



# IF ONLY THEY HAD KNOWN

## *Protecting Your Home with an Owner's Policy*

There are two types of title insurance: owner's title insurance, called an **Owner's Policy**; and lender's title insurance, called a **Loan Policy**. Most lenders require a Loan Policy when they issue you a loan, and the fee is usually based on the dollar amount of your loan. It only protects the lender's interests in the property. It does not protect the buyer.

A recent news article tells of a homebuyer who purchased a home on a land contract and made monthly payments of \$1500 to the seller until they were able to secure a loan from a national lender. At the time, the lender required the buyer to purchase a Loan Policy. Because it is not required by law to purchase an Owner's Policy, the homebuyer closed on the home with only the lender's interest being protected by the Loan Policy.

Several years later, the owners of the home were notified that their house was being foreclosed on and the sale date was fast approaching. How could this have happened? As it turns out, there was a prior loan on the home that was never paid off by the previous owner. Because the current

lender had required a Loan Policy, their interest in the property was covered. Had the current owners invested in an Owner's Policy, they too would have been covered. Unfortunately, without title insurance, they lost their home. Additionally, the resulting foreclosure may adversely affect their credit standing for years to come.

The homebuyers in the story above stated,

***"We didn't buy title insurance. We were first-time homebuyers. Had we known about title insurance, [we] definitely would have gotten it."***

Many homeowners mistakenly think that because a title search has been done on the property their interest is protected.

One thing is certain...If more homebuyers were aware of the protection a First American Title Owner's Policy provides, they would purchase one, and eliminate the unnecessary risk of losing their home.

### **Land Title Inc.**

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## LANDTITLE

**service beyond the expected**

# LINCOLN LOST HIS HOME **TWICE** BECAUSE OF TITLE DEFECTS

Losing a home is a cruel thing, but life can be cruel—even to those destined for greatness.

Abraham Lincoln was born in a meager, one room cabin on the Big South Fork of Nolin's Creek near Hodgenville, Kentucky. It had a dirt floor, one window, and a sticky-clay chimney. Lincoln's father, Tom, had paid \$200 for the cabin and 300 acres of unproductive land. It wasn't much, but it was home and the young family's only chance for a decent life.

**After four years of fighting mosquitoes, heat, and hardscrabble land, the Lincolns had to pack up and leave. There was a defect in the title.**

They did not have the right papers and somebody else had a better claim to the land. With three-year-old Abe in his mother's arms, the family moved eight miles away to Knob Creek.

In less than four years, Tom Lincoln had to go to court to prove his ownership rights to this second farm. Another claimant to the land sued him

as a "trespasser." Tom Lincoln won the suit, but was haunted by the fear that he might someday lose another property. There was enough talk of land titles, landowners, landlords, land laws, land lawyers, and land sharks to make him unsure of his title. After all, Daniel Boone, the first pioneer of the Kentucky wilderness, had lost every inch of his once vast landholdings because he had "the wrong kind of papers." Tom then decided to move his family to Indiana where there was rich, black land—government land with clear title and the right kind of papers. Thus, Abraham Lincoln lost a second home to title problems.

It was the anxiety and outright losses of the Lincolns and other hardworking Americans that gave rise to today's title insurance industry. The first land title insurance company was founded in Philadelphia in 1876 to protect buyers against the hidden hazards of real estate ownership; forgeries; faulty

surveys; hidden liens; conveyances by a minor or mentally incompetent person; the false representation of married person as being single; and many other title defects. Even the most complete search of records may not reveal them all.

**Today, title insurance is just as important as ever.** The same potential flaws in title exist. A home is still the largest purchase most of us make in our lifetime. And, with escalating land values, the loss of property can still bring a family to ruin. Consequently, both buyer and seller should insist on the stability and reliability they receive from a First American Title Owner's Policy.

The unfortunate loss of the Lincoln family would have been covered by insurance had Tom Lincoln owned a title policy.

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## SOMETHING WAYS YOU COULD LOSE YOUR HOME AND 1 WAY TO STOP IT

There are many title issues that could cause you to lose your property or your mortgage investments. Even the most careful search of public records may not disclose the most dangerous threat: hidden risks. These issues may not be uncovered until years later.

Without title insurance from a reputable and financially secure company, your title could be worthless. With the proper insurance, your rights will be defended in court.

### Here are some of the issues that occur most frequently:

1. Forged deeds, mortgages, satisfactions or releases.
2. Deed by person who is insane or mentally incompetent.
3. Deed by minor (may be disavowed).
4. Deed from corporation, unauthorized under corporate bylaws or given under falsified corporate resolution.
5. Deed from partnership, unauthorized under partnership agreement.
6. Deed from purported trustee, unauthorized under trust agreement.
7. Deed to or from a "corporation" before incorporation, or after loss of corporate charter.
8. Deed from a legal non-entity (styled, for example, as a church, charity or club).
9. Deed by person in a foreign country, vulnerable to challenge as incompetent, unauthorized or defective under foreign laws.
10. Claims resulting from use of "alias" or fictitious name style by a predecessor in title.
11. Deed challenged as being given under fraud, undue influence or duress.
12. Deed following non-judicial foreclosure, where required procedure was not followed.
13. Deed affecting land in judicial proceedings (bankruptcy, receivership, probate, conservatorship, dissolution of marriage), unauthorized by court.
14. Deed following judicial proceedings, subject to appeal or further court order.
15. Deed following judicial proceedings, where all necessary parties were not joined.
16. Lack of jurisdiction over persons or property in judicial proceedings.
17. Deed signed by mistake (grantor did not know what was signed).
18. Deed executed under falsified power of attorney.
19. Deed executed under expired power or attorney (death, disability or insanity of principal).
20. Deed apparently valid, but actually delivered after death of grantor or grantee, or without consent of grantor.
21. Deed affecting property purported to be separate property of grantor, which is in fact community or jointly-owned property.
22. Undisclosed divorce of one who conveys as sole heir of a deceased former spouse.

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# 70-Something Ways

## You Could Lose Your Home *continued*

23. Deed affecting property of deceased person, not joining all heirs.
  24. Deed following administration of estate of missing person, who later re-appears.
  25. Conveyance by heir or survivor of a joint estate, who murdered the decedent.
  26. Conveyances and proceedings affecting rights of service-member protected by the Soldiers and Sailors Civil Relief Act.
  27. Conveyance void as in violation of public policy (payment of gambling debt, payment for contract to commit crime, or conveyance made in restraint of trade).
  28. Deed to land including "wetlands" subject to public trust (vesting title in government to protect public interest in navigation, commerce, fishing and recreation).
  29. Deed from government entity, vulnerable to challenge and is unauthorized or unlawful.
  30. Ineffective release of prior satisfied mortgage due to acquisition of note by bona fide purchaser (without notice of satisfaction).
  31. Ineffective release of prior satisfied mortgage due to bankruptcy of creditor prior to recording of release (avoiding powers in bankruptcy).
  32. Ineffective release of prior mortgage of lien, as fraudulently obtained by predecessor in title.
  33. Disputed release of prior mortgage or lien, as given under mistake or misunderstanding.
  34. Ineffective subordination agreement, causing junior interest to be reinstated to priority.
  35. Deed recorded, but not properly indexed so as to be locatable in the land records.
  36. Undisclosed but recorded federal or state tax lien.
  37. Undisclosed but recorded judgment or spousal/child support lien.
  38. Undisclosed but recorded prior mortgage.
  39. Undisclosed but recorded notice of pending lawsuit affecting land.
  40. Undisclosed but recorded environmental lien.
  41. Undisclosed but recorded option, or right of first refusal, to purchase property.
  42. Undisclosed but recorded covenants or restrictions, with (or without) rights of reverter.
  43. Undisclosed but recorded easements (for access, utilities, drainage, airspace, views) benefiting neighboring land.
  44. Undisclosed but recorded boundary, party wall or setback agreements.
  45. Errors in tax records (mailing tax bill to wrong party resulting in tax sale, or crediting payment to wrong property).
  46. Erroneous release of tax or assessment liens, which are later reinstated to the tax rolls.
  47. Erroneous reports furnished by tax officials (not binding local government).
  48. Special assessments which become liens upon passage of a law or ordinance, but before recorded notice or commencement of improvements for which assessment is made.
  49. Adverse claim of vendor's lien.
  50. Adverse claim of equitable lien.
  51. Ambiguous covenants or restrictions in ancient documents.
  52. Misinterpretation of wills, deeds and other instruments.
  53. Discovery of will of supposed intestate individual, after probate.
  54. Discovery of later will after probate of first will.
  55. Erroneous or inadequate legal descriptions.
  56. Deed to land without a right of access to a public street or road.
  57. Deed to land with legal access subject to undisclosed but recorded conditions or restrictions.
  58. Right of access wiped out by foreclosure on neighboring land.
  59. Patent defects in recorded instruments (for example, failure to attach notarial acknowledgment or a legal description).
  60. Defective acknowledgment due to lack of authority of notary (acknowledgment taken before commission or after expiration of commission).
  61. Forged notarization or witness acknowledgment.
  62. Deed not properly recorded (wrong county, missing pages or other contents, or without required payment).
  63. Deed from grantor who is claimed to have acquired title through fraud upon creditors of a prior owner
- In certain states, an extended coverage policy may be requested to protect against such additional defects as:**
64. Deed to a purchaser from one who has previously sold or leased the same land to a third party under an unrecorded contract, where the third party is in possession of the premises.
  65. Claimed prescriptive rights, not of record and not disclosed by survey.
  66. Physical location of easement (underground pipe or sewer line) which does not conform with easement of record.
  67. Deed to land with improvements encroaching upon land of another.
  68. Incorrect survey (misstating location, dimensions, area, easements or improvements upon land).
  69. "Mechanics' lien" claims (securing payment of contractors and material suppliers for improvements) which may attach without recorded notice.
  70. Federal estate or state inheritance tax liens (may attach without recorded notice).
  71. Pre-existing violation of subdivision mapping laws.
  72. Pre-existing violation of zoning ordinances.
  73. Pre-existing violation of conditions, covenants and restrictions affecting the land.
  74. Post-policy forgery against the insured interest.
  75. Forced removal of residential improvements due to lack of an appropriate building permit (subject to deductible).
  76. Post-policy construction of improvements by a neighbor onto insured land.
  77. Damage to residential structures from use of the surface of insured land for extraction or development of minerals.