

## CHAPTER THREE

### DEFENDING YOUR TITLE

#### What Title Insurance Will Do for You--and What It Won't

After an hour in the lawyer's conference room, you've signed your name in half a dozen places and written checks for the down payment and fees. Standing up and stretching, you shake hands with the lawyer, the banker and the sellers. Despite all your worries, the closing has gone smoothly and you're free to gather up your papers, thank everyone and head down the hall. Stepping outside, it hits you that you now officially own that wonderful home.

You can't help peeking again at the paper with "Warranty Deed" written in bold letters at the top. Everything looks fine: the lengthy legal description, the sellers' signatures, the statement in lofty language that you are the owner in fee simple, to have and to hold said premises forever. The document is authoritative, traditional and reassuring. So why did your lender insist on title insurance?

Because residential property often has a long and convoluted history of previous owners and transactions. You can't tell by looking at the property and the current deed whether the title is good, as if it were a grapefruit in the supermarket. For all you know, the people you bought the house from might have slipped out and gotten a second mortgage on the property two days before closing, or neglected to pay a \$5,000 special assessment for the new sewer. Perhaps the swimming pool is located right on the electric company's easement for underground lines. Maybe the prior owner

decided not to tell you that her ex-husband has a **lien**, that is a claim on the property for repayment of debt, on the house for half the proceeds of sale.

Title insurance is like a stockade fence around your property, protecting it from pirates who might creep out of the past. Chances are you'll never file a claim, but you'll be mighty glad to have title insurance if you do.

To a great extent, securing title insurance is an exercise in preventive law. Just as health insurance companies refuse to insure people with a history of medical problems, title insurance companies refuse to insure properties with a history of legal uncertainties. Accordingly, the title examiner combs the records with an expert eye and identifies any potential problems, such as an unpaid tax assessment or a neighbor's easement for right-of-way. The examiner then issues a preliminary report called a **commitment**, which lists these defects and informs you of any problems that the seller must correct prior to closing. If the company isn't willing to cover a particular matter and the seller can't or won't correct it, you have a choice whether to live with the problem or bow out of the deal. If a title insurer refuses to write the policy at all, you can bet that the seller can't give you good title.

But even a stout stockade fence can't protect you from bolts out of the blue. Title insurance policies clearly state that they don't cover matters that arise after the effective date of the policy. So if a court files a judgment against you two months after closing, secured by a lien on your house, that's not the title company's problem. Nor is the city's decision to condemn your property to build a new fire station. And because title companies refuse to insure risks they discover in their search, the insurance policy covers only surprises: hidden problems caused before the effective date of the policy but only coming to light later.

That's why it's important to know not only what your title insurance will cover, but also what it won't: what scenarios might arise in the future that would challenge your title to the property. This chapter offers an introduction to titles, title insurance and various encumbrances that could endanger your ability to enjoy your home.

## EVIDENCE OF TITLE

Let's begin with the concept of **good title**. If you have good title to your property, you legally own it; whoever you bought it from owned it fair and square and had a right to sell it to you. Suppose that person bought it two years before from a con artist who knew it really belonged to someone out of state but forged a convincing deed. In that case, you couldn't obtain good title from that seller no matter how much you paid, because it wouldn't be his to sell. But with good title, you're legally free to buy the property, own it as long as you wish and sell it to someone else.

A real estate title consists not only of ownership but also of a bundle of interests and rights to use the property, including minerals, crops, fixtures, water and air space. (It also includes any toxic wastes that might be on the property, which might become the new owners' problem. [See the section on toxic wastes in chapter four.](#)) The title search is designed to ensure that the entire bundle is tied together correctly and completely--or at least to know which rights aren't included.

For instance, the fact that the prior owner legally owned the property doesn't help much if there's a major lien on the property. Unless the lien is paid off, the creditor could require the property to be sold to satisfy the debt. Liens and other claims that people or governments have on a property are called **encumbrances**. Broadly speaking, they diminish the value of the property or limit its use.

To ensure good title reasonably free of encumbrances, someone has to research the history of transactions involving the property. Historically, this began with an **abstract** prepared by an attorney or an abstract firm, which included copies of all documents that recorded transactions involving the property. The buyer's attorney would examine the abstract and write a letter expressing the opinion that the seller did indeed have good title, subject to whatever encumbrances had surfaced in the process.

Especially in rural areas, some buyers still rely on abstract and opinion for evidence of title. People who love the land feel a certain affinity with abstracts, yellowed with time and replete with Indian names, French explorers and early settlers. For many small-town lenders who know their area and much of its history, an abstract backed by the opinion of a local attorney is good enough. But metropolitan mortgage lenders, who rarely know much about any given property, have made abstracts and opinions obsolete by insisting on title insurance.

The chief problem with abstracts is their lack of accountability. What happens if the abstract company or the lawyer issuing an opinion on the property fails to uncover a flaw in the title that costs you, the new owner, a great deal of money? You could sue, but you'd have to prove that someone was negligent. With title insurance, the insurer agrees to pay covered claims whether anyone was negligent or not. Essentially it's a thorough search of the public record, just like abstract and opinion, but backed by insurance.

### **How Title Insurance Works**

In a way, title insurance is the opposite of your home's casualty and liability insurance, which repays you in case of injury or damage occurring after the effective date of the policy. Title

insurance only covers matters that occurred before the policy's effective date, but were discovered later. And instead of having to pay premiums year after year to maintain the coverage, you only have to pay once to be covered, though you would probably have to buy another title insurance policy on the property when you refinance. Many lenders insist on a new policy before refinancing, to make sure their new loans will have first priority. They want to know if you've taken out a second mortgage, gotten a home improvement loan or been subject to a court judgment between the original mortgage and this one.

That brings us to the two kinds of title insurance policies. When you bought your home, perhaps the seller bought an owner's policy for you, or perhaps you bought the owner's policy. That practice varies depending on what part of the country you're in. Either way, though, probably you had to buy a "mortgagee" policy for your lender. The **owner's policy** covers losses or damages you suffer if the property really belongs to someone else, if there's a defect or encumbrance on the title, if the title is unmarketable, or if there's no access to the land (say, if the person who owns the private road you'd have to cross to get to your property refuses to grant permission).

Your policy should have a section setting forth what is covered as of the effective date: ownership is free from defects or encumbrances (except for those listed in the policy); there is access to the land; you have the legal right to sell the property and convey good title (your title is marketable).

The lender's **mortgagee policy** protects the lender. It includes all four of the protections listed above, since lenders care about encumbrances too. Important clauses for the lender are those covering losses the lender would suffer if another creditor were first in line. Suppose you took out a \$40,000 second mortgage and managed to keep that fact hidden while arranging refinancing for your first mortgage. Then suppose the second mortgage lender foreclosed and claimed a big chunk

of the proceeds. The lender who refinanced your first mortgage would be able to recover the difference from the title company.

Owner's policies are more expensive, in part because the owner has a greater stake in the title. (The mortgage may be well under the value of the property). Accordingly, the owner's policy is considered primary. If the same insurer issues both, the concurrent mortgagee policy will probably cost about a third as much. In part that's because the insurer doesn't have to search the records twice. More importantly, it's because a concurrent policy doesn't really increase the risk. Suppose the owner's policy is for \$100,000, the mortgagee policy is \$80,000, and the title turns out to be no good at all. The insurer reimburses the owners for their lost equity, say \$20,000, and the lender for the value of the mortgage, say \$80,000. With \$100,000, the insurer has covered both policies.

The limit of the owner's policy is typically the market value of the house at the time of the purchase, while the mortgagee policy is for the amount of the mortgage. The premium is based on the amount of coverage, and the cost ranges widely, depending on location.

If you're refinancing, your new title insurer will probably rely on the work of the individual or company who did a title search when you bought the home, bringing it up to date. In that case, a search would be conducted from the date you purchased your home up to the date you are refinancing. However, this is only true if you provide a prior policy as evidence of good title. Then, if a big problem surfaces that the original title insurer should have caught, the second insurer may go after the first to cover the claim. Make sure to contact an attorney if you have questions about your title policy. If you have an abstract and opinion, the insurer may bring it up to date and base the policy on that.

### **What's Not Covered**

Title insurance policies are standard in most states, although the forms may vary somewhat from state to state. Owner's policies usually do not cover one or more of the following matters, often referred to as standard exceptions, unless, in most (but not all) states, an additional premium is paid and/or extra investigation or a survey is done and the necessary information is furnished to the title company. When the evidence is furnished and the additional insurance coverage is given, this is frequently referred to as "extended coverage." The **standard exceptions** are

- claims of people who turn out to be living in the house (such as the prior owner's tenants or someone living without your knowledge in your lake cabin) if their being there isn't a matter of public record,
- boundary line disputes,
- easements or claims of easements not shown by public records,
- unrecorded mechanic's liens (claims against the property by unpaid home improvement contractors),
- taxes or special assessments left off the public record.

In addition, in much of the country (primarily the western states), mineral and/or water rights are a standard exception.

Other important exceptions from coverage include zoning, environmental protection laws, matters arising after the effective date of the policy, and matters created, suffered or assumed by the insured. Other exceptions are subdivision and building codes, and matters known to the insured, not shown on the public records, and not disclosed to the insurer. Check your current policy to see what's on the list in case there's anything you should be concerned about. Exceptions need to be removed by special endorsements and probably will result in additional premiums.

## **COPING WITH CLOUDS ON YOUR TITLE**

### **Liens**

**A lien** is a claim to property for the satisfaction of a debt. If you refuse to pay a debt, whoever files the lien may ask a court to raise the money by foreclosing on your property and selling it, leaving you with the difference between the selling price and the amount of the lien. (Your mortgage lender, though, would probably be first in line for payment.) It's possible to lose a \$200,000 house over a \$5,000 lien--but not likely, because any homeowner with the wherewithal to own such a house would almost surely not let it go over that.

There are several types of liens, any of which functions as a cloud on your title. If not removed, any of these liens can lead to foreclosure or inhibit your ability to sell your home.

- **Mechanic's lien (also called a "construction lien")**. If contractors or subcontractors have worked on the house (or suppliers have delivered materials) but have not been paid, the law

allows them to file a mechanic's lien against the property at the local recording office. These people are entitled to payment, and have a right to foreclose on the property to obtain it.

In some states contractors and subcontractors have to notify the homeowner if they intend to file a lien, but in others your first word is notice of actual filing. If the prior owner had work done shortly before selling but neglected to pay the bill, the lien could come as a surprise to you--and unless you have extended coverage, your title insurance won't cover it.

If you're the one who had the work done, you could still face a mechanic's lien if your contractor failed to pay your subcontractor or materials supplier. That's why you're well advised to withhold final payment until the contractor gives you a release-of-lien form signed by all subcontractors and material suppliers. ([See chapter six, Remodeling?](#))

- **Divorce decrees.** If two homeowners get divorced, chances are that the court will grant one of them the right to keep living in the house. When that owner sells it, though, the ex-spouse may be entitled to half the equity. The divorce decree would probably grant that spouse a lien on the property for that amount. If everything goes as it should, the closing will involve payment in full of each ex-spouse's share.

But things don't always go as they should. Suppose the ex-husband of the woman you bought the house from was subject to such a decree, but he had given her a **quitclaim deed** to the property conveying ownership to her but not mentioning his lien. She might leave town with both halves of the equity--and under some circumstances the lien would stay with the property. The ex might still have a right to extract his equity from it.

In that case the title insurer might disclaim responsibility because the lien isn't filed in the land records. However, in some jurisdictions the courts have ruled that insurers can't do that;

when there's been a divorce, insurers are on notice that this problem could arise so they should check the divorce decree.

Likewise, if you bought a home with your spouse but later got divorced, your own divorce decree might give your ex a lien on the home for half the proceeds. That lien can hinder your ability to sell the home if your ex refuses to release it. A careful divorce lawyer will build a release mechanism--such as an escrow containing a deed and release--into the divorce decree.

- **Community association liens.** If you purchased your home in a common-interest community (such as a condominium, cooperative, planned unit development, or homeowner association), the association might well have a lien for unpaid assessments. At the closing, often the title company or lender will receive a certificate of payment from the association to assure that this is not the case.
- **Unpaid child support.** Some states slap a lien on the property of divorced parents who fail to pay child support. That lien would have to be paid off before the property could be sold. In many cases the lien is tied to each child-support payment, so the property can be sold if the parent is current in his or her payments.
- **Court judgments.** A homeowner who gets into financial trouble might wind up with a court order to pay a given debt, secured by a lien on his property. Again, the debt would have to be paid and the lien removed before the property could be sold.

If you discover a lien on your property, see your lawyer immediately to determine your best course of action. If the lien is valid and the amount in question is relatively small, an attorney

might advise you to pay it off yourself to clear the title and avoid foreclosure. However, just paying it off is not enough. Have the payee sign a release of lien form, and file it at the county recording (or "land title") office to clear the title. You can then decide how to pursue whoever's responsible. (Be aware, though, that if you voluntarily pay an invalid lien, you wouldn't be able to recover from the debtor.) If the amount of the lien is major and you believe it's not your debt, consult with your attorney about what to do.

### **Taxes and special assessments**

Usually the title search will turn up any unpaid property taxes, including those for the current year, and list them as exceptions in its title commitment. Then whoever conducts the closing will make sure the seller pays a *pro rata* share of the taxes due or gives the buyer a credit for the unpaid taxes.

If the public record doesn't show that back taxes are due, perhaps because of some clerical error, the title company may point to the standard exceptions and refuse to pay. In that case, it's up to the current owner to pay the taxes to avoid a lien on the property. If you have an "extended coverage policy," though, the insurer would have to pay the taxes and then seek recovery from the prior owner.

Likewise, if the city upgrades the sewer or puts in a new sidewalk, all affected homeowners may be required to pay their proportionate share of the cost. Normally this is done through a special assessment voted by the city council and communicated to homeowners with a notice. If your home's prior owner failed to pay it, it's your responsibility to do so because otherwise the city could foreclose on your property to extract payment.

An unpaid assessment may turn up in your title company's search, but not necessarily. Although a record of the vote would be in the council's minutes, it wouldn't be in the public land record--so title companies routinely disclaim responsibility unless the insured has obtained extended coverage. It's often two or three years between the time the owner fails to pay a special assessment and the time the city files a lien against the property--in which case you, the new owner, may get a sudden unpleasant surprise.

If you get notice that the city or county has filed a lien against your property for unpaid taxes or special assessments, see your attorney to determine if the lien is valid. You may be advised to pay off the debt, then, depending on the amount, sue whomever sold you the house without paying the assessment. It's important to clear your title.

If you're the one who pays the debt, have the clerk draw up and sign a release of lien form. Then stop by the county recording office to file the form.

## **Easements**

If there's an **easement** on your property, someone else may have a right to use part of it for a specific purpose. For instance, your beachfront property might have an easement granting public access to the waterfront. These are normally established by the developer at the time the subdivision is platted, to provide needed services to the development.

If a utility wants an easement that won't benefit a given property, such as using a strip of land for a high-voltage power line, it must pay the property owner for the property's diminished value (if the property owner refuses to grant the easement, the utility owner may exercise its power of eminent domain to force a deal; see below).

It's also possible for your neighbors to have an easement on your property, whether to use your driveway to get to their house or to restrict you from blocking their view of the lake. Or they might have a **profit** (short for the French term *profit a prendre*, which means "profit to be taken"), allowing them to remove something from your property such as raspberries, coal or timber.

An easement or profit may be created by a deed, by a will, or by implication--say, if a previous owner divided a single lot in half and the only access to the back lot is through the front one. If a neighbor has been using your property in some way for a long time, say by maintaining his fence on a strip of your property, he may be able to secure a **prescriptive easement** to continue doing so whether you want him to or not. The mechanism to settle such a dispute is called a **quiet title** lawsuit.

Courts are willing to grant prescriptive easements when the neighbor has been engaging in the activity in question for a given number of years and the property owner hasn't physically stopped him, say by erecting a locked gate. Oddly, one of the requirements for gaining a prescriptive easement is the property owner's objections--such as your telling him not to drive on your road over and over for a period of years (that varies by state) but not keeping the gate closed. The reasoning seems to be that if you give me permission to do something, I can't claim it as a right.

Easements on your property are recorded at the county courthouse, but they may be scattered throughout the county building among various plats, deed books and mortgage books. They generally turn up in a title search. Like encroachments (see below) they are often brought to light by a survey. If you don't have a survey done yourself, at least look at the owner's or lender's survey before the closing.

If you discover an easement, check the wording. When a document grants an easement to a particular person, the restriction usually terminates when he dies or sells the property. But if it's granted to someone for a term of years or to someone and "his heirs and assigns," it's probably in effect no matter who owns the property.

Unless and until the easement expires, your legal obligation is to refrain from interfering with that right. Again, unless you have extended coverage on your title insurance, your insurer isn't responsible for any loss you suffer because of an easement that wasn't recorded in the public record. At any rate, easements involve use of the property rather than ownership; if you're careful to respect them, they shouldn't cause you problems.

### **Adverse Possession**

Although you have a right to keep trespassers off your land, it's possible under the law for a trespasser who uses the property as you would yourself to actually become the owner. This entitlement is called **adverse possession**. It's unlikely to occur in an urban or suburban area, where lots are relatively small and homeowners know when someone else has been using their property. But if you own a remote hunting cabin, you might not know that someone's been living there full time for years.

Adverse possession is similar to a prescriptive easement, where a court declares that, say, your neighbor has a right to keep his hedge on that strip of your land because it's been there for forty years. The difference is that while prescriptive easements concern use of the land, adverse possession concerns actual ownership.

In order for a claim of adverse possession to succeed, the trespasser has to show that his occupation of your property was open and hostile, which means without permission. As with prescriptive easements, granting the person permission to use the property cancels his claim to ownership by adverse possession.

His occupation must also have continued for a certain number of years, depending on the state. Generally it's 10 to 20 or even 30 years, but sometimes less. And in many states, the trespasser must have paid local property taxes on the land.

This last requirement provides a way to ward off loss of a property through adverse possession. If you suspect that someone's been living in your hunting cabin, check the property tax records for that county to see whether anyone has made tax payments on it.

A bit of vigilance will prevent problems in this area. Post "no trespassing" signs to warn people that this is private land. Erect gates at entry points and keep them locked. Ask trespassers to leave, and call the police if they refuse.

If you suspect that someone in particular will keep on using your property (such as for a road or to obtain lake access) despite your efforts, consider granting written permission to keep on doing so, especially if the use does not interfere with your use. That way the party can never claim a right to your land. To make the arrangement clear, ask for a written acknowledgment, and, if reasonable, a payment.

## **Encroachments**

When your neighbor's house, garage, swimming pool or other permanent fixture stands partially on your property or hangs over it, that's **an encroachment**. So is your new addition if it starts 23 feet back from the sidewalk, when the local setback ordinance requires 25 feet.

It's even possible to encroach on an easement, for instance by locating the apron of your swimming pool on the telephone company's easement across your property for underground cables. In that case, the company would have a right to dig up the concrete and charge you for it.

In the case of the setback requirement, the neighbors could band together and sue you, hoping to get you to move the offending wall. Or you might have to live with your neighbors' disapproval, perhaps after paying a fine to the city for the violation.

In the case of a neighbor's roof overhanging your property or his fence being two feet on your side of the line, you may or may not be able to demand its removal. Your rights might depend on how obvious the encroachment is, and how long it has been in place. If it was open, visible and permanent when you bought your home, you may have taken your property subject to that encroachment. You can't turn around a few years later and demand that it be removed. The neighbor has an **implied easement** on your property to continue using it in that manner. If the encroachment is less obvious, you may only discover it when you have a survey conducted for some other purpose. What to do? You have several options.

- Demand that the neighbors remove the encroachment. If they refuse, you could file a quiet title lawsuit or ejection lawsuit and obtain a court order requiring removal. Of course, this approach isn't the best for neighborly feelings, especially if the fixture in question is the cornice of his house. Further, if prior owners of the neighboring property have used that bit of

your land for quite a few years, your current neighbor could ask a court to declare a prescriptive easement to keep doing so (see above).

- Sell the strip of land to your neighbors. Perhaps you didn't know quite where the boundary line was anyway, so you might as well agree on a new one on your side of the encroachment and file it with the county recording office.
- Grant written permission to use your land in that way. This maneuver can actually ward off a claim for prescriptive easement or adverse possession, because perfecting either of these claims requires showing that the use was open and hostile (without permission). If you like this neighbor but may not like those who follow, you might grant permission only as long as that neighbor owns the property. Your attorney could draw up a document granting permission and file it for you.

The primary question when someone has encroached a bit onto your property is how important it really is to you. Typically, disputes over encroachments arise when there's already dissension between neighbors. If everyone's getting along fine, chances are you can live quite happily even though your neighbors' fence does stand a foot or two on your side of the line. Choose the least contentious option and get on with your life.

## **BOLTS FROM THE BLUE**

Earlier, we looked at title insurance as a stockade fence around your title, protecting you from several types of surprise attacks. By now it's clear that the protection is only partial; title insurance won't cover a wide range of encumbrances that the company specifically excludes.

Nor will it help if you're struck by a bolt from the blue: a challenge to your ownership that arises after closing. In addition to court judgments, divorce decrees, mechanic's liens, unpaid assessments and other problems we've already covered, here are two other challenges that you'd best know about.

### **Eminent Domain**

Since ancient times, governments have had the right to obtain private property for governmental purposes. This power, called **eminent domain**, is practically universal. But in the United States this power is limited by the Constitution's Bill of Rights, which grants people the right to due process of law and just compensation if they're deprived of their property.

The federal government and individual states may delegate their condemnation power to municipalities, highway authorities, forest preserve districts, public utilities, and others. These authorities may force the purchase of private land for public purposes, whether building a new freeway or expanding a school playground.

If the government wants your land, you may hear about it informally at a public hearing on the matter. Chances are you and your neighbors won't be happy about it. You can't stop a condemnation by arguing that the proposed use isn't a public purpose because the scope of government's activity has expanded so much in recent years that almost anything counts as a public purpose. Your best approach would be rallying the neighbors to City Hall in hopes of

influencing the plans--perhaps making the new road narrower so it doesn't take people's front yards.

Your first official notice will be a letter indicating interest in acquiring your property (or a portion of it) for a given purpose. That's when informal negotiations should kick into high gear. With or without your input, the government then has your property appraised and makes you an offer, called the **pro tanto award**. You may accept it or refuse it. If you accept it, the government may ask you to sign a document waiving your right to sue for more. Some governmental units offer a bonus to entice people into accepting the *pro tanto* award, because it's cheaper than going to court.

In a typical project, about 75 percent of the property owners accept the government's initial offer. The rest sue for more, but three-quarters of them settle the case before trial.

If you don't think the offer is high enough, retain a lawyer experienced in eminent domain cases to negotiate for you and prepare your case for possible trial (see sidebar). If the case does go to trial, it's a battle of experts. Each side brings in various expert witnesses to testify to the value of the property, which is ultimately set by the jury. If you're lucky, you'll get enough to buy a new house with fewer aggravations than the one you lost.

### **Property Seizures**

In cases of eminent domain, the federal government is scrupulous about due process of law, but in a different and relatively new area statues give the government far more leeway. If the police suspect you of certain kinds of crime (e.g., drug dealing), the law allows them to seize any of your property that might have been used in the commission of the crime or purchased with

proceeds from the crime. For instance, if your tenant grows marijuana in the basement of your rental house, the police might seize the house, sell it and keep the equity to fund further law enforcement efforts. Since 1985, law enforcement officials have seized more than \$2.6 billion worth of houses, cash, cars and other assets.

What disturbs many critics is that for civil forfeitures, the owner doesn't have to be convicted of a crime. Government officials are free to seize property without warning or compensation if they believe it can be linked to criminal activity. Then it's up to the owners to prove their property should be returned--even if they've never even been charged with a crime. The value of the property forfeited need have no relation to the seriousness of the crime, as an Iowa man learned when he lost his \$6,000 boat because he caught three fish illegally.

In a California case, a couple held a second mortgage on a house that was occupied by a businessman convicted of running an interstate prostitution ring. Federal agents seized the house and kept it for five years while it fell into disrepair. The owners had to go to court to regain their property.

A growing number of critics are calling for legal reform in this area. In the meantime, better make sure there's not even an appearance of criminal activity in any house or vehicle you own. If your property does get seized by the government, retain a knowledgeable, assertive lawyer as fast as you can.

## **Sidebar: TITLE INSURANCE OPTIONS**

Refinancing your mortgage? Buying a second home? Unless you and your lender are content with an abstract, you'll need to buy title insurance. You have more than one option on where to get it.

If you employ a commercial title company to research your title, you won't necessarily be dealing with a lawyer. Some commercial title companies issue policies through lawyers, but others employ non-lawyer agents. However, commercial title policies have some advantages. For example, if the holder of a title insurance policy relocates to another state and a title problem arises with the property in his former state, he may have the convenience of being able to deal with a branch office in his new locale if his policy was issued by a national commercial insurer. If his policy was issued by a state bar-related insurer in the former state, however, there will be no branch office. There may also be some comfort to the insured to know that the liquidity of a national title insurer may not be affected as much as a state bar-related title insurer in an area where there is a high claim rate as a result of an economic downturn. The national insurer's risk is spread across the country.

On the other hand if you want to make sure your title is researched by a lawyer familiar with the complexities of real estate law, consider dealing with a bar-related title insurer, if they are available in your state. Essentially, this is a real estate lawyer who sells title insurance. The insurance policy, which is backed by an attorney's title guarantee fund, is no better or worse than those issued by for-profit companies. It even uses the same standard forms. The chief advantage is having the same person research the title and offer legal counsel.

For the names of attorneys in your area who offer bar-related title insurance, contact the National Association of Bar-Related Title Insurers in Park Ridge, Illinois at (708) 698-0500.

### **Sidebar: IF THE GOVERNMENT WANTS YOUR PROPERTY**

If you've been convicted a crime, the federal government can seize any property used in the crime, including your house. The property may then be sold and the proceeds used to further the

government's crime-fighting efforts. So if you own a crack house, your arrest and conviction may lead not only to jail time but to permanent loss of the house and your equity in it.

For those of us who steer clear of crime, the good news is that recent changes in federal law make it far less likely that the government will seize your property. From 1970 to early 2000, police who even suspected you of committing a crime such as drug dealing or terrorism could seize any property that might have been involved, whether it was a car, an airplane, a boat or a house. So if the tenant in your rental house was suspected of growing marijuana in the basement, the police could seize the house and sell it. It would be up to you to prove that your property should be returned. That law cost innocent property owners enormous litigation fees just to get their property back.

After a seven-year legislative battle over these civil forfeitures, Congress amended the law. Signed into law in May, 2000, the new law prohibits the government from confiscating property unless it can show "by a preponderance of the evidence" that the property is substantially connected to the crime. This is a much higher standard of proof than "probable cause." Property owners no longer have to post a bond in order to challenge a civil forfeiture, and they have more time to file the challenge. If a property owner successfully challenges the seizure in court, the government has to pay legal fees. And if the confiscation causes substantial hardship to the owner, the government just may release the property.

Under the new law, as long as you're staying away from crime, one thing you almost certainly don't have to worry about is the government seizing your property and selling it. To be on the safe side, avoid the appearance of criminal activity in your house and vehicles. And if your property should be seized, retain a knowledgeable, assertive lawyer as fast as you can.

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