

The Title Commitment... What is it?

During the real estate purchase process, the title company will search the public records, and issue what is called a title insurance commitment. Along with certain property, buyer, and lender information, this document will likely have a list of requirements and exceptions. This document binds the title company to issue the insurance policy subject to the requirements being met. The list of exceptions includes those items that will not be covered by the insurance policy.

The list of requirements on this title insurance commitment might include:

- payoff of the seller's current mortgage
- evidence of the buyer's new mortgage
- payment of all outstanding taxes and assessments against the property
- a proper deed transferring ownership
- a new survey or improvement location report
- satisfaction of any liens against the property

The list of exceptions to the title binder might include:

- any claims that exist but were not in the records to be found when the title search was done
- any easements that were in existence but not shown in the public records when the search was done
- any liens that might be in existence but were not shown in the public records at the time of the search
- restrictions or covenants as shown in the public records

❖ ***The purpose of the title insurance commitment is to indicate to the buyer that they will get title insurance issued if the requirements are met, and to list items not included in the coverage.***

What to review when you receive the Title Commitment:

Schedule A

Once you receive your title commitment, carefully review the following information on Schedule A:

1. Are the buyers' names spelled correctly?
2. Is the purchase price correct?
3. Does the legal description match the one on the contract?
4. Are the sellers listed on the commitment the same parties who executed the contract?
5. Is the property address correct?
6. If the contract calls for an Owner's Extended Coverage (OEC) policy, check the premium to make sure that the correct policy type is being paid for and provided.
7. Review the endorsements and make sure they apply to the property. Lender endorsements are requested by the lender and may not be removed by any other party.

If you find any discrepancies between Schedule A and the contract, let your closer know immediately.

Schedule B-1

Carefully review the following information on Schedule B-1, Requirements:

1. Are any of the parties using a Power of Attorney? Even though there will not be a requirement listing this, it is very important to get a copy of the POA to your closer well in advance of the closing for review.
2. Is the seller or buyer a corporation, limited liability company, or partnership? If so, the requirements may call for a trade name affidavit, partnership agreement, or articles of incorporation. The sooner you can obtain these from your customer, the sooner the title department can review them.
3. Sometimes the title commitment will show two deeds of trust on a property, yet the seller has only a single loan. Please let your closer know right away; we can probably obtain a Release of Deed of Trust from the previous lender, or a Letter of Indemnity from the previous title company.
4. The requirements may show Federal Tax Liens or Judgments that need to be satisfied. If these liens do affect your seller or buyer, please contact the appropriate parties to obtain payoff information. Many times, however, these liens show up as a result of a common name. In that case, your client may be asked to supply additional information showing that they are not the same person in the judgment.
5. A requirement for a Death Certificate may mean one of the parties has died but title has not been cleared. We must record a Death Certificate in lieu of the other party signing the Warranty Deed.

Beginning July 1, 2006, a Supplemental Affidavit stating that the party on the Death Certificate is the same as the party holding title must be signed by a third party with no interest in the property (a physician or funeral director, for example), notarized, and recorded. It can be recorded simultaneously with the Death Certificate or as a separate document.

If property was held in Joint Tenancy, the items listed above are all that will need to be recorded. If title was held as Tenants in Common, however, and there was a death of one of the owners, the estate must go through probate. For more information, see our November 2004 Technical Bulletin, "How a Death Affects a Transaction."

6. An Owner's Policy on vacant land may require an ALTA survey, which is usually paid for by the seller. ALTA surveys tend to cost more than ILC surveys but are required by the underwriter in order to provide survey protection.

Schedule B-2

Schedule B-2 describes the exceptions to title—items not being insured over by the title company—including standard exceptions (listed below), taxes, and other burdens that will affect the subject property after closing. These include items such as covenants, conditions, and restrictions (CC&Rs); easements (for example, utility or access); and/or mineral reservations. There are eight standard exceptions taken by the title company, which include:

1. The rights or claims of parties in possession not shown of public record.
2. Easements or claims of easements; not shown by the public records.
3. Discrepancies, conflicts in boundary lines, shortages in area, encroachments, and any facts that a correct survey and inspection of the premises would disclose and that are not shown of public record.
4. Any lien or right to a lien, for services, labor, or material before or after the effective date, imposed by law and not shown by the public records.
5. Defects, liens, encumbrances, adverse claims or other matters, if any are created, first appearing in the public records or attaching subsequent to the effective date of the commitment and prior to the date the warranty deed is recorded. This exception is sometimes referred to as the "gap exception," referring to liens that may occur after the title company has closed the transaction but before the conveyance documents are recorded.
6. Taxes and assessments not yet due or payable and special assessments not yet certified to the Treasurer's office.
7. Any unpaid taxes or assessments against the land.
8. Liens for unpaid water and sewer charges, if any.

These standard exceptions are found on every title commitment but may be deleted or revised on the policy. For example, upon proof of payment of prior and present taxes, item 6 will be amended to reflect current taxes and item 7 will be deleted. With an Owner's Extended Coverage (OEC) policy, standard exceptions 1 through 4 are automatically deleted. Upon underwriter approval, endorsements can provide additional protections for certain exceptions. If buyers have questions regarding specific exceptions, they should consult a real estate attorney.