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ANSWERS TO YOUR QUESTIONS ABOUT  
**TITLE INSURANCE**

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A MESSAGE TO  
**HOME BUYERS**

FROM THE ARIZONA DEPARTMENT OF INSURANCE

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Buying a home is, for many of us, the most substantial, single investment we'll ever make and all of us want to make sure we do it right!

Most homeowners provide for security and safekeeping of their homes through homeowners insurance—to protect against hazards such as fire, theft and weather damage, yet title insurance offers protection to home ownership as well. “Title” is a collective term used to describe your legal rights to own, possess, use, control or dispose of your home.

As you know, one of the first steps in purchasing and acquiring title to your home is to choose a title insurance company to perform a title search on the property to make sure the title is free and clear of any unacceptable defects, claims or encumbrances. A title defect might involve unpaid taxes, liens, an undisclosed claim from an heir of a previous owner, or perhaps, just an easement from the local power company to install a power line on your property.

Your title insurance company will search the history of the property in the public records and issue a title policy assuring the condition of the title at the time of your purchase. There are two types of title insurance policies: a *lender's* policy (usually required by the lender to cover the amount of the loan) and an *owner's* policy (optional homeowner's protection for full property value). Should someone challenge your title (i.e., your legal rights of ownership), the title insurer must defend that challenge and pay all associated costs and loss in property value that might result.

As you prepare to make this important investment, please remember that Arizona Department of Insurance resources are available to help you make informed decisions about your title insurance needs. Please visit our website at [www.id.state.az.us](http://www.id.state.az.us).

Christina Urias  
Director  
Arizona Department of Insurance

## WHAT IS TITLE?

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Title is a collective term that encompasses your legal rights to own, possess, use, control or dispose of real property—land. Title takes into account all previous land ownership, uses and transfers of land use and ownership. In order to legally transfer real estate property, you must perform a title search to determine the title is clear or free of defects or inappropriate encumbrances.

## WHAT IS A TITLE DEFECT OR ENCUMBRANCE?

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A title defect is a problem or omission associated with the title that impairs your ownership rights to the property. Possible title defects include errors or omissions in recording deeds, forgery, confusion caused by similar or identical names, signatures of minors, mental incompetence, fraud, incorrect marital status, etc. For example, a title defect could be an undisclosed heir of a previous owner suddenly appearing to make an ownership claim on your land.

An encumbrance is a claim made upon the land by someone other than an alleged landowner. For instance, your local power company may have an easement—a limited right to use your property—to install electrical power lines to serve your house or your neighbor's. While a utility easement is often an appropriate encumbrance, other encumbrances may not be acceptable. If you are borrowing money to purchase your house, your lender will want assurance that no one else has a claim against your house—the collateral for your loan. Therefore, your lender will require clear title—title free of any outstanding defect or unacceptable encumbrance—before approving the loan and transfer of ownership.





## WHY IS TRANSFERRING TITLE TO REAL ESTATE DIFFERENT FROM OTHER OWNERSHIP TRANSFERS, SUCH AS THE TRANSFER OF TITLE TO A CAR?

Land is permanent, although land usage can change over time. A landowner can transfer various rights from the title, such as mineral, water or utility rights while still maintaining title to the property. If you are considering a purchase of vacant land, for example, you should consider its history to determine possible unacceptable prior usage (i.e., landfill, pollution, etc.). You and your lender should search the title for any defects or unacceptable encumbrances.

## WHAT IS TITLE INSURANCE?

Title insurance is a contractual obligation between you (and/or your lender) and the title insurance company, wherein the title insurer, in exchange for a premium payment, provides protection (effective as of the date the title insurer issues the policy) against future losses that might result from a variety of possible title defects or encumbrances.



## WHY CONSIDER PURCHASING TITLE INSURANCE?

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Actually, there are two types of title insurance policies to consider: a *lender's* policy (also known as a "loan" policy) and an *owner's* policy. A *lender's* policy protects the *lender's* investment by paying the mortgage in the event that a title defect voids the owner/buyer's title to the property. Typically, a *lender's* policy does not represent the full property value and the amount of policy protection decreases as the mortgage balance decreases over the life of the loan and terminates when you pay off the mortgage.

An *owner's* policy protects the landowner/homeowner against the specific types of claims listed in the policy, usually purchased to cover the full property value. While lenders generally require a *lender's* policy as part of the real estate transaction, an *owner's* policy is usually optional. An *owner's* policy protects against any title loss, which insures the value of the property and lasts as long as you or your heirs retain an ownership interest in the property.

In addition to title loss coverage under a *lender* or *owner* policy, a title insurer must also pay for any and all costs associated with defense against title challenges and, if unsuccessful, the title insurer must also pay for any reduction in land value as result. You pay for an *owner's* policy only once, at the close of escrow; there are no continuing monthly premiums.

## WHAT IS A TITLE SEARCH?

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Part of the cost of title insurance includes a title search, in which the title insurer conducts a detailed examination of the historical, public records concerning the property. These records include deeds, court records, property and name indexes and many other public documents. The purpose of the search is to verify the seller's right to transfer property ownership and to discover any defects or encumbrances on the title. A title search should show all title defects and encumbrances as well as judgments, liens and other restrictions (i.e., unpaid taxes, unsatisfied mortgages, judgments against the seller, land-use restrictions, etc.). Remember, the seller's title policy does not protect you as a buyer; any of these defects could have occurred during the seller's ownership and a new title search will protect your ownership rights when you acquire the property.

## WHAT DOES TITLE INSURANCE COVER?

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Title insurance protects you and/or your lender from losses resulting from claims against your ownership of real estate. It is unique because it provides coverage for problems or "hidden risks" (errors, forgeries, unpaid taxes, etc.) that possibly occurred before you took title to the property, yet can jeopardize your ownership rights.

Title insurance coverage includes:

- ◀ Protection from financial loss (up to the face amount of the policy) due to covered claims against your title;
- ◀ Payment of legal costs to defend against covered claims;
- ◀ Payment of successful claims against your title (up to the face amount of the policy).

Read your title insurance policy carefully and note possible exclusions and exceptions, which may include:

- ◀ An unrecorded title defect you knew about;
- ◀ Condemned land;
- ◀ Building and zoning ordinance violations;
- ◀ Payments required (except for legal access rights) because your deed failed to provide rights of use to adjacent land, streets, alleys or waterways;
- ◀ Conveyance of title irregularities arising from a deceased person's estate, a bankruptcy estate or trust;
- ◀ Restrictive covenants limiting your use of the property;
- ◀ Discrepancies, conflicts or shortages in area, boundary lines, encroachments, protrusions or overlapping improvements;
- ◀ Right of usage claims arising if your property is on or near a body of water, river or stream; or,
- ◀ Renter or adverse possession claims from "parties in possession" of all or a portion of your property.



## WHERE CAN I GET TITLE INSURANCE?

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You can obtain title insurance from any licensed title insurance company or its agents operating in Arizona. Competing title insurers offer different services, costs and fees for title services and rates may vary between companies. By law, real estate professionals cannot dictate which title insurer (or title agency) you must use—so, shop and compare: the choice of title insurers is yours. The Arizona Department of Insurance suggests you consider:

- ◀ The lender usually requires a *lender's* policy only for the amount of the loan, but the buyer should consider an *owner's* policy covering the full purchase price;
- ◀ Payment of the policy premiums could be an *owner's* negotiating point in the sale;
- ◀ Make sure the policy effective date matches the escrow closing date;
- ◀ Verify the policy correctly describes the property interests covered;
- ◀ Ask for first-time buyer or other possible discounts—refinancing or short-term financing rates may be available;
- ◀ You can choose the title insurance company (or title agency)—you do not have to use the one suggested by the real estate professional or lender;
- ◀ The Arizona Department of Financial Institutions regulates escrow activities—call them if you have questions regarding the closing or escrow transactions at (602) 255-4421.

## HOW TO MAKE A TITLE INSURANCE CLAIM

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As soon as you discover any title-related problem that could impair your ownership rights, contact the title insurance company listed on your *owner's* title insurance policy, and have your policy number available. You should make claims in writing, and include copies of all relevant documents, such as payment demands and correspondence relating to the title dispute or claim. Keep copies of everything for your own personal records.

The title insurer should promptly acknowledge receipt of your claim and you should expect the title insurance company to accept or deny your claim in a reasonable amount of time.

The Arizona Department of Insurance regulates title insurance companies and title insurance agencies authorized to do business in Arizona. You can file a complaint with the Arizona Department of Insurance if you feel the title insurer or agency has acted in an illegal or inappropriate manner.





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## OTHER RESOURCES

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For escrow questions, call the Arizona Department of Financial Institutions at (602) 255-4421.

For real estate issues, call the Arizona Department of Real Estate at (602) 468-1414.

For other title insurance questions, visit the American Land Title Association (ALTA) website at [www.alta.org](http://www.alta.org).

The Arizona Department of Insurance is an Equal Employment Opportunity agency that complies with the Americans with Disabilities Act (ADA) and the Arizonans with Disabilities Act. Persons with disabilities may request materials in an alternative format by contacting the ADA Coordinator at (602) 364-3471 and should do so as early as possible to allow reasonable time to make necessary arrangements.