

TITLE INSURANCE & SURVEYS - WHAT YOUR PROFESSOR DIDN'T TEACH YOU IN LAW SCHOOL - OR YOU WERE ABSENT THAT DAY IT WAS COVERED

By: Michelle R.E. Donovan
Clark Hill PLC





PROPERTY CLASS



REMEMBER THE BLIP YOUR PROFESSOR DID ON
TITLE INSURANCE IN LAW SCHOOL

Today's Agenda

TITLE INSURANCE IN GENERAL

ANATOMY OF A TITLE COMMITMENT

SURVEYS

TITLE COMMENT LETTERS

1. TITLE INSURANCE IN GENERAL

Title insurance is a contract to reimburse the insured for losses caused by title defects as of the Effective Date of the policy.



Title insurance is *not* a guaranty that a title defect does not exist.



Allows purchasers and lenders to balance the risk of loss with the protection afforded by the policy.



BALANCE OF RISK VS LOSS

Owner's Policy of Title Insurance

- Parties mutually agree on Title Company
- Seller generally pays for premium
- Buyer generally pays for endorsements

Lender's Policy of Title Insurance

- Lender generally selects Title Company
- Borrower pays for premium and endorsements

2. ANATOMY OF A TITLE COMMITMENT.

A title commitment is an *offer* by the title company to insure title to the property upon satisfaction of certain requirements and subject to certain conditions.



It reflects the status of title to the property on the defined Effective Date of the title commitment.



It includes the requirements to issue an owner's policy and the exceptions to coverage under the owner's policy when it is issued.

The only thing I'm
committed to are my
commitment
issues.



your  cards
someecards.com

Commitment Jacket

| | |
|--|--|
|  First American Title™ | Owner's Policy of Title Insurance |
| | ISSUED BY First American Title Insurance Company |
| Owner's Policy | POLICY NUMBER [REDACTED] |

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 the address shown in Section 18 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, FIRST AMERICAN TITLE INSURANCE COMPANY, a Nebraska corporation (the "Company") insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
 - (a) A defect in the Title caused by
 - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
 - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
 - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
 - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
 - (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
 - (vii) a defective judicial or administrative proceeding.
 - (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
 - (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.

(Covered Risks Continued on Page 2)

In Witness Whereof, First American Title Insurance Company has caused its corporate name to be hereunto affixed by its authorized officers as of Date of Policy shown in Schedule A.

First American Title Insurance Company

For Reference:

Dennis J. Gilmore

File #: [REDACTED]

Dennis J. Gilmore
President

Jeffrey S. Robinson

Jeffrey S. Robinson
Secretary

(This Policy is valid only when Schedules A and B are attached)

This Jacket was created electronically and constitutes an original document

Copyright 2006-2009 American Land Title Association. All rights reserved. The use of this form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association.

Covered Risks.

- ▶ Title being vested other than as stated in Schedule A to the Owner's Policy (i.e., someone else claims to own the land).
- ▶ Any defect in or lien or encumbrance on the title caused by:
 - ▶ forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - ▶ failure of any person or entity to have authorized a transfer or conveyance;
 - ▶ a document affecting title not properly executed, witnessed, notarized, or delivered; or
 - ▶ invalid power of attorney.
- ▶ The lien of unpaid real estate taxes or assessments.
- ▶ Any encroachment that would be disclosed by an accurate survey of the land.
- ▶ Unmarketable title.
- ▶ No right of access to and from the land.

Costs, Fees and Expenses

- ▶ “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 Nope -that's not included in the Policy

- ▶ Exclusions from Coverage include:
 - ▶ Laws or governmental regulations relating to use of the property, location of an improvement on the land, or environmental protection.
 - ▶ Rights of eminent domain.
 - ▶ Defects, liens, encumbrances and other matters created by or assumed by the Insured, not known to the title company, or attaching after the Effective Date of the policy.
 - ▶ Any claim, by reason of the operation of federal or state bankruptcy laws, that the transaction is a fraudulent conveyance or preferential transfer.
 - ▶ Any lien for real estate taxes or assessments attaching after the Effective Date of the policy.

Conditions and Stipulations

***read the fine print ***

Conditions and Stipulations include:

Definitions of key terms, such as the “insured,” “knowledge” and “land”.

Limitations on coverage after conveyance of title.

Procedures and time limits for filing a notice of claim with the title company.

Guidelines for the title company’s obligation to defend a claim.

Limitations of Liability.

Notices.



SCHEDULE A

Effective Date

- *Practice tip:* When the Commitment is marked-up, it is essential to make sure that the Owner's Policy covers the gap period. Typically, an owner's policy should be dated as of the recording of the vesting deed.

Type of Policy

Policy Amount

Proposed Insured

Estate or Interest in the Land

Legal Description

- *Practice tip:* You and seller's counsel may need to work closely with the surveyor to address any discrepancies between the various legal descriptions (e.g., by issuing a new survey that identifies "measured" and "recorded" calls on the same drawing). In other cases, a seller may be asked to convey its interest (if any) in a disputed strip of land through a quit claim deed.

| | |
|--|---|
|  First American Title™ | POLICY OF Commitment for Title Insurance <i>NRL</i> |
| | <small>ISSUED BY</small> First American Title Insurance Company |
| Schedule A | |

CHIRCO TITLE AGENCY, INC.

an agency for
 First American Title Insurance Company

File No.: C-123456

NRL-1. ~~Commitment Date~~ **EFFECTIVE** ~~May 9, 2017 at 12:00 AM~~ **POLICY** ~~VESTING DATE~~ **DATE OF CLOSING OR DATE OF RECORDING OF** ~~WHICHEVER IS LATER~~

- NRL-2.* ~~Policy (or Policies) to be issued:~~ **POLICY**
- | | <u>Policy Amount</u> |
|--|----------------------|
| a. ALTA Owners Policy (6/17/06) | \$9,999,999.99 |
| <i>NRL-</i> Proposed Insured: Apartment Managers, LLC, a Michigan limited liability company | |
| b. ALTA Loan / Construction Loan Policy (6/17/06) | \$8,888,888.88 |
| Proposed Insured: American Life Insurance Company, a Michigan corporation, its successors and/or assigns as their respective interests may appear. | |

NRL-3. Fee Simple interest in the land described in this ~~Commitment~~ **POLICY** is owned, at the ~~Commitment~~ **EFFECTIVE** Date by:
NRL ~~Apartment Managers, LLC, a Michigan limited liability company~~ **APARTMENT MANAGERS, LLC, a Michigan limited liability company**

NRL-4. The land referred to in this ~~Commitment~~ **POLICY** is described as follows:
 Land in the City of Pontiac, County of Oakland, State of Michigan

SEE SCHEDULE C ATTACHED HERETO

Dated: May 9, 2017

Countersigned:

By: 

 Authorized Officer or Agent
 (This Schedule A valid only when Schedule B is attached)

Schedule B - Section 1 Requirements

Know these!!

Requirements may include:

Pay the title insurance premium.

Record a deed to transfer title into the purchaser's name

Submit organization documents for the seller, including Articles of Organization, operating agreement and resolutions

Record a Certificate of Trust Existence and Authority for the seller, if the seller is a revocable living trust.

Discharge recorded mortgages, tax liens or construction liens on the property.

If the purchaser has requested issuance of the Owner's Policy "without standard exceptions", then the Requirements will include submission of an Owner's Affidavit and survey of the property.

| | |
|--|--|
|  First American Title™ | POLICY OF Commitment for Title Insurance |
| | ISSUED BY First American Title Insurance Company |
| Schedule BI | |

CHIRCO TITLE AGENCY, INC.
 an agency for
First American Title Insurance Company

File No.: C-123456

REQUIREMENTS

The following requirements must be satisfied:

1. Pay the agreed amounts for the Title and/or the mortgage to be insured.
2. Pay us the premiums, fees and charges for the policy.
3. You must tell us in writing the name of anyone not referred to in this commitment who will get an interest in the Land or who will make a loan on the Land. We may make additional requirements relating to the interest or the loan.
4. Pay unpaid taxes and assessments unless shown as paid.

2016 and all prior taxes Paid.
 2016 Summer taxes Paid - \$100,000.00
 2016 Winter taxes Paid - \$68,888.88
 Tax Identification No. 14-00-000-001
 S.E.V.: \$332,333.03
 Homestead: 0%

NRZ

5. Instruments necessary to create the estate or interest to be insured must be properly executed, delivered and duly filed for record, as follows:

Submit Operating Agreement of Apartment Developments, LLC.

~~Submit Operating Agreement of Apartment Managers, LLC.~~

SHOW ON SCHEDULE B

~~Record Mortgage in the amount of \$8,888,888.88 given by Apartments Managers, LLC, a Michigan limited liability company to American Life Insurance Company, a Michigan corporation, DATED, RECORDED, IN LIBER, PAGE, OAKLAND COUNTY RECORDS.~~

6. ~~Record discharge of the following, otherwise same will be shown on the policy if any, to be issued:~~

~~Mortgage in the face amount of \$7,777,777.77 given by Apartments Developments, LLC to U.S. Life Insurance Company dated 04/30/99 and recorded 05/01/99 in Liber 12345, Page 987, Oakland County Records, together with Assignment of Leases and Rents recorded in Liber 12345, Page 999, Oakland County Records.~~

~~Financing Statement with Apartments Developments, LLC, as debtor and U.S. Life Insurance Company, as secured party, recorded 05/01/1999 in Liber 12346, Page 001, Oakland County Records.~~

Status of real estate taxes and assessments for property.

Water and Sewer.

“NOTE: The policy to be issued does not insure against unpaid water, sewer, electric or gas charges, if any, that have not been levied as taxes against these lands. (Meter readings should be obtained and adjusted between appropriate parties.)”

- ***Practice tip:*** If a final paid water and sewer bill is not presented by a seller at closing, the purchaser should insist that an appropriate amount be withheld from the seller's proceeds and held in escrow by the title company to cover any unpaid water bills. As a purchaser, you should ask for this Note to be struck from the final Owner's Policy in your Title Comment Letter to cover the issue from a title review standpoint.

Schedule B - Section 2



Standard Exceptions



Specific Exceptions

Generic Specific Exceptions
Unique Specific Exceptions

Standard Exceptions

- ▶ For Owner's Policies in Michigan, the Standard Exceptions generally include:
 - ▶ Any fact, rights, interest, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
 - ▶ Easements, claims of easement or encumbrances which are not shown by the public records.
 - ▶ Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title including discrepancies, conflicts in boundary lines, shortage in area, or any other facts that would be disclosed by an accurate and complete land survey of the land, and that are not shown in the public records.
 - ▶ Practice tip: This standard exception is often referred to as the "Survey Exception".
 - ▶ Any liens, or rights to a lien, for services, labor or materials theretofore or hereafter furnished, imposed by law and not shown by the public records.

Deletion of Standard Exceptions

- ▶ Standard Exceptions are generally deleted from the owner's policy upon the title company's receipt of:
 - ▶ a satisfactory Owner's Affidavit signed by the seller and delivered to the title company at closing, and
 - ▶ a current survey of the property.
- ▶ If a survey identifies specific encroachments (e.g., overhead wires or a driveway encroachment), the title company will add these items to the policy as Specific Exceptions, but the broader Survey Exception will be deleted from the owner's policy.



WAKE UP!

This is an important
Practice Tip.
Really.

▶ Here is the most important Practice Tip for today:



▶ If you are representing a purchaser in a commercial real estate deal, you should always ask the title company to delete the Standard Exceptions from the owner's policy.

▶ There is no additional charge for this valuable coverage.

Section B – Section 2 Specific Exceptions

- ▶ Generic Specific Exceptions:
Exceptions that apply to all similarly situated properties.
- ▶ Unique Specific Exceptions:
Exceptions that are truly unique to the property that is being purchased.

Generic Specific Exceptions

- ▶ Taxes and assessments not yet due and payable.
- ▶ Rights to a portion of the land taken, used or granted for streets, roads and highways.
- ▶ Interest in the oil, gas and mineral rights in, under or produced from the insured property.
- ▶ Lien for outstanding water or sewer charges, if any.
- ▶ Rights of Tenants.
- ▶ Riparian rights.
- ▶ *Practice tips:* When representing a purchaser, you should ask the title company to modify or limit these Specific Exceptions, in an appropriate manner, depending on the situation.

Unique Specific Exceptions

- ▶ Practice Tips to address Unique Specific Exceptions:
 - ▶ It is ok to request the underlying documents if they have not been provided.
 - ▶ When there are multiple Specific Exceptions, write the number that is assigned to the Specific Exception in the title commitment on the top of the first page of the document.
 - ▶ Read the document. You might be surprised by what it says.
 - ▶ Confirm that the restriction has not terminated by the terms of the document.
 - ▶ Provide easements and other documents to your surveyor as soon as possible to make sure that they actually apply to the property in question.
 - ▶ If all else fails, ask for an endorsement.



First American Title™

~~POLICY OF~~
~~Commitment for~~ Title Insurance ~~WAZ~~

ISSUED BY
First American Title Insurance Company

Schedule BII

CHIRCO TITLE AGENCY, INC.
an agency for
First American Title Insurance Company

File No.: C-123456

EXCEPTIONS

~~WAZ~~ The policy ~~or policies to be issued~~ will contain exceptions to the following matters ~~unless the same are disposed of to the satisfaction of the Company.~~

- ~~1. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or by making inquiry of persons in possession of the Land.~~
2. Easements, liens or encumbrances, or claims thereof, ~~not shown~~ by the Public Records.
- ~~WAZ~~ 3. Any encroachment, encumbrance, ~~violation~~, variation, or adverse circumstance affecting the Title including discrepancies, conflicts in ~~boundary~~ lines, shortage in area, or any other facts that would be disclosed by an accurate and complete land survey of the Land, and that are not shown in the Public Records.
- ~~4. Any lien or right to lien for services, labor or material imposed by law and not shown by the Public Records.~~
5. Taxes and assessments not due and payable at ~~Commitment~~ ^{EFFECTIVE} Date. ~~WAZ~~
6. Rights or claims of parties in possession not shown in the public records.
- ~~WAZ~~ ~~7. Defects, Liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of record the estate or interest of mortgage thereon covered by this commitment.~~
8. Reservation of an easement for utilities, vehicular, pedestrian traffic as disclosed in Liber 1111, Page 111, Oakland County Records.
9. Overhead easement (right-of-way) granted to the Detroit Edison Company as recited in Liber 22222, Page 222, Oakland County Records.
10. Agreement for exclusive license and easement granted to interactive cable systems as recited in Liber 33333, Page 333, Oakland County Records.
11. Cross-easement agreement as recited in Liber 44444, Page 444, Oakland County Records.
12. Easement in favor of Michigan Gas Storage Company as recorded in Liber 55555, Page 555, Oakland County Records.
13. Storm water outlet Easement as recorded in Liber 77777, Page 777, Oakland County Records.

SCHEDULE BII
(Continued)

14. Subject to the rights of the public and of any governmental agency in any part of the land thereof taken, used or deeded for street, road or highway purposes.
15. The following matters disclosed on a survey by Survey Experts, Inc. dated _____. Job No. 88888:
 - A. Encroachment of roads, driveways, parking areas, and garages into easements.
16. Unpaid water, sewer, electric or gas charges, if any, that have not been levied as taxes against the land.
17. Any provisions contained in any instruments of record which provisions pertain to the transfer of divisions under Section 109(3) of the Subdivision Control Act of 1967, as amended.

Endorsements



memecreatorapp.com

Commonly Requested Endorsements

- ▶ Comprehensive
- ▶ Survey
- ▶ Contiguity
- ▶ Access
- ▶ Tax Identification
- ▶ Zoning
 - ▶ Practice Tips: Request the endorsements early in the process to avoid delays. Also, you should carefully consider which endorsements you request, because asking for numerous endorsements without evaluating if they will cover an identified risk can result in delays and increased costs.

3. SURVEYS

- ▶ Purposes:
- ▶ Legally describe the property
 - ▶ *Practice tip:* Many practitioners find it necessary to read the legal description from the commitment *out loud* while another person follows along on the survey. For a long metes and bounds legal description, it is almost impossible to do it effectively and efficiently without a partner.
- ▶ Set boundaries of the property
- ▶ Disclose access
- ▶ Disclose unrecorded matters

Types of Surveys

- ▶ ALTA/ACSM Survey
 - ▶ Minimum Standard Detail Requirements
- ▶ Certified Survey
- ▶ Mortgage Survey
- ▶ Boundary Survey
- ▶ Topographic Survey
- ▶ As-built Survey

TABLE A

OPTIONAL SURVEY RESPONSIBILITIES AND SPECIFICATIONS

NOTE: The twenty (20) items of Table A may be negotiated between the surveyor and client. Any additional items negotiated between the surveyor and client shall be identified as 21(a), 21(b), etc. and explained pursuant to Section 6.D.ii.(g). Notwithstanding Table A Items 5 and 11, if an engineering design survey is desired as part of an ALTA/NSPS Land Title Survey, such services should be negotiated under Table A, Item 21.

If checked, the following optional items are to be included in the ALTA/NSPS LAND TITLE SURVEY, except as otherwise qualified (see note above):

1. Monuments placed (or a reference monument or witness to the corner) at all major corners of the boundary of the property, unless already marked or referenced by existing monuments or witnesses in close proximity to the corner.
2. Address(es) of the surveyed property if disclosed in documents provided to or obtained by the surveyor, or observed while conducting the fieldwork.
3. Flood zone classification (with proper annotation based on federal Flood Insurance Rate Maps or the state or local equivalent) depicted by scaled map location and graphic plotting only.
4. Gross land area (and other areas if specified by the client).
5. Vertical relief with the source of information (e.g., ground survey, aerial map), contour interval, datum, and originating benchmark identified.
6. (a) If set forth in a zoning report or letter provided to the surveyor by the client, list the current zoning classification, setback requirements, the height and floor space area restrictions, and parking requirements. Identify the date and source of the report or letter.
 (b) If the zoning setback requirements are set forth in a zoning report or letter provided to the surveyor by the client, and if those requirements do not require an interpretation by the surveyor, graphically depict the building setback requirements. Identify the date and source of the report or letter.
7. (a) Exterior dimensions of all buildings at ground level.
 (b) Square footage of:
 (1) exterior footprint of all buildings at ground level.
 (2) other areas as specified by the client.
 (c) Measured height of all buildings above grade at a location specified by the

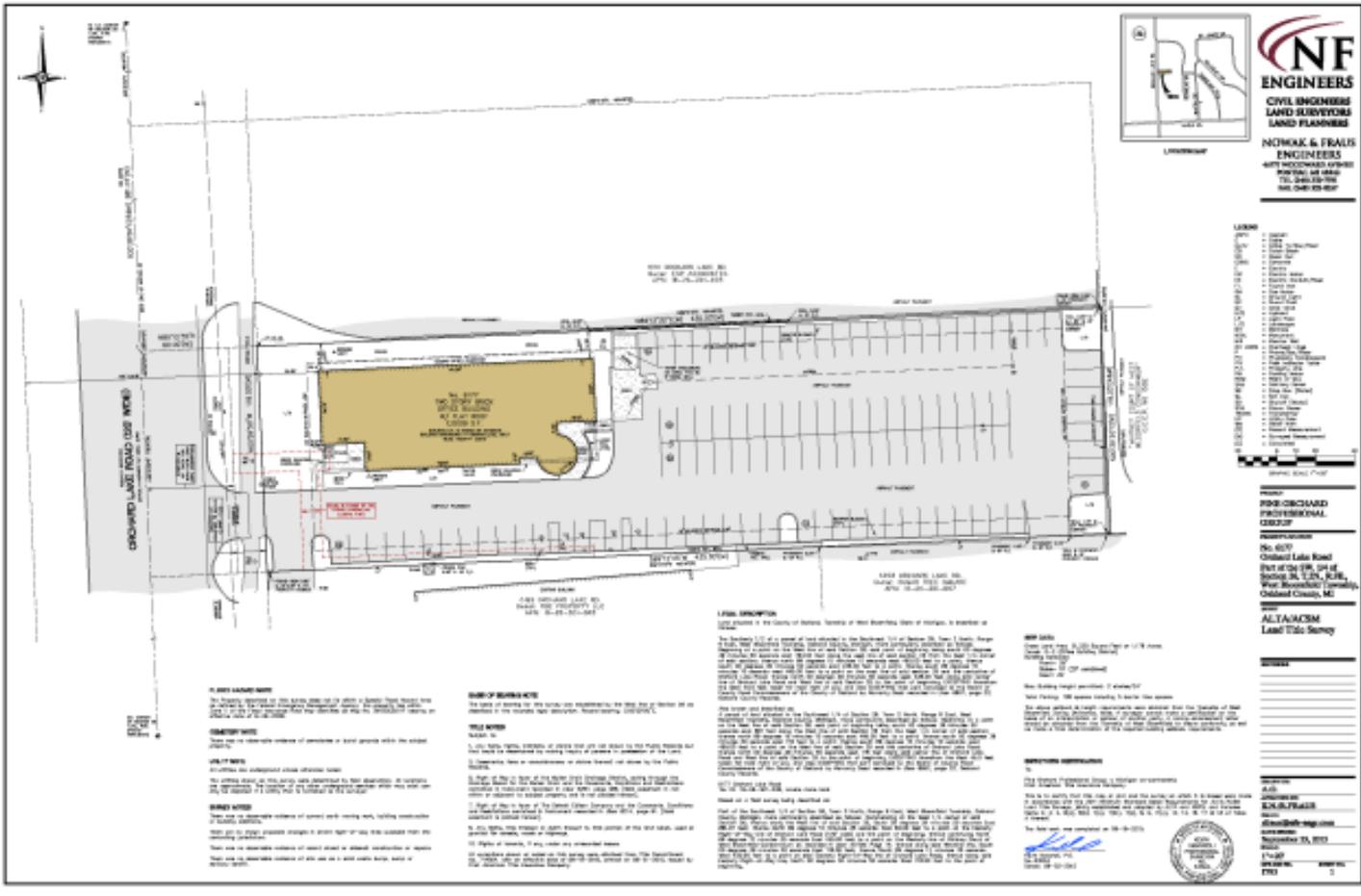
(01282365.DOCX)
Page 9 of 12

Practice Tips on Survey Review

- ▶ Review the legal description.
- ▶ Confirm that legal description on survey is identical to legal description in commitment.
- ▶ Review the drawing in detail, paying particular attention to either the encroachment of improvements from adjoining property onto the subject property, or vice versa. You should also look for the encroachment of improvements into recorded easements.
- ▶ Confirm that easements disclosed in title commitment are located on the survey.

Practice Tips on Survey Review (Cont.)

- ▶ Confirm that any easements disclosed in survey are included in the title commitment.
- ▶ If you have an ALTA/ACSM survey, confirm that the improvements are in compliance with setback restrictions contained in local zoning ordinance, or in any recorded building and use restrictions.
- ▶ Confirm that there is access to a public right-of-way, either directly or via a private easement.
- ▶ Survey should include surveyor's contact information, a legend for any symbols and a north arrow.
- ▶ The survey should be dated within last 6 months.
- ▶ Make sure survey is certified as true and correct to lender, borrower title insurance company.



NF ENGINEERS
CIVIL ENGINEERS
LAND SURVEYORS
LAND PLANNERS

NORMAN & FRANKS ENGINEERS
 4075 HOOVER AVENUE
 BIRMINGHAM, AL 35202
 TEL: 205-988-7800
 FAX: 205-988-6807

LEGEND

- 1. Proposed Building Footprint
- 2. Proposed Parking
- 3. Proposed Driveway
- 4. Proposed Walkway
- 5. Proposed Utility Lines
- 6. Proposed Site Boundary
- 7. Proposed Easement
- 8. Proposed Right-of-Way
- 9. Proposed Survey Boundary
- 10. Proposed Survey Point
- 11. Proposed Survey Line
- 12. Proposed Survey Area
- 13. Proposed Survey Station
- 14. Proposed Survey Monument
- 15. Proposed Survey Marker
- 16. Proposed Survey Control
- 17. Proposed Survey Reference
- 18. Proposed Survey Datum
- 19. Proposed Survey Method
- 20. Proposed Survey Accuracy

NOTICE TO CONTRACTOR
 The owner warrants that the information contained herein is true and correct to the best of his knowledge and belief. The contractor shall verify the accuracy of the information contained herein before proceeding with the project.

CONTRACTOR'S OBLIGATION
 The contractor shall be responsible for obtaining all necessary permits and approvals from the appropriate authorities. The contractor shall also be responsible for ensuring that the project complies with all applicable laws and regulations.

UTILITY NOTES
 The contractor shall be responsible for locating and marking all existing utility lines. The contractor shall also be responsible for ensuring that the project does not interfere with any existing utility lines.

ADDITIONAL NOTES
 The contractor shall be responsible for ensuring that the project is completed within the specified time frame. The contractor shall also be responsible for ensuring that the project is completed in accordance with the specifications and drawings.

STATE OF ALABAMA
 I, the undersigned, being duly qualified and licensed as a Professional Engineer in the State of Alabama, do hereby certify that the above is a true and correct copy of the original as shown to me by the owner of the same.

PROFESSIONAL ENGINEER
 Norman & Franks Engineers
 4075 Hoover Avenue
 Birmingham, AL 35202
 Tel: 205-988-7800
 Fax: 205-988-6807

FINAL DESCRIPTION
 This plan is a part of a larger project and is intended to be read in conjunction with the other plans and specifications for the same. The contractor shall be responsible for ensuring that the project complies with all applicable laws and regulations.

NOTICE TO CONTRACTOR
 The contractor shall be responsible for ensuring that the project is completed within the specified time frame. The contractor shall also be responsible for ensuring that the project is completed in accordance with the specifications and drawings.

APPENDIX
 The contractor shall be responsible for ensuring that the project is completed within the specified time frame. The contractor shall also be responsible for ensuring that the project is completed in accordance with the specifications and drawings.

CONTRACTOR'S OBLIGATION
 The contractor shall be responsible for obtaining all necessary permits and approvals from the appropriate authorities. The contractor shall also be responsible for ensuring that the project complies with all applicable laws and regulations.



PROJECT:
 607 ORCHARD LAKE ROAD
 BIRMINGHAM, AL 35202

PROFESSIONAL ENGINEER:
 Norman & Franks Engineers
 4075 Hoover Avenue
 Birmingham, AL 35202
 Tel: 205-988-7800
 Fax: 205-988-6807

DATE:
 10/15/2010

SCALE:
 AS SHOWN

ORCHARD LAKE ROAD (120' WIDE)

120' R.O.W.
N00°39'50"W 236.00'(R)
WEST LINE OF

N89°12'35"E
60.00'(M)

N00°39'50"W 118.00'(R)

EXCEPTED W/
45' TAKEN FOR
ROAD R.O.W. (PER
LEGAL DESCRIPTION)

EXCEPTED 15'
CONV. TO R.C.
(L.8667, P.22)

CONCRETE
APPROACH

LIGHTING ○ TRAFFIC
LIT

SAINTARY

ASBTE
ROUCH

ASPHALT WALK
N00°39'50"W 118.00'(M)

P.O.B.

TEL
MH ○

FOUND IRON 0.85'
E & 0.30' S. OF
PROPERTY CORNER

SB

L/S

BRICK BUILDING
OVERHANG

FIBER
OPTICS
RISER

TRANS

R.O.W. IN FAVOR OF THE
DETROIT EDISON CO.
(L.8214, P.91)

ASPHALT PAVEMENT

TRANS.

TRANS. PAD
0.95' N. OF P/L

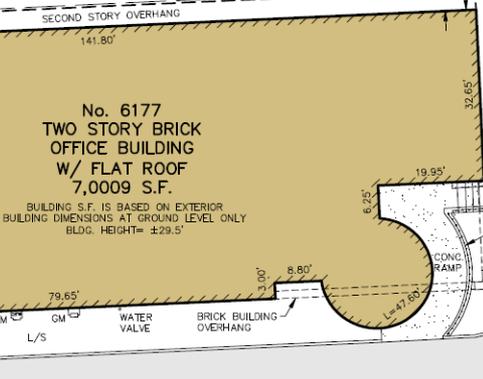
6199 ORCHARD LAKE RD.
Owner: MSE PROPERTY LLC

ASPHALT PAVEMENT

GRASS

WALL 0.45'
N. OF P/L

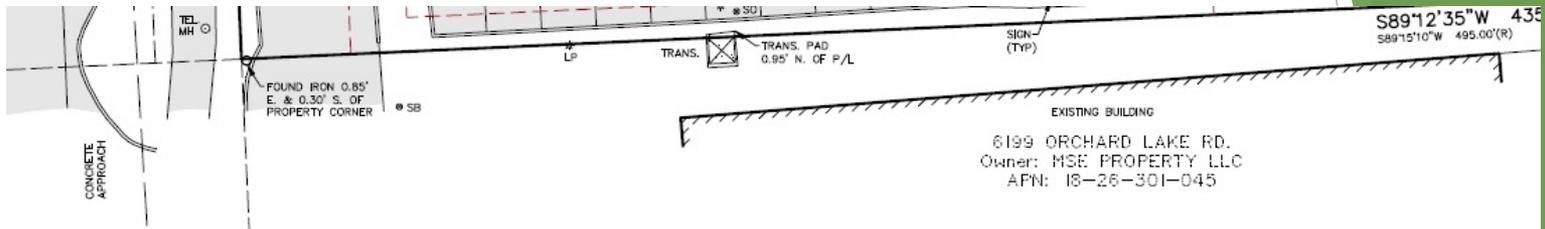
N89°12'35"



No. 6177
TWO STORY BRICK
OFFICE BUILDING
W/ FLAT ROOF
7,009 S.F.

BUILDING S.F. IS BASED ON EXTERIOR
BUILDING DIMENSIONS AT GROUND LEVEL ONLY
BLDG. HEIGHT= ±29.5'

S89
58915



FLOOD HAZARD NOTE

The Property described on this survey does not lie within a Special Flood Hazard Area as defined by the Federal Emergency Management Agency; the property lies within Zone X of the Flood Insurance Rate Map identified as Map No. 26125C0511F bearing an effective date of 9-29-2006.

CEMETERY NOTE

There was no observable evidence of cemeteries or burial grounds within the subject property.

UTILITY NOTE

All utilities are underground unless otherwise noted.

The utilities shown on this survey were determined by field observation. All locations are approximate. The location of any other underground services which may exist can only be depicted if a Utility Plan is furnished to the surveyor.

SURVEY NOTES

There was no observable evidence of current earth moving work, building construction or building additions.

There are no known proposed changes in street right-of-way lines available from the controlling jurisdiction.

There was no observable evidence of recent street or sidewalk construction or repairs.

There was no observable evidence of site use as a solid waste dump, sump or sanitary landfill.

BASIS OF BEARING NOTE

The basis of bearing for this survey was established by the West line of Section 26 as described in the recorded legal description. Record bearing: S.00°39'50"E.

TITLE NOTES

Subject to:

1. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by making inquiry of persons in possession of the Land.
2. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
6. Right of Way in favor of the Mullen Drain Drainage District, acting through the Drainage Board for the Mullen Drain and the Covenants, Conditions and Restrictions contained in instrument recorded in Liber 5267, page 489. [Said easement is not within or adjacent to subject property and is not plotted hereon].
7. Right of Way in favor of The Detroit Edison Company and the Covenants, Conditions and Restrictions contained in instrument recorded in Liber 8214, page 91. [Said easement is plotted hereon].
8. Any rights, title interest or claim thereof to that portion of the land taken, used or granted for streets, roads or highways.
10. Rights of tenants, if any, under any unrecorded leases.

All exceptions shown or noted on this survey were obtained from Title Commitment No. 714004, with an effective date of 08-10-2015, printed on 08-21-2015, issued by First American Title Insurance Company.

LEGAL DESCRIPTION

Land situated in the County of Oakland, Township of West Bloomfield, State of Michigan, is described as follows:

The Southerly 1/2 of a parcel of land situated in the Southwest 1/4 of Section 26, Town 2 North, Range 9 East, West Bloomfield Township, Oakland County, Michigan, more particularly described as follows: Beginning at a point on the West line of said Section 26, said point of beginning being south 00 degrees 39 minutes 50 seconds east 763.00 feet along the west line of said section 26 from the West 1/4 corner of said section; thence north 89 degrees 15 minutes 10 seconds east 495.00 feet to a point; thence south 00 degrees 39 minutes 50 seconds east 236.00 feet to a point; thence south 89 degrees 15 minutes 10 seconds west 495.00 feet to a point on the west line of said section 26 and the centerline of Orchard Lake Road; thence north 00 degrees 39 minutes 50 seconds west 236.00 feet along said center line of Orchard Lake Road and West line of said Section 26 to the point of beginning, EXCEPTING therefrom the West 45.0 feet taken for road right of way, and also EXCEPTING that part conveyed to the Board of County Road Commissioners of the County of Oakland by Warranty Deed recorded in Liber 8667, page 22, Oakland County Records.

Also known and described as:

A parcel of land situated in the Southwest 1/4 of Section 26, Town 2 North, Range 9 East, West Bloomfield Township, Oakland County, Michigan, more particularly described as follows: Beginning at a point on the West line of said Section 26, said point of beginning being south 00 degrees 39 minutes 50 seconds east 881 feet along the West line of said Section 26 from the West 1/4 corner of said section; thence north 89 degrees 15 minutes 10 seconds east 495.00 feet to a point; thence south 00 degrees 39 minutes 50 seconds east 118 feet to a point; thence south 89 degrees 15 minutes 10 seconds west 495.00 feet to a point on the West line of said Section 26 and the centerline of Orchard Lake Road; thence north 00 degrees 39 minutes 50 seconds west 118 feet along said center line of Orchard Lake Road and West line of said Section 26 to the point of beginning, EXCEPTING therefrom the West 45.0 feet taken for road right of way, and also EXCEPTING that part conveyed to the Board of County Road Commissioners of the County of Oakland by Warranty Deed recorded in Liber 8667, page 22, Oakland County Records.

6177 Orchard Lake Road
Tax ID: 18-26-301-036, covers more land

Based on a field survey being described as:

Part of the Southwest 1/4 of Section 26, Town 2 North, Range 9 East, West Bloomfield Township, Oakland County, Michigan, more particularly described as follows: Commencing at the West 1/4 corner of said Section 26; thence along the West line of said Section 26, South 00 degrees 39 minutes 50 seconds East 881.07 feet; thence North 89 degrees 12 minutes 35 seconds East 60.00 feet to a point on the Easterly Right-of-Way line of Orchard Lake Road (120' wide) and the point of beginning; thence continuing North 89 degrees 12 minutes 35 seconds East 435.00 feet to a point on the Westerly line of Whitney Court of West Bloomfield Condominium as recorded in Liber 22738, Page 74; thence along said Westerly line, South 00 degrees 39 minutes 50 seconds East 118.00 feet; thence South 89 degrees 12 minutes 35 seconds West 435.00 feet to a point on said Easterly Right-of-Way line of Orchard Lake Road; thence along said Easterly Right-of-Way line, North 00 degrees 39 minutes 50 seconds West 118.00 feet to the point of beginning,

SITE DATA

Gross Land Area: 51,330 Square Feet or 1.178 Acres.
Zoned: O-2 (Office Building District)
Building Setbacks:
Front= 25'
Sides= 10' (20' combined)
Rear= 20'

Max. Building Height permitted: 2 stories/24'

Total Parking: 108 spaces including 5 barrier free spaces.

The above setback & height requirements were obtained from the Township of West Bloomfield Zoning Ordinance. Note: A surveyor cannot make a certification on the basis of an interpretation or opinion of another party. A zoning endorsement letter should be obtained from the Township of West Bloomfield to insure conformity as well as make a final determination of the required building setback requirements.

SURVEYOR'S CERTIFICATION

To:

Pine Orchard Professional Group, a Michigan co-partnership
First American Title Insurance Company

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2011 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes items 2, 3, 4, 6(a), 6(b), 7(a), 7(b), 7(c), 8, 9, 11(a), 13, 14, 16, 17 & 18 of Table A thereof.

The field work was completed on 09-18-2015.



Kevin Navaroli, P.S.
No 53503
Dated: 09-25-2015



4. Title Comment Letters

- ▶ Purpose
- ▶ Timing
- ▶ Relationship with Purchase Agreement
- ▶ Objections
 - ▶ Practice Tip: Title Comment Letters are often used as a checklist to make sure that nothing falls through the cracks on title and so that both parties have a clear understanding of what purchaser expects will happen at closing. Even if seller's counsel responds to your Title Comment Letter by stating that seller refuses to remedy certain "defects", your client may still elect to close on the deal based on a clear understanding of the risks associated with those defects.

• Sample Form of Title Comment Letter

• _____, 2017

• _____

• _____

• _____

• _____

• RE: _____ Purchase and Sale Agreement, dated _____, 2017 ("Purchase Agreement"), between _____ ("Seller") and _____ ("Purchaser"), for the property and building located at _____ ("Property")

• Dear _____:

• We have reviewed Title Commitment No. _____, having an Effective Date of _____ ("Title Commitment"), issued by _____ ("Title Company"). In accordance with the Purchase Agreement, Purchaser makes the following comments and/or objections to the Title Commitment and Survey, which it reserves the right to augment, amend and/or waive:

• 1. The Effective Date of the Title Commitment is _____. Please confirm that Title Company will provide a marked-up title commitment or a revised, pro-forma title policy with a then current effective date at Closing, as defined in the Purchase Agreement.

• 2. Please confirm that Seller will, on or before the Closing, satisfy Requirements 1-13 as set forth in Schedule B-I of the Title Commitment, including (without limitation) recording a discharge of the \$ _____ Mortgage and \$ _____ Mortgage, and providing an Owner's Affidavit in the form required by Title Company to delete Standard Exceptions 1-4. Purchaser has already provided a copy of the Survey to Title Company to delete Exception 3.

• 3. Please confirm that you will provide a fully paid water bill to Title Company at Closing and the "Notes" in Requirement 14 will be deleted.

• 4. Please confirm that Title Company will delete Schedule B-II Exceptions 1-4 (i.e., the Standard Exceptions) from the owner's title policy. Purchaser has already provided a copy of the Survey to Title Company to delete Exception 3.

• 5. Purchaser objects to Exception No. 6 (interest of _____). Please confirm that this Exception will be deleted from the owner's title policy.

- ▶ 6. Please confirm that Exceptions 7 (\$_____ Mortgage) and 8 (\$_____ Mortgage) will be deleted from the owner's title policy.

- ▶ 7. Please confirm that Exception 11 (mineral rights) will be deleted from the owner's title policy.

- ▶ 8. Please confirm that Exception 13 (lens for water and sewer charges) will be deleted from the owner's title policy. A final paid water bill should be provided to Title Company at Closing or a water escrow agreement should be executed at Closing.

- ▶ 9. Please arrange for the Title Company to provide me with copies and the cost of the following pro-forma endorsements to the owner's title policy:
 - ▶ a. Comprehensive Endorsement;
 - ▶ b. Zoning Endorsement;
 - ▶ c. Access Endorsement;
 - ▶ d. Survey Endorsement; and
 - ▶ e. Tax Parcel Endorsement.

- ▶ Purchaser reserves the right to provide additional and/or revised comments based upon its receipt and review of updated Title Commitment(s), your response(s) to these comments and any new documentation received. Purchaser reserves all of its rights under the Purchase Agreement.

▶ I look forward to hearing from you regarding these comments.

▶ Sincerely,

▶ Dewey, Cheatem and Howe, PC

▶ John Q. Lawyer, Esq.

Michelle R.E. Donovan



Michelle R.E. Donovan has over 20 years in the real estate law including transactional and litigation. She also advises cannabis companies regarding medical and adult-use marijuana licensing, regulatory, compliance, business entity formation, and litigation.

As one of the fastest-growing industries, Michelle's experience and connections allow her to strategize and advise cannabis companies on how to navigate the constantly changing legal landscape that surrounds this emerging market. Along with national experience, Michelle has an extensive background with Michigan's Medical Marijuana Facilities Licensing and Michigan Regulation and Taxation of Marijuana Act and has successfully assisted clients with the process of applying for pre-qualification and license qualification status. Michelle obtained the first licensed provisioning center in Oakland County. Michelle filed the litigation successfully challenging the State of Michigan's cannabis supply regulations and case of first impression on behalf of a medical marijuana patient for access. She is frequently in the media for her expertise and knowledge and recently featured on Michigan's Cannabis Industry Association cover for "Women Power an Industry" and feature article.

mdonovan@clarkhill.com

313-309-9487

er

General Disclaimer

This presentation is intended for general education and informational purposes only and should not be regarded as either legal advice or a legal opinion. You should not act upon or use this presentation or any of its contents for any specific situation. Recipients are cautioned to obtain legal advice from their legal counsel with respect to any decision or course of action contemplated in a specific situation.

Clark Hill and its attorneys provide legal advice only after establishing an attorney-client relationship through a written attorney-client engagement agreement. This presentation does not establish an attorney-client relationship with any recipient.



THANK YOU!