

## Title Exceptions -- The Title Company Point of View

You are obtaining a loan on the property you are buying. Part of that process involves buying a title policy *FOR THE LENDER*. You will pay for a *LENDER POLICY*. Make sure you also obtain an Owner's Policy to protect you- the new owner. When bought simultaneously (when you close on the purchase), it is likely only a nominal fee for the extra policy. Below are comments from one of the largest US Title Companies. This is just an excerpt, a snippet. Nothing in this is legal advice – you should consult your own attorney if you have questions. For more information and discussion about what may be typically seen on your title commitment, pick up a copy on [Winning Mortgage, Winning Home](#). The book will not provide you with legal advice, but may help you understand more. **Don't rely only on the lender; they make the title policy acceptable to them and not to you!!**

This excerpt was taken from a presentation by an associate general counsel and senior underwriter for Stewart Title Guaranty Company from November 2019 and specifically applies to Texas. Many states have similar, if not exact, issues and more information can be found with the American Land Title Association (ALTA).

### A Walk Through the Typical Objection Letter

Unlike property casualty insurance, which can be reviewed periodically and its terms changed by the insurer, Title Insurance is a contract of indemnity that is usually final once issued.

Prior to policy issuance, the proposed insured Buyer or Lender may seek to maximize coverage under the policy to secure the value of the property / investment. This is done by:

- reviewing the commitment once issued
- making “objections” or “comments” to terms of the commitment, usually seeking to remove certain exceptions from coverage or seek affirmative coverage through endorsements

### Reviewing the Commitment

The Commitment is:

- The form through which the Title Insurer *offers* to issue a title policy in the future *subject to* the terms and conditions of the commitment *and* the stated exclusions, exceptions and requirements
  - applies to Owner's Policies, Lender's Policies, and Interim Construction Binders
  - Good for up to 90 days or until the Title Policy is issued
  - Does not provide coverage by itself

During the period between the Commitment issuance and before the Policy is issued is when the Title Objection Letter surfaces, to negotiate the terms and conditions under which the Policy will be issued.

### Typical Objection Letter

- Sent by Buyer's Legal Counsel on Owner's Policy; or,
- Sent by Lender's Legal Counsel on Loan Policy
- Typically addressed to the Seller/Borrower and the Title Company and/or Surveyor closing the matter

Not every objection is addressed to the Title Company. Some or most matters are to be handled by the Seller/Borrower only. The title company role is to identify what can be done *if possible within the regulatory limits* to issue the policy without the objected exception or to satisfy the requirement – but to not cure all matters. The title company role is not to give legal advice, but describe in plain language what needs to be done to close the transaction and issue the policy. The parties to the transaction are ultimately responsible for performing curative matters.

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*Comment: In essence, if the buyer or lender or borrower objects to an item in the title commitment, some can be removed by the title company with proper documentation (cured), some can be fixed by the seller (cured), some can be fixed with a survey or inspection (cured), and some must remain!*

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Objections need to be made to specific matters/issues in the commitment. The title company must be notified of which specific exception/condition is requested to be removed or satisfied. The title company role is not to cure all matters, but give plain instructions on what the parties need to do to close the transaction and for the title company to issue the policy. The title company will evaluate the law vs. acceptable insurance risk.

### **Who is Vested in Title (*Who Actually Owns or Has an Interest in, The Property*)**

Recorded documents may show persons/entities in title that are different than the Seller listed on the contract.

- **Can be caused by many title issues:** non-probated estates of present/prior owners; transfers to trustees of owner-created trusts; transfers from individual owners to owned entities; divorces; purchases by one spouse only
- Usually tied a Schedule C condition on the issue as referenced in the Commitment
- May need additional examination to clarify and if possible, suggest requirements or options available to properly vest title in the new buyer.

### **Legal Description**

**Legal Descriptions** are to lots and blocks in subdivisions or to metes and bounds. Descriptions should be created by a surveyor.

- Description should include all land being insured, be correct, “close” and match the legal description on the survey and the legal description in the contract and in the deed or deed of trust.
- Objection usually is because of new survey by Buyer.
- Typically the legal description may be revised upon receipt and review of an acceptable land title survey as long as it meets our requirements.
- Any items disclosed in the survey may appear as exceptions in any policy issued.

### **Typical Objections to Schedule B Exceptions**

Some states have “promulgated” exceptions. This means the language is always the same for certain items. These are Promulgated Standard Exceptions 1- 9 of Schedule B for Texas and follow a specific rule in order to delete or modify:

1. restrictive covenants
2. boundaries, shortages in area, encroachments, protrusions, or overlapping of improvements
3. homestead and community property rights – Owner’s Policy
4. waterfront issues / water rights
5. tax assessments
6. documents creating the insured’s interest
7. construction issues on Homestead ICBs
8. subordinate liens and leases
9. informational Note on applying exceptions to the residential loan policy (T-2-R)

### **Schedule B-1: (Restrictive Covenants)**

The title company must disclose restrictive covenants by specific reference to the volume and page where each appears of record (this is in the book and page(s) number from the official county or city deed or plat books). The

Buyer may object to one or more specific Restrictions contained in recorded documents and the prohibited uses referenced. This might be deleted if

- There are no Restrictions;
- Restrictions have expired by their terms;
- Restrictions have been released;
- Restrictions are void and unenforceable by statute;
- Restrictions cancelled by final court judgment affecting all property owners and lienholders.

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*Lot and Block is usually used in a city where subdivisions have been “platted” and houses have been built. Metes and Bounds is simple a geometry exercise. The survey will show a starting point and will tell the reader to follow the edge of the property for so many feet in a specific direction. This line will be drawn on the survey. Each time the direction changes, the surveyor will put a mark on the line drawn and will explain which direction to go next and how far to go. A reader should be able to trace that line from the description back to the beginning point, “closing” the legal description.*

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## **Schedule B-2: Area and Boundary Amendment**

B-2 references discrepancies, conflicts, shortages in area or boundary lines, encroachments, protrusions, or overlapping of improvements. Texas allows for deletion of all of B-2 except "shortages in area" in both the Owner's and Loan Policies (termed "Survey Deletion" coverage). The title company will require an "Acceptable Survey". This allows the title company to rely on older surveys, made for any party in the chain of title to consider amending the standard area and boundaries exception. If relying on an older survey, the title company will require a specifically worded Affidavit to verify no changes since the survey date or describing and showing new(er) improvements. However, the title company still can except to specific matters found on survey, matters of record and may limit when a prior survey is acceptable.

There is additional material available. Please send us a note/comment or pick up a copy of Winning Mortgage, Winning Home!