

Is title insurance necessary for the buyer?

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HOUSE
LAWYER

I recently read an article in the Real Estate section about what buyers should know before closing. The article, however, did not deal with the question of title insurance for the buyer, as opposed to the lender. Does it make sense for the buyer to pay for owner's title insurance even though the lender is requiring its own title policy?

— E.R.

The short answer is yes — buy title insurance. Perhaps the best way to illustrate why you need owner's title insurance is to share a real-life situation involving a recent graduate who had just landed his first well-paying job and decided to buy his first home in the District. Because he had student loans, his cash available for closing was limited. Mr. Buyer learned that the title company was going to conduct a full 60-year search of the land records, the court records and the bankruptcy courts. So he figured he could save a few hundred dollars by not buying an owner's policy. What he did not appreciate was that the lender's policies only cover lenders, not owners.

At settlement, Mr. Buyer met the Sellers — a nice, middle-aged couple who had bought the home 20 years earlier.

About a month after the settlement, Mr. Buyer was surprised by a knock on his door. "What are you doing in my home?" asked the woman on the doorstep. The woman produced her Nevada driver's license, which identified her as Mrs. Seller. Unfortunately, this was not the "Mrs. Seller" who attended the settlement and signed the deed.

Twenty years ago, she said, she and Mr. Seller were newlyweds and bought that home as tenants by the entirety. Shortly after moving in, the marriage soured, and Mrs. Seller moved to Nevada to start her new life. She eventually filed for and obtained a Nevada divorce.

The Sellers agreed at that time that Mr. Seller would remain in the home and pay all expenses, including the mortgage. But in the event the home was to be sold, both parties would split the proceeds. When a marriage ends in divorce, a tenancy by the entirety is automatically converted into a tenancy in common. Nothing was ever recorded in the Recorder of Deeds Office in the District, and because the divorce was in Nevada, nothing showed up when the title company searched the D.C. court records.

The real Mrs. Seller discovered that her ex-husband had sold the home to Mr. Buyer when she received a copy of the certificate of satisfaction from the

mortgage company. Some checking revealed that her ex-husband apparently had his girlfriend pose as his ex-wife when signing the listing agreement and again at settlement when forging the deed. She learned from the settlement agent that her ex had the net sales proceeds wired to an offshore bank account and had apparently moved out of the country and vanished. All forwarding addresses and contact information provided at settlement turned out to be false and dead ends.

So where does this leave Mr. Buyer, his lender and the real Mrs. Seller? Under D.C. law, a forged deed cannot convey good title to a purchaser. When Mr. Seller signed the deed, at best he conveyed his 50 percent tenant-in-common interest. When his girlfriend forged the real Mrs. Seller's name to the deed, it conveyed nothing. Consequently, Mr. Buyer does not have good title to 100 percent of his home. The real Mrs. Seller, never having signed the deed, still owns her half of the home. Because the lender's first lien position was granted by Mr. Buyer, who did not own the entire property, its first lien position in the entire property is also not valid. However, because it has a lender's title insurance policy, the title insurance company might have to cover the lender's losses up to the full loan

amount as a result of this forgery.

When the dust settles, Mr. Buyer is legally the 50-percent tenant in common with the real Mrs. Seller. This is obviously an unsatisfactory situation. Had Mr. Buyer purchased owner's title insurance, he could have simply filed a title claim, and the title insurance company would hire attorneys, at their expense, to sort out the mess. The title company probably would have bought the real Mrs. Seller's interest for Mr. Buyer's benefit.

However, without title insurance, Mr. Buyer must either deal directly with the real Mrs. Seller or hire attorneys at his own expense to try to track down Mr. Seller and the sales proceeds. This is an arduous and expensive undertaking. Protracted negotiations and/or litigation likely would ensue. All the while, Mr. Buyer's quiet enjoyment of his new home is in jeopardy.

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