

## ADVISORY REGARDING TITLE INSURANCE

This Advisory Regarding Title Insurance (this “Title Insurance Advisory”) explains title insurance and how it is involved in a real estate transaction.

**1. TITLE:** To understand title insurance, it is helpful to understand what title to real estate is. It is not a piece of paper, like a title to a vehicle. Title to real property is the sum of all the transactions relating to the property in the past: it is a description of the rights currently held by the owners and others. Real estate title is often compared to a bundle of sticks. A person who acquires real estate “in fee simple” (meaning with all the rights of ownership) has a full bundle of sticks. The owner can give away some of those sticks in the form of leases, mortgages, easements, licenses, profits á prendre (such as mineral rights), CC&Rs (covenants, conditions, and restrictions), liens, options, etc. Oregon law typically requires each of these to be documented in writing. To preserve and give notice of these rights, each document that creates them is recorded in the official records of the county in which the property is located. Governments have unrecorded rights, such as the right to create zones for permitted uses, the right of eminent domain for just compensation, the right to tax property, the right to require construction permits, and the right to impose codes for proper construction.

**2. TITLE REPORTS:** Before a person buys a property, they have the right to know which of the sticks in the bundle have already been given away, so that they will know how they can use the property and how the sticks that have been given up impact the property’s value. After a buyer and seller sign a sale agreement, the seller or their agent sends the agreement to a title and escrow company. A title officer searches a database of the county’s real estate records and makes a list of the sticks that have been given up, which are referred to as “title exceptions.” The title officer creates a “preliminary title report” that shows who owns the property, a description of the title insurance being purchased and amount of coverage, the cost of the insurance policy, the names of the buyers who will be covered by the policy, a legal description of the property, a description of the property taxes assessed against a property, a list of general title exceptions applicable to all properties, links to special title exceptions applicable to just the property being purchased, and the effective date of the report. The preliminary title report also includes a description of what the title company requires to close the transaction, a description of what the title insurance policy does not cover, and the title company’s privacy policy.

**3. REVIEWING TITLE REPORTS:** Reviewing preliminary title reports is essential to buyers and their lenders. Mortgage lenders want to know if there are

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any title exceptions that would lower the value of the property because the property is the collateral for the loan they will make. Buyers want to know such things as whether the property is in a neighborhood regulated by an owner association, and whether anyone has the right to use any portion of their property. Both buyers and lenders want to know that the title will be “marketable,” meaning free of objectionable encumbrances. When the title company sends the preliminary title report to the buyer, the buyer should review all of it. Here are some things buyers should look for:

(a) **Mortgages.** In Oregon, a mortgage is usually called a “trust deed” or a “deed of trust.” Buyers and lenders insist that sellers remove mortgages from title at closing by paying them off with the proceeds of the transaction and recording a release document.

(b) **Taxes and Assessments.** Governments automatically have liens on property for taxes and assessments on property within their boundaries. Unless the parties have made a separate agreement about these amounts, buyers should object to any past-due taxes and assessments, and sellers should pay them at or before closing. Escrow officers prorate taxes and assessments for the current year as of the closing date.

(c) **Plat.** Many properties, especially those within city limits, are formed by recording a plat that shows the boundaries of each lot within a development being created. Plats also create streets that are dedicated to the public, easements for utilities and common areas. Buyers should review plats to determine whether there are any rights or obligations that are unique to the property being purchased. A plat is different from a survey; see “Surveys” below for additional information.

(d) **Covenants, Conditions, and Restrictions (CC&Rs).** Developers record CC&Rs to make neighborhoods more valuable to buyers, but they may contain restrictions that some owners do not like. Buyers should review the CC&Rs to determine whether there are limits on pets, the places where boats or recreational vehicles can be parked, limits on exterior paint color or signs, and uses of the common areas and amenities controlled by the owner association.

(e) **Easements.** There are two kinds of easements: those that benefit a property (such as the right to maintain a fence on a neighbor’s property), and those that burden a property (such as a driveway that a neighbor can use to get to their property). Easements for electricity, gas, water,

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fiber, or other utility lines running over or under the surface run through most properties. It is helpful to hire a surveyor to prepare a sketch of an easement area to determine the area impacted, particularly if the buyer is depending on an easement for access to a property.

(f) **Leases**. The parties to residential leases usually do not record them unless they include an option to purchase the property. If a lease or a memorandum of a lease is a title exception, but the lease has terminated, the buyer should object so that the seller will eliminate it from title.

(g) **Options**. A person who pays for the right to buy a property typically obtains a right to record the option agreement or a memorandum of the agreement. This prevents the seller from ignoring the person's rights by selling to a third party. Buyers should object to expired options.

(h) **Mineral Rights**. Profits à prendre are rights that a third party owns, allowing them to remove minerals, soil, or other materials from a property. They are more common in rural areas. If a title exception for mineral rights appears on a preliminary title report, the buyer should engage experts to determine the financial and physical impact of previous mineral removal (both now and in the future), any resulting environmental contamination, and the status of land use approvals.

(i) **Liens**. There are many types of liens against properties: governments may have liens for unpaid taxes, cities may have liens for code violations, creditors may have liens for judgments they have won in court, owner associations may have liens for assessments, and contractors or material suppliers may have construction liens for their contributions to projects. Buyers should object to these so that they do not take title to a property subject to them.

(j) **Water**. If the boundary of a property runs along a river or stream, there may be a title exception due to the possibility that the river or stream has changed course. There may also be title exceptions for water rights or allowing irrigation districts to regulate water use on the property. Buyers of agricultural and other properties that use water can include a contingency for the availability of sufficient water rights.

(k) **Surveys**. Some property surveys are recorded, and a recorded survey may show encroachments or other information impacting a property. Encroachments appearing in recorded surveys will appear in preliminary title reports as title exceptions. Lenders may be willing to

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close loans with minor encroachments if an easement agreement with the neighboring owner is signed and recorded at or before closing.

(I) Waivers of Rights of Remonstrance. Remonstrate means to oppose, object, or protest. People typically have the right to oppose governmental actions that impact them, but they can give up that right by waiving the right of remonstrance. Governments may require owners or developers to waive that right before building the infrastructure necessary to develop or improve a neighborhood. These waivers prevent developers and subsequent property owners from opposing assessments on properties for costs incurred to build or maintain community improvements such as streets, lighting, stormwater facilities, and sidewalks (sometimes referred to as “local improvement districts”).

**4. TITLE OBJECTIONS:** Sale agreements typically give buyers several days to review the preliminary title report, object to title exceptions, and terminate the transaction if the seller and title company do not agree to eliminate title exceptions to which the buyer objects. Although some title exceptions, such as the seller’s mortgages, are always objectionable, others, such as neighborhood CC&Rs, cannot be removed at closing, and an objection would result in the termination of the transaction. Buyers should contact their agents if they want to object to title exceptions. A timely objection is usually handled in one of four ways: (a) if it is a financial encumbrance, the seller agrees that a portion of the sale proceeds will be used to pay it off; (b) if it is uncertainty about occupancy, construction or rights of heirs, the seller typically signs an affidavit and agrees to indemnify the title company if the affidavit is not accurate; (c) if it is an easement or other title encumbrance that was mistakenly included in the title report or is no longer applicable, the title company agrees to eliminate it from the title report; (d) if the seller and the title company will not agree to eliminate it, the buyer can choose whether to waive their objection or terminate the transaction. If the transaction will go forward, the escrow company will prepare escrow instructions for the parties to sign at Closing, and those instructions will indicate which of the title exceptions the parties have agreed will remain. Buyers should review the escrow instructions they are asked to sign to ensure that any title objections that the seller agreed to remove are not included as permitted exceptions. The deed that is recorded will convey title to the borrower, subject to encumbrances to which the buyer did not object.

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**5. TITLE INSURANCE POLICIES:** In Oregon, sellers typically pay for the buyers' standard title insurance policy, buyers typically pay for their lender's title insurance policy, and those payments are made at closing. Like most insurance, title insurance policies and the amounts charged for them are regulated by Oregon's Department of Consumer and Business Services. Unlike other kinds of insurance, premiums for title insurance are not paid annually: a single payment at closing keeps the title insurance in place forever. A few weeks after a transaction is closed and the deed is recorded, the title insurance company sends the buyer a title insurance policy. Buyers should review their policies when they arrive to make sure the list of title exceptions matches the list in the escrow instructions signed by the buyer and seller. Title insurance insures parties against damages they incur when the actual title to a piece of real property differs from the way it appears in a title policy. If a title issue covered by the policy ever emerges, the buyer should make a claim under their policy to the title insurance company.

**6. TYPES OF TITLE INSURANCE POLICIES:** There are a few types of title insurance policies available:

(a) Standard Owner's Policy. A buyer generally obtains a standard owner's policy of title insurance. This policy ensures the buyer that they own the property by providing coverage against problems with recorded documents, including errors in examining records, forgery, deeds signed by people who lacked capacity to sign a contract, the interests of missing heirs, and mistakes in recording documents. The cost depends on the value of the property and is generally  $\frac{1}{4}$  to  $\frac{1}{2}$  of a percent of the purchase price of the property.

(b) Extended Owner's Policy. A buyer can obtain additional coverage by paying an additional premium and having a detailed survey of the property prepared by a licensed surveyor. Extended policies cover damages associated with unrecorded easements or leases, violations of building permits, setbacks, restrictive covenants, or covenants resulting in reversion, adverse possession, and various title issues that don't arise until after the policy is issued.

(c) Early Issue Insurance. This insurance protects buyers of new or remodeled homes from construction liens. Oregon's Homebuyer Protection Act requires sellers of residential properties with more than \$50,000 of work completed in the 90 days before closing to protect

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buyers from construction liens, and this is one of the ways that protection can be provided.

(d) Extended Lender's Policy. Mortgage lenders obtain title insurance policies simultaneously with buyers obtaining their policies. They insure that the lender has a first-priority mortgage. These title insurance policies cost less than owner's title insurance policies because the title company does not have to do the same title examination work twice, the coverage amount is only the outstanding amount of the loan, and the lender is less likely to incur damages than an owner.

(e) Seller's Policy. A particularly cautious seller can purchase title insurance for themselves, insuring against damages they incur as a result of the promises they make when they sign a deed.

(f) Vendee's Policy. For the same reasons that a buyer obtains an owner's title insurance policy, a person who is purchasing a property under a contract of sale (also known as a land sale contract) should obtain a vendee's or purchaser's policy of title insurance at Closing.

(g) Policy Endorsements. These are not actually types of insurance policies: they are extra coverage that goes along with one of the policies described above. There are dozens of endorsements, covering everything from the accuracy of the property's address to remote online notarization to encroachments.

The title insurance policy should be kept in a safe place so that the buyer can refer to it if there is ever a title problem in the future.

**7. ACKNOWLEDGMENT:** The undersigned party acknowledges that: (a) they have read and understand this Title Insurance Advisory; (b) they have been provided with a copy for their own files; (c) they understand the purpose of title insurance and the importance of reviewing preliminary title reports and title insurance policies.

Client \_\_\_\_\_ Date \_\_\_\_\_  a.m.  p.m. ←  
Print Name \_\_\_\_\_

Client \_\_\_\_\_ Date \_\_\_\_\_  a.m.  p.m. ←  
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