

Title Insurance and Property Donations in Italy

*A portrait / interview of Jean Bernard Wurm, Managing Director,
Secure Legal Title Limited, London*

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www.internews.biz/?p=9257 // <https://www.youtube.com/watch?v=ulamKIVDDTs>



When he enters the room, he has a big smile on his face. “Paola, I have an “exclusive” for Internews. *Secure Legal Title* is a shareholder in a new company, just launched, called *Titolo Sicuro*. It will provide title insurance to cover legal risks related to the acquisition or financing of donated properties. This new insurance product is called ‘Donazione Sicura’ (Secure Donations) and this is the first time such policy coverage exists.

Secure Legal Title, backed by Lloyd’s of London, together with a group of notaries and some private individuals, created *Titolo Sicuro*. AON is the exclusive broker.

This is a significant development for the growing volume of donated properties in Italy which, until now, have been considered highly risky and, in some cases, overwhelming in their complexity.”

I have known Jean-Bernard Wurm for many years. He is Managing Director of London-based *Secure Legal Title Limited*, an Appointed Representative of Tyser & Co Ltd., authorised and regulated by the UK’s Financial Conduct Authority.

Jean-Bernard lives in the charming city of Geneva, from where he covers the EU and accession countries, Central and Eastern Europe, and most of the Balkans. When I first met him, Jean-Bernard was living in New York but returned to Europe several years ago. Originally from Paris, he graduated with honours from the Institute of Political Sciences before obtaining a Masters from the Sorbonne.

The man sitting in front of me has over 30 years experience in the European and US property markets as a commercial and investment banker and private equity investor. In late-2012, along with two associates, he founded *Secure Legal Title*, a provider of title insurance for real estate in Europe, backed by the financial strength of Lloyd’s. Previously, Jean-Bernard launched the European sales operations of the two largest US title insurance companies. He began his career with JP Morgan Paris, Frankfurt, and New York, then Bankers Trust/Deutsche Bank and HVB Capital in New York.

In addition to his mother tongue, Jean-Bernard speaks perfect English and is fluent in German and Italian. Always elegant, gentle, refined, and even really funny, Jean-Bernard is, in three words, a classy man.

Q. Jean Bernard, let’s talk about your company, Secure Legal Title in London.

A. Secure Legal Title provides title insurance for real estate in Europe and is backed by the financial strength of Lloyd’s—with ratings higher than those of the US title insurers.

It was founded in October 2012 by three senior insurance professionals: Sean Dalton, Chairman, created and ran leading Lloyd’s syndicates and agents, and Joel Peck, CEO, and I previously launched and managed two top US title insurance companies in Europe.

Q. What exactly is “title insurance”?

A. Title insurance indemnifies against losses arising from both known—and unknown—legal risks related to real estate acquisitions and mortgage finance. Because it reduces risks for property investors and

mortgage lenders, title insurance can accelerate transactions and solve issues that might otherwise prevent deals from closing.

Q. What are the benefits for owners and for lenders?

A. For owners, it provides coverage against the ultimate risk of title and property loss and the full costs of litigation to defend against title claims. For lenders, it insures the validity, enforceability and rank of the mortgage, clean ownership to the underlying property and mortgage gaps.

Q. What does title insurance cover?

A. Title insurance covers losses arising from defects in land titles, including liens, encumbrances, restitution issues, zoning and permitting issues, registration mistakes, mortgage registration gaps, missing documents, fraud, forgery and error in title documents and registries. It can also cover specific identified risks, as with UK legal indemnity insurance.

Q. And what is not covered?

A. Title insurance does not cover post-closing events, such as administrative decisions regarding zoning or permits. It also excludes pending litigation and consequential damages, such as business disruption. It does not cover credit risks does it cover political risks.

Q. What is your relationship with Lloyd's of London? What is their role in your business?

A. Our capacity is 100% Lloyd's. The longevity of the Lloyd's name is a perfect match for the longevity of our policies and, as a new company with a product that is that provides coverage over the long-term, it is reassuring to have the Lloyd's brand behind us. We also benefit from the A+ Lloyd's rating, which is substantially higher than our competitors. In our first year, we reviewed 75 deals—double our expectation.

Q. Why have US buyers and bankers been using title insurance for more than 100 years?

A. Title insurance was created to allow US banks to provide the same mortgage conditions nationwide, despite laws and regulations that vary from state to state and even from county to county. This is similar to the situation for multi-jurisdiction transactions in Europe.

Q. Who can use title insurance?

A. Investors, developers, law firms, real estate funds, banks, property sellers, distressed mortgage debt and real estate equity investors, issuers of commercial or residential mortgage-backed securities.

Q. How does it work?

A. In the event of a third-party claim challenging the owner's title or lender's mortgage, the insurer is responsible for defending against the claim at its expense. If this litigation proves unfavorable, the policyholder is indemnified for his loss, up to a maximum of the amount of the insurance. The premium is paid only once, at closing, and the policy remains valid for the entire duration of ownership, without additional cost or yearly premiums. If the property is bought and sold, a new policy would be required.

Q. Why should someone buy title insurance if they have already been provided with a legal opinion?

A. Lawyers provide an opinion—title insurance provides an indemnity. Furthermore, cases of fraud are covered by title insurance, but not by lawyers or notaries. A legal opinion, especially in a large commercial transaction, is fundamentally a disclosure document. Counsel carefully defines the state of title and related issues, identifies areas of uncertainty or defect, and carves out exceptions, such as fraud, thus putting the investor or lender in the position of having to “take a view” on such risks.

Q. Does title insurance change the role of lawyers or notaries?

A. Their role remains unchanged. Policies are underwritten based on the property title due diligence and legal opinions provided by lawyers or notaries in each country. Title insurance can, in fact, be valuable for legal professionals since it: allows deals to move forward that might otherwise be considered too risky, and effectively transfers risk from lawyers and notaries to the title insurance company, thus making it responsible for defending against title and mortgage claims.

Q. Could it be useful for property sellers?

A. Sale and purchase agreements typically include Reps and Warranties by the seller relating to a number of issues, including title. Sellers can replace these with title insurance and thereby eliminate contingent liabilities affecting their balance sheet, the need for cash collateral and post-closing challenges.

Q What are the costs?

A. Premium will vary based on risk, but usually ranges from 20 to 50 basis points (0.2%-0.5%) of the value of a transaction for a typical risk profile. This premium is paid only once, at closing, and the policy remains valid for the entire duration of ownership, without additional cost or renewal premiums.

Q. Why are people in Europe asking for this kind of coverage?

A. For cross-border transactions, title insurance eliminates the burden—and reduces the risks—of coordinating the multitude of national ownership protection rules (e.g., Grundbuch in Germany, Cadastre in France and Land Registry in the UK.). Transactions are, therefore, safer and easier, particularly important in light of the rising volume of indirect real estate transactions through corporations, funds or Limited Partnerships.

Q. Which is the applicable law?

A. Policies are issued by Lloyd's and are subject to English law. However, title risks covered by the policies are subject to the legal jurisdiction in which the property is located.

Q. In what currency are the policies issued/the properties insured?

A. Policies can be issued in Euros or in Pounds Sterling.

Q. What is the market size of this business?

A. The US title insurance market was worth over \$11bn in premiums in 2012, while we estimate the European market at less than €75m. In Europe, it's still a relatively new financial instrument but of increasing importance in protecting cross-border real estate investments. We see European real estate activity picking up, not only with European buyers but also with US and Chinese investors.

Q: What are the trends affecting real estate investment risks?

A. Ownership risks are decreasing since more thorough due diligence has led to an increase in discovery of title flaws, even in countries like France or Germany. Restitution issues are decreasing, but number of cases has actually increased. Sloppy privatizations have decreased but awareness and risk aversion have actually increased the number of legal cases. Regulatory risks are increasing as Basel III and AIFMD put new burdens on banks and real estate funds for the accuracy of their ownership representation. Seller's risks are increasing, with buyers more reluctant to accept sellers Reps & Warranties.

Q. And, to conclude, what is your business looking like?

A. A lot of our business is in Central, Eastern and Western Europe, and the hot spot for the last few years has been Poland. Title insurance is still relatively new in Western Europe. In the past, people had always assumed that because a cadastral system was in place there was little need for title insurance, but this is changing as investors conduct more intensive due diligence. Facultative business—one-off transactions where one party is buying a property from another party—is our “bread and butter”. The bulk of our deals concern defined risks. For example we are currently working on a restitution issue in Poland, and risks that deal with encroachment of buildings in Germany.

Q. And your new interest in Italy?

A. Donated properties, and the title insurance to cover legal risks with their acquisition or financing.

THIS IS AN EDITED VERSION OF THE INTERVIEW, ORIGINALLY PUBLISHED IN A COMBINATION OF ITALIAN & ENGLISH.



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