

# The Title Contingency



## **Buyer's Viewpoint**

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Following up with previous articles on the inspection and loan contingencies of the purchase contract, this article will address the title contingency.

Homebuyers want to know that there aren't any ownership issues with the property they are purchasing, and that they are receiving what's known as clear title. Per the purchase contract, the seller pays for and provides the buyer with title insurance.

The purchaser can request the seller to provide an extended coverage title policy, which gives additional protection. The title company may require a survey in order to provide this additional coverage.

The title insurance company conducts an investigation of the property, and by a designated contract date, provides the buyer with a commitment for title insurance. The title commitment lists requirements that have to be met for the title company to insure the property, and exceptions for conditions the title company won't cover. The buyer can request that copies of the documents referenced in the list of exceptions be delivered with the title commitment.

Also, by a designated date, the seller provides documents and discloses title matters that they have knowledge of that are not of public record, such as leases, surveys or liens.

Homeowner association governing documents will be provided if the property belongs to an HOA, and the contract can be made conditional on the buyer's acceptance of these governing documents.

The title commitment will have some normal exceptions. For example, the title company won't cover loss due to taxes the new homeowner doesn't pay, damage to rosebushes planted on a utility easement, or penalties imposed due to the owner breaching neighborhood rules and regulations (covenants). An exception to an encroachment or right of way, however, can signal a problem.

The buyer and buyer's agent review the title documents. For some complex issues a real estate lawyer may be consulted. If there are unsatisfactory title conditions the buyer wants to

object to, the buyer is required to provide written notice by the title objection deadline specified in the contract. I usually write a title letter stating areas of concern that need to be addressed, or to request additional documents, and deliver it to the title company and the seller's agent. The seller has until closing to cure the unsatisfactory conditions. If the seller is unable to cure them by this time, the contract will terminate unless the buyer chooses to withdraw the objections.

The title policy arrives several weeks after closing. It's a good idea to review the policy to ensure that the coverage provided in the policy matches that which was stated in the commitment.

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