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Owner's Need for Separate Coverage

Many buyers of real estate, particularly residential real estate, make the serious mistake of believing that owner's title insurance is unnecessary because the purchase money mortgagee is being furnished with title insurance, usually at that very buyer's expense. The very reasons why the mortgagee requires title insurance should convince the buyer of the same need. Title defects, liens and encumbrances may exist even though not disclosed by the mortgagee's title certificate. Title examiners and title insurers do make errors. In addition, certain matters normally are omitted from a loan policy that may be quite significant to an owner, as, for example, liens that are subordinate to the mortgage being insured. There are also numerous "hidden risks" against which there is no protection other than by title insurance.

Fully as important to the purchaser is the protection against legal costs and expenses assumed by the title insurer in the event of title litigation. Even if the initial investment is small, the buyer's equity and financial interest in the property likely will increase. More immediately, the buyer-mortgagor is probably liable on a warranty of title contained in the mortgage being insured. In the event that the title insurer is required to pay a loss under the title policy, it becomes immediately subrogated to the rights of its insured, including the right to sue on the note evidencing the debt which the mortgage secures. In that event, not only might the buyer lose the property and the initial investment, but the buyer also will continue to be financially obligated for the repayment of the purchase money note.

Since the cost for owner's title insurance is usually sharply reduced when taken simultaneously with the insurance of a purchase money or other mortgage (by 70 percent of the mortgage rate under the TIRSA rate manual), the risk of being uninsured is one that a well-informed buyer should not take. In fact, several states have adopted statutory requirements which mandate that home buyers be given a form of notice as to the availability of title insurance similar to that being obtained by their purchase money mortgagee. The TIRSA rate manual contains such a requirement.