

Inside Edition

Are You Covered?

By Denae Hildebrand Budde

It is not uncommon for people, even attorneys, not to read their insurance policies and know what coverage they have until after they need it. The provisions of an insurance policy, like the provisions of any other contract, must be construed in the context of the policy as a whole. It is the insured's burden to establish a particular loss is covered. *Buss v. Superior Court* (1997) 16 Cal.4th 35, 45. It is then up to the insurer to establish that an exclusion applies. Because the insured bears the burden of establishing coverage under an insurance policy, it makes sense that the insured must also prove that the exception affords coverage after an exclusion is triggered. *St. Paul Fire and Marine Ins. v. Warwick Dyeing*, 26 F.3d 1195, 1200 (1994).

In order to know what coverage an individual has in any type of insurance policy, the number one rule is to read the policy. Most policies are prospective looking, covering for a loss that may occur in the future, pursuant to the contractual terms contained in the policy. However, a title insurance policy is an exception. It is retrospective and covers an insured for issues or defects in title that existed prior to the date of the policy and not listed as an exception to coverage. Title insurance is a policy of indemnity, protecting against loss under the terms of the policy. Another distinction between title policies and liability policies is that, liability policies typically renew annually or every so many years requiring additional premiums, but with title insurance, there are no continuing premiums.

One might ask why do I need title insurance if it does not protect me from future defects with my title? Buying a home is one of the most expensive and important purchases an individual will make. Title insurance offers protection against claims resulting from various defects (as set out in the policy) which may exist in the title as of the effective issuance date of the policy. By way of example, if an individual was sued for quiet title based on a person claiming to have a deed giving them ownership to possess the property, a title policy could assist in defending against that claim. Another example would be when an individual claims to hold an easement across your land, a title policy could defend that claim. A title insurance policy contains provisions for the payment of the legal fees in defense of a claim against your property and also contains a provision for indemnification against losses which result from a covered claim. A title insurer typically has the right under the policy to clear title, defend and defeat the claim against the insured, or to pay the diminution in value of the defect.

There are generally two types of policies: An owner's policy which insures the individual homeowner as long as they or their heirs own the home; and a lender's policy which insures the priority of the lender's security interest over the claims that others may have in the property. When a loan is used for the purchase, the lender will generally require as part of the transaction title insurance to protect the lender's interests in the property, such that there are no issues with ownership or unknown easements and no one else has any lien, claim or encumbrance on the property superior to the lender's lien. For a lender holding a title policy, if there is a lien that was recorded prior to the one the new lender holds on your property securing the repayment of a debt,

the company issuing the title policy would attempt to remove that lien. Another situation may be if the borrower claims the loan and deed of trust are invalid for some reason, a title policy would protect the lender in that claim to maintain the lender's security. If the title company cannot remove the lien, it would then pay the insured lender under the policy.

Title companies, in advance of issuing the title policy, identify and attempt to eliminate potential risks and losses caused by title defects that may have been created prior to the particular transaction. In California, the organization that represents member title companies throughout the state is The California Land Title Association ("CLTA"), a non-profit corporation, founded in 1907. CLTA assists with recommended policy forms for possible use by member companies in the issuance of title insurance.

In this edition of the CCBA magazine, we will examine several types of policies that cover future harm including EPLI insurance, Medicare coverage, environmental coverage, disability and long term care coverage, and earthquake insurance. We will also look at insurance fraud.