

Title Insurance- What is it?

By: William W. Shearouse, Jr., Attorney at Law

We are all familiar with the need for insurance. It is easy to understand that insurance protection is needed in the areas of general liability, fire loss, casualty and collision, but why is title insurance needed?

Real property has always been viewed as one of our most valuable assets. It is such a basic form of wealth that special laws, most of which have been around since the days of our forefathers, have been enacted to protect the rights of homeowners and property owners with respect to the title to their property.

The laws with respect to the title to real property are complex and they extend to the rights of spouses and heirs, as well as the rights of state and local governments to regulate the use of real property.

Generally speaking, matters which affect the title to real property are disclosed on the land records in the Office of the Clerk of Superior Court for the county where the real property lies. But some matters which affect the title to real estate cannot be discovered by examination of the public records. For example, forgeries or confusion due to similar names. Errors in record keeping on the land records may prevent the title examiner from discovering all of the matters which affect the title. The deed for a person who is insane or mentally incompetent may not be binding. Deeds from corporations or partnerships may not be valid if they are executed by unauthorized persons.

Deeds following foreclosures may be suspect if all of the required procedures for a valid foreclosure were not met. Deeds executed by a person utilizing a power of attorney must be executed in proper form and format and the instrument authorizing the attorney to act must be in a format which is legal and binding. Deeds by executors or administrators of estates can be relied on only if the estate was properly administered and the executor or administrator was authorized to convey the real property.

Deeds to land conveying wetlands or navigable bodies of water are subject to the rights of the government to protect the public interest in navigation, commerce, fishing and recreation. If the grantor of a deed is a governmental entity, the transfer must be legally authorized by the governing body to be binding.

These are only a few of the areas of concern regarding the title to real estate in Georgia. Although a proper examination of the land records will clarify most of these issues, a policy of owner's title insurance will protect the property owner from claims made regarding the validity of the title. An owner's policy of title insurance protects against potential defects that can remain hidden despite a thorough search of the public records. The policy will reimburse the insured for losses suffered due to undetected defects that existed prior to the issue date of the policy, up to the amount of the policy, and unless specifically excluded, the title insurance policy also provides for legal defense costs in the event a claim is made.

Unlike other forms of insurance, the original premium is the insured's only cost as long as he or she owns the property. There are no annual payments to keep the policy enforced.

When purchasing real estate, it is always good practice for the buyer to consult with a real estate attorney about the need for and availability of owner's title insurance.

William W. Shearouse, Jr. is a real estate attorney at the firm of Weiner, Shearouse, Weitz, Greenberg & Shawe. He serves as legal counsel for the Home Builders Association of Greater Savannah and also practices in the areas of general business, corporate and partnership law, and municipal law.