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Real Estate Title Insurance

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Definition:

"Title insurance refers to land or an interest therein, and is an agreement whereby the insurer, for a valuable consideration, agrees to indemnify the insured in a specific amount against loss through defects of title to real estate wherein the latter has an interest, either as purchaser or otherwise * * * Title insurance is not mere guess work, nor is it a wager; it is based upon careful examination of the muniments of title, and the exercise of judgment by skilled conveyancers." (38 CYC 344-5)

An opinion from a Pennsylvania court contains the following definition of title insurance: "The quality of a title is a matter of opinion, as to which even men learned in the law of real estate may differ. A policy of title insurance means the opinion of the Company which issues it, as to the validity of the title, backed by an agreement to make that opinion good, in case it should prove to be mistaken and loss should result in consequence to the insured." *Foehrenbach v German American Title Co.* 217 Pa. St. 33, 66 Atl 561.

History:

In a work published in 1853 there is mentioned "The Law Property Assurance and Trust Society" the purpose of said society being the insurance of real estate titles and guaranteeing repayment of loans and mortgages (*Frances Annals of Life Insurance*, page 291).

In the year 1871 there was published in this country a "plan for the insurance of titles and mortgages" by means of a corporation to

be called the Title Warranty Company. Title guaranty insurance was first undertaken in Philadelphia in 1876 by the Real Estate Title and Trust Company. The activity of the real estate market in Philadelphia because of the Centennial Exposition, and the unsatisfactory methods then employed for evidencing real estate titles, induced a number of the Philadelphia business men to call a meeting to consider an improvement of the situation. The result was the organization of this company. Today there are three large companies insuring real estate titles in Philadelphia and several smaller ones, and that is now practically the only method there employed for evidencing real estate titles.

The formation of the Philadelphia company was followed in succession by companies in Baltimore, Washington, Boston, Chicago, New York and Los Angeles, and throughout the principal cities of this country. In 1883 the Title Guarantee and Trust Company of New York was organized, its purpose being to copy the records of real estate in the Counties of New York and Kings and to examine and guarantee titles. In 1885 the Lawyers Title Insurance Company was organized under the general act of 1885, to insure titles and has carried on business in New York City since 1887, having at this time a capital and surplus of \$16,000,000. In 1887 a title insurance company was organized in Chicago and title insurance is an approved method of evidencing title in that city. Los Angeles started title insurance in 1888 and today abstracts are un-

known in southern California and in fact are used very little in any part of the state.

Vance on Insurance (590) say that "the business has become very extensive, every considerable city having one or more title companies which unite the business of examining titles with that of insuring them. The thoroughness which characterizes the work of these companies is attested by the remarkably small number of cases involving title insurance that are to be found in the reports."

The 1926 directory of The American Title Association lists four hundred title guaranty companies among its active members. There are also other title companies which do not happen to be members of this association.

The business of title insurance is carried on to-day almost exclusively by insurance companies incorporated under state laws prescribing their powers and limitations and providing for state regulation; and in the insurance laws of the several states these corporations are placed upon substantially the same footing and are made subject to the same rules as apply to other insurance companies excepting so far as the character of the business transacted by these corporations differs from that transacted by other insurance companies. (38 CYC 354)

To illustrate the growth of title insurance business in the United States the record of one company is illuminating. The Union Title and Guaranty Company of Detroit, Michigan, started writing title insurance in 1921. That year it wrote policies aggregating \$1,000,000. In 1922 it wrote policies amounting to approximately \$13,000,000. In 1923 the policies amounted to \$33,000,000, in 1924 to \$49,500,000 and in 1925 to \$112,000,000.

It is interesting to note that Colorado has had a special statute on the organization of title guaranty companies since the year 1887. Among other things the act requires that no such company shall be organized with a less capital than \$100,000 and that such company shall not organize and proceed to business under the act until all of the stock shall have been subscribed for and the whole amount actually paid in in cash.

Marketability:

As to whether or not a given real estate title is "marketable" attorneys differ and will differ so long as we retain our present system of conveyancing. It may be interesting to note how title insurance companies handle this proposition. The Eastern companies insure "marketability" in their policies and have done so for a great many years. The central and western companies in the past have not to any great extent insured "marketability" but have provided protection against attack or actual loss. At the present time the tendency seems to be toward insuring marketability. The writer does not know of any title insurance company that does not now make a practice of insuring "marketability" when the conditions of the title warrant it.

Losses:

Since title insurance is absolute irrespective of real estate records losses of various kinds occur in this form of insurance. From the various sources of information available the principal losses of title insurance companies appear to be on account of forgeries, mistakes or incompetence of public officials, mistakes and errors of employees, differences of opinion on legal matters, undisclosed heirs, conveyances by persons under disability, undisclosed wills.

Title insurance appears to be the outgrowth of changing conditions in business life. Real estate titles, the basis of all wealth, are becoming more and more complex. New decisions appear from our courts each day, involving points of real estate law. State legislatures each year create new laws concerning real estate and our National Congress is passing similar laws and creating federal liens. Abstracts of title are becoming larger and more bulky. The average attorney, considering the time and responsibility involved, is inadequately compensated for title opinions. Under the present system of title examination there is a constant duplication of work and a constantly occurring difference of opinion all of which slows down the closing of real estate transactions.

Our courts are recognizing more and more the place that title insurance occupies in a community. In a case decided this year by the Wisconsin Supreme Court a mortgagee was asserting the lien of his mortgage against an innocent purchaser of the real estate who had relied on an abstract compiled from the public records. A release of this mortgage regular in all respects appeared of record. It developed that this release was a forgery. The Court said in part:

It is firmly established in every jurisdiction that a lien of a mortgage properly recorded, cannot ordinarily be destroyed by a forged release. * * * Our recording system is the result of years of development and is the product of the best thought and efforts of experts in their line; and notwithstanding that, it is far from being perfect and is still open to many improvements. The defects and shortcomings of the system have of recent years been disclosed, and in order to meet a situation like the one here presented title

guaranty companies have been chartered to do business for the express purpose of indemnifying those who have become the victims of criminal operations or of the ignorance or negligence of the recording officers. For a trifling percentage such a policy of indemnity may be readily procured everywhere, and such guaranties as a title company affords could readily have been procured by those who will be obliged to suffer the loss in the instant case.

Mergener v Fuhr (Wis) 208 NW 271.

Undoubtedly for many years the abstract system has served the public and has proven a satisfactory means of handling the transfer of land titles. In all probability the abstract system will continue for some years to come, particularly in communities where transfers are few and where (generally speaking) the buyer or his representative is personally acquainted with the seller and the latter's known possession of the land.

The writer has attempted to present in a very brief way the subject of title insurance. Although of recent origin, in comparison to other forms of insurance, it has had a remarkable growth in this country, and seems destined to succeed by meeting a growing demand for this sort of service. Arguments in favor of this form of insurance have been intentionally omitted from this paper.

EDITOR'S NOTE.—*Title Insurance, although comparatively new, is one which is fast attaining considerable preeminence in the business world. The editors are fortunate in having an additional article on the subject, contributed by Hon. Herbert Becker, Vice President, Chicago Title and Trust Company, which will be printed in the next issue.*