

Title Insurance In India: Shortcomings & Challenges

written by Rhea Susan Verghese | May 13, 2022



Title Insurance in India

In real estate, the idea of title insurance is the guarantee of indemnifying an insured person in the case of a loss caused by an error that was not discovered during the insurance company's title determination process. Builders in India are obliged to obtain insurance covering the title of project land under the Real Estate Regulation and Development Act, 2016 [RERA].

RERA requires a promoter to acquire all essential government insurance, including title insurance for any land or structures that are part of the real estate project, as well as construction insurance. When the promoter enters into a selling agreement with the allottee, the insurance is transferred to the benefit of the allottee or the allottee's association. This form of insurance benefits both homeowners and developers since it helps them establish a reputation for being trustworthy and reliable. It should thus be considered an investment instead of an expense in the real estate sector. Having a reputation of reliability is important – especially now since RERA is guaranteeing reputable developers by actively pushing for title insurance compliances.

The land market in India is separated into two sections: rural and urban. Each has its own legal and administrative structure. While municipalities have significant authority over urban real estate markets, state governments have direct control over rural real estate markets. Both markets have profited to varying degrees from the efforts of their respective governments.

The National Land Records Modernization Programme, 2008 (now, Digital India Land Records Modernization Programme [DILRMP]) was launched to create a system of conclusive titles with title assurance in rural areas. In many aspects, title insurance is a private mechanism similar to the conclusive titling system that the Indian government introduced under the DILRMP. However, there is widespread acknowledgement that title risk is inherent within the land registration system and the Indian market is not without its challenges regarding the same. Some of these risks include:

- Lack of land records
- Cost of the title insurance
- Legal framework of insurance law in India
- Poor underwriting quality
- Monopoly abuse
- Judicial uncertainty
- Exclusivity
- Lack of domestic expertise

Major Challenges Facing Title Insurance Holders

- Insufficient data on land records

Because of India's low-quality land records, the possibility of identifying errors that result in claims is higher. This has an impact on the cost as well as the viability of title insurance companies. There is also inadequate information on the specific impact that land record accuracy may have on actual claims that insurers must manage. This has significant consequences for the practicalities of rate management as well as the prudential risks that insurers may face as a result of claims arising from previously unknown flaws.

- Cost of title insurance

Title insurance is expensive since the premium is inclusive of other factors such as the cost of land, the building, and the developer's profit margin, which can go up to 3%. The premium must be paid for 7 years or more, which is a hefty cost to bear.

The title insurance industry appears to be in trouble, as builders of under-construction properties are unable to pass on such costs to clients with whom they have agreed on prices and signed registered agreements. It is unreasonable to expect a premium reduction. Each stage of the process demonstrates the ongoing scarcity of reliable data on property ownership and valuation.

- Legal framework on insurance law

The Insurance Act governs insurance in India. The act has rules which make it difficult for foreign firms to sell title insurance in India and stymies the entry of specialized title insurance firms.

The legislative system determines how incumbent insurers compete with or learn from specialized firms operating outside of the country by imposing such constraints. Furthermore, this means that present Indian insurance companies will offer title insurance as a new product, emphasizing the importance of prudential requirements aimed at separating the risks associated with other insurance lines from the traditionally low-risk title insurance business within the same company. However, if land titles are of inferior quality, title insurance risks may increase, which has a detrimental impact on pre-existing insurance products offered by providers.

- Poor underwriting

Despite a dismal credit history, insurers may be able to sell insurance. This can occur due to a multitude of factors but a noteworthy one is low-quality title records generated by underwriting lacking severely in skill and quality. Consumers and insurers may suffer financial losses as a result. Poor underwriting quality can lead to inaccurate price decisions, such as undercharging or overcharging clients or the wrong reserve allocation for indemnifying consumers. These consequences could jeopardize the insurance company's financial viability and subsequently, the insured's indemnification.

- Abuse of monopoly

Insurers may impose monopoly pricing or onerous contractual requirements on title insurance buyers if the former is in an unfairly advantageous position to abuse their market dominance. Title insurance businesses can improve title information over time since they keep confidential records of titles – to the detriment of those who do not.

- Judicial uncertainty

Title insurers do have the incentive to defend a customer's title in court. However, court procedures are opaque, and litigation in India is frequently

delayed. Further, precise estimates of litigation costs are tough to determine. Another cause of cost misallocation is poor litigation forecasting – which can result in either high consumer costs or extremely low litigation-related expense provisioning.

- Structural exclusions

Title insurance only covers previous flaws. The threat of future invasion or squatting is one of the most common anxieties among landowners and developers. The land mafia remains an extraordinarily major threat and encroachers that work professionally can be found in both urban and rural regions. The exclusion of such threats from an insurance coverage is especially unfavourable for this reason. Furthermore, there is generally a disagreement between official approvals, which causes development to be halted. As a result, large-scale undertakings fail.

- Lack of domestic expertise

While foreign insurers are considering offering international title insurance in India, they do not have the native experience that domestic insurers do. International insurance businesses are more likely to have higher operating costs and a reduced capacity to manage India's bureaucratic processes, which leads to higher premiums.

Bottomline

To conclude, a title insurance regime could ease some of the concerns raised above by lowering the risks in individual transactions as well as the market as a whole. Current title insurance alternatives in India are confined to RERA-registered real estate projects. Title insurance companies provide more in-depth searches and information than is currently available in India. Further, such a mechanism might provide coverage for future claims and losses.

Title insurance promotes specialization and intermediation in the land market by allowing specialized organisations to determine the quality of titles and indemnifying them for their due diligence. In the long run, this results in social benefits due to the improvement of land titles as a result of private labour. The manner in which title insurance is introduced and regulated, on the other hand, will be important to the market's success.

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