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What is a title insurance commitment?

By carefully reviewing documents prior to closing, buyers can avoid legal headaches later

A few years ago, a young couple bought a home in a fairly simple, straightforward purchase transaction. The home was situated on a large, half-acre lot in a quiet neighborhood. Along the back property line was a high-voltage electricity transmission line which the couple's title insurance commitment reflected as an easement affecting their property. The following spring, the couple attempted to build a swimming pool in the backyard, but the city would not grant them a building permit.

Why? The easement for the electric lines was 100 feet wide and extended from their back property line up to 5 feet from their back door. This meant their ownership rights in the property were subject to the easement, and legally, they could not build any structures within that space.

With dreams of their backyard oasis crushed, the couple turned to their real estate agent, who reminded them that he had suggested they order a survey prior to closing, but they had declined to do so because of the additional expense.

"A survey, as well as a close reading of the couple's title commitment, would have alerted the real estate agent and his customers to the utility easement problem. This,

together with the agent's knowledge of the couple's plans for their pool, could have avoided the issue," said **Valerie Jahn-Grandin**, executive vice president and chief underwriting counsel for North American Title Insurance Company (NATIC).

Real estate agents must be knowledgeable about all aspects of the homebuying process — lending, appraisal, home inspection, closing, etc. — but the intricacies and complexities of title insurance sometimes fall outside their area of expertise. In this case, had the agent encouraged the couple to consult with legal counsel or a title professional, the couple may have been spared this unfortunate discovery, said Jahn-Grandin.

"Today's real estate agents have to wear many hats in their transactions. However, it is asking too much for them to also be an expert and try to explain the title commitment in detail," Jahn-Grandin said. "But the wise real estate agent will encourage their buyers to review their title commitment carefully and seek counsel for a more complete understanding of the scope of the coverages afforded in their policy of title insurance."

WHAT A TITLE COMMITMENT IS — AND ISN'T

A title commitment is a title insurer's offer to issue a policy of title insurance, subject to title matters



SIMPLE. DONE RIGHT.

affecting the property and other requirements. Not to be confused with other title-related documents a buyer may encounter at closing, a title commitment is simply the insurer's promise to issue a title insurance policy, provided that the required premium is paid; the necessary documents are executed, delivered and recorded; and certain requirements are met.

"Commitments report the current record ownership of the subject property — also known as vesting — the estate to be insured (fee simple or leasehold), the legal description of the property and the exceptions from coverage that must appear in final title insurance policy," explained **Kent Pelt**, NATIC's vice president and regional underwriting counsel for California and Hawaii. "In addition, commitments list requirements that must be satisfied before the insurer becomes contractually obligated to issue policies to the proposed insureds."

Depending on the state in which the property is located, the title commitment can vary slightly, but it typically contains the following five components:

- **A commitment jacket**, which serves as a notice to issue a title policy to the buyer. The commitment jacket must always be included with any validly issued commitment.
- **Transaction identification data**, which provides factual information regarding the transaction, including the title insurer, the issuing title agent, the proposed insureds, the purchase price, loan amount, address, etc.

- **Three schedules:**

1. **Schedule A** lists the effective date of the commitment (the date up to which the status of title has been searched); proposed insureds (buyer, lessee or lender); policies to be issued; liability amount; estate or interest to be insured; the party that currently holds title to the property; and the legal description.
2. **Schedule B-1, Requirements** lists the items that must be satisfied in order for the policy to be issued, including premium, fees and charges for the policy; necessary documents, such as the properly executed deed or mortgage; payment of all property taxes, special assessments; satisfaction and release of all judgments and liens; and local requirements such as water or zoning certificates.
3. **Schedule B-2, Exceptions** lists any taxes, special assessments, easements, encroachments, liens, encumbrances, overlaps, boundary line disputes, violations, variations or any adverse circumstances that may or may not show up in the public record. Many of these exceptions have corresponding Schedule B-1 requirements which may allow some of these exceptions to then be deleted from the final policy of title insurance.

lenders to review title information before the proposed transaction is consummated and the title policy is issued. Buyers should review the title commitment carefully, and consult an attorney if they have any questions about its contents.

By encouraging this review, real estate agents can help buyers prevent future legal challenges that may arise if buyers fail to examine their title commitment carefully — and gain a complete understanding of the real property interest they are purchasing.

If buyers, such as the couple mentioned at the beginning of this story, later discover problems arising from a title matter which has been excluded from coverage, they will not be able to turn to their real estate agent, title insurer or title agent for help. A survey, typically required by lenders, would have revealed the electric utility easement invaded their back yard and prevented them from building the pool of their dreams. Providing the survey to the title company also would have enabled them to obtain additional protections in their title insurance policy and potentially coverage for defects not shown on the survey or discoverable by an inspection of the premises.

"Real estate agents benefit when their buyers are well informed about the transaction they are participating in, and how their ownership will be affected by matters of title reflected in their title insurance commitment," concluded Jahn-Grandin.

WHY BUYERS SHOULD CARE

A title commitment provides an opportunity for purchasers and

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