

## **ATTORNEY WRITES**

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### **“Title Insurance”**

In Michigan, it is foolish to purchase riparian or waterfront property without having a title insurance commitment done by a title insurance company for the prospective purchaser to review before closing and for the purchaser to have title insurance on the property once the closing occurs.

In the “old days,” there was no title insurance for purchasers of real property in Michigan. Rather, real estate buyers (or their attorneys) reviewed abstracts or attorney opinions regarding title. An abstract was generally just a listing of all prior recorded documents regarding the property involved going back a certain number of years. Abstracts told lay people very little. A lawyer’s opinion dealt with whether or not the seller had proper title and any limitations upon that title. Neither the old abstracts nor attorney title opinions were insurance as such, and they really did not constitute reliable guarantees of proper title to the purchaser.

Insurance companies eventually introduced a product often referred to as “title insurance.” Title insurance is very important for almost all real property purchases, but particularly so where a waterfront property is involved. The issuance of title insurance is a two-step process. Almost all real estate purchase/sales agreements require the seller to provide to the buyer a “title insurance commitment” before closing and a title insurance policy after closing. Typically, both are issued in an amount equal to the purchase price. A title insurance commitment is usually issued by a title insurance company before closing and allows the prospective purchaser (and potentially, his or her attorney) to see whether the seller has good

title, whether there are any encumbrances on the property, what the property taxes are annually, any requirements for closing, and similar matters. Before issuing a title insurance commitment, the title company does a title search of the property, looking for relevant documents recorded with the local county register of deeds regarding the property. Once a title insurance commitment is issued, the title company is affirming that it will issue a final title insurance policy in favor of the buyer after closing with all of the requirements, exceptions and limitations contained in the title insurance commitment. Typically, the seller pays for both the title insurance commitment and the eventual title insurance (although there is generally one overall fee for both), unless the purchase/sales agreement provides otherwise.

A formal final title insurance policy is usually issued (and sent) to the buyer a few months after the closing. The buyer should take great care to preserve the original of the title insurance policy forever. Furthermore, it is often prudent to make copies of the actual original title insurance policy and to store the copies at a different location than the actual original document for safe keeping (that is also true with the deed or land contract after closing and recording). Title insurance insures good title, lack of encumbrances, etc., apart from those items which are expressly “carved out” or exempted in the title insurance commitment and title insurance policy. Normally, the title insurance will pay for attorney fees and costs for an attorney provided by the title insurance company to the buyer to defend the buyer’s title if challenged as well as any damages that might be incurred by the buyer resulting from a title defect or other matter covered by the title insurance policy.

It has also become very common for real estate closings in Michigan to occur at the offices of the title insurance company (or its agent or affiliate) and for the title insurance

company to provide many of the closing documents (the deed or land contract, any mortgage, a closing statement, etc.) for additional fees.

Why is it so important for title insurance to be provided for riparian properties? There are multiple reasons. First, title insurance verifies that the prospective purchaser will have good and marketable title for the waterfront property involved. Second, it is not uncommon for waterfront properties to have encumbrances such as deed restrictions or an easement, which a prospective purchaser of a waterfront property should know before closing. Third, if the waterfront property is not located on a public road, it is always best to have the title insurance cover and insure any private road or access easement for the property. Fourth, title insurance insures the legal description involved and quite often legal descriptions are proof that a property is waterfront. Finally, title insurance helps give the prospective purchaser “peace of mind”.

Unfortunately, title insurance policies almost never warrant or guarantee riparian rights or the riparian nature of the parcel involved. On occasion, a special rider on an insurance policy can be purchased to cover riparian issues, but those riders tend to be fairly rare and can be quite expensive.

In Michigan, one should almost never buy waterfront property without obtaining a title commitment prior to closing and title insurance for the property that becomes effective at and after closing.