreported land title defects insured against, such as forgeries, claims by missing heirs, recording errors, etc.

Types of policies

In New Mexico the two most common types of policies are the owner's policy of title insurance and the mortgagee policy or loan policy. The mortgagee policy protects the lender who loans money to the owner secured by the insured real estate. Most lending institutions will not loan money to buy a house or other real property unless they are furnished with a mortgagee policy of title insurance. The owner's policy protects the owner's title to the insured property.

How do title companies determine if a title is clear of defects?

The title company performs research in the real property records of the county where the property is located to determine whether there are any adverse claims to the subject real property. If adverse matters are found of record, the title company will require that these matters be addressed prior to the issuance of the policy.

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What does a title company do?

- Maintain a database of titles from the public records of the county where the company operates
- Help solve certain title defects prior to closing
- Issue a title commitment showing intent to issue a policy setting out requirements to insure and matters to be excepted from the coverage
- Prepares the escrow closing, acting as an independent third party central clearing house, collecting necessary documents, following the parties' and the lender's instructions, making proper payoffs of liens and disbursing funds
- Prepares the Settlement Statement or Closing Statement (called HUD-1 for residential transactions)
- Coordinates and handles the execution of documents
- Records the appropriate documents with the county clerk
- Issues the title policies and returns documents to the appropriate parties.

How much does title insurance cost?

In New Mexico the premium rates charged for title insurance are regulated and set by the Superintendent of Insurance. The rates are based on the purchase price or the value of the property. A one-time premium is paid at the time of purchase of the property for an owner's policy. There are no annual payments. The owner's policy provides coverage for as long as the owner has an interest in the property. If the value of the property increases, the owner can increase the amount of the policy for proportional additional premium for the additional amount. The mortgagee policy issued to the lender for a purchase money mortgage issued at the time of the issuance of the owner's policy costs \$30.00. If the owner refinances the property, a new policy is typically purchased for each lender for each loan, but there are discounts for these policies.

Is title insurance regulated?

Title insurance regulation varies greatly from state to state. In New Mexico title insurance is fully regulated by the Department of Insurance, a division of Public Regulation Commission. All of the rates, rules and forms are promulgated by the Department of Insurance.

How are the rates set?

The statutes mandate that there will be a public hearing held annually to address the rules, rates and forms. It is held in November of each year. The rules, (13.14.1 NMAC) provide that all insurers and all agents file an "Statistical Report" each year giving the Department

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of Insurance a large amount of information about the policies issued, the cost of operation, the amount spent on advertising and the type of advertising, the number of claims and the types of claims, the taxes paid, and the profit. Certain portions of the “Statistical Report” are reviewed and certified by a licensed Certified Public Accountant. The Department of Insurance employs another Certified Public Accountant to compile the information for the companies doing business in the state. The Department of Insurance hires an actuary and the New Mexico Land Title Association hires an actuary and they both study and analyze the data and testify at the hearing making recommendations about what should be the premium rate for the next year. The Superintendent of Insurance then issues an Order setting the rates for the next year. The statutes mandate that the rates set by the Superintendent shall not be excessive, inadequate or unfairly discriminatory and shall contain an allowance permitting a profit that is not unreasonable in relation to the riskiness of the business of title insurance. The percentage of profits the actuaries use in determining the rates is 7.5% before taxes for the agencies and 5% for the underwriter or title insurer.



How is title insurance different from other lines of insurance?

There is a single premium for title insurance and the coverage lasts as long as the insured has an insurable interest in the insured property. Other lines of insurance have yearly premiums and last only for the time period covered by the premium. Title insurance is a loss prevention type of insurance where most of the premium dollar goes to maintaining title plants and employing skilled employees who research and examine titles and determine insurability and assist in clearing title issues. Title defects are required to be addressed before insuring title with the assistance of trained professionals. Title insurance insures against title defects in place before the property is insured. Other lines of insurance insures against events that may occur in the future. Other lines of insurance pay out more of the premium dollar for losses. Title insurance has fewer losses and most of the premium dollar goes to loss prevention.

Where can I find the rules of the title insurance industry in New Mexico?

The Department of Insurance has available the compiled NEW MEXICO TITLE INSURANCE RULES. They may also be found on line by going to www.nmcpr.state.nm.us/nmac/_title13/T13c014.htm. More information can be found about the title industry including a glossary of terms and an explanation of the escrow closing process at www.alta.org. Information about the New Mexico Land Title Association and title insurance in New Mexico, including rules and rates can be found at www.nmlta.org.