

TITLE INSURANCE PRIMER

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TITLE INSURANCE PRIMER

What is Title Insurance?

Title insurance is an exclusively American invention.

Its purpose was well stated in the first advertisement for title insurance back in the late 1800s:

*"This company insures the purchasers of real estate and mortgages against loss from defective titles, liens, and encumbrances. Through these facilities [the] transfer of real estate and real estate securities can be made more speedily and with greater security than heretofore."
[circa 1876]*

Protecting purchasers against loss is accomplished by the issuance of a title insurance policy, which states that if the status of the title to a parcel of real property is other than as represented, and if the insured suffers a loss as a result of a title defect, the insurer will reimburse the insured for that loss and any related legal expenses, up to the face amount of the policy.

Title insurance differs significantly from other forms of insurance. While the functions of most other forms of insurance is risk assumption through the pooling of risks for losses arising out of unforeseen future events (such as death or accidents), the primary purpose of title insurance is to eliminate risks and prevent losses caused by defects in title arising out of events that have happened in the past. To achieve this goal, title insurers perform an extensive search of the public records to determine whether there are any adverse claims to the subject real estate. Those claims are either eliminated prior to the issuance of a title policy or their existence is excepted from coverage.

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Frequently Asked Questions About Title Insurance



FAQ

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Why do you need it?

Buying a new home is one of life's most gratifying experiences. As you approach the big day of closing, however, all the details can be a little overwhelming. You might easily overlook the single most important step in the entire process – the purchase of title insurance on the wonderful new home of yours.

What is a title?

A title is the evidence, of right, that a person has to the ownership and possession of land. It is possible that someone other than the owner has a legal right to the property. If that right can be established, this person can claim the property outright or make demands on the owner as to its use.

Do I need title insurance?

Most definitely! Title insurance is a means of protecting yourself from financial loss in the event that problems develop regarding the rights to ownership of your property. There may

be hidden title defects that even the most careful title search will not reveal. In addition to protection from financial loss, title insurance pays the cost of defending against any covered claim.

What can make a title defective?

Any number of problems that remain undisclosed after even the most meticulous search of public records can make a title defective. These hidden "defects" are dangerous indeed because you may not learn of them for many months or years. Yet they could force you to spend substantial sums on a legal defense, and still result in the loss of your property.

But the lender already requires title insurance, won't that protect me?

Not necessarily. There are two types of title insurance. Your lender likely will require that you purchase a Lender's Policy. This policy only insures that the financial institution has a valid, enforceable lien on the property.

Frequently Asked Questions About Title Insurance

Most lenders require this type of insurance, and typically require the borrower to pay for it.

An owner's policy, on the other hand, is designed to protect you from title defects that existed prior to the issue date of your policy. Title troubles, such as improper estate proceedings or pending legal action, could put your equity at serious risk. If a valid claim is filed, in addition to financial loss up to the face amount of the policy, your owner's title policy covers the full cost of any legal defense of your title.

How much does title insurance cost?

The one-time premium is directly related to the value of your home. Typically, it is less expensive than your annual auto insurance. It is a one-time-only expense, paid when you purchase your home. Yet it continues to provide complete coverage for as long as you or your heirs own the property.

When should I look into purchasing title insurance?

Call Old Republic Title as soon as you and the seller sign the earnest money contract. With a brief summary of the details, our team of title experts will begin a search of the public records and issue a title commitment. Because there are a number of steps we must take to make certain that we know all we can about the title, it is wise to get the ball rolling as soon as possible.

Should I shop around for the best title insurance deal?

Some states closely regulate rates. Others permit open competition, often resulting in significant differences

between title insurers on rates and coverage. Depending where you live, it pays to investigate your options carefully in order to obtain the most complete coverage.

What items are needed at closing?

You will want to have these items complete or in hand when you come to the closing (please confirm with your escrow officer, as practices vary by state):

Buyer

- Buyer's copy of purchase agreement
- Cashier's check(s) to make all payments
- Proof of purchase of insurance for fire, casualty, etc.
- Invoices for any unpaid taxes, utilities or assessments
- Photo identification (passport, driver's license or state-issued identification card)

Seller

- Seller's copy of purchase agreement
- Invoices for any unpaid taxes, utilities, assessments and latest utilities meter readings
- Receipts for last payment of interest on mortgages
- Bill of Sale of personal property covered by the purchase agreement
- Any unrecorded instruments that affect the title
- Proof of satisfaction of any mechanics' liens, chattel mortgages, judgments or mortgages that were paid prior to the closing
- Photo identification (passport, driver's license or state-issued identification card)

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Historical Developments

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

Historical Developments

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. Old Republic Title is proud to play a leading and innovative role in this industry.



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Title Issues

The job of searching the public records to identify existing rights and interests is not an easy task.

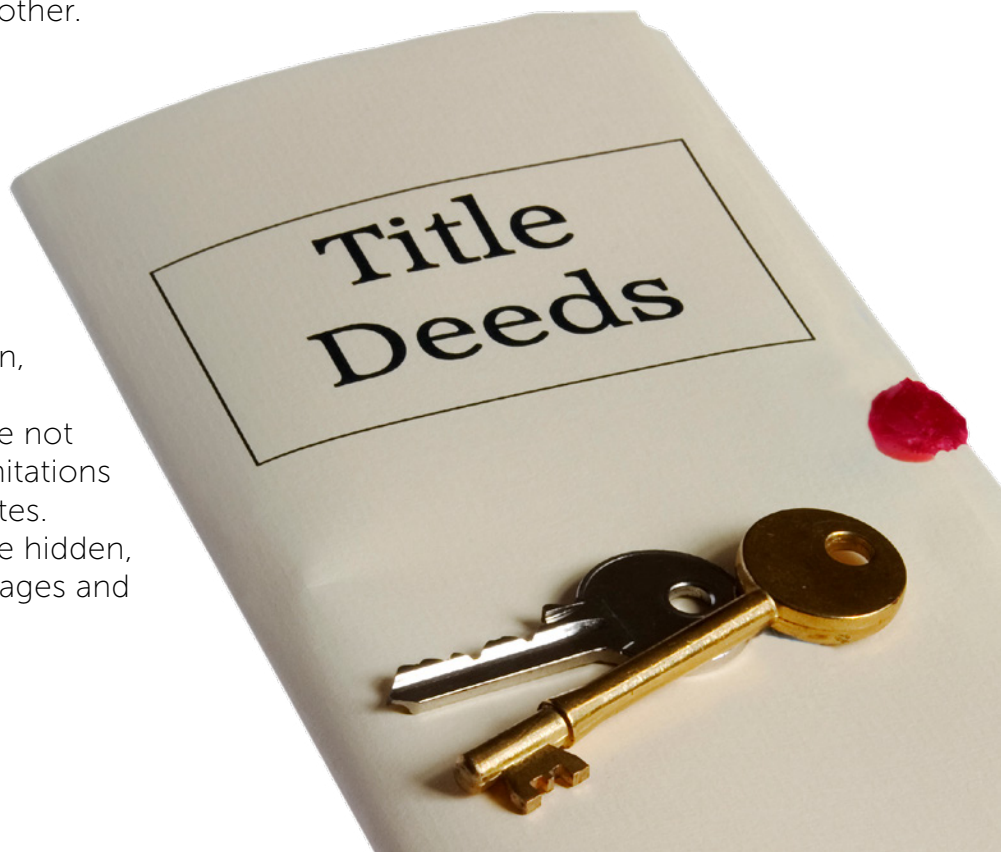
The title searcher or abstractor reviews the public records to find all aspects of title, which can be seen and recognized. From the title search, the title examiner produces an opinion of title, from which the Company will issue its insurance.

In many areas, the title to a property can be traced back to a royal grant, charter or the United States government. In many areas, titles are not traced back that far; instead, local custom or title insurance company requirements dictate a shorter search.

There are few titles, if any, that have a perfect history from their source, or root, to the present day. Each transfer of ownership is a "link" in what is referred to as the "chain of title." As each transaction or link takes place, there is a potential for a problem. Even if the entire chain of title appears to be in order, the chain is still subject to interpretation. When searching a title, what we are trying to determine are the various rights and interests that make up each link in the chain as it has passed from one owner to another.

A "title" is composed of three basic elements.

- Rights and interests that are disclosed in the public records or by physical inspection of the property, e.g., deeds, mortgages, leases, parties in possession, utility easements.
- Rights and interests that are not recorded but exist, e.g., limitations imposed by laws and statutes.
- Rights and interests that are hidden, e.g., forgeries, secret marriages and unknown heirs.



Title Issues

Every title is made up of many different “rights” and “interests” that may be owned by different people. The “owners” of the property own the most valuable of the property’s rights and interests, but other people may also have rights to the property, such as easements for utilities or mortgages, etc.

Each title can be compared to sticks in a bundle. The rights and interests are represented by the sticks. The “owners” own what we call a “fee simple” title, that is, they have purchased the most vital and valuable sticks including rights of possession, use, occupancy, enjoyment, inheritance, etc. Also within the bundle are sticks that may be owned by other parties. These are called encumbrances and may consist of easements, mortgages, liens, etc.

When a person purchases a parcel of real estate, it is not only the physical property itself that he or she acquires, but the seller’s rights and interests, “the seller’s title,” in the property. It is essential for the prospective purchaser to know before the transaction takes place, precisely what rights or interests the seller can convey. The purchaser also needs to know who else may have rights or interest in the property, and about any encumbrances against the property that may affect the use or enjoyment of the land. The title search must cover all these rights and interests.

CERTIFICATE OF TITLE

UNDER THE “TRANSFER OF LAND ACT, 1893” AS AMENDED

described in the First Schedule hereto registered proprietor and subject to the easements and encumbrances mentioned in the Second



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Benefits of Title Insurance

Title insurance issued by Old Republic Title provides a broad range of benefits to the parties involved in a real estate transaction.

To the Purchaser of Real Estate...

The purchaser of real estate needs protection against serious financial loss due to a defect in the title to the property purchased. For a single, one-time premium, which is a modest amount in relationship to the value of the property, a buyer can receive the protection of a title insurance policy - a policy that is backed by the reserves and solvency of the Company. A title insurance policy will cover both claims arising out of title problems that could have been discovered in the public records, and those so-called "non-record" defects that could not be discovered in the record, even with the most complete search.

A title insurance policy will not only protect the insured owner, but also that person's heirs for as long as they hold title to the property, and even after they sell by warranty deed. The Company will not only satisfy any valid claim made against the insured's title, but it will pay for the costs and legal expenses of defending against a title claim.

To the Lender...

The overwhelming majority of mortgage loans made in the United States are made by persons who are acting in a fiduciary capacity - by

savings and loan associations, savings banks, and commercial banks on behalf of their depositors, and by life insurance companies on behalf of their policyholders. Because they are lending other people's money (other people's savings or policyholder's funds) these lenders must be concerned with the safety of their mortgage investments.

A policy of title insurance provides a mortgage lender with a high degree of safety against the loss of security as a result of a title problem. This protection remains in effect for as long as the mortgage remains unsatisfied.

Old Republic Title also provides lenders with in-depth expertise on a wide variety of title-related matters to facilitate the mortgage loan process.

To the Seller...

An owner of real property whose interest is insured by an owner's title insurance policy has the assurance that the title will be marketable when selling the property. The title insurance policy protects the seller from financial damage if the seller's title is rejected by a prospective purchaser. Also, when the seller conveys with "warranties," the seller is still protected if the buyer sues because of a breach of those warranties.

Benefits of Title Insurance

To the Real Estate Attorney...

Title insurance enables the real estate attorney to provide the client with substantially greater protection than would be afforded by the attorney's opinion alone. The attorney's opinion is generally limited to recorded matters and the client can only recover from the attorney if the attorney is found to be negligent. (Remember the case of *Watson v. Muirhead* that prompted the creation of title insurance?)

To the Real Estate Broker...

The title insurance company and the real estate agent both seek to ensure that as many purchases as possible are closed to the satisfaction of all the principals in the transaction. From the broker's standpoint, the efficient and safe transfer of title will result in client satisfaction, increased prestige, and continued business.

Apart from the security that title insurance offers, most real estate brokers have experienced numerous instances in which title insurance personnel have enabled them to close transactions that otherwise would have been delayed. By helping to avoid delays, Old Republic Title is able to support real estate brokers in delivering smooth transactions, and minimizing inconveniences and costs to the homebuyer.

To the Home Builder...

By providing various title insurance services and information to the home builder, the title insurance industry can and does assist the builder in

identifying and evaluating building and use restrictions, easements, etc., in removing title problems that may arise, and in facilitating prompt and needed disbursement of construction funds from the construction lender.

All of these services ultimately rebound to the benefit of the buyers of newly constructed homes.

To the Community In General...

Apart from the unique benefits title insurance offers to particular parties involved in a real estate transaction, title insurance companies can and do offer considerable assistance to public officials through the use of their "title plants" – the data banks of reorganized and indexed public records that are maintained by title companies in many areas of the country.

Much of the information contained in title plants is not readily available from other sources. For example, information such as the date of recent sales, representative sale prices, ownerships, area maps, use restrictions, surrounding properties and a host of other matters pertinent to proposed projects, has helped representatives from all levels of government save countless hours and taxpayer dollars. In addition, title plant staff frequently help recording officers correct errors they discover in public indices and records.

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Methods of Title Searches

There are various methods by which title to a parcel of real property can be examined

Direct Search

In some areas of the country, title companies or lawyers retained by the customer go directly to the county records when conducting a title search. In others, title companies maintain copies of those records in "title plants," which are located right in the companies' offices.

In some parts of the country, predominantly in the northeast, the counties' records are maintained in Grantor/Grantee books that index properties by sellers' and buyers' names and are laborious to search.

In some states, the county real estate records are indexed in a Tract Index similar to a title company's title plant. A tract index indexes properties by the property location, i.e., lot number, and if reliable, title companies may use them instead of going to the expense of building their own title plants.

Title Examination

When the search is completed, copies of all pertinent documents, tax searches, name searches, etc., are sent to a title officer. It is the officer's responsibility to examine those items and arrive at a conclusion as to who owns the property and what encumbrances or defects exist. The officer may also set out certain requirements to clear up any problems disclosed by the search and examination.

Title Underwriting

The title officer may also have to make certain underwriting decisions. Suppose, for instance, that there are building restrictions limiting buildings from being constructed closer than 30 feet from the front lot line, but our building is actually located 25 feet from the front line. Can we guarantee the lender that it will not suffer loss because of this violation?

At Old Republic Title, we take pride in trying to resolve such problems – many of them are very complex and require skill and experience to underwrite to our customer's satisfaction.

If a particularly difficult problem arises or it involves a large title policy, your local title officer will call the Regional Counsel or our Chief Title Counsel for advice and suggestions.

Title Plant Examination

The other method of title searching is called the Title Plant Examination. The title examiner makes the search from the company's title plant records. The plant contains a duplicate of the "public records," which has been reorganized and indexed in a more useful fashion. This means that once the searcher locates the property, the searcher has instant access to all instruments affecting that property. This method of title search has been used in most metropolitan areas since the advent of title insurance. It requires that the title insurer or its agent own a title or abstract plant.

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The Public Records

In the United States, we maintain a public records system that varies from state to state. This system is controlled by “recording statutes.” Simply, this means that in each and every county there is a public office where people may have their deeds, or other written instruments relating to title, recorded in permanent record books. The public records provide constructive notice to everyone as to the rights and interests of parties in a particular piece of property. There may be other rights and interests that are not disclosed by the public records (e.g., secret marriages, incompetency, unknown heirs, forgery, etc.). The public recording offices and their records constitute the most important source of information about title to real estate.

The offices in which these public records are maintained have different names in different states. In fact, there usually are several different offices in each county. One office may be for the recording of deeds,

The public records provide constructive notice to everyone as to the rights and interests of parties in a particular piece of property.

mortgages and documents pertaining exclusively to land. Other offices in the same counties may contain the records of other matters affecting the title to the land. Lawsuits, marriages, divorces, insanity proceedings and probate may all affect the title to the land. Still other offices may contain the records relating to taxes against the properties or, in some instances, recorded surveys.

In a very limited number of states the Registered Land System (also known as a “Torrens System”) is used. Under this system, a court proceeding has been brought naming parties who have an adverse interest in the property. If everything in the proceeding is completed and handled properly, the plaintiff is said to have a good title as of that date. This title, however, is not guaranteed by the state. The Torrens System has been abandoned by most states, primarily because the associated court proceedings complicated title transfer and delayed real estate sales proceedings caused extra and unnecessary expenses.

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The Parties in a Transaction



There are few business transactions with more importance than those related to the sale and purchase of real estate. The purchase of a home is usually the largest single expenditure most families will ever make. To these families, we at Old Republic Title play a critical role in the real estate transaction.

In most cases, a property owner will approach a real estate agent and offer a property for sale. The real estate agent will then advertise the property and conduct a search for potential buyers. Generally, a number of potential buyers will respond to the agent's listing, depending upon real estate market conditions and general economic conditions at the time. The real estate agent, working with the client, then determines which of the potential buyers is financially qualified to enter into sale price negotiations with the property owner.

Once a qualified buyer is found and a sale of property is arranged for and completed, the agent is compensated in the form of a commission. This commission is normally paid by the property seller and is based on a percentage of the final sale price of the property. The actual dollar amount of

the commission, as well as the general terms of the real estate agent's services, are specified in a **listing contract** or **listing agreement**.

Once the buyer and seller have agreed on a purchase price, they enter into a purchase agreement or contract. The contract sets out the terms of the agreement such as price, closing date, contingencies, etc. It is recommended that the parties have the advice of their lawyers before signing the contract, since once it is executed it defines the terms of the sale.

The parties' attorneys will continue to provide legal advice to their respective clients until the real estate transaction is completed.

Most people do not have enough cash to purchase property on an all-cash basis and must therefore look toward

The Parties in a Transaction

one of the many sources of financing available today. The basic arrangement is that someone will lend the buyer enough money to purchase the property under certain conditions. The conditions require the purchaser to repay the monies according to a known repayment schedule, and pledge the property as security for the debt.

When you borrow money, the lender is in fact making an investment in which the lender will earn interest. Your payments will usually be made on a monthly basis and are calculated so that the entire amount of principal and interest due is repaid in a fixed number of years. If the entire debt will not be paid in this time (i.e., fully "amortized") the total amount left to be paid is called a "balloon" payment.

The lender first processes and underwrites the buyer's application. This involves ordering credit reports, appraisals, verification of salary, verification of debts and possible investor and private mortgage insurance company approval. When loan approval appears likely, title insurance is ordered, often by the real estate agent.



Tips for Home Sellers

Increase Your Home's Appeal

Exterior

Look at your property from the buyers' vantage point as they approach in their vehicle. If the mailbox is the first thing they see, it should be free of dents, clean and fresh in appearance. Are trees or shrubs along the drive properly trimmed back? Is the lawn mowed, hedge trimmed, garden pruned? If you are selling your home in the fall, try to keep the leaves raked and the lawn cleared of other debris.

Next, that all-important first critical look at the house itself. Put yourself in the buyers' shoes. Stand in the driveway and imagine you are seeing your home for the first time. Make certain the walkway to the front door is swept, that there are no children's toys scattered about. See that the roof and gutters are clean, windows washed, doorknobs gleaming and welcome mat in place. If you discover any obvious signs of disrepair - blistered or peeling paint, rusted drain spouts or missing shingles - ask your Realtor® whether you should have them fixed before showing the home.

Interior

One word of restraint: do not undertake any major redecorating unless it is absolutely necessary. That beautiful new Berber carpet in the living room and Tyrannosaurus Rex wallpaper in the children's bedroom may not be to the buyers' liking. They may see it as decoration they'll have to replace when the home is theirs. In most

instances you are not likely to recoup the added expense of any such work. Repair or replace worn-out and broken accessories. Badly chipped tiles on the kitchen counter, a broken hand railing on the staircase or noisy hot water heater create a negative impression of the home's overall condition. The rather minimal expense of eliminating these problems is usually worthwhile.

Clean up! It doesn't have to be boot camp spotless, but your home should be generally clean and uncluttered. Wash and wax hardwood floors, vacuum carpets thoroughly, remove grease and grime from walls. Clean kitchen and bathroom tiles. Polish and dust your furniture, and vacuum, if necessary.

Make certain all faucets, sinks and toilet bowls are cleaned and properly functioning.

Thin out closets. If your clothes are packed to the rafters, place enough in temporary storage to give the impression that your home has adequate closet space.

Garage and basement: Get rid of the junk! You may think you can't live without your collection of 25 fishing rods, but your buyers will want to see a neat, orderly space with enough room for their favorite odds and ends. Also, put a fresh coat of white paint on the walls. It's a minor expense and it goes a long way toward creating the right feeling of freshness.

Tips for Home Sellers Cont.

Furniture: Take an hour to visit an apartment complex model. Note how these typically small rooms are made to appear larger than they are, with very little furniture. Traffic patterns are open and accessible. Apply those lessons at home. Remove two or three chairs, an end table and lamp, or other objects that are not absolutely necessary in a room. Make sure your own traffic patterns within and between rooms are generous.

Team With Your Realtor®

Your Realtor® typically has a wealth of experience in every aspect of home selling. Take advantage of his or her knowledge and work together for a quick, successful sale:

- Ask your Realtor® what else you might do to frame your home in the best light.
- Be sure to make your home available for showings. Your Realtor® spends considerable time and effort to advertise, qualify prospects, show the property, and ultimately negotiate the sale. Try to accommodate requested appointments whenever possible.
- Compile a short packet of information on your neighborhood: local schools, transit systems, parks, libraries, municipal services, etc. Also, be certain to include the cost and availability of day care, as prospective buyers may have children.

Showing Tips

When your Realtor® calls to bring a prospective buyer to your home, prompt attention to last-minute details can enhance your home's appeal:

- Straighten up minor messes - newspapers in the garage, china and silverware in cupboards, ironing board back in the closet.
- Clear tables. That collection of golf magazines may be handy on the cocktail table, but it creates an unwanted air of clutter.
- Confine your pets. Some people may tremble in fear at the sight of your pet, even if it is a miniature Schnauzer; so keep dogs or cats away from prospective buyers.
- Leave the lights on! Even your Realtor® won't necessarily remember that the switch for the recessed ceiling lights is hidden inside the foyer closet.
- Leave home whenever possible. Your Realtor® has been hired because of his or her expertise at home sales. Stay out of the way. Besides, buyers may be uncomfortable if they feel you're watching their every move.
- If you can't leave, greet your guests politely and retreat to another room. Send the kids and the dog outside. That way your Realtor® will be able to best answer questions and most effectively show your home.

