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NOTES

The Insured's Rights Against the Title Insurer

Title coverage is a type of protection relatively new to the business of insurance. It had its beginning in Philadelphia about seventy years ago and has grown in importance until the present time when in many parts of the country practically every transfer of real estate is accompanied by some form of title protection. Title insurance has been defined as "an agreement whereby the insurer, for a valuable consideration, agrees to indemnify the insured in a specified amount against loss through defects of title to real estate wherein the latter has an interest, either as a purchaser or otherwise."[1]

While certain features of insurance policies may vary from one part of the country to another, the interests protected are essentially the same. The owner can obtain either a title guaranty or an owner's policy of title insurance. The guaranty insures record title and under its provisions the insurer will indemnify the owner against any loss that he may sustain because of a defect of record in his chain of title. The typical owner's policy sets forth the interest insured and the means by which it has been acquired in Schedule "A" and then in Schedule "B" lists those encumbrances and defects against which it will not insure.[2] This policy generally insures the marketability of the land and will indemnify the owner against any loss not specifically ex-

[1] Foehrenbach v. German American Title & Trust Co., 217 Pa. 331, 66 Atl. 561 (1907). Title insurance is defined in 1 COOLEY, INSURANCE 12 as a "contract to indemnify against loss through defects in the title to real estate or liens or incumbrances that may affect the title at the time the policy is issued."

[2] Some of the more common exceptions listed in Schedule "B" are rights of parties in possession other than the fee holder, questions of boundary of land or improvements dependent upon actual survey for determination, easements not of record,