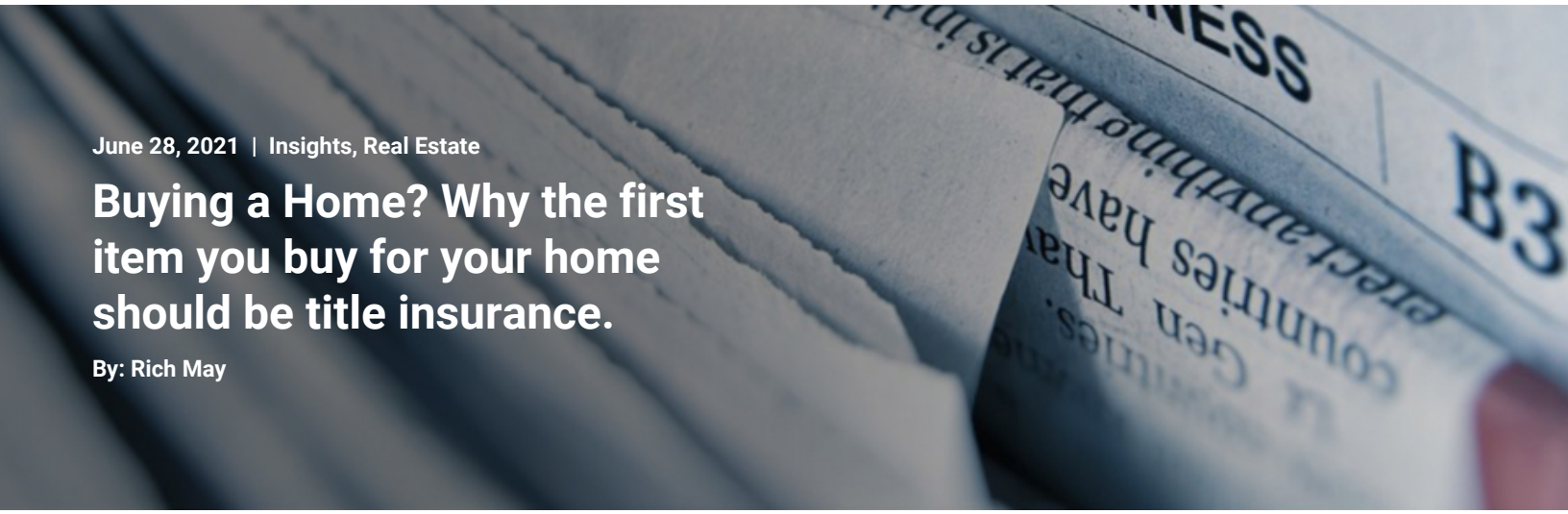


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# Buying a Home? Why the first item you buy for your home should be title insurance.

By: Rich May

Title insurance protects real estate buyers and lenders from financial loss resulting from a challenge to title. It is an indispensable closing cost for any property purchase or loan. However, the steady rate of title litigation involving uninsured parties suggests that buyers and borrowers continue to underestimate its value. This may be due, in part, to the confusion caused by a misguided association of title insurance with its fire and casualty counterpart. In fact, title insurance coverage differs substantially from fire and casualty insurance coverage not only in scope but also in time. While property insurance covers the risks and the resulting losses that occur during the period of the insured owner's ownership, title insurance covers risks that were created in the past. A buyer declining title insurance generally has no control over, or knowledge of, these risks. As a result, title insurance is almost always worth the one-time expense given the variety of issues that could give rise to a challenge to title.



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Many common title defects stem from the transfer of property from a previous owner to another previous owner or to the buyer. Deeds are the documents that evidence ownership by virtue of a transfer and create the chain of title. Some examples of common deed defects covered by title insurance include:

- Forged Deeds.
- Deeds that are filed improperly.
- Deeds signed by incorrect or incorrectly identified persons ("wild deeds") OR deeds that are not signed by all necessary persons.
- Deeds signed by a person who is unauthorized, improperly authorized, not empowered or incompetent.
- Deeds signed fraudulently or by mistake.
- Erroneous or inadequate legal descriptions.

Title problems also arise from liens which may be voluntarily or involuntarily created to secure the payment of the property owner's debt to the lienholder. Generally, the lien must

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be released upon satisfaction of the underlying debt. Liens provide lienholders with a future right to acquire title as a form of enforcing the lien and repayment of the debt; this future right may be superior or subordinate to that of other lienholders but, where the lien is recorded, that right is generally superior to those of future buyers and lenders. A mechanic's lien, for example, secures the payment of amounts owed to contractors for their construction work. A tax title (or tax lien) generally secures the payment of taxes and assessments owed to a city or town. These rights threaten the ownership of property and the costs to defend against these rights, not to mention the risk of loss, can be devastating. Generally, these liens are discovered during the title search and the required discharges are obtained. However, occasionally the lien is missed or the discharge is not properly executed or recorded creating a title problem.

In Massachusetts most real estate transfers require and rely on an attorney's certified examination of the title records at the Registry of Deeds. However, history has shown that even the most careful title exam may not reveal hidden defects or a subtle oversight in the chain of title. While it is unlikely that an owner will need to make a claim during its ownership due the extent of diligence performed by title examiners, there is simply no substitute in value for the peace of mind that an owner's title insurance policy can provide.

*Disclaimer: This summary is provided for educational and informational purposes only and is not legal advice. Any specific questions about these topics should be directed to attorney Atakelti Desta.*

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