

What is it that youâ??re buying???

Description



There are so many insurance and bond products available to people and businesses in the Title Industry, and options keep growing. Some items are required and some are just good business sense.

Since the late 90â??s, the Commonwealth of Virginia has required licensed Title Agencies, that conduct real estate closings, to obtain and maintain a surety bond and a fidelity bond and E&O. If the Title Agency only issues policies, only E&O is required. These requirements still stand today.

The **Surety Bond** is a â??license bondâ??. That means that the state is requiring you to have this bond, in order to obtain their required license, the bond protects the state and citizens of the state. The surety bond is NOT insurance and does NOT provide any protection to the Title Agency. If an owner of a company embezzles funds, or commits intentional fraud, that may harm a consumer, the state may call the bond, by putting a claim into the surety company. If the bond company is called and they pay a claim, the owner of the Title Agency must pay back those funds, to the bonding company.

The **Fidelity Bond/Policy** does protect the Title Agency. The state of Virginia only requires \$100,000, in protection from employee theft only, but crime has landed in this industry, very hard, so several additional coverage options have become available and are recommended (more on that below).

The **E&O Policy** protects the Title Agency in the event they make a mistake, while conducting professional services to others, for a fee. The state only requires a Title Agency to carry \$250,000, but most underwriters require \$1,000,000. The vast majority of E&O policies exclude losses related to money and escrow funds.

The most confusing coverage options are under the heading of **Cyber insurance**. This term flies all over like a hummingbird, but no one really knows what it is or what they want.

For example, there is a large lender that has a check box on their form that asks â??do you have cyber insurance, yes or no?â??. We have asked this lender if they are looking for **Cyber** for Money or **Cyber** for data, and their answer is alwaysâ?!. they donâ??t know.

Ultimately, when we hear people speak of **Cyber**, they are looking for protection of money, the problem is that most **Cyber** policies are created with the intent to cover a Data or Privacy Breach. Since this is not required by law, the responsibility for protection falls on the Title Agent or title attorney.

Cyber for protection in the event of Funds loss, is really a **Crime/Fidelity** policy:

Around 2009 or so, the **Fidelity/Crime** policies started offering a new coverage to the policy called **Funds Transfer Fraud**. This protection would help a Title Agent in the event a hacker got into their system, posed as the Title Agent and wired funds out of their accounts. **This is a valuable endorsement for all companies that hold escrow accounts, but is not required by law.**

In 2015 a new coverage came to life, as a direct result of the awful attacks on Title Agent escrow accounts, **Fraudulently Induced Funds Transfer and/or Social Engineering**. This is an excellent endorsement to have, but you must use caution and read your policy.

Many of the Social Engineering coverage options require a call back verification and documentation procedure to be in place and used for every wire instruction. If that procedure is not followed, coverage could be void. This type of theft is almost always **excluded** from all policies, unless it has been specifically endorsed onto it.

This Social Engineering theft is when a fraudulent email is received and acted upon. The email could look like it came from the client, the lender or even the owner of the Title Agency. The email would provide the instructions for the delivery of funds or a change in wire instructions. Basically someone is trying to trick the Title Agency into giving money away. We find that the majority of changes to wire instructions are fraudulent.

Also, if the owner of the Title Agency requests an employee to send a wire, using email instructions, it would be in your best interest to phone call the owner as well, to confirm that it really is the owner. Always better to be safe than sorry.

Cyber Liability for Data Breach / Privacy, would be an actual policy, called **CYBER Liability**. This coverage is generally for protection in the event of a data breach or release of Non Public Information. In most cases this coverage is for data only, but there are a few policies that will add some coverage for funds. In this day and age, everyone should consider purchasing a Cyber policy.

Phishing: This is a coverage that is not widely available to the title industry, but the uninsured losses are astounding. Phishing is when the buyer gets a fake email, that looks like it came from the Title Agency, with fake wire instructions. If the buyer trusts that email and sends their money to a crook, rather than the Title Agency, we can all be pretty sure they are going to sue the Title Agency. Coverage for Phishing is becoming almost extinct or completely unaffordable.

To help prevent these losses to the buyer, it is highly recommended that the Title Agency engage their buyer in conversation the moment they become aware of them, with all efforts to contact them before the crook does. You can try FaceTime, video chat, the phone and then send a follow up letter through the US Postal Service, with your wire instructions, highlighting and stick-notes pointing out that you will never change your instructions.

Bottom Line:

- In Virginia, to be in state compliance:
- VA Title Agent Surety Bond in the amount of \$200,000.
- Fidelity Bond: in the amount of \$100,000.
- E&O: \$250,000.

That is all that is **required**, but it is prudent to expand on your coverage in order to protect yourself and the people you do business with.

Suggestions:

- **E&O:** with limits of no less than \$1,000,000
- **Fidelity;** Higher limits, such as \$500,000, adding additional protections, including the funds fraud discussed above.
- **Cyber Liability** for Data: \$1,000,000.

Other coverage to consider:

- Rental insurance and Liability for your office space and.
- Worker's Compensation.
- Employment practices, to protect you from things like wrongful termination or harassment suits



Michele Blanco has been working as an Insurance Agent, supporting the Title Agent,

Lawyers and Real Estate Industry since 1996. The support started minimally, with just the state required surety bonds, but she quickly realized that Title Agents needed more than just a bond. She independently developed a program offering of all insurances needed to fully protect these businesses.

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Date Created

2018/06/05

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