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WHY ARE CO-OP PURCHASERS WILLING TO RISK IT ALL?

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When purchasing real property, such as a condominium apartment, single or multi-family home, there is never a question of whether or not title insurance will be purchased in order to protect the future owner against claims of creditors, fraud, forgery, liens, rights of ownership, or loss of property. However, it has not been customary to procure title insurance for shares in a cooperative corporation when buying a cooperative apartment.

When purchasing a cooperative apartment, a lien search is obtained to reveal any and all liens and/or encumbrances that may be against a specific unit. The lien search, obtained through a title company, does not insure ownership or that any such liens and/or encumbrances are, or will be cleared from record prior to or at closing. Furthermore, in the event that such lien search fails to include all liens and/or encumbrances, the lien search provider's liability is limited to a nominal figure, sometimes as low as \$1,000, although more often between \$50,000 and \$100,000. The average price of a cooperative apartment, as of 2016, exceeds \$1.3 million, which means that a purchaser could be taking a substantial risk that their ownership may be tainted.

There are now cooperative title insurance products that are available to offer protections to cooperative owners. These policies are purchased in the same manner as title insurance on real property, but for a substantially less amount than that of a title insurance policy for real property.

A cooperative title insurance policy protects an owner against issues such as fraud, forgery, liens, and judgements (whether or not the title company disclosed such defects in the lien search), maintenance charges and other monetary obligations unpaid by the seller, and then confirms that

the seller is transferring marketable title.

In the event that, after closing, a third party seeks to recover a debt secured by the cooperative apartment, the owner can make a claim against the title insurance policy and the title company that issued the cooperative title insurance policy will provide the owner with a legal defense. In the event of a loss, the title company will pay out on the claim in an amount up to the policy amount, which is the purchase price of the cooperative apartment. The legal defense itself may easily exceed the nominal coverage offered by the lien search alone. It should be noted that a lien search does not cover the costs of defending against a claim or action.

As an example, if a lien search failed to disclose a UCC-1 Financing Statement (a notice lien securing the security interest) from an owner, prior to the seller, and then that creditor that filed that UCC-1 Financing Statement makes a claim for an unpaid sum, the lien search would only protect the current owner in an amount up to the covered liability amount, but not for any costs of litigation defense. With a cooperative title insurance policy the current owner is not only protected in any outstanding amount due to the creditor up to the insured amount, but also will not suffer out-of-pocket expenses in defending an action that may be brought by the creditor to recover the outstanding sum.

The cost of cooperative title insurance is a fraction of the cost of a policy for real property and is negligible in comparison to the investment in the property being purchased. This small investment in cooperative title insurance can provide peace of mind to an owner that their cooperative ownership is not subject to claims of creditors, fraud, or other issues that may negatively affect title ownership in the ownership of the shares of the cooperative corporation.