# What is Title Insurance?
# Why do I need it?

● Commercial ● Residential ● Escrows ● 1031 Exchanges

# Disclaimer

- This presentation discusses title insurance and services in general manner across all of the states BridgeTrust serves.  Not all services discussed in this presentation are available in all states because state law may prohibit or limit them.  BridgeTrust provides only those services allowed by, and in a manner compliant with, that state's laws.

# The Nature of Title Insurance

- Title insurance provides protection against losses resulting from defects in title to real property to:
  - Owners of real property
  - Lenders with a security interest in real property

- Protection is provided by affirmative assurances regarding:
  - Vested ownership
  - Legal access to a public road
  - No pre-existing undisclosed liens or encumbrances
  - Marketability of Title
  - Loan policy – The deed of trust is recorded, valid, and enforceable with priority over any other liens except as shown on the policy.

# The Nature of Title Insurance

- Risk Elimination & Backward Looking
  - Title Insurance is a "***risk elimination***" form of insurance NOT the "***assumption of risk***" involved in virtually all other lines of insurance.
  - A title policy looks backwards from a specific moment in time.
  - Insures the owner or lender against loss or damages arising out of defects to title which:
    - Are not excepted or excluded in the title policy **and**
    - Occurred prior to the issuance of the policy.
  - Contrast with casualty insurance which covers matters which occur after the policy is issued and during a more limited coverage period.

- Process is "Front Loaded"
  - Title Search – Search public records before closing to identify risks.
  - Commitment – Contains requirements that must be met to get the policy – "risk elimination".
  - Coverage – Title policy insures against all matters except those list as exceptions on policy.

# The Nature of Title Insurance

- **Types of Risk** – Title insurance insures against loss or damage arising out of title matters which are not expressly excepted or excluded in the policy. These risks can be grouped into three categories:
  - Unknowable title defects – Things that *can't be found* by the search (e.g., forgeries, fraud, deeds executed by minors or under duress, etc).
  - Undiscovered title defects – Things that are *missed* by the searcher (e.g., human error or unknown heirs to an estate in the chain of title).
  - Known risks - Things *known* such as encroachments, violations of setbacks, fence encroachments and other minor issues. The title insurance company may agree to insure without exception to such matters making title "insurable" if not "marketable".

# The Nature of Title Insurance

- Owner's Policy v. Loan Policy – Claims are different.
  - Any title problem is loss to owner, usually immediately.
  - Lender only harmed if lender has to foreclose and title problem impairs their lien.

- Loan Policy After Foreclosure
  - Remains a loan policy (does not convert to an owner's policy), so claims process does not change.

# Why is there Title Insurance?

- Land Record Not Perfect – Even a perfect search has problems due to hidden or unknown risks.
- Attorney Opinions Do NOT cover all issues – Prior to title insurance, people got ***opinions of title*** from an attorneys, which had the following risks:
  - The opinion was limited to matters found of record and did NOT cover "hidden or unknown" risks.
  - A lawyer's liability is limited to losses arising from the failure to exercise a reasonable degree of care (negligence – which is hard to prove).
  - Many lawyers have limited financial resources to fully cover a loss.
  - The statute of limitation barred many cases.
  - If the lawyer died, there is little to no recourse.

# Title Insurance to the Rescue

- Title Insurance solved these problems in the following ways:

1. **Risk Assumption** –
   - ***Unknowable defects*** or "hidden risks".
   - ***Undiscovered defects*** missed in the title search (human error).
   - ***Assumed Risks*** which the title company decides to take (e.g. mechanic's liens).

2. **Basis of Liability** – Title insurance is a contract, so liability of the title company is easier to prove than a tort against a lawyer. Title insurance liability comes in two flavors:
   - Duty to Indemnify – Liability for loss or damage resulting from a matter insured against by the policy.
   - Duty to Defend – Liability for the costs, attorney's fees and expenses incurred in the defense of title (a significant benefit).

# Title Insurance to the Rescue

3. **Financial Backing** – Title companies are rated by rating agencies so that people can evaluate their ability to pay claims. Title insurance companies are regulated by state insurance commissions and must maintain statutory reserves for claims.

4. **No Time Limits** – Title policies continue in effect as long as the insured owner or lender retains an interest in the insured property. An Owner's policy often covers someone after they sell their property if there is a claim related to covenants in their deed to a purchaser.

5. **Standardization/Secondary Market** – Title insurance is standardized as a practical solution to marketability concerns of lenders allowing them to make loans with confidence and sell the loans in the secondary market.

# Comparison of Title and P&C

| Features | Title | P&C |
|---|---|---|
| **Insures** | Past Events & Assumed Risks | Future Events |
| **Coverage** | Specific | Broad |
| **Policy Term** | Unlimited | Finite |
| **Premium/Cost** | One time – no renewals | Annual renewals |
| **Loss Frequency** | Moderate to High (defense costs) | High |
| **Distribution** | Agents/Direct | Agents/Direct, Mass Market |