



Compliments of:

Unless you are a real estate agent, an attorney or a lender, you probably don't have much interaction with title insurance companies. So it would be easy to assume they are all the same and that it doesn't matter which one you use. In reality, nothing could be further from the truth.

The purpose of this brief report is to

- Give you some facts about what title companies actually do
- Explain what criteria is important to consider, and
- Help you sort through the options available to you to make the best choice for your situation

First the facts. Title companies play multiple roles in a real estate transaction; some you see, most you do not.

First and Foremost, Title Companies are Insurance Agents

Title companies are actually insurance companies, regulated by the Texas Department of Insurance. The policies they issue protect you, the buyer, against any claims others might make against your property. These claims could be caused by fraud or forgery, contested wills, erroneous trusts, missing heirs, undisclosed encroachments, easements, mechanic's liens or tax liens to name only a few.

Your title insurance premium is typically about ½-1% of the purchase price of your property and is paid at closing. It is a one-time fee and your policy covers you as long as you own the property. It is allocated quite differently from all other types of insurance premiums. Title insurance is based on the theory of "loss prevention", which means most of the time, money and effort is spent up front, to prevent title problems from ever occurring in the first place.

This is a highly labor-intensive and expensive component of a title company's operating budget. It includes the cost of maintaining current title information (the "title plant"), the cost to search and examine title to subject properties

and some of the cost to clear or resolve any defects in title prior to issuing the policy. It also includes issuing preliminary and final title commitments and issuing the policy.

Over 85% of your premium goes toward this upfront effort.

Why make all the upfront effort, so different from other types of insurance? Because if a title claim is made, you could lose your property so it is worthwhile to avoid a claim in the first place. However, if a claim is made - even if it has no merit - your title insurance underwriter will defend all claims on your behalf. Claim payouts are usually measured in tens - or hundreds - of thousands of dollars.

Historically, title insurance claims use up about 4-6% of premiums received.

Title Companies are also Escrow Agents/Closing Officers

In this role, the title company acts as a neutral third party who holds all the documents and money related to a transaction and waits for word from the appropriate parties that all the requirements in the sales contract, lender and title commitments have been met. Once all requirements are met, a closing date can be set and the most visible part of the title company's business begins. But the process starts when a contract is submitted to the title company. The title company then:

- Holds all earnest money or deposit checks in an escrow account where they will remain until closing
- Orders payoff figures from the existing lender, or orders an assumption package if the loan is being assumed; prorates or ensures taxes are paid
- Reviews documents to make sure correct property description is being used
- Notifies the appropriate parties of any problems or discrepancies
- Collects surveys, appraisals and inspections and bills for these services to be paid at closing
- Prepares the HUD-1 Settlement Statement (subject to change with Dodd-Frank rulings eff. 1/2013)
- 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.

Deciding Which Title Company to Use

Even though it is common practice for the seller of a property (or his agent) to name a title company when the property is listed, “no seller...shall require directly or indirectly, as a condition to selling the property, that title insurance covering the property be purchased...from any particular title company.” (Sec 9, RESPA) Since the buyer is the insured party and arguably has the most at stake, it’s very important for both parties to be comfortable with the company selected. So how do you decide which title company to use? There are several important criteria to consider:

Reputation in the Community

- Ask for referrals from those you trust: friends, family, co-workers, others who have recently closed a real estate transaction. Find out if they would recommend the company or individual they dealt with, if their expectations were met.
- Don’t overlook referrals from real estate agents or lenders, even if you are not using their professional services. They work with title companies on a regular basis and usually steer you towards a reputable firm who provides good customer service.
- Are they or their employees involved in the community? Community involvement shows a commitment to the area and also instills a familiarity with the market. It shows a company is “here to stay”.

Stability of the Company

Since the title company is responsible for escrowing funds prior to closing and handling other financial aspects of your transaction, as well as paying any claims that may arise, it is very important to choose one that is financially stable.

- Does the company have errors and omissions insurance? Fidelity bonds?
- Are they members of national or state organizations (American Land Title Association or Texas Land Title Association)? If they are, they are keeping abreast of current trends and requirements on both the state and federal level. Visit www.alta.org or www.tlta.com
- Check the Texas Department of Insurance to see if they are in good standing. Even in rural areas, local title policies are underwritten by large firms. Check the rating of the firm doing the underwriting; that’s who will be doing the heavy lifting in the event there’s ever a claim. www.tdi.state.tx.us

Adequate Staffing and Resources

- Does the company have enough employees to handle the amount of work they do? Lots of business and inadequate staff can cause problems for your transaction.
- Have they invested in automated systems and online records to streamline the work they do for you? Systems are vital for two reasons: they ensure efficiency and timely closings, and they greatly reduce human error.
- If they have multiple locations, do they centralize redundant functions? You care about this because centralization breeds expertise in specific areas. Expertise is more important than local performance in this case.
- Do they offer an in-house attorney to cure any title problems that occur or will you be responsible for curative? One in four transactions has some sort of title

problem, all of which must be remedied prior to closing the transaction. You want your title company to be able to address them accurately and efficiently so your closing is not delayed. In-house attorneys can ensure not only that title curative is done, but that it is done properly.

Experience of the closing officer/escrow agent

The closing officer will be an integral part of your life for at least 30-60 days, working closely with you through title issues, lender requirements, inspections and other details of your transaction. Since the agent is responsible for coordinating many parties to the transaction, he or she can be the difference between a “nightmare closing” and one that is cause for celebration. The closer should:

- Be professional, knowledgeable, efficient, patient, friendly
- Be willing and able to explain things in language you can understand
- Be familiar with your type of transaction
- Have good working relationships with local lenders and real estate agents
- Return phone calls and
- Always be courteous and confidential

Location of the office or closing agent

You will have to visit the closing office in person at least once and maybe several times prior to closing, so it’s important for the office to be accessible to you during normal business hours.

- If the primary location is not convenient, does the title company offer alternative sites for closings?
- Can/will they accommodate the seller at one office and the buyer at another?

Fees

There are many fees associated with closing a real estate transaction, many of which are only collected by the title company/closing agent. It’s important for you to understand what you are paying and to whom.

- Texas is the most regulated state in the nation when it comes to title insurance. Unlike most Texas insurance rates, title rates are set by the Commissioner of Insurance and the same rate must be charged by all title companies.
- The one title company fee that is not regulated is the escrow fee. The escrow fee, which is typically split between the buyer and seller, covers all the title company’s account services. The title company opens a bank account for the earnest money of a transaction, takes in the money from the lender and pays the surveyors, termite inspectors, sellers and other parties involved. Your closing officer should be happy to explain the escrow fees to you and explain what they offer that other companies may not.
- All of the other fees should be pass-through charges that are the same as what the title company is charged for the services.
- The company with the lowest fees is not necessarily the best choice for your transaction, as the services offered may vary significantly. It’s more important to make sure you get what you think you are getting and that you understand the fees you are paying.