

# The History of Title Insurance

By Cliff Bernstein

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The need for title insurance arose historically from the fact that traditional methods of conveying real property did not provide adequate safety to the parties involved. Until a century ago, transferring title to real property was handled primarily by conveyancers, who were responsible for all aspects of the transaction. The conveyancer conducted a title search to determine the ownership rights of the seller and any other rights, interests, liens or encumbrances that might exist with respect to the property, and, based on its search, provide a signed abstract (or description) of the status of the title. Although the conveyancer was generally not a lawyer, that individual was recognized as an authority on real estate law. The origin of title insurance is directly traceable to the limited protection that the work of such a conveyancer provided to the purchaser of real property.

In 1868, the celebrated case of *Watson v. Muirhead* (57 Pa. 161) was filed in Pennsylvania. In that case, Muirhead, a conveyancer, had searched and abstracted a title for Watson, the purchaser of a parcel of real property. In good faith and after consulting an attorney, Muirhead chose to ignore certain recorded judgments and to report the title as good and unencumbered. On the basis of Muirhead's abstract, Watson went ahead with the purchase, but was subsequently presented with, and required to satisfy, the liens that Muirhead had concluded were not impairments to title. Watson sued Muirhead to recover his losses, but the Pennsylvania Supreme Court ruled that there was no negligence on the conveyancer's part and dismissed the case. Watson, an innocent purchaser who had suffered financial damages because of the encumbrances on his title, had no recourse.

The decision of *Watson v. Muirhead* demonstrated clearly that the existing conveyancing system could not provide total assurance to purchasers of real property that they would be safe and secure in their ownership. As a result of that decision, the Pennsylvania legislature shortly thereafter passed an act "to provide for the incorporation and regulation of title insurance companies." The first title company was founded in Philadelphia in 1876.

This new type of insurance (called "title insurance"), addressed the concerns raised in *Watson v. Muirhead* by providing:

1. Responsibility without proof of negligence;
2. Financial protection through a reduction of the risk of insolvency; and
3. The assumption of risks beyond those disclosed in the public records (for which the abstractor was not liable).

Since the late 1800s, the title insurance industry has grown to where it now is an essential component in an overwhelming majority of real estate transactions in this country. The services provided by the title insurers may vary somewhat from one area of the country to the other, reflecting the different laws, customs and procedures of the various states and counties throughout the nation. But the essential purpose of these services is the same - to assist all of the parties in real estate transactions by ensuring that the acquisition or transfer of an interest in real estate can be effected with a maximum degree of efficiency, security and safety.

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