

## **INTERNATIONAL TITLE INSURANCE FAQs**

Title insurance is emerging as a quick, efficient, and cost effective method for addressing the growing demand from world-wide investors, rating agencies, and auditors for greater transparency, guarantees, and security in land transactions. FNF insures valid ownership of property and mortgage liens by working with the owners, attorneys and other experts during the course of transactions to analyze due diligence, identify issues and resolve obstacles to guarantee clean title in your transaction. The following are our clients' most Frequently Asked Questions.

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### **1. *What are the benefits?***

- a. **Contract of Indemnity** . A title insurance policy is a contract of indemnity between the Policyholder and FNF. The Policyholder need only provide prompt notice of a claim to FNF, and we will then assume obligations under the policy resolve the covered claim and/or ultimately pay the Policyholder for any covered loss.
- b. **Relieves Fiduciary Responsibility**: The underwriting performed to issue a title insurance policy supplements and helps standardize the title due diligence completed during the course of a land acquisition or mortgage lending. The end result is a financial guarantee that supplements the legal opinion and reduces the uncertainty of recovery if a title defect is discovered. Ultimately, fiduciaries will never have to explain why they did not purchase available coverage for basis points on the dollar to protect lost assets or diminution in value.
- c. **Replaces Seller's Representations and Warranties**: Warranties provided by sellers are only as good as the seller's balance sheet. In the event of bankruptcy, dissolution of an SPV, or dispute with seller denying liability, a title insurance policy replaces those warranties by shifting the obligation of recovery from an insolvent seller to the title insurance company,
- d. **Availability of Survey Coverage** . With an approved survey, title insurance can provide insurance against unknown and/or off-record defects relating to boundary line disputes and encroachments.
- e. **Expedites Distressed Transactions**: Buyers and sellers alike can purchase title insurance to remove the uncertainty of issues that arise in the due diligence on the title to land, or matters that remain unknown until after completion of a land transaction. Escrows, indemnities and financial renegotiations can be avoided with the simple addition of a title insurance policy.
- f. **Covers Known Issues**: May cover cases of defective title, violations of restrictive covenants, etc., by transferring defined risks from the purchaser of the land or mortgage lender to the title insurer.

- g. **Creates Due Diligence Efficiencies**: Title due diligence experts perform standardized, efficient and cost-effective title due diligence, eliminating the need to have the same documents translated and checked by buyer, lender and/or investor.
- h. **Covers Defense Costs** . FNF assumes the cost of defending meritorious and even frivolous challenges to the owner's title or the lender's mortgage as long as the claim would be covered under the terms of the policy. FNF's obligation to pay the costs of defense is over and above its obligation to pay any covered loss. In other words, if litigation proves unfavorable, FNF will indemnify the Policyholder for its loss, up to the amount of the insurance in addition to paying defense costs.

## 2. ***What is covered by title insurance?***

Loss arising from:

1. Liens, encumbrances on the title to the land;
2. Defects to the title to the land such as fraud, forgery and errors in recording;
3. No legal right of access to the land;
4. Zoning & permitting issues (with additional endorsement);
5. Invalidity or unenforceability of mortgages or other instruments that create a security interest on land;
6. Adverse Possession
7. Processes to formalize title to land (e.g., Ejidos in Mexico)

In certain cases, known defects such as restitution (in Central and Eastern Europe), Landless People (Brazil), public tenders, and gap registration.

## 3. ***What is not covered by title insurance?***

Title insurance does not cover losses that are triggered by events that occur after the policy date, such as future administrative decisions regarding zoning or permits. It also excludes pending litigation and consequential damages, e.g., business disruption or loss of future profits. It also does not cover:

1. *The actual amount or area of the land;*
2. *The marketability of the title to the land; BUT this is not a common legal concept outside the United States;*
3. *Claims of ownership by the sovereign that are not recorded such as expropriation;*
4. *Claims to natural resources, such as: water, oil, gas and mineral interests.*
5. *Matters appearing in the Gap, unless Gap Coverage is specifically provided, and where it is available.*

## 4. ***How large and well-capitalized is Fidelity National Financial?***

Fidelity National Financial (NYSE: FNF) is the world's largest title insurance company, with

1. an investment portfolio of approximately **\$4.7 billion**,
2. a reserve for claim losses that exceeds **\$2.6 billion**, and
3. financial strength ratings of **"A-" by S&P**, **"A3" by Moody's** and **"A-" from AM Best**

## 5. ***Why buy title insurance in addition to a legal opinion?***

Lawyers provide an opinion- title insurance provides true financial indemnification over a potential title loss. Furthermore, cases of fraud, forgery, boundary line disputes, hidden defects, etc. are covered by title insurance, but not by lawyers or notaries. In addition, it transforms the risk of a land based transaction from a negligence or fault-based basis of recovery to a non-fault based method of recovery. The risk of proving any fault in the recovery for a potential loss to the title to the land against a foreign law firm or notary in their domestic jurisdiction is shifted to the title insurer , whose economic strength may diminish the advantage that local notaries or lawyers may have.

Second, a legal opinion, especially in a large commercial transaction, is fundamentally a disclosure document: Counsel carefully defines the state of title to the land and related issues, identifies areas of uncertainty or defect(s), and carves out exceptions (e.g., fraud), thus putting the investor or lender in the position of having to take a view on such risks. A title insurance policy goes beyond that disclosure and places many of those risks of loss to the title on the balance sheet of the insurer.

**6. Does title insurance change the role of lawyers and notaries?**

No. It supplements the work of these real estate professionals. A title policy wraps a financial guarantee around the work of lawyers and notaries. FNF Title underwrites policies based on the title due diligence and legal opinions provided by lawyers or notaries in each country.

Title insurance then takes over where real estate professionals leave off by providing:

- “ Defense costs in the event of a third-party claim (whether or not the claim is frivolous) . attorneys and notaries charge for these costs
- “ Covers fraud and forgery (not covered by attorneys opinions or their E&O coverage)
- “ Protects against third-party errors (which are not the responsibility of other real estate professionals)
- “ Protects against mistakes by the public registry (after the notary has completed his work)

Title insurance can, in fact, be valuable for legal professionals since it:

- Introduces due diligence best practices that are customary in the title insurance industry;
- Enhances dialogue and bridges the gap between local legal professionals and the Policyholder’s U.S. based counsel and/or authorized representatives;
- Allows deals to move forward that might otherwise be considered too risky;
- Effectively transfers risk from lawyers and notaries to the title insurance company, thus making it responsible for defending against title and mortgage claims.

**7. Does title insurance also cover indirect property investments, e.g., acquisitions of real estate companies or investments in Limited Partnerships?**

Yes. Here, the role of title insurance may be even more critical, since acquisitions of shares in real estate companies, or interests in Limited Partnerships, are usually not subject to a contract by a notary or a new entry in a land registry. Therefore, new shareholders, or Limited Partners and their lenders, may not be fully protected by older documents.

It is always possible, and relatively easy, to obtain an update of a title policy that provides full coverage as of the date of the new transaction.

**8. Can title insurance also be useful to property sellers?**

Yes. Sale and purchase agreements typically include representations and warranties by the seller relating to a number of issues, including title. Sellers can replace these with title insurance and eliminate contingent liabilities, the need for cash collateral, and post-closing challenges.

- If the seller is a public company, it avoids carrying contingent liabilities and explanatory footnotes.
- In the case of distressed sales, buyers may not want to rely on sellers’ representations and warranties and may require a price reduction or cash collateral to back them up. A title policy satisfies the needs of both parties by covering those risks.

**9. What are the costs?**

They can vary from 0.2% to 2% of the value of the transaction, depending on the size, complexity and risk of the deal. This premium is paid only once, at closing, and the policy remains valid for the entire duration of ownership or for as long as the mortgage is in place if a Loan Policy is issued, without additional cost or yearly premiums.

For a development project, premium payments can be made in stages as the value of a project increases.

**10. Why are investors and lenders purchasing title insurance outside the US?**

For cross-border transactions, title insurance eliminates the burden and reduces the risks of coordinating the multitude of national ownership protection rules (e.g., Grundbuch in Germany, cadastre in France and Land Registry in the UK).

Transactions are, therefore, safer, easier and more transparent, which is particularly important in light of the rising volume of indirect real estate transactions through corporations, funds or Limited Partnerships.

**11. Can title insurance play a role in loan syndication or in the sale of entire loan portfolios by banks?**

While there are efforts to harmonize public market rules, it will take decades to move forward. Title insurance already enhances efficiency and liquidity of mortgage markets by:

- Assuring investors that the borrower owns the land and guaranteeing the priority and enforceability of the lien of the insured mortgage;
- Standardizing title due diligence across different laws, regulations and languages, especially critical in multi-country transactions;
- Providing investors with safety and common standards for due diligence on title to land and thus helping fulfill their fiduciary requirements.
- The title policy can in some cases enhance the creditworthiness of a securitized transaction which can result in lowering the cost of due diligence or a more favorable interest rate.

**12. Does the title policy fall under European or US laws?**

With the exception of Mexico, where we have a licensed underwriter, our English language title policies are issued through our New York office subject to the laws of the United States. In the event of a claim, we retain one of our trusted firms in the foreign country to handle the matter immediately.

**13. Are the amounts insured only in US dollars?**

No, policies can also be issued in Euros, Pounds Sterling or almost any other local currency.

**14. Where does FNF insure?**

FNF Title underwriters have already insured transactions on most continents, including Mexico, Brazil, CEE, Russia, Romania, Bulgaria, the Ukraine, South Africa, select Asia Pacific countries, including Japan, Australia, India, Republic of Korea, and throughout the Americas.

**15. What claims experience have title insurers incurred?**

Following are some sample title claims:

1. Mexico: Big box retailer receives notice from public utility identifying easement directly through Policyholder's property. Resolution: FNF secured adjacent property, consent from utility and associated expenses to allow retailer to open on time.
2. Mexico: Objection by seller's partner to conveyance of coastal land to development company interrupting outsales of individual condominium. RESOLUTION: FNF indemnified developer and individual outsale purchasers for all defense costs and ultimately against potential loss of title or financial award to seller.
3. Romania: Developer acquisition of commercial building stalled due to claim by former family member of seller that previous sale in chain of title invalid. FNF insured over the claimed issue allowing developer to continue funding by lender.
4. Eastern Europe: City's public sale declared invalid in Policyholder's chain of title. FNF hires counsel to defend.
5. England: Policyholder owner received claim by neighbor asserting significant boundary line discrepancy. Insurer defended and ultimately settled paying near face value of policy.
6. Panama: Taxing authority determined that over \$100K of back taxes were owed and attempted to collect from Insured. Insurer paid back taxes from the prior owner and allowed the developer to continue developing the property.

**16. When should we become involved in the transaction?**

We should be involved in the transaction from its inception. The underwriting process compliments the attorney's research, revealing whether known issues can be insured as the process moves forward. Our experienced underwriters will also attempt to eliminate issues that may present a problem at closing.

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FNF Title facilitates real estate acquisition, financing, and securitization. A subsidiary of Fidelity National Financial, Inc., a NYSE company, FNF is the world's largest title insurance company.

FAQs are for informational purposes only and are not intended to offer advice - legal, financial, or otherwise - about specific situations or problems.

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