



# Building Relationships

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## Texas Title Insurance Overview

**TITLE INSURANCE** is a contract of indemnity between the insured and a title company. The form of the contract is determined by the Texas Department of Insurance. Likewise, title insurance rates in Texas are promulgated by the Department and are uniform for all companies.

There are two major types of policies. The Owner's Policy of Title Insurance is issued to an owner/purchaser and insures against certain listed title risks. The Mortgagee Policy of Title Insurance is issued to a lender and insures the validity of the lender's lien against the property.

Before issuing a title policy, a careful search is made of the county, state, and federal records that affect real estate. This is accomplished by using the company abstract plant which maintains references to every deed, mortgage, death, divorce, which might affect property. These instruments are examined by lay examiners employed by the title company. Based upon the results of the examination, the title company decides whether to issue a policy.

Some of the risks that exist which a title policy may protect against include: forgeries, false representations, mistakes of law, undisclosed heirs, illegal trusts, delinquent taxes, fraud, lost wills, mistakes in legal description, clerical mistakes, defective acknowledgments on documents and platting discrepancies. In most cases, it is customary that the seller of the property pay for the Owner's Policy, but this is sometimes a matter of negotiation and in many instances is paid for or partially paid for by the buyer. The premium for the Owner's Policy is based on the sales price. The borrower is responsible for paying for a Mortgagee's Policy, which is based on the amount of the loan.

The title insurance company also acts as an escrow agent between the seller, buyer and lender and has responsibilities to all parties for fair dealing. The title insurance company receives the buyer's money as well as all other documentation required for the transaction. When all requirements of the contract and the lender are satisfied, the transaction is "closed."

**THE COMMUNITY PROPERTY SYSTEM**, which is governed by Texas case law and statutes, is mandatory for all married couples in Texas, whether the marriage is by civil law or by common law. Likewise, when a husband and wife who are nonresidents of Texas, purchase property in Texas, the laws of the State of Texas would govern (as to that property), and the property would be considered community property.

However, property in other states, acquired by married couples who subsequently move to Texas, is governed by the case law of the state in which the property is located. Further, the system does provide statutory methods allowing spouses to divide community property into separate property.

**TEXAS HOMESTEAD LAWS** primarily provide for the security of a family's home, shelter, and earning a livelihood free from the claims of all creditors except the holders of purchase money liens, home equity liens, and liens for improvements and taxes. The "residential homestead" refers to the lot or land upon which the residence of the family or single adult is located and anything which is a part of that land is subject to the homestead exemption laws of the State of Texas.

In the residential context, the homestead is owned and occupied as the home and is protected from forced sale for general debts. Only certain types of liens are valid against the homestead, including:

- To finance the purchase of the homestead
- To pay taxes due on the homestead
- To obtain money for work and material repair or renovate existing improvements thereon
- For owelty of partition liens, including divorce or probate
- For refinancing a federal tax lien
- For home equity loans as defined by Section 50 (A)(6), Article XVI of the Texas Constitution

