

Reviewing the Title Insurance Commitment





Goals of the webinar

- The topic will be Reviewing Title Insurance Commitments and will focus on how to read one and understand the requirements and exceptions.



What is Title Insurance?

- Title insurance is insurance against loss or damage resulting from defects or failure of title to a particular parcel of realty; or from the enforcement of liens existing against it at the time of the insurance.
- Protection title insurance provides to the insured party:
 - A title insurance policy affords lenders and owners protection against loss or damage
 - up to the face amount of the policy;
 - together with costs, attorney's fees and expenses arising out of all liens upon and all defects in the title except those specifically excluded or excepted.



Benefits of Title Insurance

- Coverage is not limited to matters relating to and shown on the public records: title insurance covers hidden defects, which are not disclosed by public records.
- Title insurance covers loss resulting from errors, omissions and mistakes of judgment made by title examiners (whether occasioned by negligence, lack of professional skill or otherwise.)
- Unless specifically excepted, title insurance covers loss arising out of erroneous and inadequate surveys, and unrecorded and undiscovered rights of parties in possession.
- Title insurers are regulated and supervised by state insurance departments.
- The coverage afforded by a title policy remains in effect as long as the insured has an interest in the property.
- Title insurance companies assume liability for certain known risks under reasonable circumstances.
- Title insurance is offered for a one-time premium.
- Title policies insure against unmarketability of title.

Mortgagee (Loan) Policy of Title Insurance

A mortgagee (Loan) policy insures

- A lender whose debt is secured by a deed of trust or mortgage encumbering real estate
- The title insurance guarantees that the lender has a valid and enforceable lien.
- The insurance is for the face amount of the policy, and declines as the principal loan balance declines.
- A mortgagee (Loan) policy affords coverage to the named lender (insured) and all subsequent holders of the note through assignments.
- A mortgagee (Loan) policy affords owner's coverage to a mortgagee or its corporate subsidiary in the event the lender acquires title pursuant to foreclosure or a deed in lieu of foreclosure.

Covered Risks:

The Covered Risks that appear on a Loan Policy (Mortgagee):

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- Ownership-Insures against loss/damage if the ownership is different than stated in Sch. A;
- Notice-insures against loss/Damage as a result of matters of public record;
- Access-insures against loss/damage if the insured cannot get to the property; not quality of access;
- Marketability-insures against loss/damage as a result of losing title based on the marketability of the property; AND
- Validity-assures the lender the lien on the property is valid;
- Assignability-assures the lender the lien on the property is assignable and assignees will be covered as if they were the insured named in Sch. A;
- M/M Liens-assures the lender that the deed of trust/mortgage has priority against M/M liens in certain situations;
- Priority-assures the lender that the lien being insured is in a first position.



Covered Risks (cont.):

- The Covered Risks also include coverage for the “little gap”; the period of time between closing and the recording of the insured instruments- Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 13 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the Insured Mortgage in the Public Records.; and
- The “duty to defend” clause- The Company will also pay the costs, attorneys’ fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

Exclusions from Coverage:

The Exclusions from Coverage that appear in the Mortgagee (Loan) Policy jacket include, but are not limited to:

- Loss or damage suffered as a result of:
 - Acts of the insured
 - Creditors Rights, not of record
 - Eminent Domain, not of record
 - A loan that violates the usury laws of the state
 - Failure to comply w/ “Doing Business” laws of a state
 - Issues known to the insured, not of public record and/or not revealed to the insurer

Conditions

Conditions listed in the Policy jacket include, but are not limited to:

▫ Defined Terms, including but not limited to:

- *Amount of Insurance*- The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy;
- *Date of Policy*-The date designated as “Date of Policy” in Schedule A;
- *Insured*- the owner of the Indebtedness and each successor in ownership of the Indebtedness;
- *Mortgage*- Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law;
- *Knowledge*-Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title;
- *Land*-The land described in Schedule A, and affixed improvements that by law constitute real property. The term “Land” does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.

Conditions (cont.)

- *Continuation of Coverage*- The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured after acquisition of the Title by an Insured or after conveyance by an Insured, but only so long as the Insured retains an estate or interest in the Land...
- *Proof of Loss*- If the company is unable to determine the loss, it may require a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.
- *Payment of Loss*- When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.
- *Reduction in coverage based on payment of claim*- All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment.
- *Arbitration*- All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. This "Condition" is altered when the VA-141 endorsement is attached to the Policy of Title Insurance. The VA-141 states that Arbitration in the Commonwealth of Virginia is "non-binding".
- *Where to file a claim*- Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at Investors Title Insurance Company, P.O. Drawer 2687, Chapel Hill, North Carolina 27515-2687

Loan Policy Jackets:

The two Loan Policy Jackets issued most often are:

2006 Loan Policy of Title Insurance

Also known as the “long form” loan policy

- Contains 6 parts in all:
 - The Policy Jacket which contains: the Covered Risks, Exclusions from Coverage, the Conditions; &
 - Schedule A
 - Schedule B, Pt. I which shows the “Exceptions from Coverage.”
 - Schedule B, Pt. II which notes any matters subordinate to the lien of the insured mortgage or deed of trust in Schedule A.

2012 Short Form Loan Policy of Title Insurance

- Contains Sch. A only
- Schedule B of the Short Form Loan Policy
 - Incorporates all of the Covered Risks, Exclusions from Coverage and Conditions contained in the “long form” policy;
 - contains pre-printed exceptions and assurances, including, briefly:
 - Restrictions are not violated and do not contain a forfeiture or reversion of title
 - Easements of record do not encroach and will not interfere with or damage the improvements
 - Minerals of record do not impair use of property

Loan Policy Jackets (cont.):

2006 Loan Policy of Title Insurance-Sch. A

- Policy Number;
- Loan Number (if known);
- Address Reference: the physical address of the property being insured;
- Policy date: the earlier of either the examiner's certification date or recording date and time of the insured instrument;
- Designation of the amount of insurance and name of the party or lender to be insured;
- Names of the parties title is vested in;
- The type of estate or interest, i.e., fee simple;
- The insured deed of trust or mortgage;
- The legal description of the property; and
- Check the box provisions for incorporation of the following endorsements:
 - ALTA 4-06 - Condominium
 - ALTA 4.1-06 – Condominium
 - ALTA 5-06 – Planned Unit Development
 - ALTA 5.1-06 – Planned Unit Development
 - ALTA 6-06 – Variable Rate
 - ALTA 6.2-06 – Variable Rate/Negative Amortization
 - ALTA 8.1-06 – Environmental Protection
 - ALTA 9-06 – Restrictions, Encroachments and Minerals
 - ALTA 13.1-06 – Leasehold Loan
 - ALTA 14-06 – Future Advance Priority
 - ALTA 14.1-06 – Future Advance – Knowledge
 - ALTA 14.3-06 – Future Advance – Reverse Mortgage
 - ALTA 22-06 – Location

2012 Short Form Loan Policy of Title Insurance-Sch. A

- Policy number:
- Loan number: (if known);
- Address Reference: the physical address of the property being insured;
- County and State;
- Amount of Insurance;
- Premium: Policy premium; not including fees or any other charges;
- Mortgage Amount;
- Mortgage Date: Date of recorded Mortgage
- Date of policy: at a.m./p.m.
- Date the transaction closed at 8:00am or recording date and time of the insured instrument
- Names of Insured: Lender including any “and/or” clause as applicable
- Name of Borrower(s): Name of Mortgagor(s)
- Addendum Checkbox, if necessary
- Endorsements Checkbox, if any
- Hard copies of the Endorsements will not be included if the box is checked

Loan Policy Jackets (cont.):

2006 Loan Policy of Title Insurance-Sch. B

- Schedule B, Pt. I which shows the “Exceptions from Coverage.” These are detailed exceptions to coverage as of the date of the Policy, added by the underwriter; and
- Schedule B, Pt. II which notes any matters subordinate to the lien of the insured mortgage or deed of trust in Schedule A.

2012 Short Form Loan Policy of Title Insurance-Sch. B

- Incorporates all of the Covered Risks, Exclusions from Coverage and Conditions contained in the “long form” policy;
- contains pre-printed exceptions and assurances, including, briefly:
 - Restrictions are not violated and do not contain a forfeiture or reversion of title
 - Easements of record do not encroach and will not interfere with or damage the improvements
 - Minerals of record do not impair use of property
 - Additional Schedule B exceptions will be listed on an ***Addendum to the Short Form Policy.***

Covered Risks:

The Covered Risks that appear on an Owner's Policy:

ONAM

- Ownership-Insures against loss/damage if the ownership is different than stated in Sch. A;
- Notice-insures against loss/Damage as a result of matters of public record;
- Access-insures against loss/damage if the insured cannot get to the property; not quality of access;
- Marketability-insures against loss/damage as a result of losing title based on the marketability of the property;
- The Covered Risks also include coverage for the “little gap”; the period of time between closing and the recording of the insured instruments- Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the Insured Mortgage in the Public Records.; and
- The “duty to defend” clause- The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

Exclusions from Coverage:

Exclusions from Coverage that appear in the Owner's Policy Jacket include, but are not limited to:

- Loss or damage suffered as a result of:
 - Acts of the insured
 - Creditors Rights, not of record
 - Eminent Domain, not of record
 - Issues known to the insured, not of public record and/or not revealed to the insurer

Conditions:

Conditions listed in the Policy Jacket include, but are not limited to:
Defined Terms, including but not limited to:

- *Amount of Insurance*- The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy;
- *Date of Policy*-The date designated as “Date of Policy” in Schedule A;
- *Insured*- the owner of the Indebtedness and each successor in ownership of the Indebtedness;
- *Mortgage*- Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law;
- *Knowledge*-Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title;
- *Land*-The land described in Schedule A, and affixed improvements that by law constitute real property. The term “Land” does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.

Conditions (cont.)

- *Continuation of Coverage*- The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured after acquisition of the Title by an Insured or after conveyance by an Insured, but only so long as the Insured retains an estate or interest in the Land...
- *Proof of Loss*- If the company is unable to determine the loss, it may require a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.
- *Payment of Loss*- When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.
- *Reduction in coverage based on payment of claim*- All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment.
- *Arbitration*- All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. This "Condition" is altered when the VA-141 endorsement is attached to the Policy of Title Insurance. The VA-141 states that Arbitration in the Commonwealth of Virginia is "non-binding".
- *Where to file a claim*- Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at Investors Title Insurance Company, P.O. Drawer 2687, Chapel Hill, North Carolina 27515-2687



Commitment of Title Insurance

- What is a commitment?
An agreement to issue policy according to the terms of the Commitment
- How much coverage and effective date?
When we show the policy amount and your name as the proposed insured in Schedule A, the Commitment becomes effective as of the Commitment Date shown in Schedule A.
- What is the “Commitment Date”
The “Commitment Date” is that title through which title has been certified. If there is a delay in the recording offices of a particular county, the certification date could be a few weeks prior to the “order” date of the commitment (usually the date the work is entered into our operating system or received by the office).
- Does the commitment expire?
If the Requirements shown in this Commitment have not been met within six (6) months after the Commitment Date, our obligation under this Commitment will end. Also, our obligation under this Commitment will end when the Policy is issued and then our obligation to you will be under the Policy.



Commitment of Title Insurance *(cont.):*

- What are the different parts of the commitment jacket?

The Provisions in Schedule A.

The Requirements in Schedule B-I.

The Exceptions in Schedule B-II.

The Conditions on Jacket.

The Commitment is not valid without Schedule A and Sections I and II of Schedule B.



Commitment of Title Insurance *(cont.)*

- **Defined Terms in the Commitment:**
 - “Mortgage” means mortgage, deed of trust or other security instrument.
 - “Public Records” means title records that give constructive notice of matters affecting your title according to the state statutes where your land is located.

Commitment of Title Insurance *(cont.):*

Clauses within the Commitment:

- **LATER DEFECTS** The Exceptions in Schedule B - Section II may be amended to show any defects, liens or encumbrances that appear for the first time in the public records or are created or attach between the Commitment Date and the date on which all of the Requirements (a) and (c) of Schedule B - Section I are met. We shall have no liability to you because of this amendment.
 - The “Later Defects” clause is also known as the “Gap Exception.” This informs the proposed insured that the period of time from the Commitment Date to the closing date is not covered under the commitment and in order to be covered, an update on title must be performed in order to close the “gap”
- **EXISTING DEFECTS**-If any defects, liens or encumbrances existing at Commitment Date are not shown in Schedule B, we may amend Schedule B to show them. If we do amend Schedule B to show these defects, liens or encumbrances, we shall be liable to you according to Paragraph 4 below unless you knew of this information and did not tell us about it in writing.
 - The “Existing Defects” clause means if the information in Schedule B is incomplete, we can “make it whole” by amending Schedule B. However, if the incomplete information is relied upon we will be liable to the insured because of the error or omission, unless the proposed insured knew of the issue, but failed to inform the title company of it prior to the closing date.

Commitment of Title Insurance *(cont.)*

- Clauses within the Commitment:
 - **LIMITATION OF OUR LIABILITY**-Our only obligation is to issue to you the Policy referred to in this Commitment, when you have met its Requirements. If we have any liability to you for any loss you incur because of an error in this Commitment, our liability will be limited to your actual loss caused by your relying on this Commitment when you acted in good faith to:
 - Comply with the Requirements shown in Schedule B - Section I
- OR**
- Eliminate with our written consent any Exceptions shown in Schedule B - Section II.
 - We shall not be liable for more than the Policy Amount shown in Schedule A of this Commitment and our liability is subject to the terms of the Policy form to be issued to you.
 - The “Limitation of our Liability” clause states that errors in the Commitment that resulted in a loss to the insured when title was being cleared, is the responsibility of the title insurance company, but only the actual loss cause by the reliance of the commitment and only up to the policy amount show in Schedule A.



Commitment of Title Insurance

Schedule A:

Schedule A of the Commitment of Title Insurance:

- Schedule A includes information relevant to the transaction, including:
 - Sch A, No. 1: The date/time title is certified through
 - If no specific time is provided, 8:00 AM is used
- The Commitment Number

Commitment of Title Insurance *Schedule A (cont.):*

Schedule A of the Commitment of Title Insurance:

Sch. A, No. 2:

- Shows the proposed Owner's Policy that will be issued, coverage amount of the owners policy (can be the fair market value of the property) and the proposed insured (mortgagor) under the owner's policy:
- Shows the proposed Loan Policy that will be issued, the coverage amount of the loan (mortgagee) policy (should be the amount of the lien encumbering the property), the proposed insured (lender) and the loan language that is specific to the "type" of loan being issued
 - Conventional; or
 - Veterans Affairs; or
 - Housing and Urban Development Loan

Commitment of Title Insurance *Schedule A (cont.):*

Schedule A of the Commitment of Title Insurance:

Sch. A, No. 3:

- The current fee title holder of the insured premises at the time the Commitment has been issued.

Sch. A, No. 4:

- The Legal Description of the insured premises;
 - Including the state/commonwealth and county where the property lies:
 - Typically taken from the last vesting deed found in the chain of title
 - Can be a lot/block description
 - Or A Metes/Bounds Description

Commitment of Title Insurance

Schedule B:

Schedule B, Section I of the Commitment of Title Insurance: sets forth requirements that must be complied with prior to the issuance of the title policy.

- Requirements are:
 - Matters of public record that affect the property;
 - are “standard” forms needed on most transactions, including a final update on title;
 - speak to the potential priority of the lien being insured;
 - speak to the ownership of the property;
 - ensure there are no “clouds” on title

Commitment of Title Insurance *Schedule B (cont.):*

- Some requirements are typical for a transaction and are only for “forms”;
- Other requirements are necessary for the conveyance or mortgaging of the property;
- Some requirements that are for the release of liens;
- Some are “out of the ordinary” requirements
 - If a Non-Individual is the proposed insured or current fee title holder of the insured premises, there are certain requirements that need to be fulfilled to ensure the property is being conveyed/mortgaged properly
- If the transaction being insured is a construction loan, there are specific requirements that one would see on a commitment.

Commitment of Title Insurance

Schedule B:

Schedule B, Section II of the Commitment of Title Insurance:

- Typical exceptions on a standard transaction include, but are not limited to:
 - Taxes not yet due and payable, Easements of record, plat matters of record
- There are Exceptions that may not be found in the public records, but still affect the property. They are usually found after reviewing the legal description of the insured premises and/or a survey of the insured premises. They include, but are not limited to:
 - Riparian Rights (water), Railroad Rights-of-way, Cemetery (ingress/egress)
- There are Exceptions that are listed as being on the Mortgagee Policy or Owner's Policy only

Commitment of Title Insurance *Schedule B (cont.):*

Schedule B, Section II of the Commitment of Title Insurance:

- Typically survey coverage is automatically extended, along with other affirmative assurances, but there are times when Survey Coverage would not be automatically extended to the lender (i.e. a poor legal description). The Exception that would be used specifically deletes Covered Risk 2 (c).
- There are Exceptions that either limit or eliminate coverage afforded to the insured party under the Covered Risks and/or the Conditions shown in the Policy Jacket, including, but no limited to
 - Access Issues, Mobile Home Issues, other fee title holders, limited search period
- There are Exceptions that are typical of a Construction Transaction. The inclusion of these types of Exceptions limit the amount of loss that may be recovered as stated in the “Conditions” shown on the Policy Jacket. The use of these Exceptions limit the loss to the amount of funds disbursed up to the face amount of the policy.