ALTA Owners' and Lenders' Policies: Procedures and Information

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A. Placing the Order Properly

Insofar as real estate transactions are concerned, the insured will not necessarily be the customer of or the party that places the request for title insurance with, the title insurance agent that issues the commitment for title insurance. Thus, the seller, a real estate broker, the lender or their respective counsel may conceivably be the party that places a request for title insurance with the title insurance office or agent. The initial request for the commitment having been placed by another party, the insured must scrutinize the commitment for title insurance upon receipt to assure itself that the commitment is suitable and adequately describes the property, the parties and other criteria required by the purchase agreement between the parties.

Ideally, the request should be one that is designed to inform the title agent of the requisite information necessary to generate a commitment for title insurance and policy of title insurance that indemnifies against loss or, in the mind of the parties, protects the interest of the insured. Communication that places the order or request for title insurance may conceivably be by any of several means, whether email, letter, fax, face to face communication or phone. Regardless of the means of communication, it is imperative that the requesting party supply sufficient information to the title agent that results in a search and examination of the entirety of the land in question, and not,

through inadvertence, an adjoining parcel or an incomplete portion of the whole, nor to describe more of the seller's land that the seller intends to convey. In the event that a property address or tax parcel identification number, rather than a definitive legal description of the property, is provided, the title agent must carefully review the description to assure that it is capable of ascertaining for a certainty what land the seller intends to convey, and if not, to engage in communications with the seller for clarification. If easements appurtenant to the real estate are to be created or where pre-existing, transferred, the seller and purchaser should so indicate to the title agent. Amenities, such parking spaces, storage units, boat slips and other limited common elements appurtenant or related to the transfer of a condominium unit should be identified. The request should also carefully identify the name of the purchaser using the purchaser's correct legal name. In the event that the purchaser is an entity, the name given should be that under which the entity was duly organized by filing of articles of organization or incorporation with the appropriate State office or department. In the event that the purchaser is an individual, the name given should be the individuals full name, not an alias or nickname unless used regularly, and if more than one name is occasionally use, both names separated by the words "also known as", depending upon local title examination practice, can be used.

B. The Search and Examination Process

A request for title insurance placed with the title insurer or title insurance agent, or opinion of title with counsel, will initiate a search and examination of the title. Though the public land records are maintained by local government, it is the title examiner, a title company employee or attorney, who conducts the search of the records. Under the prevailing system of public land records, the individual making the search verifies that there exists an unbroken sequence of conveyances, a *chain of title*, culminating in a deed vesting title in the proposed grantor (Exhibit 4). The searcher's conclusions are ultimately reduced to a commitment for title insurance, abstract of title, or attorney's opinion of title. Titles defy generalization: Some are exceedingly complex and others straightforward. Title offices and attorneys are assessed by their clients and customers on the basis of two overriding but often contradictory criteria: Accuracy and ability to expedite. Among the factors that will necessitate additional time or expertise in order to issue the requested title guaranty document, resulting in delay in the document's issuance:

- Complex, vague or indefinite legal descriptions
- Lack of a starter policy (a policy that was issued for the same land previously)
- Large numbers of judgments, tax liens and other statutory liens
- Pending bankruptcy
- Pending foreclosure

- Break in the chain of title
- Transfers by operation of law or intestate succession
- Dissolution of corporation, limited liability company or partnership owner
- Civil forfeitures
- Unavailability of court records that were removed to a storage site
- Impoundment of court records involving mental incompetence proceedings
- Lack of parallel title records for Native American titles held by the United States in trust
- Lack of parallel title records or source documents for railroads

The internal cost to the title office of preparing the opinion or commitment for title insurance and the time necessary to issue the commitment will vary accordingly. It should not be surprising that approaches to the search of the public land records necessary to produce title insurance will undergo periodic evaluation, and that the insurer's subjective claims experience in the locality where the land is located, though not actuarial as such, may result in an increase or decrease of the scope of the public land records that are examined. At the current time, due to the transfer of increasing numbers of distressed real estate parcels, title insurers and title agencies are processing titles that are frequently subject to multiple

judgments, tax liens and statutory liens, and that entail an examination of a pending or recently completed foreclosure proceeding. The time necessarily for the title staff to extract, retrieve, analyze and reproduce detailed lien information in the commitment, and where a foreclosure occurred, to verify that all necessary parties were named defendants and duly served or notified, is resulting in the delay in issuance of title insurance generally. The author is unaware of any expedited title searching procedure by which title insurers would discount or otherwise disregard the possible existence, without having first examined the foreclosure proceeding, of subordinate liens to assure that the holders of the subordinate liens were duly notified and their possible lien or right of redemption barred by foreclosure.

C. Title Standards

All title offices tend to adhere to criteria that they create from laws of the state termed marketable title legislation, enacted to make titles marketable and to bar myriad stale title defects or claims in real property. Thus, the state may have enacted a statute of repose that time bars claims of ownership or mortgage, where the claimant's interest did not appear of record at any time within the immediate thirty-year period. In practice, the title office would, where the land is located in the state, likely disregard any mortgage that, though unsatisfied was recorded more than thirty years prior to the date on which the request for title insurance was received. The same standards will apply to a wide range of matters affecting real property,

including recorded easements, restrictive covenants, reversionary clauses, options to purchase and leases, so long as the statute expressly addresses such matters. Individuals who adhere to office standards thus make a "thirty-year search" of the public land records, when preparing for the issuance of the commitment for title insurance. Statutes vary considerably among states, and therefore, the title insurer or attorney rendering the opinion must carefully consult local law when fashioning criteria for the removal or deletion of such matters as recorded possibilities of reverter, remainders, mineral rights, and rights of the State. It should not be surprising that in many states, it will not be possible to obtain title insurance that omits claims in subsurface minerals or other paramount interests affecting the title under examination.