

# Title Insurance: What are YOU en-*titled* to?

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- Megan graduated from Southern Illinois University School of Law in 2016 and Bradley University in 2013.

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- Previously, Matt has worked as an underwriter for both First American Title and another national title insurer. Matt got his start in title insurance working as the general counsel for a title agency.
- Matt graduated from the University of Utah in 1998 and Vermont Law School in 2001.

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# What IS Title Insurance?

## Statutory Definition

- TITLE INSURANCE. (a) Insurance guaranteeing or indemnifying owners of real property or others interested therein against loss or damage suffered by reason of (i) liens, encumbrances upon, defects in, or the unmarketability of title to such real property, or adverse claim to title in real property with reasonable examination of title guaranteeing, warranting, or otherwise insuring by a title insurer the correctness of searches relating to the title to real property and (ii) defects in the authorization, execution, or delivery of an encumbrance upon such real property, or any share, participation, or other interest in such encumbrance, guaranteeing, warranting, or otherwise insuring by a title insurer the validity and enforceability of evidences of indebtedness secured by an encumbrance upon or interest in such real property...

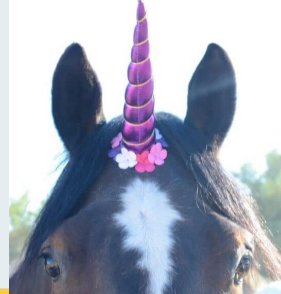
-Neb. Rev. Stat. § 44-201 (15)

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# What IS Title Insurance?: “Just the Facts”

- **Title insurance** protects or insures an owner’s or lender’s interest in real property against loss or damage caused by:
  - (A) **Encumbrances, Unmarketability of Title, Defects in or Adverse Claims**
  - And/or
  - (B) **Defects in the Authorization, Execution, or Delivery of Interest in Property**
- ....Okay....
  - ...an ‘interest’ in property?
  - And “real” property? Is there fake property? *Imaginary* property??
  - WHAT’S AN ENCUMBRANCE?!
  - Never fear! Let’s start at the beginning:



Pictured: “imaginary property”

# “All Property Is ‘Real’ Property, but Some Property is More Real” or How Did We Get Here?

- **Oldest documented ‘real estate’ transaction is from Scotland, in 1248** ([source link](#))
  - Describes a “Sir Malcolm,” who conferred ‘full Sasine’ to “Sir David Graham”
  - “Sasine”: [SAY-ZINE] ceremony to transfer right/interest in land between seller + buyer, with symbols/stand-ins for property rights
  - THEN: ceremony was recorded in “Registry of Sasines,” which kept track of property ownership records
- **English term “real estate,” comes from 2 sources:**
  - 1) “**real**” comes from Latin *realis*, adj meaning “existing, physical, or [for property] “immovable”\*”
    - \*as distinct from “movable,” or more common term: “personal” property
  - 2) “**estate**” was added by British monarchy, emphasizing any property rights subjects held were gift/grant from “monarch’s estate” (i.e., the entire country/nation)



# **“What’s It To Me?” or; Relevance of Title Insurance in the “Real” World**

- Most common events in a person’s life involving real estate (and associated title insurance policies):
  - (1) Buying /Selling a Residential Home; and/or
  - (2) Inheriting a house, piece of property, or other real estate [if inheritor(s) then decide to sell the inherited property\*]
- We’re going to follow a couple, the Robinsons, through both of these life experiences, to see how title insurance works for them



## The Robinsons(' Children) Inherited: What Now?

- Sadly, not long after Craig and Melody are married, Craig's parents, Betsy and Charles Robinson\* pass away on the same date in a parasailing accident, meaning their four children, including Craig, inherit the family home, according to both their parent's wills. \*names are fictitious
- **All** the siblings **agree to sell** their parents' **house**, but
  - **Multiple** types of property deeds →
  - What is best for the siblings (especially Craig, who has never owned a home before)?
  - Let's look at types of property deeds and help them decide!

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# Selling the Concept of ‘Ownership’; Or: “Conveyance by any other name...”

- FIRST: what does ‘conveying a property deed’ mean?
- **Conveyance**...is just a fancy word for “[legally] transfer [ownership].”
- Property can be conveyed (transferred) multiple ways, but two most common are **sale** or **inheritance** of property (through property “deed”)
- **Deed** is a legal document that conveys ownership to a piece of property or real estate from seller to buyer
  - **How it works:** deed transfers title\* of an asset to new owner, then [public] record is made of deed - (usually) done by the County Records Office and stored there
    - **Some conveyances** (transfers) of deed carry a “**warranty of title**”
      - \*A **warranty of title** is a promise the seller makes to buyer: seller can convey [transfer] ownership of the property **freely**\*
        - » \* **‘freely,’** here, means ‘no other person holds an interest in this property/house’
      - title is a document showing legal ownership of a property or asset
  - The *most secure* way to **convey** a **deed** from seller to buyer is by starting with a title search of the property, but it’s not the only way:
    - » six (6) common types of property deeds in real estate →

# (Almost) All the Ways to Sell [or Buy] a House or: **Common Types of Property Deeds**

- NOTE: This list is not exhaustive, only represents the most common types of deeds used in real estate transactions. List is ordered from 'least' to 'most secure' types.
- (1) **Quitclaim Deed**\*
  - Buyer takes property “as-is”, i.e., no protection if seller does not have clear title
- (2) **Bargain and Sale Deed**\*
  - Deed states grantor (seller) is the title-holder
    - \*No guarantee property does not have attached liens or debts
- (3) **Grant Deed**
  - Transfers interest in property from seller to buyer;
  - Guarantees seller owns property entirely
    - 1) “seller owns entirely” = no other person can claim an interest in the property
    - 2) “guarantee” in Grant Deed is v. important, because gives buyer a recourse (i.e., right to sue) if there’s a flaw in the deed

# Common Types of Property Deeds, Cont'd

- Robinson siblings decide on a more secure type of deed, b/c house will be on the open market, so they keep researching, learning about:
  - 4) **Warranty Deeds**
    - Have two subtypes:
      - (A) **General Warranty Deed**
        - Guarantee that seller has legal right to sell property + no encumbrances\* on property exist
          - » \*encumbrance = “interest or right to property by someone other than owner”
      - (B) **Special Warranty Deed**
        - Protects grantee (buyer) from any issues or claims, but only those arising during grantor’s (sellers) ownership period
  - (5) **Mortgage Deeds**
    - Deed is signed between 1) homeowner and 2) bank (or other lender), putting property as collateral for home financing taken out
      - » “mortgage payments” = payments toward debt/loan held by bank
- AND** →(last, but not least...)

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# Common Types of Property Deeds, 3

- (6) Deeds of Trust
  - **How a Trust works:**
    - A “trust” is a fiduciary relationship where:
      - The “grantor”/“trustor” gives a second party – the “trustee” (normally a bank, but may also be a person) right to title of property or assets for the benefit of a third party (the beneficiary)
    - “Deeds of trust” replace a conventional mortgage with a situation where the deed/loan for property is transferred by trustor to trustee [usually **bank/mortgage lender**], who holds loan/property as security against debt of ‘beneficiary’ [**homeowner**], until debt is fully paid
- Wow, that’s a LOT!
- Robinson siblings are overwhelmed. **All** siblings agree to contract with a real estate company to handle the sale of their inherited home
- Melody and Craig can use new info on property deeds as we follow them through **buying their first home** →

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# “Foundations” of Property Law: aka, How to Buy a House in 6-8-10 ‘Easy’ Steps

- **Craig and Melody Find their Dream House: at lovely 742 Evergreen Terrace!**
  - Process of Buying a Home (or other piece of Real Estate):
    - » 1) Offer –
      - Step1 – extend an offer to **seller** to buy the property/house
        - Step 2: **Seller** accepts offer, Craig and Melody move in.
        - Easy!
        - ....Right?
          - **Not quite.**
    - » 2) Seller’s Acceptance of Offer = just the beginning of conveyance
      - Another essential difference b/w “**personal**” and “**real**” property: in general, real prop/real estate (EX: land, houses, etc.) is much more complex to convey (aka: transfer/sell)



Why? Let’s dive in →

# Title Search: Steps 1-3; or: “Why Won’t You ‘Commit’ to Me??”

The **Title Search** process *starts\** the usual ‘closing’ of a **real estate** transaction, including purchase of a home

## Steps of Title Search:

- (1) Title agent creates an **Order** for a title search for either a new loan and/or purchase of piece of property
- (2) **Public records** are searched and examined
- (3) **Title Commitment** is issued
  - Commitment contains:
    - Agreement to insure title of prop
    - Amount of Insurance
    - Insured parties
    - Exceptions to policy
    - Conditions to be met
  - **NOTE:** “title commitment” is not title policy [yet]

[CONTINUED →]

# [Issuing a Title Insurance Policy]

## Title Search Step 4: “Clearing the Clouds”

- “Clearing Clouds” = Removing Exceptions in title commitment before closing of sale
  - Two Types of Possible “Clouds” on property title:
    - (A) Encumbrances, Unmarketability of Title, Defects in or Adverse Claims
      - Encumbrances: [Rem: Encumb = ‘an interest or right in the property by someone other than the owner’]
        - » Ex: liens, easements, mortgages, leases, restrictive covenants, ALSO: can be an unrecorded interest in the property
      - Unmarketability of Title = Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of Title or lender to be released from the obligation to purchase, lease or lend if there is **a contractual requirement to deliver marketable title** (i.e., “seller must have clean title [right to sell property]”)
      - Adverse Claims = other party(ies) with claim on property

### (B) Defects of Authorization/Execution/Delivery of Interest in Property



# [Issuing a Title Policy, Step 4: Clearing Clouds] Exceptions, and Easements and Deeds, Oh My!

- **Important 1<sup>st</sup> Point:** instead of removing “clouds,” a title insurance agent will first attempt (if possible/realistic) to resolve issues on title, then, title commitment will list the still-existing “clouds” on the title → title policy contract language
  - WHY Do Some Cloud’s Stick Around?
    - Public records = v. difficult to change
    - Sometimes ‘issues’ on title are not ‘issues,’ *per se* (or, are ‘Temporary’)
      - No “**release assignment**” or “**satisfaction of mortgage**” forms filed on public record [we will come back to this later
      - **Outstanding Lien Issues**
        - » Title agent/agency can require [by adding to terms of sale closing in contract language] **seller of property** to pay any outst. liens prior to closing of sale
        - » NOTE: work with your title co. – buyers/homeowners can norm. look over title commitment before policy is issued, and paid liens can be removed from commitment doc

## Common Exceptions to Coverage in a Title Commitment or Title Insurance Policy:

- Easements
- Restrictive Covenants
- Outstanding liens (if not able to be closed out as ex ↑)
- Previous deeds on property →

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# Title Company Release” Forms or; “A Man’s House is His Castle (Especially After the Mortgage is Paid)” [Issu’ance, Step 4: Clearing Clouds]

- “Title Company Release” forms also called “**release assignment**” or “**satisfaction of mortgage**” forms
- Def: docs which state a named lender has released a named homeowner from all liability for mortgage loan
  - **Title Co. Release/Release Assign./Satisfaction of Mortgage Forms** must be filed at the local land office to be valid/binding
  - Release forms contain:
    - Legal description of property
    - Borrower’s name
    - Title company’s contact information
    - Date the release takes effect
      - \*mostly comes up in cases of mortgage being re-sold/re-financed
- NOTE: Usually, it is the borrower’s responsibility to fill out/file release form on their own loan – lender is not obligated

# [Issuing a Title Insurance Policy]

## Title Search: Final Steps (5+6)

- (5) **Sale Closes (concludes); Title Ins Premium is paid once (i.e., lump sum)**
  - “Closing” is deceptively short word
  - Title Insurers often also provide “closing services,” along with issuing title ins policies, specifically, escrow services
    - **Neb. Rev. Stat. §44-1981(8):** Def. of “escrow”
    - **Short version:**
      - » title insurer opens **escrow account**, (usually with a bank), and any money deposited in **escrow account** is held by a “custodian,” (i.e., usually bank), who ensures **1) funds are segregated** and **2) no funds disbursed without meeting req’s set up by account owner**
    - Title insurer/agent takes **direct payment** (i.e., “escrow fees”) to conduct **closing of sale**– using **escrow account** to pay third parties involved in real estate transaction
- (6) **Title Insurance Policy Issued after Closing**
  - “gaps” can occur between the first and last steps → see next ~~NEBRASKA~~ slide

# “Mind the Gap” or, Issues of “Gap” Coverage in Title Insurance Policies

- **“Gap” in context of title insurance: period of time between:**
  - (1) “date of policy” (aka date title policy issued) and
  - (2) “date of record” (aka, date that deed for property is received/recorded/filed with appropriate agency, listing buyer as the new owner)
- **“Closing” process of a property sale can stretch over three different dates (all important!):**
  - (1) date of closing (i.e., date of “signing [paperwork]”)
  - (2) date of settlement/final escrow closing payments made
  - (3) date records are actually updated by local land office (e.g., the County Recorder’s Office)
    - NOTE: The records date also needs to account for time to get records to office, then time for records to be “indexed” by Recorder’s office (i.e., added into the public records)
- **MOST IMPORTANT OUT OF ALL OF THESE DATES: “Date of Policy”**
- **WHY?:** anything that occurs **before date of policy** is **covered** (unless listed as an exception in the policy)

# Bridge over ‘Unquiet Title’ or, “Gap Coverage” Provisions in Title Insurance Policies

Solution to (Possible) Coverage Gaps =

**“Date Down Endorsements”:**

These **change** the effective date of a title insurance policy, to later coverage date, using **provision/clause in the title contract**

- NOTE: “date down endorsements” are also commonly used when mortgages are purchased by a 3<sup>rd</sup> party or refinanced

IMPORTANT THINGS TO REMEMBER:

- (1) gaps may occur without any “error” on party of person who issued title policy
- (2) sometimes, gaps **don’t occur**

# Types of Title Insurance Policies

- (1) Owner's Title Policy:
  - Insures the owner **against loss due to**:
    - Conflicting ownership claims
    - Errors and/or “honest mistakes” in public records
    - Fraud or forgery
    - No right of access to and from the land
  - **NOTE**: Owner's title ins is **not required by the buyer's lender**, but is **recommended**
- (2) Lender's Title Policy:
  - Insures the lender's mortgage against loss
    - **Lender's** title ins almost always purchased by **borrower** as a req for obtaining a home loan,
    - Normally, issuance of **lender's title insurance policy** marks **closing** of sale, because:
      - Lender's title policy (usually) covers up to mortgage loan amount, but **no protection for borrower/owner – hence ↑**

# Title Insurance: a Brief History

- **Watson v. Muirhead**, intro'd concept of **title insurance** in 1868
  - Muirhead, a “conveyancer” [**think: land agent, a person who helps someone transact a property sale**] hired by Watson, to assist Watson to purchase some property
    - **Muirhead** consults local attorney, who tells **M** there is a lien on the property, but the lien is not recoverable [i.e., can't be collected on]
    - **M** goes back to **W**, gives **W** OK to buy property, BUT →
      - Turns out, lien **is** enforceable, and new owner (**Watson**) ordered to pay \$\$
    - **Watson** (buyer) actually lost his case (!) – BUT brought attention to importance of protecting individuals in property transactions, and:
- In 1876, first Title Insurance Company is opened in Philadelphia
- **Title insurance = minor industry** until World War II
- Post-WWII Real Estate Boom: blessing and a curse for title insurers
  - Investments ↑ in title insurance co.'s due to **new laws** requiring title insurers to be solvent
  - Title Ins Industry (up to ~1970's) benefited big investors/firms/building companies
    - far more than individual consumers

# “The High Price of Peace of Mind;” or Expense Ratios in P&C and Title Insurance

- Historically, **title insurance policy rates** had a reputation for being higher than justified by skill, effort, or time consumed by process of issuing title policy
  - [see linked “Testimony on Cost & Competition in Title” on “Sources” slide]
- The NAIC collects data about and reports bi-annually on expense ratios for both the Property and Casualty and Title Insurance Industry
  - **Expense ratios:** % of premiums that insurer uses to pay out for expenses
    - **ER:** calculated by dividing expenses of acquiring, underwriting and servicing premiums by net premiums earned
    - Expense ratios can be a (rough) guide of **insurer’s profits:** the higher the expense ratio, the more the “expenses” (i.e., **costs to insurer**) are ‘taken up’ by **net premiums** (i.e., **profit**), which means overall a reduction in cash flow for insurer to use towards investments
- (For 1<sup>st</sup> half of 2021) **P&C’s Expense Ratio: 26.7%\***  
vs.
- (For 1<sup>st</sup> half of 2021) **Title’s Expense Ratio: 95.7%\***
  - \*all figures taken from NAIC Report “Property & Casualty and Title Insurance Industry,” link at end of slides
- **However:** expense ratios don’t tell the whole story →



# Comparing Underwriting and Loss Ratios in P&C vs. Title Insurance

## (1) Loss Ratios in Insurance:

- “Loss Ratio” for an insurer calculated by: **total of all claims reported to insurer + insurer’s cost for claim handling ÷ total premiums earned**
  - Loss ratios often used as (rough) way to evaluate insurer’s financial health and profitability [\*information taken from NAIC Report, Pub. 2022 – see sources]
  - \*Loss Ratio of P&C Ins [for 2021]: **69.6%**
  - \*Loss Ratio of Title Ins [for 2021]: **2.4%**

## (2) Underwriting Costs:

- **P&C underwriting costs:** 20-30% of total rate (on average)
- **Title underwriting costs :** 85-95% of total rate (on average)

What accounts for such a dramatic difference? →



# Why Are Underwriting Costs for Title So High? Or: **“[Your title agent] Works Hard for the Money”**

Short answer: Inherent fixed costs in title underwriting (i.e., title search process)

Issuance of (Average) Title Insurance Policy requires Title Agent or Agency to:

- Perform Extensive Searches of/for\* (\*not an exhaustive list):
  - Tax records
  - Court Judgments
  - State and Federal Records
  - Encumbrances on Property
- “Clear Clouds” On Property Title (After Search Results Obtained) and
- Draft a Unique Title Policy for Each Transaction
  - Key difference b/w **Title** and **P&C policies**:
    - **Title ins policies**: must contain an accurate legal description of property, including any encumbrances on property, a complex task title agent is req'd to perform as part of underwriting duties
    - **P&C ins policies**: policies tend to have “boilerplate” language only need to be altered to describe covered property or liability → much less drafting [underwriting] work for P&C agent

# What ‘Combined Ratio Data’ Can Show”, Or: How to Read the “Title-leaves

- The Combined Ratio of an insurer measures how much revenue from collected premiums an insurer is earning, compared to total of claims paid out by insurer
  - “combined ratio data” is used as a metric for an insurer’s profitability and financial health
    - [\*information taken from NAIC Report, Pub. 2022 – see sources]
    - \*Combined Ratio of P&C Ins [for 2021]: 96.9%
    - \*Combined Ratio of Title Ins [for 2021]: 98.1%
      - ↑ so, (at least in 2021), contrary to its rep, title insurers spent **more revenue from collected prem.’s (balanced against total claims paid out)** than P&C industry
- Price of title insurance may lead consumers to seek other options to conduct real estate transactions, which leads us into →

# Title Fraud, or; “Hey, I’m a Stranger on The Internet: Would I Lie to You?”

## What Property Title Fraud Can Look Like:

### Wire Fraud (‘Email hijacking’)

- ‘email hijacking’ is where **wire fraud** begins
  - » **Phishing** → ‘hijack’ target’s emails → send emails as Selected target, Often a **real estate pro**
- Scammers use **“Seller impersonation”** once they have **access** to **target’s information:**
  - Scammer impersonates seller of prop, fraudulently signs “for” owner, to either:
    - » take out a second mortgage on prop/house, then disappear with money; or
    - » “sell” the house/property
      - **NOTE:** no ‘true title’ is conveyed by sale, leaving buyer with **no recourse**
  - Also shows up as **impersonation of a seller’s representative**
    - Scammer sends an email to person selling a house, representing themselves as seller’s **realtor/lawyer/agent/etc.**, and including **fraudulent wire transfer information**, and a **request for funds**, hoping victim will follow and send money

**NOTE: specific red flag:** information for wire transfers changing rapidly or at the last minute, and really, an email request to wire money - **email is not a secure way to send financial info - do not follow wire transfer instructions through an email**

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# Title Insurance and Regulation: or “Where Do You Get the Authority?!”

- **Title Insurer’s Act:** Neb. Rev. Stat. §44-1978 – 44-19,105
  - 210 Neb. Admin. Code, **Chapter 34** concerns **Title Insurance and Title Agents**
  - **Regulators have a duty** to protect current and potential policyholders from harm, **especially** in title insurance industry, where there are:
    - Few choices in providers
    - Product (title ins) is not marketed to buyers
    - Product is poorly understood by consumers ↑
    - **Price inelasticity** of product (due to nature of title ins)
  - **Special considerations for title:**
    - **Title Insurers/Agents** are also under **federal regulation:**
      - The Real Estate Settlement Procedures Act (RESPA)
      - RESPA prohibits paying rebates or ‘kickbacks’ to title agents (‘kickbacks’ = **giving or accepting money/other items for services of value**)
      - rebating/kickbacks are also generally banned under state law ~~NEBRASKA~~
- Which brings us to →

# Recent Changes in Nebraska Title Law

- **Legislative Bill 863** was approved by the Governor on April 18, 2022, applies to insurers and insurance agents
- **Before** the Bill: rebating of any kind was completely restricted.
- **After: rebating up to \$100** is now allowable for non-cash gifts, meals, items and/or services.<sup>\*</sup>
  - Cite to updated law (link included): [Neb. Rev. Stat. §44-361](#)
- **HOWEVER, rebating can never, ever, be used for referrals** see → **Neb. Rev. Stat. 44-19, 111:**

“A title insurance agent or other person shall not provide or receive, directly or indirectly, any consideration for the referral of title business or escrow or other services provided by a title insurance agent.”

# A Friendly Reminder & Update on Pending State Legislative Actions

(A) Reminder: Mandatory/Binding Arbitration Clauses in title insurance contracts cannot be enforced in this state under Neb. Rev. Stat. §25-2602.01(f)(4) –  
Neb. Rev. Stat. :

§ 25-2602.01(b) “[a] provision in a written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable, and irrevocable...”

[followed by]:

§ 25-2602.01(f) “[s]ubsection (b) [shown above] does not apply to:

\* \* \*

(4): ...any agreement concerning or relating to an insurance policy [other than a contract between insurers, including reinsurance].”

(B) Possible Repeal of Req: On-Site Review by Title Insurer of their Agents –  
– LB 92 → now, “AM84” is in enrollment and review (i.e., has not been passed at this point)  
– IF it passes – will remove the words “an on-site” [review] from ~~NEBRASKA~~ §44-1993(3), the **Title Insurer’s Act**

# DOI Guidance Document Update

- NOTE: States may vary widely on what their agencies issue as guidance outside statute. **Refer to your state statutes on what is considered a guidance document, and as to what violations of those documents may result in.**
- Titles for guidance docs may include:
  - Bulletins, Guidance Documents, or Notices
- Recent “Overhaul” of our guidance docs → “Insurance Guidance Documents” (IGD)

## Update of Insurance Guidance Documents:

### Title Insurance Guidance Document’s Withdrawn/Struck (as of 1/31/2023):

- **CB-69**, subject: “Title Insurance Rebates & Compensation for Unlicensed Agents”
- **CB-93**, subject: “Title Opinions” [aka Prohibition Against Title Agents/Insurers to issue Title Opinions/Reports/Memos not related to Issuance of Title Commitment or Policy]
- **CB-131**, subject: “Title Insurer Onsite Review of Title Agent”

AND:

### New Name, same great guidance:

“Bulletin CB-140” is now **“IGD C-12,”** subject: “Closing Protection Letters [for title agents/insurers]” – NO CHANGES OTHERWISE

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# Insurance Complaint Division... the Big Bad Wolf?

- The role of Insurance Complaint Division's staff is to be regulators, not advocates

## What does this mean?

- ICD does not take sides between insurers and consumers
  - ICD's role is to evaluate company and agent/agency handling for compliance with the policy contract and applicable insurance laws and statutes
- **And:** ICD is not looking to assign fault
- Please consider ICD a resource for all types of questions



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# Title Insurance Complaints: Examples

- **Ex. 1:** Title agency holding \$1,000 in escrow for work completed two years ago and wouldn't release contractor's [complainant's] funds [b/c work was not completed to the buyer's satisfaction and buyer refused to release the funds].
  - Outcome: Buyer's attorney authorized the release of the funds and the complainant confirmed receipt of funds.
  - Statutory cite for duties of title agents/insurers managing escrow accounts: Neb. Rev. Stat. §44-19,116;
  - Regulation cite: Neb. Admin. Code Title 210, Chapter 34, §006.11 – **Escrow Closings**
- **Ex. 2:** Closer asked for check to pay delinquent taxes [which seller owed, but hadn't paid prior to sale]. Title agency should have collected for taxes and missed it. Complainant still owed the taxes and needed to pay it. Note: this outcome was due to contract provision in title policy. Be sure

to read/check!

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# Title Insurance Complaints: Part Two

- Complainant sold rental property to their son, but loan on the property was taken out under complainant's name. Property sold and multiple alleged problems with title agency handling, one of which:
  - **Was affiliated business arrangement disclosed?**
    - Def: arrangement where Title Producer A (or an associate of A) refers title ins business to Title Agent B, gen. for either money or “gift” of some kind
      - NOTE: there must be a “financial interest” involved to make an affiliated business arrangement– i.e., a friend of a title agent recommends them, b/c they're friends [i.e., no financial gain]? not an **affiliated business arrangement**
    - Title Agents must disclose to clients in writing any “affiliated business provision” and (also in writing) an estimate of charge (or range of charges) gen. made for title agent's (their own) services – [Neb. Rev. Stat. §44-19,112](#)
    - Agency handled correctly -provided documentation of **written disclosures**

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# Title Insurance Complaints: Final

- Mechanic [i.e., contractor] had a lien filed on a property and it wasn't paid off when the property was sold to a new buyer. Title agency refused to release funds without the seller's permission. The seller disputed the lien. The complainant's (mechanic's) recourse was civil.
  - Only civil recourse b/c DOI does not have jurisdiction over enforcing the terms of escrow accounts (terms are set and agreed to by account owner and account custodian (aka: the bank managing escrow, usually), must be addressed in civil court)
- The NDOI received notice of an agency's canceled surety bond. The agency chose not to respond to the NDOI inquiries regarding the bond.
  - Neb. Rev. Stat. §44-19,109(3), any Title Agents who handle escrow accounts or security deposits for clients are required to hold a surety bond [or similar instrument], MIN Amount of \$100,000.00 to cover title agency and its employees, if any

**Outcome:** An action was filed and the agency was fined \$200. Do not ignore requests from the NDOI

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# What Should You Do In The Event Of a Complaint?

- Uh oh... now what?
- If you get a Department inquiry, answer it. Make sure you provide all requested documentation
- Remember, ICD is not out to get you and the investigator isn't accusing you of any wrongdoing. They are gathering information to see what happened
- Whatever you do, do not ignore a Dept/ICD request
- We won't notify you if a complaint is closed with no action taken. No news is good news



# What Can You Do To Prevent a Complaint?

- Be upfront
- Call Barbara Peterson with any questions or concerns... this is not a time to ask for forgiveness instead of permission
- Promptly and courteously answer questions, return calls and emails
- Be sure the information you give is accurate and up-to-date
- Communication is key. Numerous complaints could have been avoided with better communication
- Document, Document, Document!
  - **If it's not documented, it didn't happen**

# Rules for Referrals of Title Agents

- Referrals of title agents can be a tricky, because there's a thin line between "referral" and "illegal kickback"
- Let's do a quick rundown on common scenarios in title insurance, and what does (and does not) count as a "referral" :
  - "Referral," under Neb. Rev. Stat. §44-19,108(12) means: "the directing of title insurance business, whether or not the consent or approval of any other person is sought or obtained with respect to the referral"
    - Prohibited Referral Methods:
      - Title Agents cannot pay clients for accepting a referral for their services and
      - Title Agent A can't contract with Title Agent B (or any other or Agent B to refer Agent A
    - Accepted Referral Methods:
      - anyone can recommend or refer a title agent – as long as no financial interest/benefit behind/in the referral [good question to ask: is anyone being paid for making this referral? Or receiving a benefit]
      - Title agents can share office space with other businesses, but ONLY IF:
        - » The business sharing space with title agency is not being paid to refer the title agent AND
        - » The space-sharing business cannot provide incentives to a title agency to share the space (Ex: a bank cannot offer a title agency a reduction in rent if title agency agrees to share bank's office space

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# Insurance Complaint Division

- Barbara Peterson, Administrator

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Phone: (531) 500-2349

- [www.doi.Nebraska.gov](http://www.doi.Nebraska.gov)
- Hotline: (877) 564-7323

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# Works Cited & Sources

- Rosenberg, M. K. (1977). Historical Perspective of the Development of Rate Regulation of Title Insurance. *The Journal of Risk and Insurance*, 44(2), 193–209. <https://doi.org/10.2307/252133>
- Article from American Land and Title Association (ALTA) about [steps to take to avoid falling for 'wire fraud' in property title transactions](#)
- [A.M. Best Methodology: Article on "Rating Title Insurance Companies" \(Pub. August 3, 2016\)](#)
- The Consumer Federation of America's Report on Testimony Given Before the U.S. House of Representatives on April 26, 2006, Concerning ["Cost and Competition in Title Insurance"](#)

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# Housekeeping

- Certificates of completion will be emailed to participants
- Please stick around after the Q&A for a brief satisfaction survey



# Questions?

Contact:

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# Satisfaction Survey

If you have a topic you would like us to discuss in future presentations, please email us at [aj.raaska@nebraska.gov](mailto:aj.raaska@nebraska.gov)