



TITLE INSURANCE FOR COMMERCIAL TRANSACTIONS

The sale and financing of commercial real estate can be a complex process and title insurance plays an important role in the transaction. While commercial transactions are similar to residential transactions because they involve the transfer of property from one party to another, commercial transactions generally involve a larger financial investment, complex ownership entities and uses, and more extensive research to ensure the insured interests are conveyed properly and free and clear from any encumbrances.

Title insurance is structured to protect both commercial property buyers and their mortgage lenders; however, the respective base policies each have differing terms and coverage.

The lender typically requires the buyer to purchase title insurance to protect the loan collateral. This loan policy (often called a lender's policy) is required by essentially all lending institutions as a way to insure the validity, enforceability and priority of their security interest in the property.

Commercial real estate buyers also have the option to purchase an owner's policy of title insurance, which provides insurance directly to the insured owner listed in the policy, and describes the type of real property interest owned.

Commercial lenders and buyers often seek additional coverages under an array of title policy endorsements that might be available under appropriate circumstances. Title insurance generally protects the policy holder from events or issues that occurred prior to the date of the policy, and generally fall into four major categories: liens, basic risks, encumbrances, and escrow and closing, as described to the right:

LIENS

Typically relate to the priority of the lender's mortgage or the buyer's deed in relation to other liens attached to the property, such as other mortgages, state or federal tax liens, or court judgments resulting from unpaid loans or unpaid contractor bills. In the commercial setting, such unpaid items can be large and costly in the absence of insurance.

BASIC RISKS

Fraud, forgery, lack of authority, recorded notices of zoning violations or building permit violations, and improper legal description of property. Defects of this kind can be difficult to uncover during the title search and examination process because of incomplete records, improper filing and/or forgery of the relevant documents. In commercial transactions, the parties transferring interests upon which policy holders rely are often entities with complex ownership structures; a legal defect in the transfer of those interests could impact the validity and/or priority of the mortgage or the actual ownership of the property.

ENCUMBRANCES

Defects in insured title otherwise not excepted in the policy, such as missing interests, easements or other recorded rights. An easement may not affect an owner's right to own or sell their property; however, it may limit their use of the property which may result in a diminution of the value of their real property. This is particularly important in the commercial setting.

ESCROW AND CLOSING

Problems due to improper execution of closing documents and improper recordings. In commercial closings, there are often numerous documents to be executed by multiple parties and recorded properly. If the closing of the mortgage or sale transaction was incomplete or flawed, that could impact the validity and/or priority of the mortgage or the actual ownership of the property.

If the commercial transaction involves the sale of personal property, a Uniform Commercial Code (UCC) Insurance Policy insures the attachment, perfection and priority of security interests in personal property and provides additional protection for the buyer and lender.

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