

## Title Insurance Follow-up

In response to [Harvey Temkin's](#) February 25th article entitled "[What Is Title Insurance?](#)" a reader submitted the following question:

**"If we pay for title insurance via a one time "premium" [fee], what protection are we offered if the title insurance company goes out of business between the time of the transaction [sale] and the time of a challenge, which might happen decades later or is this too rare to be considered a real risk?"**

To answer this question the Madison Real Estate Gurus requested the assistance of one of our colleagues in Reinhart's Waukesha office, Bush Nielsen. Prior to joining Reinhart, Mr. Nielsen was in-house counsel to two national title insurers for a combined 16 years and is the author of the book *Title & Escrow Claims Guide*, a national treatise on the law of title insurance policies, real estate closing agents and escrows. He is also editor of The Title Insurance Law Newsletter, a monthly national report of new law affecting the land title industry.

Below is Mr. Nielsen's response:

There is a legitimate concern that a title insurer may become insolvent or file bankruptcy before a claim is made. There can be a long time between policy issuance and claim incurred. I am aware that a large policy issued in the 1920's was the subject of a total failure of title in the 1980's, causing the policy limits to be paid. The very long life of title policies is one reason why most states require title insurers to set aside a very large share of their premiums every year in claims reserve accounts. This is one of the hidden and misunderstood expenses that title insurers face.

Title insurers do go out of business. I worked for the largest title insurer in the country in 1988, and yet that company briefly considered a bankruptcy filing that year after its sister company did file bankruptcy. Another title insurer filed bankruptcy in the 1980's. Dozens of regional underwriters have gone out of business. In every case to date, however, the stock or assets of the failed insurer has been purchased by another company, which continues to pay claims on the failed company's policies.

Most people put price as the number one consideration in selecting a title insurer.

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I put financial ability as the number one factor. The saving of a few dollars on a policy premium is not very valuable if the company does not exist when the claim transpires.

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