



Title Insurance – is it worthwhile?

Buying a property has some inherent risks which may cause loss or affect ownership of the property in the future. Some of these risks will be unknown at the time of purchase or are not always discoverable, but as with many risk situations, it's possible to take out insurance to try and safeguard against some future potential loss. Title Insurance is sometimes suggested as a useful insurance measure but what is it and is it worthwhile taking out?

What is Title Insurance?

Generally, when you purchase property, except for the Statutory Disclosures that the seller must make, “Caveat Emptor” or “Buyer Beware” applies, meaning that the Purchaser should protect themselves by undertaking searches and enquires regarding the title of the property.

To understand what Title Insurance is it's important to first understand what Title is. “Title” is typically defined in a Title Insurance policy as the ownership of interest in land and any structures on that land. Title Insurance therefore is a special type of insurance that provides cover against a defined set of risks to the ownership of your land and the structures on it, being those risks that are set out in the Title Insurance policy document.

It's also important to understand that Title Insurance is separate and different from:

- Home Building Insurance - which covers damage and repairs including building replacement;
- Contents Insurance - which covers loss of furniture, appliances and personal items etc;
- Landlords Insurance - which covers damage done to a property by a tenant; and
- Lenders Mortgage Insurance - which covers a lender against loss due to a loan default.

Unlike other insurances policies where premiums are paid monthly, Title Insurance only involves a one-off premium payment made at the time of purchase.

As with every insurance policy, it's vital to understand:

- What risks are covered by Title Insurance;
- What risks are not covered or are otherwise excluded from Title Insurance cover; and
- What limits are there on the extent of Insurance coverage.



What risks are covered by Title Insurance

The following risks are typically covered if the circumstances giving rise to them existed before you took out the Title Insurance policy:

1. Someone else claims to have rights affecting the title of your title because of forgery, fraud or mental incapacity;
2. Someone else lodges a dealing which prevents your interest in the property being registered;
3. Someone else claims an interest in the property under the Family Law Act;
4. Someone else claims an interest in the property arising out of a Contract, a Lease or an Option;
5. Someone else claims to have an easement or right of access that affects the property but is not recorded on the land title;
6. There are unpaid Rates or Taxes which are a Charge on the property;
7. There exists an adverse matter affecting the title which a current Survey Report would have disclosed; and
8. A local authority prevents you from using your property or requires you to rectify or remove an existing structure (other than boundary walls or fences) because it contravenes planning laws or was built without approval.

What isn't covered by Title Insurance?

Like all insurance policies, Title Insurance policies will contain a number of exclusions which will need to be read very carefully and advice taken about their meaning before deciding whether to take up Title Insurance.

It's especially important to understand that Title Insurance policies DO NOT provide cover for destruction of or damage to a building on your land and Title Insurance is not the same as, or a substitute for, home building or home contents insurance. Common exclusions (i.e. things NOT covered) in the policies include:

- Things that are known to you at the date your purchase of the property settles (for example, it is already contained or disclosed in the Contract for Sale);
- Dilapidation or pest infestation of buildings and accordingly Title Insurance won't provide cover for things discoverable in a pre-purchase Pest and Building Inspection report;
- Buildings that fail to comply with proper building standards (e.g. the Building Code of Australia); and
- Environmental contamination.

In many Title Insurance policies exclusions can also extend to "defects" (such as illegal building works or unpaid rates or land tax) that:

- Would have been disclosed if proper enquiries had been made with the local council or revenue authority; or
- Were not disclosed despite proper enquiries because a mistake was made by the council or revenue authority.



Do you need Title Insurance?

You need to think carefully about whether you really need Title Insurance. Some of the protections you are paying for when you buy Title Insurance may already be contained in the Torrens Title legislation governing property acquisition in New South Wales. As an example, your title to land is obtained on registration of your interest with the NSW Registrar General and, in the absence of any fraud by a Purchaser in acquiring the property, the State guarantees the validity of your title to the property. It also administers a compensation fund for people who, without fault of their own, have lost an interest in the property because of the operation of the Torrens system.

The most common alternative to Title Insurance is to instruct your property lawyer to make the proper enquiries and investigations such as getting a Building Certificate Inspection from the local council (to confirm whether there are any illegal/unapproved buildings on the land) or a Survey Report (to confirm whether there is anything on your land encroaching on your neighbour's land, or vice versa). Check with your property lawyer about the cost of doing these investigations comparative to the cost of Title Insurance having regard to the exclusions contained in the Title Insurance policy. You should ask your property lawyer to explain the advantages and disadvantages of Title Insurance in respect to the nature and location of the property you are purchasing.

At Bateman Battersby we have extensive experience in advising and acting for Purchasers buying properties to use as their home or for investment. If you need advice about what's involved in and the steps you should take to protect your interests please contact our [accredited property specialists, John Bateman](#) or [Michael Battersby](#) on (02) 4731 5899 or email us at property@batemanbattersby.com.au for further information or assistance.