

The Title Process



The title company's process starts when a fully executed contract is submitted to the company by a buyer, a seller, a real estate agent representing the buyer or seller, or a lender. A "fully executed contract" is one in which the buyer and seller have agreed to all of the terms in writing and where the buyer has proffered a good faith earnest money check. The party who brings the contract and earnest money check to the title company "opens title", or orders a title commitment for the subject property.

The title company's role as escrow agent begins at this time. They will receipt the earnest money check and hold all earnest money or deposit checks in an escrow account where they will remain until closing.

The title company will simultaneously start the title search process, using the resources available through their abstract plant and the public records. Once the title search is completed, the title will be examined by a qualified examiner.

If there are no defects or clouds on the title, a title commitment will be issued to the buyer and the seller. It is very important for the both parties to review the commitment and become familiar with any exceptions.

If there are defects or clouds on the title, these must be "cured" before closing. **East Texas Title Companies has attorneys on staff skilled at handling title curative, and we provide this service to our clients at no cost.**

In addition to producing the title commitment, the title company also:

- ♦Orders payoff figures from the existing lender, or orders an assumption package if the loan is being assumed
- ♦Notifies the appropriate parties of any problems or discrepancies
- ♦Prepares the HUD-1 Settlement Statement
- ♦Orders tax certificates and other tax information
- ♦Orders updated information required prior to closing
- ♦Orders documents for closing - Deeds, Deeds of Trust, Releases, etc.
- ♦Confirms date, time and location of the closing and coordinates the details with all parties involved

You can see from the above list that title companies perform a range of duties *on behalf of other entities*. Many people think that, because they are "the messenger", the title companies have control over these areas, when they in fact do not. But they do have responsibility for coordinating them between the buyer, seller, lender(s) and real estate agents and other parties involved.

2008 Update on Real Estate Contracts

The latest revision of the promulgated residential real property contract (TREC Form 20-7) reflects several changes or clarifications regarding the role of the title insurance company:

- ♦Boxes are provided to determine who should pay for the owner's policy of title insurance. This has traditionally been a seller expense, but now it is a negotiable item.
- ♦The new contract form clarifies the traditional title policy exceptions for minor encroachments, making the buyer aware there are uncovered items, and also letting the buyer know additional coverage is available at an additional cost.
- ♦The new contract form provides that the title company does not have to deliver the commitment until 20 days after the title company receives a copy of the contract and specifies the seller's authorization for the title company to deliver the commitment and all related documents to the buyers address as shown on the contract.
- ♦If the commitment is not delivered in a timely manner, the delivery is automatically extended for up to 15 days.
- ♦Either party can provide/pay for a survey. If the seller has one that is acceptable to the title company or lender, he must now provide a Residential Real Property Affidavit which was promulgated by the Texas Department of Insurance stating that no significant changes have been made since the survey was completed. If the seller does not have an old survey that is acceptable, either party can provide one.
- ♦The buyer now has a fixed time to object to the commitment, exception documents and survey; the buyer's objection period does not begin until he has received all three documents.
- ♦There are now seven title "title notices" concerning: obtaining a title policy or having an attorney review an abstract of title, mandatory homeowners associations, MUD-notification, TNRCC notification if the property abuts highly influenced waters of this state, notification if the property is subject to annexation, notification regarding a certificated service area, and notification that the property is in a public improvement district (PID).