



IMPORTANCE OF TITLE INSURANCE IN THE BAHAMAS

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Title insurance is a form of indemnity insurance which insures against financial loss suffered as a result of defects in title to real property which were in existence at the time when the title insurance policy was issued.

In real estate transactions in The Bahamas, the use of title insurance is a recent development. Until the late 1990s, purchasers and lenders relied exclusively on their attorney's legal opinion on title, which is based on a thorough title search and supported by the attorney's professional indemnity insurance. In The Bahamas, an attorney acting for a purchaser or a lender has a duty to investigate the vendor's or the borrower's title and to confirm to such purchaser or lender that the vendor or borrower has a good and marketable title to the property being purchased or mortgaged, free from any recorded encumbrances.

The Bahamas has an unregistered land system; accordingly, in order to provide such confirmation, the attorney is required to conduct title searches dating back at least thirty (30) years or for a period extending back to a Crown Grant, a Crown Lease or a Certificate of Title issued in accordance with the Quieting Titles Act of The Bahamas (whichever is shorter). These title searches will reveal any recorded defects in the title or liens on the property.

In instances where title defects are discovered, a purchaser or lender may wish to purchase title insurance. Title insurance is a form of indemnity insurance which insures against financial loss suffered as a result of defects in title to real property which were in existence at

the time when the title insurance policy was issued. There are two types of title insurance policies: (i) an Owner's Policy, which protects the purchaser's interest in the property and is issued in the amount of the purchase price of the property; and (ii) a Loan Policy, which protects a first priority lender's interest in the property, and is issued in the amount of the loan. Both policies are purchased for a one-time fee.

Before a title insurance company agrees to issue a title insurance policy, it conducts title searches similar to those searches conducted by an attorney who is providing a legal opinion on title. Upon completing its title searches, the title insurance company will issue a title insurance commitment, which will outline, inter alia, any requirements (which would include any title defects or issues revealed by the title searches) which must be satisfied before a title insurance policy can be issued. All known title defects or issues must be resolved or otherwise would be listed as exceptions to the title insurance coverage.

There are several benefits to obtaining title insurance. These include the following:

- A title insurance policy will indemnify a purchaser or a lender against any loss suffered by the purchaser or a lender as a result of a title defect or lien which existed at the date of the policy,

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It is important to note that the title insurance coverage is limited to those title defects or liens which existed at the date of the title insurance policy and does not cover future risks.

but was not revealed by the title or specifically excluded from the insurance coverage.

- Title insurance covers recorded title defects or liens, which would be revealed by a usual title search, as well as hidden defects or liens which would not be revealed by the usual title search. Such defects or liens would include:
 - A forged will or deed
 - A signature by a minor or mentally incompetent person
 - Adverse possession
 - Clerical errors in the records
 - Confusion arising from similarity of names
 - False affidavits
 - Evidence of a fraudulent transfer of property
 - Judgment against a property owner
 - Lawsuits that relate to the property
 - Misfiling of a document by the Registry of Records
 - Sellers who misrepresent their marital status
 - Undisclosed heirs
 - Undiscovered wills
 - Unreleased mortgages
- The title insurance company will assume the responsibility of defending any lawsuit attacking the title insured and will also bear all costs, legal fees and expenses related thereto.
- In instances where a purchaser or lender secures title insurance

coverage for a property, they in turn would be able to offer title insurance to a future purchaser; resulting in an expedited completion of the transaction.

- Title insurance gives a purchaser or lender who has already obtained a legal opinion on title from an attorney an added level of security.

Notwithstanding the foregoing, it is important to note that the title insurance coverage is limited to those title defects or liens which existed at the date of the title insurance policy and does not cover future risks. In addition, title insurance only provides coverage over a title defect, it does not correct or eliminate it, nor will the title insurance company attempt to resolve a title defect or issue.

Ultimately, while the use of title insurance in The Bahamas is becoming increasingly popular, it should not be considered as an alternative to engaging a local Bahamian real estate attorney to assist with a real estate transaction, as the process for purchasing real estate in The Bahamas can sometimes be very complex. For example, in cases where a title defect or lien is discovered, an attorney will usually work to resolve these issues before issuing the legal opinion on title. The title insurance company on the other hand would simply issue a title insurance commitment which lists the defect as something to be addressed by the purchaser or the lender. In this instance, the purchaser or the lender would be well advised to engage the services of a Bahamian real estate attorney to assist in resolving the defect and to provide general legal advice in relation to the transaction.

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