

Owner's Policy of Title Insurance

# PROTECTION AND PEACE OF MIND



Homeowner's have many options to consider when determining the best possible protection to keep their homes safe and secure for their families.

Many homeowners choose to install smoke alarms, deadbolt locks, and home security systems as important lines of defense to ensure their peace of mind. An Owner's Policy of Title Insurance is also an option homeowners choose to provide an added layer of security and protection.

Your home may be new to you, but every property has a history. There may be hidden issues in the chain of title which could affect your ownership, such as:

- Errors in Public Records
- Unknown Liens
- Illegal Deeds
- Missing heirs
- Forgeries
- Undiscovered Encumbrances
- Unknown Easements
- Boundary/Survey Disputes
- Undiscovered Will
- False Impersonation of Previous Owner

**An Owner's Policy of Title Insurance protects your investment for as long as you or your heirs have an interest in the property.** Additionally, the title insurance company will, at its own expense, defend the title and will pay losses within the coverage of the policy if they occur. Unlike other insurance models, where premiums are paid on an ongoing basis, title insurance is a one-time premium paid at the closing of your transaction.

Securing peace of mind is easy when you take a smart approach. We encourage you to thoroughly research your options, reduce your risks and make informed decisions about the products and services offering the best protection. The peace of mind you'll have from knowing your home and family is protected is well worth the investment.

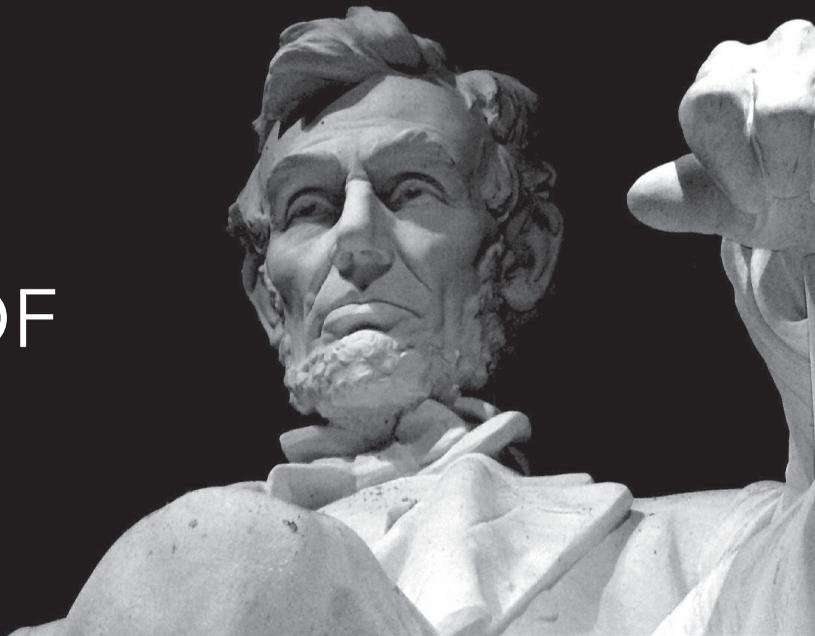
## Metropolitan Escrow, Inc.

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# METROPOLITAN ESCROW, INC

# LINCOLN LOST HIS HOME **TWICE** BECAUSE OF TITLE DEFECTS

Losing a home is a cruel thing, but life can be cruel—even to those destined for greatness.



Abraham Lincoln was born in a meager, one room cabin on the Big South Fork of Nolin's Creek near Hodgenville, Kentucky. It had a dirt floor, one window, and a sticky-clay chimney. Lincoln's father, Tom, had paid \$200 for the cabin and 300 acres of unproductive land. It wasn't much, but it was home and the young family's only chance for a decent life.

**After four years of fighting mosquitoes, heat, and hardscrabble land, the Lincolns had to pack up and leave. There was a defect in the title.**

They did not have the right papers and somebody else had a better claim to the land. With three-year-old Abe in his mother's arms, the family moved eight miles away to Knob Creek.

In less than four years, Tom Lincoln had to go to court to prove his ownership rights to this second farm. Another claimant to the land sued him

as a "trespasser." Tom Lincoln won the suit, but was haunted by the fear that he might someday lose another property. There was enough talk of land titles, landowners, landlords, land laws, land lawyers, and land sharks to make him unsure of his title. After all, Daniel Boone, the first pioneer of the Kentucky wilderness, had lost every inch of his once vast landholdings because he had "the wrong kind of papers." Tom then decided to move his family to Indiana where there was rich, black land—government land with clear title and the right kind of papers. Thus, Abraham Lincoln lost a second home to title problems.

It was the anxiety and outright losses of the Lincolns and other hardworking Americans that gave rise to today's title insurance industry. The first land title insurance company was founded in Philadelphia in 1876 to protect buyers against the hidden hazards of real estate ownership; forgeries; faulty

surveys; hidden liens; conveyances by a minor or mentally incompetent person; the false representation of married person as being single; and many other title defects. Even the most complete search of records may not reveal them all.

**Today, title insurance is just as important as ever.** The same potential flaws in title exist. A home is still the largest purchase most of us make in our lifetime. And, with escalating land values, the loss of property can still bring a family to ruin. Consequently, both buyer and seller should insist on the stability and reliability they receive from a First American Title Owner's Policy.

The unfortunate loss of the Lincoln family would have been covered by insurance had Tom Lincoln owned a title policy.

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# 70

## SOMETHING WAYS YOU COULD LOSE YOUR HOME AND 1 WAY TO STOP IT

There are many title issues that could cause you to lose your property or your mortgage investments. Even the most careful search of public records may not disclose the most dangerous threat: hidden risks. These issues may not be uncovered until years later.

Without title insurance from a reputable and financially secure company, your title could be worthless. With the proper insurance, your rights will be defended in court.

### Here are some of the issues that occur most frequently:

1. Forged deeds, mortgages, satisfactions or releases.
2. Deed by person who is insane or mentally incompetent.
3. Deed by minor (may be disavowed).
4. Deed from corporation, unauthorized under corporate bylaws or given under falsified corporate resolution.
5. Deed from partnership, unauthorized under partnership agreement.
6. Deed from purported trustee, unauthorized under trust agreement.
7. Deed to or from a "corporation" before incorporation, or after loss of corporate charter.
8. Deed from a legal non-entity (styled, for example, as a church, charity or club).
9. Deed by person in a foreign country, vulnerable to challenge as incompetent, unauthorized or defective under foreign laws.
10. Claims resulting from use of "alias" or fictitious name style by a predecessor in title.
11. Deed challenged as being given under fraud, undue influence or duress.
12. Deed following non-judicial foreclosure, where required procedure was not followed.
13. Deed affecting land in judicial proceedings (bankruptcy, receivership, probate, conservatorship, dissolution of marriage), unauthorized by court.
14. Deed following judicial proceedings, subject to appeal or further court order.
15. Deed following judicial proceedings, where all necessary parties were not joined.
16. Lack of jurisdiction over persons or property in judicial proceedings.
17. Deed signed by mistake (grantor did not know what was signed).
18. Deed executed under falsified power of attorney.
19. Deed executed under expired power or attorney (death, disability or insanity of principal).
20. Deed apparently valid, but actually delivered after death of grantor or grantee, or without consent of grantor.
21. Deed affecting property purported to be separate property of grantor, which is in fact community or jointly-owned property.
22. Undisclosed divorce of one who conveys as sole heir of a deceased former spouse.

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# 70-Something Ways

## You Could Lose Your Home *continued*

23. Deed affecting property of deceased person, not joining all heirs.
  24. Deed following administration of estate of missing person, who later re-appears.
  25. Conveyance by heir or survivor of a joint estate, who murdered the decedent.
  26. Conveyances and proceedings affecting rights of service-member protected by the Soldiers and Sailors Civil Relief Act.
  27. Conveyance void as in violation of public policy (payment of gambling debt, payment for contract to commit crime, or conveyance made in restraint of trade).
  28. Deed to land including "wetlands" subject to public trust (vesting title in government to protect public interest in navigation, commerce, fishing and recreation).
  29. Deed from government entity, vulnerable to challenge and is unauthorized or unlawful.
  30. Ineffective release of prior satisfied mortgage due to acquisition of note by bona fide purchaser (without notice of satisfaction).
  31. Ineffective release of prior satisfied mortgage due to bankruptcy of creditor prior to recording of release (avoiding powers in bankruptcy).
  32. Ineffective release of prior mortgage of lien, as fraudulently obtained by predecessor in title.
  33. Disputed release of prior mortgage or lien, as given under mistake or misunderstanding.
  34. Ineffective subordination agreement, causing junior interest to be reinstated to priority.
  35. Deed recorded, but not properly indexed so as to be locatable in the land records.
  36. Undisclosed but recorded federal or state tax lien.
  37. Undisclosed but recorded judgment or spousal/child support lien.
  38. Undisclosed but recorded prior mortgage.
  39. Undisclosed but recorded notice of pending lawsuit affecting land.
  40. Undisclosed but recorded environmental lien.
  41. Undisclosed but recorded option, or right of first refusal, to purchase property.
  42. Undisclosed but recorded covenants or restrictions, with (or without) rights of reverter.
  43. Undisclosed but recorded easements (for access, utilities, drainage, airspace, views) benefiting neighboring land.
  44. Undisclosed but recorded boundary, party wall or setback agreements.
  45. Errors in tax records (mailing tax bill to wrong party resulting in tax sale, or crediting payment to wrong property).
  46. Erroneous release of tax or assessment liens, which are later reinstated to the tax rolls.
  47. Erroneous reports furnished by tax officials (not binding local government).
  48. Special assessments which become liens upon passage of a law or ordinance, but before recorded notice or commencement of improvements for which assessment is made.
  49. Adverse claim of vendor's lien.
  50. Adverse claim of equitable lien.
  51. Ambiguous covenants or restrictions in ancient documents.
  52. Misinterpretation of wills, deeds and other instruments.
  53. Discovery of will of supposed intestate individual, after probate.
  54. Discovery of later will after probate of first will.
  55. Erroneous or inadequate legal descriptions.
  56. Deed to land without a right of access to a public street or road.
  57. Deed to land with legal access subject to undisclosed but recorded conditions or restrictions.
  58. Right of access wiped out by foreclosure on neighboring land.
  59. Patent defects in recorded instruments (for example, failure to attach notarial acknowledgment or a legal description).
  60. Defective acknowledgment due to lack of authority of notary (acknowledgment taken before commission or after expiration of commission).
  61. Forged notarization or witness acknowledgment.
  62. Deed not properly recorded (wrong county, missing pages or other contents, or without required payment).
  63. Deed from grantor who is claimed to have acquired title through fraud upon creditors of a prior owner
- In certain states, an extended coverage policy may be requested to protect against such additional defects as:**
64. Deed to a purchaser from one who has previously sold or leased the same land to a third party under an unrecorded contract, where the third party is in possession of the premises.
  65. Claimed prescriptive rights, not of record and not disclosed by survey.
  66. Physical location of easement (underground pipe or sewer line) which does not conform with easement of record.
  67. Deed to land with improvements encroaching upon land of another.
  68. Incorrect survey (misstating location, dimensions, area, easements or improvements upon land).
  69. "Mechanics' lien" claims (securing payment of contractors and material suppliers for improvements) which may attach without recorded notice.
  70. Federal estate or state inheritance tax liens (may attach without recorded notice).
  71. Pre-existing violation of subdivision mapping laws.
  72. Pre-existing violation of zoning ordinances.
  73. Pre-existing violation of conditions, covenants and restrictions affecting the land.
  74. Post-policy forgery against the insured interest.
  75. Forced removal of residential improvements due to lack of an appropriate building permit (subject to deductible).
  76. Post-policy construction of improvements by a neighbor onto insured land.
  77. Damage to residential structures from use of the surface of insured land for extraction or development of minerals.

# 10 Common Title Problems

Have you ever wondered why you need title insurance? Your home may be new to you, but every property has a history. A thorough title search can help uncover any title defects tied to your property. And, subject to the terms of the policy, your title insurance provides protection for you from title problems that may become known after you close your transaction. Some of these common title issues are:

- 1. Errors in public records:** To err is human, but when it affects your home ownership rights, those mistakes can be devastating. Clerical or filing errors could affect the deed or survey of your property and cause undue financial strain in order to resolve them.
- 2. Unknown liens:** Prior owners of your property may not have been meticulous bookkeepers – or bill payers. And even though the former debt is not your own, banks or other financing companies can place liens on your property for unpaid debts even after you have closed on the sale. This is an especially worrisome issue with distressed properties.
- 3. Illegal deeds:** While the chain of title on your property may appear perfectly sound, it's possible that a prior deed was made by an undocumented immigrant, a minor, a person of unsound mind, or one who is reported single but in actuality married. These instances may affect the enforceability of prior deeds, affecting prior (and possibly present) ownership.
- 4. Missing heirs:** When a person dies, the ownership of their home may fall to their heirs, or those named within their will. However, those heirs are sometimes missing or unknown at the time of death. Other times, family members may contest the will for their own property rights. These scenarios – which can happen long after you have purchased the property – may affect your rights to the property.

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# 10 Common Title Problems (cont'd)

**5. Forgeries:** Unfortunately, we don't live in a completely honest world. Sometimes forged or fabricated documents that affect property ownership are filed within public records, obscuring the rightful ownership of the property. Once these forgeries come to light, your rights to your home may be in jeopardy.

**6. Undiscovered encumbrances:** When it comes to owning a home, there can be a crowd. At the time of purchase, you may not know that a third party holds a claim to all or part of your property – due to a former mortgage or lien, or non-financial claims, like restrictions or covenants limiting the use of your property.

**7. Unknown easements:** You may own your new home and its surrounding land, but an unknown easement may prohibit you from using it as you'd like, or could allow government agencies, businesses, or other parties access to all or portions of your property. While usually non-financial issues, easements can still affect your right to enjoy your property.

**8. Boundary/survey disputes:** You may have seen several surveys of your property prior to purchasing, however, other surveys may exist that show differing boundaries. Therefore, a neighbor or other party may be able to claim ownership to a portion of your property.

**9. Undiscovered will:** When a property owner dies with no apparent will or heir, the state may sell his or her assets, including the home. When you purchase such a home, you assume your rights as owner. However, even years later, the deceased owner's will may come to light and your rights to the property may be seriously jeopardized.

**10. False impersonation of previous owner:** Common and similar names can make it possible to falsely "impersonate" a property owner. If you purchase a home that was once sold by a false owner, you can risk losing your legal claim to the property.

## Play it Safe

These and other issues are often covered by an owner's policy of title insurance. When you buy a home, make sure you're protecting that investment with title insurance.

# 7

# REASONS WHY EVERY HOMEBUYER NEEDS OWNER'S TITLE INSURANCE

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Buying a home is an exciting and emotional time for many people. To help you buy your home with more confidence, make sure you get owner's title insurance.

## HERE'S WHY IT'S SO IMPORTANT FOR YOU:



### PROTECTS YOUR LARGEST INVESTMENT

A home is probably the single largest investment you will make in your life. You insure everything else that's valuable to you—your life, car, health, pets, etc., so why not your largest investment? For a one-time fee, owner's title insurance protects your property rights for as long as you own your home.



### REDUCES YOUR RISK

If you're buying a home, there are many hidden issues that may pop up only after you purchase your home. Getting an owner's title insurance policy is the best way to protect yourself from unforeseen title discrepancies. Don't think it will happen to you? Think again. Title claims can include:

- outstanding mortgages and judgments, or a lien against the property because the seller has not paid his taxes
- pending legal action against the property that could affect you
- an unknown heir of a previous owner who is claiming ownership of the property



### YOU CAN'T BEAT THE VALUE

Owner's title insurance is a one-time fee that's very low relative to the value it provides. It typically costs around 0.5% of the home's purchase price.



### COVERS YOUR HEIRS

As long as you or your heirs own your home, owner's title insurance protects your property rights.



### NOTHING COMPARES

Homeowners insurance and warranties protect only the structure and belongings of your home. Getting owner's title insurance ensures your property rights are protected.



### 8 IN 10 HOMEBUYERS AGREE

Each year, more than 80% of America's homebuyers choose to get owner's title insurance.



### PEACE OF MIND

If you're buying a home, owner's title insurance lets you rest assured, knowing that you're protected from inheriting possible debts or legal problems, once you've closed on your new home.

AMERICAN  
LAND TITLE  
ASSOCIATION



For more information  
about owner's title  
insurance, ask an  
ALTA member or visit  
[homeclosing101.org](http://homeclosing101.org)

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# How Errors in Public Records Can Affect Your Home's Title

Although the property you just purchased is new to you, it has a history, and sometimes, these histories can include unwanted baggage. During a real estate transaction's closing process, a title search on the property is completed to determine whether there are title defects that can have an effect on the purchase.

One common title issue buyers face when completing a title search is an error in public records. Humans aren't error-free, and a clerical or filing error regarding your property can have an effect on the deed and result in costs you may not have expected.

A title search is performed in order to determine if your home's title is clear, as well as to find any mistakes that could have been made in public records.

An example of an error that could be filed in public records is a description of the property that may appear to be accurate but isn't, like the square footage of the home. Since banks and lenders will only offer about 80-to-90 percent of a home's appraised value, if the home's actual square footage is different than what is listed on the documents, buyers may run

into an issue with receiving the needed loan amount. As a result, buyers may be unable to obtain the loan and therefore unable to purchase the property.

Improperly filed legal documents, pending legal action or unreleased mortgages mishandled by public records can result in additional headaches for the buyers unless these issues are resolved.

## HOW TO AVOID ERRORS IN PUBLIC RECORDS

Completely avoiding errors in public records is nearly impossible because buyers have no control over a property's past or a mistake that could have been made by those filing and recording these documents. However, an Owner's Policy of title insurance will help protect your ownership rights from errors and defects found in public records. This insurance may cover both the legal costs to defend your interests as well as certain losses sustained as a result of a covered title defect.

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# IF ONLY THEY HAD KNOWN

## *Protecting Your Home with an Owner's Policy*

There are two types of title insurance: owner's title insurance, called an **Owner's Policy**; and lender's title insurance, called a **Loan Policy**. Most lenders require a Loan Policy when they issue you a loan, and the fee is usually based on the dollar amount of your loan. It only protects the lender's interests in the property. It does not protect the buyer.

A recent news article tells of a homebuyer who purchased a home on a land contract and made monthly payments of \$1500 to the seller until they were able to secure a loan from a national lender. At the time, the lender required the buyer to purchase a Loan Policy. Because it is not required by law to purchase an Owner's Policy, the homebuyer closed on the home with only the lender's interest being protected by the Loan Policy.

Several years later, the owners of the home were notified that their house was being foreclosed on and the sale date was fast approaching. How could this have happened? As it turns out, there was a prior loan on the home that was never paid off by the previous owner. Because the current

lender had required a Loan Policy, their interest in the property was covered. Had the current owners invested in an Owner's Policy, they too would have been covered. Unfortunately, without title insurance, they lost their home. Additionally, the resulting foreclosure may adversely affect their credit standing for years to come.

The homebuyers in the story above stated,

***"We didn't buy title insurance. We were first-time homebuyers. Had we known about title insurance, [we] definitely would have gotten it."***

Many homeowners mistakenly think that because a title search has been done on the property their interest is protected.

One thing is certain...If more homebuyers were aware of the protection a First American Title Owner's Policy provides, they would purchase one, and eliminate the unnecessary risk of losing their home.

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# METROPOLITAN ESCROW, INC

# THE VALUE OF TITLE INSURANCE FOR THE CASH PURCHASER

## Owner's Coverage an Essential Option

By: Michele Green, SVP, Senior Business Counsel-Agency Division, First American Title



### CLAIM SUMMARY FACTS

An owner's policy of title insurance was issued in the amount of \$1.2 million, concurrent with the insured's cash purchase of vacant land in a high-value area. The transaction was an REO sale of property recently foreclosed upon by a local bank, and the insured, Ms. Able, received a quitclaim deed. The title agent reviewed the land records and made the determination that title had validly passed to the lender via a non-judicial foreclosure, and that the lender had subsequently evicted the former owners in court. The insured Ms. Able began the process of building her dream home on the lot.

Our insured was well underway in the construction of her new home on the vacant lot and all was proceeding smoothly – right up until she was served with a lawsuit initiated by the foreclosed prior owners. The complaint alleged numerous defects not only in the foreclosure itself, but in the underlying mortgage documents. The lawsuit of course sought to set aside the foreclosure and restore title in the former owners. Unfortunately, it was discovered in the context of investigation that a few of the allegations about the validity of the foreclosure had merit under state law.

### OUTCOME

Counsel was engaged at the underwriter's expense to defend the Ms. Able's title and, although the validity of the foreclosure process was questionable, a motion to dismiss the former owners' complaint was filed based upon numerous theories of bad faith, laches, fraud, estoppel and res judicata. It's never fun to be hanging your \$1.2 million hat on murky equitable defenses from law books, but thankfully the court in this case got it right. The court ruled that because the former owners had allowed a default judgment to enter in the bank's post-foreclosure eviction proceeding against them, the issue of the bank's

rightful title to the property had already been adjudicated. Any claim by the foreclosed owners that the loan documents were bad, or that the foreclosure was void, was barred by the doctrine of res judicata. The case was dismissed, and good title rested in the hands of Ms. Able.

### LESSONS LEARNED

There are some interesting points to consider from the perspective of the title agent and the insured on the value of title insurance, especially had things not gone so well in court:

- » When underwriting a transaction where a foreclosure or other statutory process is in the back chain, title agents must confirm—often by a review of off-record evidence—that every statutory base was tagged. The consequence of a bad foreclosure is more often than not a complete failure of title.
- » Ms. Able purchased the vacant property for \$1.2 million, and that was the amount of the policy coverage. Having designed and substantially begun construction at the time of the lawsuit, Ms. Able's damages in the event of a failure of title would have grossly exceeded policy limits.
- » What would have happened if Ms. Able hadn't purchased title insurance at all? Even though the litigation to defend title was successful, it was at a cost of tens of thousands of dollars, all of which was covered by the title insurance policy. Had the defense not been successful, Ms. Able's large purchase price in cash, as well as at least that much in construction costs, would have been at risk without the policy. How many investors purchase foreclosed property for cash, and then pump money into it for improvements before selling? For the prudent purchaser, owner's coverage is never an "optional" investment!

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# There's No Place Like *Home*

## **Across this great country, from sea to shining sea, the American dream of homeownership is alive and well.**

Homeownership is about being part of a community and making the house you live in a great place to call home. It's about having backyard barbecues, children's birthday parties, and neighborhood watch patrols. It's about borrowing a cup of sugar, mowing the neighbor's lawn and teaching the paper boy the difference between the front porch and the front bushes. You plan on being here for a while, and you are invested in making your home and your neighborhood a better place than when you arrived.

There is nothing that provides quite the same joy, pride and sense of accomplishment as owning your own home. Even though your home may be new to you, every property has a history and there may be hidden issues in the chain of title that could affect your ownership rights to the property. An Owner's Policy of Title Insurance provides you with peace of mind by removing the hidden risks of acquiring a piece of property whose legal history is unknown to you.

### **COMMON TITLE ISSUES:**

- Errors in Public Records
- Unknown Liens
- Illegal Deeds
- Missing heirs
- Forgeries
- Unknown Easements
- Undiscovered Encumbrances
- Boundary/Survey Disputes
- Undiscovered Will
- False Impersonation of Previous Owner

These and other issues are often covered by an Owner's Policy of Title Insurance. Additionally, the title insurance company will, at its own expense, defend the title and pay losses within the coverage of the policy if they occur.

Title insurance has been protecting homeowners for more than 130 years. Purchasing a home may be the largest financial investment you ever make. An Owner's Policy of Title Insurance can give you added peace of mind in knowing that the title to your investment in the American dream of homeownership is insured.

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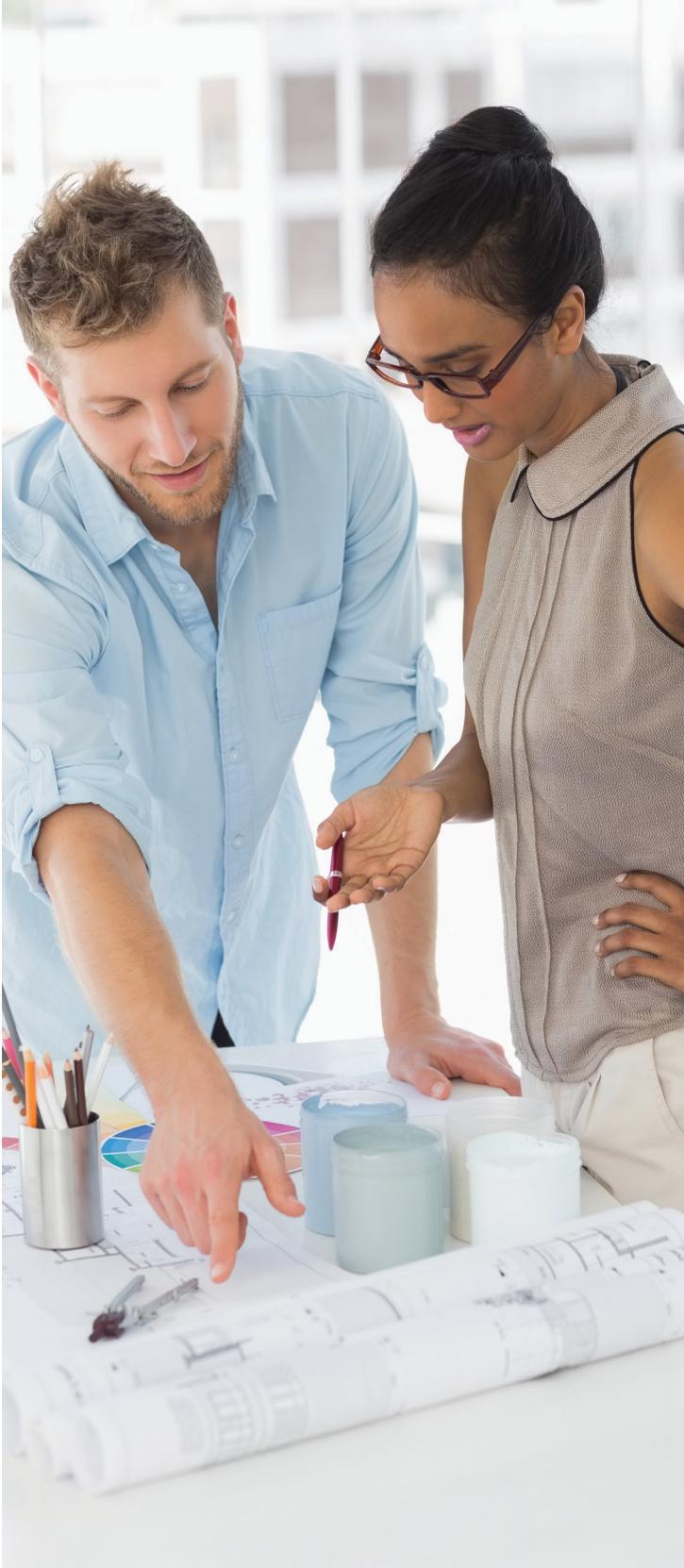
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# Why New Homes Need Title Protection

Title insurance is recommended for a newly constructed home even though the home itself has no title history. Because your new home was built on unimproved land, there may have been many prior owners of the property and with those prior ownerships comes the uncertainty of a clear chain of title. Additionally, obligations to contractors who worked on the home construction may be outstanding, jeopardizing clear title to the property.

Unlike home insurance and car insurance, which focus on possible future hazards, title insurance safeguards against loss from hazards and defects already existing in the past. A First American Title Owner's Policy offers the best protection from risk exposure associated with the purchase of a new home.

When a new home is financed, lenders almost always require that a lender's policy of title insurance be purchased, which protects the lender. This coverage does not offer protection for your investment. Only an Owner's Policy helps protect your interests. In fact, a bank's loan policy only covers the amount of the mortgage and only lasts until that debt is settled. An Owner's Policy offers you protection for as long as you or your heirs have an interest in the property.

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