

Title Insurance & Surveys

**What Your Professor Didn't Teach You in Law School –
or You Were Absent that Day it was Covered**

Michelle R.E. Donovan

Clark Hill PLC
500 Woodward Avenue, Suite 3500
Detroit, MI 48226

(313) 965-8300
mdonovan@clarkhill.com

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

Michelle R.E. Donovan
Clark Hill PLC

So – title insurance. It's a secret club that's made up of real estate professionals that use their own language. Some of it's in Latin – Lis Pendens, liber (not leeber) and ad valorem. Some of it is in code- clear title, date down, update or even abbreviated – FSBO, PA, PSA, or PMI. At the end of this section, you will learn to talk the talk of title insurance without anyone ever knowing that you might be a novice and it's your first rodeo.

But before we delve into the fundamentals of this club's membership, all you history buffs- pay attention. An abstract of title was first used to record all transactions – conveyances and liens of a piece of real property that were gained from public records. If you are lucky enough to come across a real authentic abstract in a transaction, it's like winning the Willy Wonka Golden Ticket. The entire history of that real property is in your hands from its existence. A snapshot of history. This abstract was given to each new purchaser – along with an attorney's opinion as were the new documents that were needed to complete the transaction. Each time the property was conveyed, it was added to the abstract. There was no title insurance just yet. Many mistakes occurred between the searches and public records before the thought of insurance to insure these transactions occurred.

In Pennsylvania in the 1850's, an abstractor, Mr. Muirhead, was employed to determine the state of title for a transaction or a closing in modern times. A judgment on a ground lease was discovered but not disclosed as both the abstractor that discovered the publicly recorded document and the attorney that wrote the opinion letter believed that the judgment was not a lien. Of course, the lien was foreclosed. The court held that the abstractor and attorney adhered to the customary standard of care and skill and were not found liable before a jury. *Watson v Muirhead* 57 Pa. 161 (1868). The court further opined, "the business of a conveyance is one of great importance and responsibility. It requires an acquaintance with the general principles of the law of real property and a large amount of practical knowledge, which can only be derived from experience. It is not a mere art, but a science. *Supra* at 65.

Thus, title insurance was born over 125 years ago. There's some scuttle as to which underwriter came first. Pennsylvania continued the push to expand title insurance in regulatory and company creation. The first legislation authorizing title insurance was enacted in Pennsylvania in 1874, paving the way for the first title insurance company- the Real Estate Title Insurance Company. Not a very original name but easy to locate for any prospective parties contemplating a closing.

Ah the closing... every party has a role including the lawyer. Important to distinguish and understand what each party “brings to the table” – another commonly used phrase in this club. The lawyer -doesn’t matter which side he represents- must know and understand all the documents that are involved, presented and even required for a closing. Along with the standard “board forms” – yet more club lingo, the lawyer must know how to interpret the reading of the title commitment versus a title search (completely different products but to be discussed later) and all requirements necessary to ultimately convey “clear title”.

This course will give you the necessary tools for your real estate tool box to understand the documents that are required for a closing. In essence, you will learn how the sausage is made by understanding the behind the scenes of a title commitment, requirements including survey issues to its completion.

1. TITLE INSURANCE IN GENERAL.

Title insurance is a contract to reimburse the insured for losses caused by certain title defects. By its nature, title insurance insures against past problems. Each title policy insures that title is as stated on the “Effective Date” of the policy and against matters created before that Effective Date. Title insurance is *not* a guaranty that a title defect does not exist. In fact, clients purchase property with minor title defects every day. Reviewing title for a parcel of land and then securing title insurance at closing allows purchasers to be aware of any defects *before* the purchase, so they can balance the risk of loss with the protection afforded by the title policy.

The two most common types of title insurance policies are: (a) an owner’s policy of title insurance (“Owner’s Policy”), and (b) a lender’s policy of title insurance (“Lender’s Policy”). The forms of these policies are based on standards promulgated by the American Land Title Association (“ALTA”).³

Purchasers usually require sellers to deliver an Owner’s Policy at closing⁴ issued by a reputable title company referenced by name in the purchase agreement. The Owner’s Policy insured that the purchaser has free and marketable title subject to any encumbrances. In Michigan, the term “title company” is often used interchangeably to refer to a title agency, such as Chirco Title Agency, Inc., Amrock or ATA National Title Group, and the underwriter, such as First American Title Insurance Company, Fidelity National Title Insurance Company or Chicago Title Insurance Company. In some cases, underwriters, like First American, operate their own direct title operations, which makes things really confusing and are commonly referred as “direct ops”.

³ See <https://www.alta.org/policy-forms/> for access to the ALTA collection of title policy forms and related documents.

⁴ Although some title companies will provide a “pro-forma” Owner’s Policy at closing, it is also common for title companies in Michigan to provide a “marked-up” title commitment at closing with the changes and deletions that it agrees to make, and then to issue the actual Owner’s Policy at a later date.

It is customary that sellers generally pay for the title insurance premium for the Owner's Policy, while purchasers pay for any endorsements that they request to the Owner's Policy. See below. However, like any transaction, all fees are negotiable between the parties.

The purpose of a Lender's Policy, on the other hand, is to insure the enforceability and priority of a mortgage lien (i.e., insuring that the lender's mortgage is in the priority position on title in the event of a default under the loan that the mortgage secures). The Lender's Policy is also used to make sure that there are no exceptions to title (e.g., construction liens) that could have a negative impact on (a) the lender's ability to foreclose and sell the property to someone else, or (b) the new owner's ability to use the property for its intended purpose. The cost of the Lender's Policy and any endorsements required by the lender are almost always paid for by the purchaser/borrower. Lenders will generally insist that a Lender's Policy be issued by a preselected title company at closing.

Although many of the principals that are used in reviewing Owner's Policies also apply to reviewing Lender's Policies, there are a few differences. Accordingly, the focus of this article will be on reviewing title and survey matters during the purchase of commercial real estate and making sure that the Owner's Policy protects your client's interests.

2. ANATOMY OF A TITLE COMMITMENT

The first step in analyzing title for a piece of real estate is to review the title insurance commitment for the Owner's Policy and all the underlying recorded title documents referenced in the commitment. A title insurance 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 following are the key components of a title commitment for an Owner's Policy:

A. Covered Risks.

Before you can review the title commitment, you need to jump to the end of the story and understand the purpose of an Owner's Policy and what will be covered. The purpose of an Owner's Policy is to minimize risk by insuring that purchasers acquire clean title to the property they are buying, subject only to certain identified and acceptable exceptions to title. Subject to its exclusions, exceptions and conditions, an Owner's Policy insures your client (the "Insured") against loss or damage sustained due to certain "Covered Risks". These Covered Risks can be found on the first page or the inside jacket cover of an Owner's Policy ("Commitment Jacket"). See [Exhibit A](#) for an example of a Commitment Jacket for an actual Owner's Policy.⁵

A few of the Covered Risks include:

1. Title being vested other than as stated in Schedule A to the Owner's Policy (i.e., someone else claims to own the land).

⁵ These Covered Risks are from an ALTA Owner's Policy issued under the 6/17/06 standards.

2. Any defect in or lien or encumbrance on the title caused by:
 - a. forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - b. failure of any person or entity to have authorized a transfer or conveyance;
 - c. a document affecting title not properly executed, witnessed, notarized, or delivered; or
 - d. invalid power of attorney.
3. The lien of unpaid real estate taxes or assessments.
4. Any encroachment that would be disclosed by an accurate survey of the land.
5. Unmarketable title.
6. No right of access to and from the land.

In addition to the Covered Risks, the Commitment Jacket will also provide the following essential language: “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.” This significant provision requires the title company to pay the costs, attorneys’ fees and expenses incurred in the defense of a title claim, subject to the terms and conditions of the Owner’s Policy.

The Covered Risks are modified by the “Exclusions from Coverage”. Exclusions from Coverage include:

1. Laws or governmental regulations relating to use of the property, location of an improvement on the land, or environmental protection.
2. Rights of eminent domain.
3. 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.
4. Any claim, by reason of the operation of federal or state bankruptcy laws, that the transaction is a fraudulent conveyance or preferential transfer.
5. Any lien for real estate taxes or assessments attaching after the Effective Date of the policy.

The Owner’s Policy will also contain “Conditions and Stipulations.” The Conditions and Stipulations are the fine print of the insurance policy. Some of these include:

1. Definitions of key terms, such as the “insured,” “knowledge” and “land”.
2. Limitations on coverage after conveyance of title.
3. Procedures and time limits for filing a notice of claim with the title company.
4. Guidelines for the title company’s obligation to defend a claim.
5. Limitations of Liability.
6. Notices.

Since the Commitment Jacket is almost never provided with the title commitment, it is important to understand how the Covered Risks, Exclusions from Coverage, and Conditions and Stipulations, which are referenced on the Commitment Jacket, interact with the Effective Date, Insured, Policy Amount, Requirements, Exceptions and other policy specific items that are defined in the title commitment. The Policy is often referred as the “Guts” inside the Commitment Jacket.

B. Schedule A.

The first page of a title commitment is called “Schedule A”. Schedule A describes all the key deal-specific provisions of the commitment that will be carried over to the final Owner’s Policy. Attached to this article as Exhibit B is a sample title commitment, which includes the various schedules, including Schedule A. The key provisions in Schedule A include:

- 1. Effective Date.** The register of deeds has certified to the title company that all documents recorded as of that date are available for review. Often, there is a gap between the date a document is recorded and the date a title company searching the public records can determine whether that document has been recorded. This is known as the “gap period.”

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. Often called “Gap Coverage”

- 2. Type of Policy.** This section of the commitment should specify that the policy to be issued is an ALTA Owner’s Policy per standards issued on 6/17/06.
- 3. Policy Amount.** This is the amount of insurance that a purchaser will receive at closing. It almost always matches the purchase price and caps the amount that a title insurance company would be required to pay in the event of a claim.

Note: Damages are also capped by the value of the property without the defect. Accordingly, the Insured cannot benefit by purchasing an Owner’s Policy that greatly exceeds the true value of the property; however, if the property is to be developed by the purchaser, then an Increased Value Endorsement may be appropriate.

4. **Proposed Insured.** This section of the commitment discloses the identity of the party that will be receiving title to the property at closing. Either the Lender and/or the Purchaser(s).
5. **Estate or Interest in the Land.** This section of the commitment describes the type of estate that the current owner holds and the name of the current owner. You should confirm that this name matches up with the name of the seller that signed the purchase agreement. If that is not the case, you will need to object to this in your Title Comment Letter referenced below and the seller will need to have it resolved at or prior to closing. **Note:** If the parties differ, which does happen from time to time, the title company will also require the seller to do something (e.g., record a corrective affidavit) in the “Requirements” section referenced below. Unless your client is purchasing a land contract vendee’s interest, the current owner of the property should own a “fee simple” interest in the property that is being insured.
6. **Legal Description.** This section of the commitment sets forth the legal description of the property. You must confirm that the legal description in the title commitment is identical to the one referenced in the current survey of the property, the deed, and the legal description used by the taxing authorities (a/k/a the “Tax Legal”). If not, you will need to object to this in your Title Comment Letter and require the seller to address the issue.

Practice tip: You and the seller’s counsel may need to work closely with the surveyor to address this discrepancy (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.

Note: Title insurance does NOT insure a street address.

C. **Schedule B – Section 1.**

This section lists the “Requirements” that will need to be satisfied for the title company to issue the Owner’s Policy. Requirements may need to be satisfied by the purchaser and seller. Examples of these Requirements include:

1. Pay the title insurance premium.
2. Record a deed to transfer title into the purchaser’s name (and, possibly, into the seller’s name if seller does not own fee simple title).
3. Submit organization documents for the seller, including Articles of Organization, operating agreement and resolutions, to establish that the seller has the authority to sell the property.
4. Record a Certificate of Trust Existence and Authority for the seller, if the seller is a revocable living trust.

5. Discharge recorded mortgages, tax liens or construction liens on the property.
6. If the purchaser has requested issuance of the Owner's Policy "without standard exceptions", then the Requirements would include submission of an Owner's Affidavit and survey of the property.

Schedule B – Section 1 also indicates the status of the real estate taxes for the property. If the taxes are unpaid, then the seller will be required to pay them prior to the closing, or they will be paid out of the seller's proceeds at closing. If neither occurs, then this item will become an exception on the Owner's Policy. On some commitments, the taxable value of the property will also be stated, together with a statement that the title company is not responsible if the taxable value is uncapped in connection with the transaction that is being insured.

Schedule B – Section 1 also often contains the following: "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.)" This should act as a reminder to a purchaser to insist that a final water meter reading be taken for the property, since water and sewer bills (vs. other utility bills) attach to the land as a lien and will remain as such after the closing.

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.

Finally, Schedule B – Section 1 may contain the following: "NOTE: If the Commitment Jacket is not attached hereto, all of the terms, conditions and provisions contained in said Jacket are incorporated herein. The Commitment Jacket is available for inspection at any Company office." Although this Note is often buried at the end of the 2nd or 3rd page of the title commitment, it belies its true importance to the commitment and policy. This is a reference to the Covered Risks that were discussed above.

D. Schedule B - Section 2.

Each Owner's Policy will have specific exceptions from coverage in Schedule B – Schedule 2 for (1) the so called "Standard Exceptions," and (2) interests that are a matter of public record, such as easements and building and use restrictions ("Specific Exceptions").

1. **Standard Exceptions.** For Owner's Policies in Michigan, the Standard Exceptions generally include:
 - a. 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.

- b. Easements claims of easement or encumbrances which are not shown by the public records.
- c. 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”.

- d. 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.

These Standard Exceptions are usually deleted from the Owner’s Policy upon the title company’s receipt of (i) a satisfactory Owner’s Affidavit signed by the seller and delivered to the title company at closing, and in most cases, and (ii) a current survey of the property. In the event that 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.

If you only take one piece of advice from this article, it should be this:

Delete the Standard Exceptions from the Owner’s Policy.

In Michigan, if you don’t ask for them to be removed, the Standard Exceptions will remain on the Owner’s Policy as exceptions to coverage, like a forgotten land mine that will explode in the future when your client needs to make a claim. Unlike some other states, where there is an additional charge for “extended coverage”, title companies in Michigan do not charge an additional premium for Owner’s Policies to be issued without the Standard Exceptions. This type of coverage greatly enhances the value of the insurance.

Bottom line: if you are representing a purchaser in a commercial real estate deal, you should ask the title company to delete the Standard Exceptions from the Owner’s Policy. You’ll be glad you did.

2. **Specific Exceptions.**

The Specific Exceptions referenced in Section B – Section 2 of a title commitment can be divided into 2 categories: (a) Specific Exceptions that apply to all similarly situated properties, and (b) Specific Exceptions that are truly unique to the property that is being purchased.

The first category of Specific Exceptions includes items such as:

- a. Taxes and assessments not yet due and payable.

- b. Rights to a portion of the land taken, used or granted for streets, roads and highways.
- c. Interest in the oil, gas and mineral rights in, under or produced from the insured property.
- d. Lien for outstanding water or sewer charges, if any.
- e. Rights of Tenants.
- f. 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. For example:

- You should ask the title company to limit the exception for streets, roads and highways, to the specific street in question. If the property is located on Main Street, this exception should only refer to Main Street (not all public rights of way).
- You should insist that the broad exception for “rights of tenants” be limited to a specific tenant(s) or to tenants under written leases disclosed to the insured. The general “rights of tenants” exception leaves the purchaser at risk for the existence of undisclosed leases or oral tenancies.
- Finally, depending on where the property is located, and on the underwriter, most title companies require a separate search (and will charge an additional fee) to remove the so called “Mineral Rights Exception”. This is an evolving area, which could change in the future as the ability to search these records and identify these interests improves.

The second category of Specific Exceptions is really at the heart of the Owner’s Policy with respect to title issues. These are the matters affecting title to the property for which there is limited or no coverage under the Owner’s Policy (without an endorsement). These Specific Exceptions include items, such as: recorded building and use restrictions, easements, construction liens, and references to leases.

Practice tip: When it comes to requesting title documents, title companies can be divided into three categories. The first group of title companies will provide you with a copy of the underlying title documents referenced in these Specific Exceptions, *as a matter of course*, when they send out the title commitment. The second group of title companies will gladly provide these documents to you, but only after you request a copy of them. The final group of title companies (often those that focus on residential deals) will *reluctantly* provide you with these documents after you have requested them. This third group may even imply (with a verbal eye roll) that you are making an unusual request. You are not. If you fail to read and analyze the title documents referenced on a title commitment, then you are not doing your job.

Practice tip: 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. It will be much easier to keep track of the documents during your review.

Practice tips: It is impossible to go through the thousands of scenarios that come up when reviewing Specific Exceptions, but here are a few lessons:

- . Read the document. You might be surprised by what it says.
- . Confirm that the restriction has not terminated by the terms of the document. Often, a title company may not notice that a restriction expires on a certain date (and, therefore, should be removed as a Specific Exception) or an examiner may just leave it on the title commitment out of an abundance of caution.
- . Provide easements and other documents to your surveyor as soon as possible to make sure that they apply to the property in question. It is not uncommon for a title company to refer to a utility easement as a Specific Exception and then for a surveyor to indicate that it doesn't affect the property after trying to plot it on the drawing.
- . If all else fails, ask for an endorsement.

E. Endorsements.

Title insurance endorsements modify or extend insurance coverage provided under the usual Owner's Policy. There are two types of title insurance policy endorsements. The first type of endorsement changes the terms of the policy itself, such as defenses, exclusions or terms and conditions of a policy. The second type of endorsement provides affirmative insurance for specific matters.

As policy forms have changed to specifically exclude matters that have traditionally been outside the scope of title insurance policies, requests to change or delete certain exclusions or policy terms have followed. The title industry has responded by providing endorsements addressing those concerns. Some endorsements are available at no cost; others require payment of additional premium. It is a good idea to consult with the title company to learn of the endorsements offered, the risks insured, and requirements for issuance and the cost for the endorsement.

The following are commonly requested endorsements:

1. **Comprehensive.** The comprehensive endorsement(s) (also referred to as the ALTA 9 series of endorsements) provides insurance for loss or damage that results from (a) violations of building or use restrictions; (b) exercise of rights to remove minerals; (c) encroachments; (d) certain liens for private assessments; and (e) options or rights of first refusal. The requirements for issuance of this

endorsement will vary depending on the nature of the transaction, such as whether the land is improved, vacant or under construction. The title insurer will usually review in detail a survey and all building and use restrictions of record affecting the insured land. Title insurers may be able to issue modified endorsements, if not all the matters covered in the endorsement can be insured.

- 2.** **Survey.** There are different endorsements referred to as a “survey endorsement”. One of the more common is an endorsement that insures that the land covered by the Owner’s Policy is the same as the land depicted on a survey provided by the purchaser. Another endorsement, which is also called a “location” endorsement, gives assurance that there is a specific type of improvement on the insured land. The title insurer will need a satisfactory survey to determine that the insured land is the same as shown on the survey, or that there is a certain type of improvement located on the insured land.
- 3.** **Contiguity.** This endorsement is issued to ensure that the multiple parcels of land described in the policy are contiguous to each other. To obtain this endorsement, the title company will need certification from a surveyor that the separate parcels are contiguous to each other, without any gaps or gores.
- 4.** **Access.** Absent a specific exception for a lack of a right of access, a title insurance policy insures that there is a right of access to the insured land. The policy does not, however, insure a specific means of access to the insured land. Since a purchaser may be concerned about the exact means of access to the land, they might request assurance from a title insurer that the insured land either abuts a physically open public street or is benefited by an easement that abuts a physically open public street. Because the title company must determine that the land abuts a physically open street or abuts an appurtenant easement that abuts a physically open street, it often will require a survey showing the location of the insured land and an abutting street or appurtenant easement.
- 5.** **Tax Identification.** This endorsement insures that the land described in the policy is the same land assessed under a specific tax identification number. This is intended to protect a purchaser from a situation where the land has not been assigned a separate tax identification number or the tax identification number that has been assigned includes additional adjacent land. The title insurer must determine that the description of the insured land is the same as the description of the land assessed under the tax identification number, and that it does not include any additional real property.
- 6.** **Zoning.** There are a few different zoning endorsements. One is for vacant land, and it insures the zoning classification of the insured land and the uses permitted under that zoning classification. The others, which are for improved land, also insure the zoning classification, permitted uses, and compliance with the ordinance as it relates to setbacks, area restrictions, and in some cases, parking space requirements. Issuance of these endorsements requires a survey, a review of the zoning map and ordinance, and confirmation from the municipality that

there are no outstanding zoning violations. There is usually a cost of 10-15% of the Basic Rate for a zoning endorsement. You will want to request that the municipality issue a “zoning letter” as soon as possible in the due diligence process. Sometimes, there is a nominal fee associated with this request. Some clients or real estate lawyers will elect to obtain the zoning letter but forego the Zoning Endorsement to save on fees.

Practice tips: Endorsements to title insurance policies provide purchasers with improved coverage, often at no or relatively modest cost. Here are some things to consider when requesting title insurance endorsements:

- Often, title insurance endorsements are requested shortly before closing, which can put the title insurer in the position of having to deny issuing the endorsement, because it is unable to obtain or review the required information. Ideally, endorsements are requested when the title commitment is ordered, or with enough time for the title insurer to obtain and evaluate the information necessary to underwrite the requested endorsement. Delays in closing can be avoided if the parties and their attorneys anticipate and communicate the concerns of the prospective insureds. The zoning, survey and contiguity endorsements, for example, require a review of a survey or other information that is not in the public record and not readily available to a title insurer. Although requests for many endorsements are not uncommon, it is important to understand what kind of information a title company may require before it is able to issue such endorsements.
- Which endorsements you request should be carefully considered. Identify potential risks in the particular transaction, and then consider whether that risk can be managed through an endorsement. Requesting numerous endorsements without evaluating if they will cover an identified risk can result in delays and increased costs.
- The State of Michigan’s Office of Financial and Insurance Services regulates the forms of title insurance policies and endorsements. As such, title insurers usually must issue endorsements in the forms filed with the State of Michigan. The requested endorsements should be distributed to the insured and their attorney in advance of the closing, so they can review the insurance provided by the endorsement.

3. SURVEYS.

Although the idea of reviewing an ALTA Survey can seem intimidating at first, with all those strange, dashed lines and references to “degrees” and “minutes” in the legal description, it can actually be fun once you get the hang of it. Also, you don’t need to be an engineer to review and analyze a survey; you just need to be organized and stick to a plan. Here is a quick primer on the purpose of surveys, a description of a few types of survey and some practice tips on how to review a survey.

A. **Purposes of a Survey.** The following are some of the main purposes for a land survey:

1. **Legally describe the property.** The main purpose of the survey is to legally describe the property for use on a deed, mortgage and for construction drawings. Your job is to confirm that there are identical legal descriptions on the deed, survey, and title commitment.

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.

2. **Set boundaries of the property.** A survey will set the boundaries of the property relative to adjacent properties. A survey may disclose encroachments or even gaps between properties.
3. **Disclose access.** The survey will disclose the means of access to the property, whether by a public right-of-way or by a private easement. If access is by way of an easement, the easement should be surveyed also, and should show where the easement meets a public right-of-way.
4. **Disclose unrecorded matters.** A survey may disclose the existence and location of matters not in the public record that affect title to the property. Examples include: private roads, public utilities and improvements belonging to others, such as billboards.

B. **Types of Surveys.** There are many different types of surveys. Here are few basic types:

1. **ALTA/NSP Survey.** This is a survey which meets the standards set forth by the American Land Title Association, the American Congress on Surveying and Mapping and the National Society of Professional Surveyors. See Exhibit B for the Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys. While the details of an ALTA survey can vary and some are optional (see “Table A” in Exhibit B for options), it usually discloses the following:

- If the legal description is metes and bounds, all mathematical dimensions of the boundary, both measured and previously of record.
- Public rights-of-way or other means of access.
- All recorded easements.
- Information identifying recorded plats or master deeds, including those of adjacent properties.
- Location and dimension of all improvements, including buildings, signs, and parking lots.
- Setback and height requirements.
- The location of utilities serving or located on the property.
- The location of all fences and walls.

2. Certified Survey. A certified survey is one prepared for the purpose of dividing a parcel into 4 separate parcels or less by recording it with the Register of Deeds. It must meet the requirements of MCLA 54.213, and the Land Division Act, MCLA 560.101, *et seq.*

3. Mortgage Survey. This type of survey is commonly used in residential transactions and sometimes in commercial transactions. It is of limited utility, as it shows only the location of the boundaries of the property and the location of any improvements on the property.

4. Boundary Survey. A boundary survey discloses only the boundaries of the land but does not depict any improvements.

5. Topographic Survey. In addition to the boundaries of the land, and the location of improvements, including roads and utilities, a topographic survey depicts the elevation of the property. Changes in elevation of the property are depicted by contour lines. This type of survey is usually obtained prior to development of a parcel of land, for use by the developer's engineers and architects.

6. As-built Survey. An as-built survey discloses the physical condition of the property after completion of construction of the property. It is used to confirm the existence and location of improvements.

C. **Tips for Reviewing a Survey.** Although each survey is different, the following are some general tips when reviewing a survey:

1. Review the legal description. If it is a metes and bounds description, you should compare the written legal description with the bearings and distances shown on the drawing. You should confirm that the point of ending of the description is the same as the point of beginning.
2. Confirm that the legal description on the survey is identical to the legal description in the commitment for title insurance.

3. Review the drawing in detail, paying 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.
4. Confirm that easements disclosed in the title commitment are located on the survey. You should also confirm that any easements disclosed in the survey are included in the title commitment.
5. If you have an ALTA/NSPS survey, confirm that the improvements follow setback restrictions contained in the local zoning ordinance, or in any recorded building and use restrictions.
6. Confirm that there is access to a public right-of-way, either directly or via a private easement.
7. The survey should include the surveyor's contact information, a legend for any symbols used and a north arrow.
8. The survey should be dated within the last 6 months.
9. Make sure the survey is certified as true and correct to the lender, the borrower and to the title insurance company. The certificate on an ALTA/NSPS should be more detailed than on most other types of survey.

Practice tip: If the seller provides you with a previous survey of the property (and you should always ask a seller to provide you with whatever he has in his possession or control), the original surveyor may be able to update it for a lower fee.

4. TITLE COMMENT LETTERS.

Reviewing title and survey is part of the due diligence process. Purchasers and sellers will negotiate a period of time to review the title commitment and make objections to the title for the property. The negotiation of these provisions in the purchase agreement is not the focus of this article; however, it is essential that a purchaser request an appropriate amount of time to review the title commitment, underlying title documents and the survey.

Practice tip: Make sure that you negotiate enough time to obtain a new survey of the property or to update the existing survey. It can often take up to 45 days to get a new survey for an improved parcel of land, especially during hunting season when all the surveyors seem to disappear.

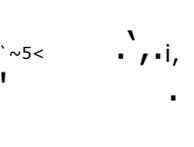
Practice tip: The title review period should not start until purchaser receives copies of the underlying title documents. You can't fully analyze the title commitment without these documents and your surveyor will not be able to complete the survey without them either.

As part of the title review process, there will be a deadline for the purchaser to make any objections to the title for the property. If the purchaser fails to make an objection (usually in writing), the purchaser will be deemed to have accepted the condition of title to the property and this condition will be deemed satisfied under the purchase agreement. In most transactions, it is wise to send a letter to seller's counsel describing your comments to the title commitment and survey, even if there are no material title defects. This is commonly referred to as a "Title Comment Letter" or a "Title Objection Letter."

Based on when and the way that title commitments are typically presented to purchasers, there are several items that need to be updated and revised when the closing occurs (e.g., the Effective Date must be updated, the Proposed Insured will become the Insured, and the Standard Exceptions should be deleted). Although most of these items are spelled out in the Requirements section of the commitment, as the attorney, you must help close the loop with the seller's counsel to make sure the seller understands that the purchaser is expecting these conditions to be satisfied. In addition, sending a Title Comment Letter allows the purchaser to reserve its rights under the purchase agreement (e.g., to terminate the purchase agreement and receive a refund of its earnest money deposit if the seller refuses to satisfy a condition).

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.

Attached as Exhibit D to this article is a sample Title Comment Letter.

	<i>First American Title'</i>	Owner's Policy of Title Insurance
		ISSUED BY First American Title Insurance Company
		POLICY NUMBER

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:



File #:

Dennis J. Gilmore
President



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.

Policy #:

COVERED RISKS (Continued)

5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (a) the occupancy, use, or enjoyment of the Land;
 - (b) the character, dimensions, or location of any improvement erected on the Land;
 - (c) the subdivision of land; or
 - (d) environmental protectionif a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
9. Title being vested other than as stated in Schedule A or being defective
 - (a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
 - (b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
 - (i) to be timely, or
 - (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
10. 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 deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

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 following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
 - (a) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
 - (b) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title,
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

Policy #:

CONDITIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

- (a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b), or decreased by Sections 10 and 11 of these Conditions.
- (b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.
- (c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.
- (d) "Insured": The Insured named in Schedule A.
 - (i) The term "Insured" also includes
 - (A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;
 - (B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
 - (C) successors to an Insured by its conversion to another kind of Entity;
 - (D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
 - (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,
 - (2) if the grantee wholly owns the named Insured,
 - (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or
 - (4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.
 - (ii) With regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.
- (e) "Insured Claimant": An Insured claiming loss or damage.
- (f) "Knowledge" or "Known": 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.
- (g) "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.
- (h) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.
- (i) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice

of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.

- (j) "Title": The estate or interest described in Schedule A.
- (k) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured hereunder of any claim of title or interest that is adverse to the Title, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish 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.

5. DEFENSE AND PROSECUTION OF ACTIONS

(a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.

- (b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.
- (c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

6. DUTY OF INSURED CLAIMANT TO COOPERATE

- ¶ In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.
- (b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

- (a) To Pay or Tender Payment of the Amount of Insurance. To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay. Upon the exercise by the Company of this option, all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in this subsection, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.
- (c) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.
 - (i) To pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or
 - (ii) To pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

- (a) The extent of liability of the Company for loss or damage under this policy shall not exceed the lesser of
 - (i) the Amount of Insurance; or
 - (ii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy.
- (b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title, as insured,
 - (i) the Amount of Insurance shall be increased by 10%, and
 - (ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.
- (c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

9. LIMITATION OF LIABILITY

- (a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.
- (b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as insured.
- (c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

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.

11. LIABILITY NONCUMULATIVE

The Amount of Insurance shall be reduced by any amount the Company pays under any policy insuring a Mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is executed by an Insured after Date of Policy and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment to the Insured under this policy.

12. PAYMENT OF LOSS

When liability and the extent of loss or damage have been fixed in accordance with these Conditions, the payment shall be made within 30 days.

13. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

- (a) Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies. If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.
- (b) The Company's right of subrogation includes the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

14. ARBITRATION

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title

Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. 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. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

- (a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.
- (d) Any claim of loss or damage that arises out of the status of the Title or by any action asserting such claim shall be restricted to this policy.
- (e) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.
- (f) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

16. SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

17. CHOICE OF LAW; FORUM

- (a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located. Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.
- (b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

18. NOTICES, WHERE SENT

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 **First American Title Insurance Company, Attn: Claims National Intake Center, 1 First American Way, Santa Ana, CA 92707. Phone: 888-632-1642.**

EXHIBIT B

Sample Marked-Up Title Commitment

(see attached)

{01304405.DOC;2 }

Real Property Law Academy I | Sponsored by the Real Property Law Section of the State Bar of Michigan



First American Title'

Pr/4g',
-Gefltlfmtmerittfects Title Insurance fete-

ISSUED BY
First American Title Insurance Company

Schedule A

CHIRCO TITLE AGENCY, INC.

an agency for

First American Title Insurance Company

File No.: C-12345

eivz. m4FitSfe-rrAtvAies-o·F

Date:

1/6-517

/?Str4 W71:-

iti·ErVE074- **1.** <

Policy Amount

Mt''' Policy4er-Pelieies-issuo4i.

\$9,999,999.99

a. ALTA Owners Policy (6/17/06)

P⁴⁴²-Pruposl Insured: Apartment Managers, LLC, a Michigan limited liability company

\$8,888,888.88

b. ALTA Loan / Construction Loan Policy (6/17/06)

Proposed Insured: American Life Insurance Company, a Michigan corporation, its successors and/or assigns as their respective interests may appear.

F*01-1 e-Y --3. Fee Fee Simple interest in the land described in this Gerrovitffloot. is owned, at the Getwe4kmorat Date by:

.frririala)⁴⁴S0er

OW-

Aigaff4:484.11841144⁴⁴iWpailig46, LLC, a Michigan limited liability company

The land referred to in this.Coren4italeAt is described as follows:

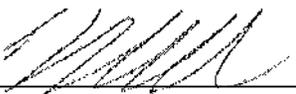
PC71 by

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)

Real Property Law Academy I | Sponsored by the Real Property Law Section of the State Bar of Michigan

Michigan - Schodulo Eil

Real Property Law Academy I | Sponsored by the Real Property Law Section of the State Bar of Michigan

SCHEDULE BI
(Continued)

en-stitisfeetien-ef-the-ineufek,-focHirriments.,,itae-ft.ailowing-oradQr.wm:a4
policy:

- ALTA 1-06
- LTA 3.1-06
- LTA 6-06 A
- TA 8.2-06
- AL 9-06 ALT
- 17-06 ALTA
- 7,2-06 ALTA
- 1 -06 ALTA
- 22-'6 ALTA
- 24-0 ALTA
- 25-06 ALTA
- 27-06 ALTA
- 39-06
- Aflairtrati

8. the following endorsement(s) will be issued with the owner's policy:

- ALTA 3.1-06
- ALTA 8.2-06
- ALTA 9.2-06
- ALTA 17-06
- ALTA 17,2-06
- ALTA 18-06
- ALTA 22-06
- ALTA 25-06
- ALTA 39-06
- Arbitration - Deletion

a e **krbe-ifiettfeel-tve** +ateiy.
verify that the description showr covers all of the intended property. Any additions or ions should immediately
be communicated to us. **0441,**

- 10. If the **improvement** located on the subject land is a mobile/manufact home, notify us immediately arid this
Commitment will be revised and made subject to such further irements and exceptions as deemed necessary.
- 11. Owner's **Affidavit(s)**, in the form furnished by us **be** completed and executed by all Sellers, Buyers and/or
Borrowers to the transaction to be insure we reserve the right to raise any additional requirements and/or
exceptions to title as deemed nec .ry based upon the information provided.
- 12. If under Public Act of 2010, the land to be insured is defined as "Commercial Real Estate" and the
proposed transaction ' a will be the subject of a written commission agreement with a commercial real estate
broker, notify
us i lately and this Commitment will be revised and made subject to such further requirements and

First American Title'

ren..1 cyOP
6erniffvitfRe4:4-for Title Insurance

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

The policy 0444646436,44434-146i464 will contain exceptions to the following matters 6141er,a-tlaa-same-efe-di.aposed-o-f-ter-th6%. 6atisfec,444.44417446444petvyt

4!-Any-feeekrrnghte;intereeterar-elaims..thatshown by the. Pub,,tc Records-butlat-be-ascctairled-by-aa_inspection of the Land or by making inquiry of persons in possession of the PA-

2. Easements, liens or encumbrances, or claims thereof, n wn by the Public Records.

Any encroachment, encumbrance,,_v1 on, variation, or adverse circumstance affecting the Title including discrepancies, conflicts ijiLbourtleary lines, shortage in area, or any other facts that would be disclosed by an accurate and eteland survey of the Land, and that are not shown in the Public Records.

~~21-F~~E

nchnot-shtwrrbrthrePubtit-Recortis.

5 Taxes and assessments not due and payable at Date.

3. Rights or claims of parties in possession not shown in the public records.

14141" der-ettaehing-subsequent-te-thc _____cffectiveTateherenthotprtortr-Hie-diate-the-prepeed-ins.w4xl-acquir-es.fcA smitt&-ef-Feeertc441444c.444-or-ii4tefeet-ef-mortgrlge the, eoit cuverechHay-this-e,ocgmitmiagt-

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 Libor 55555, Page 555, Oakland County Records.

13. Storm water outlet Easement as recorded in Liber 77777, Page 777, Oaklkand 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.

<i>First American Title</i>	<i>Paz., ey trr</i> Client for Title Insurance mt.. <small>ISSUED BY</small> First American Title Insurance Company
Schedule C	

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

File No.: C-123456

LEGAL DESCRIPTION

The Land referred to in this policy is described as follows:

A part of the North-West 1/4 of Section 2, Town 2 North, Range 1 East, City of Pontiac, Michigan, described as follows: Commencing at the South 1/4 corner of said Section 12; thence North 88 degrees, 12 minutes, 47 seconds East, 1125.38 feet; thence North 02 degrees, 54 minutes, 23 seconds West, 700.00 feet; thence South 88 degrees, 12 minutes, 47 seconds West, 300.00 feet; thence North 03 degrees, 16 minutes, 33 seconds West, 200.00 feet; thence South 88 degrees, 12 minutes, 47 seconds West, 311.86 feet; thence North 03 degrees, 12 minutes, 02 seconds West, 640.00 feet to the point of this description; thence North 86 degrees, 23 minutes, 31 seconds East, 851.26 feet to a point on the Westerly line of a 40 foot easement for roadway and public utilities; thence Northerly, along said line, along a curve to the right of radius 215.00 feet (central angle 11 degrees, 40 minutes, 04 seconds, chord North 07 degrees, 06 minutes, 23 seconds West, 43.71 feet), an arc distance of 43.78 feet, and North 01 degrees, 16 minutes, 18 seconds West, 57.92 feet, and along a curve to the left of radius 353.00 feet (central angle 23 degrees, 53 minutes, 41 seconds, chord North 13 degrees, 13 minutes, 09 seconds West, 146.15 feet) an arc distance of 147.22 feet; and along a curve to the right of radius 262.00 feet (central angle 34 degrees, 35 minutes, 48 seconds, chord North 07 degrees, 52 minutes, 08 seconds West, 155.81 feet) an arc distance of 158.20 feet; thence South 85 degrees, 50 minutes, 21 seconds West, 127.59 feet; thence North 82 degrees, 13 minutes, 47 seconds West, 697.26 feet; thence South 03 degrees, 12 minutes, 02 seconds East, 537.31 feet to the point of beginning

EXHIBIT C

(see attached)

**MINIMUM STANDARD DETAIL REQUIREMENTS FOR
ALTA/NSPS LAND TITLE SURVEYS**
(Effective February 23, 2021)

1. **Purpose** - Members of the American Land Title Association® (ALTA) have specific needs, unique to title insurance matters, when asked to insure title to land without exception as to the many matters which might be discoverable from survey and inspection, and which are not evidenced by the public records.

For a survey of real property, and the plat, map or record of such survey, to be acceptable to a title insurance company for the purpose of insuring title to said real property free and clear of survey matters (except those matters disclosed by the survey and indicated on the plat or map), certain specific and pertinent information must be presented for the distinct and clear understanding between the insured, the client (if different from the insured), the title insurance company (insurer), the lender, and the surveyor professionally responsible for the survey.

In order to meet such needs, clients, insurers, insureds, and lenders are entitled to rely on surveyors to conduct surveys and prepare associated plats or maps that are of a professional quality and appropriately uniform, complete, and accurate. To that end, and in the interests of the general public, the surveying profession, title insurers, and abstracters, the ALTA and the NSPS jointly promulgate the within details and criteria setting forth a minimum standard of performance for ALTA/NSPS Land Title Surveys. A complete 2021 ALTA/NSPS Land Title Survey includes:

- (i) the on-site fieldwork required pursuant to Section 5,
- (ii) the preparation of a plat or map pursuant to Section 6 showing the results of the fieldwork and its relationship to documents provided to or obtained by the surveyor pursuant to Section 4,
- (iii) any information from Table A items requested by the client, and
- (iv) the certification outlined in Section 7.

2. **Request for Survey** - The client shall request the survey, or arrange for the survey to be requested, and shall provide a written authorization to proceed from the person or entity responsible for paying for the survey. Unless specifically authorized in writing by the insurer, the insurer shall not be responsible for any costs associated with the preparation of the survey. The request must specify that an "**ALTA/NSPS LAND TITLE SURVEY**" is required and which of the optional items listed in Table A, if any, are to be incorporated. Certain properties or interests in real properties may present issues outside those normally encountered on an ALTA/NSPS Land Title Survey (e.g., marinas, campgrounds, mobile home parks, easements, leases, mineral interests, other non-fee simple interests). The scope of work related to surveys of such properties or interests in real properties should be discussed with the client, lender, and insurer, and agreed upon in writing prior to commencing work on the survey. When required, the client shall secure permission for the surveyor to enter upon the property to be surveyed, adjoining properties, or offsite easements.

3. **Surveying Standards and Standards of Care**

- A. **Effective Date** - The 2021 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys are effective February 23, 2021. As of that date, all previous versions of the Minimum Standard Detail Requirements for ALTA/ACSM or ALTA/NSPS Land Title Surveys are superseded by these standards.
- B. **Other Requirements and Standards of Practice** - Many states and some local jurisdictions have adopted statutes, administrative rules, and/or ordinances that set out standards regulating the practice of surveying within their jurisdictions. In addition to the standards set forth herein, surveyors must also conduct their surveys in accordance with applicable jurisdictional survey requirements and standards of practice. Where conflicts between the

standards set forth herein and any such jurisdictional requirements and standards of practice occur, the more stringent must apply.

- C. **The Normal Standard of Care** - Surveyors should recognize that there may be unwritten local, state, and/or regional standards of care defined by the practice of the “prudent surveyor” in those locales.
- D. **Boundary** - The boundary lines and corners of any property or interest in real property being surveyed (hereafter, the “surveyed property” or “property to be surveyed”) as part of an ALTA/NSPS Land Title Survey must be established and/or retraced in accordance with appropriate boundary law principles governed by the set of facts and evidence found in the course of performing the research and fieldwork.
- E. **Measurement Standards** - The following measurement standards address Relative Positional Precision for the monuments or witnesses marking the corners of the surveyed property.
 - i. “Relative Positional Precision” means the length of the semi-major axis, expressed in meters or feet, of the error ellipse representing the uncertainty in the position of the monument or witness marking any boundary corner of the surveyed property relative to the position of the monument or witness marking an immediately adjacent boundary corner of the surveyed property resulting from random errors in the measurements made in determining those positions at the 95 percent confidence level. Relative Positional Precision can be estimated by the results of a correctly weighted least squares adjustment of the survey. Alternatively, Relative Positional Precision can be estimated by the standard deviation of the distance between the monument or witness marking any boundary corner of the surveyed property and the monument or witness marking an immediately adjacent boundary corner of the surveyed property (called local accuracy) that can be computed using the full covariance matrix of the coordinate inverse between any given pair of points, understanding that Relative Positional Precision is based on the 95 percent confidence level, or approximately 2 standard deviations.
 - ii. Any boundary lines and corners established or retraced may have uncertainties in location resulting from (1) the availability, condition, history and integrity of reference or controlling monuments, (2) ambiguities in the record descriptions or plats of the surveyed property or its adjoiners, (3) occupation or possession lines as they may differ from the written title lines, or (4) Relative Positional Precision. Of these four sources of uncertainty, only Relative Positional Precision is controllable, although, due to the inherent errors in any measurement, it cannot be eliminated. The magnitude of the first three uncertainties can be projected based on evidence; Relative Positional Precision is estimated using statistical means (see Section 3.E.i. above and Section 3.E.v. below).
 - iii. The first three of these sources of uncertainty must be weighed as part of the evidence in the determination of where, in the surveyor’s opinion, the boundary lines and corners of the surveyed property should be located (see Section 3.D. above). Relative Positional Precision is a measure of how precisely the surveyor is able to monument and report those positions; it is not a substitute for the application of proper boundary law principles. A boundary corner or line may have a small Relative Positional Precision because the survey measurements were precise, yet still be in the wrong position (i.e., inaccurate) if it was established or retraced using faulty or improper application of boundary law principles.
 - iv. For any measurement technology or procedure used on an ALTA/NSPS Land Title Survey, the surveyor must (1) use appropriately trained personnel, (2) compensate for systematic errors, including those associated with instrument calibration, and (3) use appropriate error propagation and measurement design theory (selecting the proper instruments, geometric layouts, and field and computational procedures) to control random errors such that the maximum allowable Relative Positional Precision outlined in Section 3.E.v. below is not exceeded.
 - v. The maximum allowable Relative Positional Precision for an ALTA/NSPS Land Title Survey is 2 cm (0.07 feet) plus 50 parts per million (based on the direct distance between the two corners being tested). It is recognized that in certain circumstances, the size or configuration of the surveyed property, or the relief, vegetation, or improvements on the

surveyed property, will result in survey measurements for which the maximum allowable Relative Positional Precision may be exceeded in which case the reason shall be noted pursuant to Section 6.B.x. below.

4. **Records Research** - It is recognized that for the performance of an ALTA/NSPS Land Title Survey, the surveyor will be provided with appropriate and, when possible, legible data that can be relied upon in the preparation of the survey. In order to complete an ALTA/NSPS Land Title Survey, the surveyor must be provided with the following:
- A. The current record description of the real property to be surveyed or, in the case of an original survey prepared for purposes of locating and describing real property that has not been previously separately described in documents conveying an interest in the real property, the current record description of the parent parcel that contains the property to be surveyed;
 - B. Complete copies of the most recent title commitment or, if a title commitment is not available, other title evidence satisfactory to the title insurer;
 - C. The following documents from records established under state statutes for the purpose of imparting constructive notice of matters relating to real property (public records):
 - i. The current record descriptions of any adjoiners to the property to be surveyed, except where such adjoiners are lots in platted, recorded subdivisions;
 - ii. Any recorded easements benefitting the property to be surveyed; and
 - iii. Any recorded easements, servitudes, or covenants burdening the property to be surveyed; and
 - D. If desired by the client, any unrecorded documents affecting the property to be surveyed and containing information to which the survey shall make reference.

Except, however, if the documents outlined in this section are not provided to the surveyor or if non-public or quasi-public documents are otherwise required to complete the survey, the surveyor must conduct that research which is required pursuant to the statutory or administrative requirements of the jurisdiction where the surveyed property is located and that research (if any) which is negotiated and outlined in the terms of the contract between the surveyor and the client.

5. **Fieldwork** - The survey must be performed on the ground (except as may be otherwise negotiated pursuant to Table A, Item 15 below). Except as related to the precision of the boundary, which is addressed in Section 3.E. above, features located during the fieldwork shall be located to what is, in the surveyor's professional opinion, the appropriate degree of precision based on (a) the planned use of the surveyed property, if reported in writing to the surveyor by the client, lender, or insurer, or (b) the existing use, if the planned use is not so reported. The fieldwork shall include the following:

A. Monuments

- i. The location, size, character, and type of any monuments found during the fieldwork.
- ii. The location, size, character, and type of any monuments set during the fieldwork, if item 1 of Table A was selected or if otherwise required by applicable jurisdictional requirements and/or standards of practice.
- iii. The location, description, and character of any lines that control the boundaries of the surveyed property.

B. Rights of Way and Access

- i. The distance from the appropriate corner or corners of the surveyed property to the nearest right of way line, if the surveyed property does not abut a right of way.
- ii. The name of any street, highway, or other public or private way abutting the surveyed property, together with the width of the travelled way and the location of each edge of the travelled way including on divided streets and highways. If the documents provided to or obtained by the surveyor pursuant to Section 4 indicate no access from the surveyed property to the abutting street or highway, the width and location of the travelled way need not be located.
- iii. Visible evidence of physical access (e.g., curb cuts, driveways) to any abutting streets, highways, or other public or private ways.

- iv. The location and character of vehicular, pedestrian, or other forms of access by other than the apparent occupants of the surveyed property to or across the surveyed property observed in the process of conducting the fieldwork (e.g., driveways, alleys, private roads, railroads, railroad sidings and spurs, sidewalks, footpaths).
 - v. Without expressing a legal opinion as to ownership or nature, the location and extent of any potentially encroaching driveways, alleys, and other ways of access from adjoining properties onto the surveyed property observed in the process of conducting the fieldwork.
 - vi. Where documentation of the location of any street, road, or highway right of way abutting, on, or crossing the surveyed property was not disclosed in documents provided to or obtained by the surveyor, or was not otherwise available from the controlling jurisdiction (see Section 6.C.iv. below), the evidence and location of parcel corners on the same side of the street as the surveyed property recovered in the process of conducting the fieldwork which may indicate the location of such right of way lines (e.g., lines of occupation, survey monuments).
 - vii. Evidence of access to and from waters adjoining the surveyed property observed in the process of conducting the fieldwork (e.g., paths, boat slips, launches, piers, docks).
- C. Lines of Possession and Improvements along the Boundaries**
- i. The character and location of evidence of possession or occupation along the perimeter of the surveyed property, both by the occupants of the surveyed property and by adjoining, observed in the process of conducting the fieldwork.
 - ii. Unless physical access is restricted, the character and location of all walls, buildings, fences, and other improvements within five feet of each side of the boundary lines observed in the process of conducting the fieldwork (see Section 5.E.iv. regarding utility poles). Trees, bushes, shrubs, and other vegetation need not be located other than as specified in the contract, unless they are deemed by the surveyor to be evidence of possession or occupation pursuant to Section 5.C.i.
 - iii. Without expressing a legal opinion as to the ownership or nature of the potential encroachment, the evidence, location, and extent of potentially encroaching structural appurtenances and projections observed in the process of conducting the fieldwork (e.g., fire escapes, bay windows, windows and doors that open out, flue pipes, stoops, eaves, cornices, areaways, steps, trim) by or onto adjoining property, or onto rights of way, easements, or setback lines disclosed in documents provided to or obtained by the surveyor.
- D. Buildings**
- The location of buildings on the surveyed property observed in the process of conducting the fieldwork.
- E. Easements and Servitudes**
- i. Evidence of any easements or servitudes burdening the surveyed property as disclosed in the documents provided to or obtained by the surveyor pursuant to Section 4 and observed in the process of conducting the fieldwork.
 - ii. Evidence of easements, servitudes, or other uses by other than the apparent occupants of the surveyed property not disclosed in the documents provided to or obtained by the surveyor pursuant to Section 4, but observed in the process of conducting the fieldwork if they are on or across the surveyed property (e.g., roads, drives, sidewalks, paths and other ways of access, utility service lines, utility locate markings (including the source of the markings, with a note if unknown), water courses, ditches, drains, telephone lines, fiber optic lines, electric lines, water lines, sewer lines, oil pipelines, gas pipelines).
 - iii. Surface indications of underground easements or servitudes on or across the surveyed property observed in the process of conducting the fieldwork (e.g., utility cuts, vent pipes, filler pipes, utility locate markings (including the source of the markings, with a note if unknown)).
 - iv. Evidence on or above the surface of the surveyed property observed in the process of conducting the fieldwork, which evidence may indicate utilities located on, over, or beneath the surveyed property. Examples of such evidence include pipeline markers, utility locate

markings (including the source of the markings, with a note if unknown), manholes, valves, meters, transformers, pedestals, clean-outs, overhead lines, guy wires, and utility poles on or within ten feet of the surveyed property. Without expressing a legal opinion as to the ownership or nature of the potential encroachment, the extent of all encroaching utility pole crossmembers or overhangs.

F. Cemeteries

As accurately as the evidence permits, the perimeter of cemeteries and burial grounds, and the location of isolated gravesites not within a cemetery or burial ground, (i) disclosed in the documents provided to or obtained by the surveyor, or (ii) observed in the process of conducting the fieldwork.

G. Water Features

- i. The location of springs, ponds, lakes, streams, rivers, canals, ditches, marshes, and swamps on, running through, or outside, but within five feet of, the perimeter boundary of the surveyed property and observed during the process of conducting the fieldwork.
- ii. The location of any water feature forming a boundary of the surveyed property. The attribute(s) of the water feature located (e.g., top of bank, edge of water, high water mark) should be congruent with the boundary as described in the record description or, in the case of an original survey, in the new description (see Section 6.B.vi. below).

6. Plat or Map - A plat or map of an ALTA/NSPS Land Title Survey shall show the following information. Where dimensioning is appropriate, dimensions shall be annotated to what is, in the surveyor's professional opinion, the appropriate degree of precision based on (a) the planned use of the surveyed property, if reported in writing to the surveyor by the client, lender, or insurer, or (b) existing use, if the planned use is not so reported.

A. Field Locations. The evidence and locations gathered, and the monuments and lines located during the fieldwork pursuant to Section 5 above, with accompanying notes if deemed necessary by the surveyor or as otherwise required as specified below.

B. Boundary, Descriptions, Dimensions, and Closures

- i. (a) The current record description of the surveyed property, or
(b) In the case of an original survey, the current record document number of the parent tract that contains the surveyed property.
- ii. Any new description of the surveyed property that was prepared in conjunction with the survey, including a statement explaining why the new description was prepared. Except in the case of an original survey, preparation of a new description should be avoided unless deemed necessary or appropriate by the surveyor and insurer. Preparation of a new description should also generally be avoided when the record description is a lot or block in a platted, recorded subdivision. Except in the case of an original survey, if a new description is prepared, a note must be provided stating (a) that the new description describes the same real estate as the record description or, (b) if it does not, how the new description differs from the record description.
- iii. The point of beginning, the remote point of beginning or point of commencement (if applicable) and all distances and directions identified in the record description of the surveyed property (and in the new description, if one was prepared). Where a measured or calculated dimension differs from the record by an amount deemed significant by the surveyor, such dimension must be shown in addition to, and differentiated from, the corresponding record dimension. All dimensions shown on the survey and contained in any new description must be horizontal ground dimensions unless otherwise noted.
- iv. The direction, distance, and curve data necessary to compute a mathematical closure of the surveyed boundary. A note if the record description does not mathematically close. The basis of bearings and, where it differs from the record basis, the difference.
- v. The remainder of any recorded lot or existing parcel, when the surveyed property is composed of only a portion of such lot or parcel, shall be graphically depicted. Such remainder need not be included as part of the actual survey, except to the extent necessary to locate the lines and corners of the surveyed property, and it need not be fully

- dimensioned or drawn at the same scale as the surveyed property.
- vi. When the surveyed property includes a title line defined by a water boundary, a note on the face of the plat or map noting the date the boundary was measured, which attribute(s) of the water feature was/were located, and the caveat that the boundary is subject to change due to natural causes and that it may or may not represent the actual location of the limit of title. When the surveyor is aware of natural or artificial realignments or changes in such boundaries, the extent of those changes and facts shall be shown or explained.
 - vii. The relationship of the boundaries of the surveyed property to its adjoiners (e.g., contiguity, gaps, overlaps) where ascertainable from documents provided to or obtained by the surveyor pursuant to Section 4 and/or from field evidence gathered during the process of conducting the fieldwork. If the surveyed property is composed of multiple parcels, the extent of any gaps or overlaps between those parcels must be identified. Where gaps or overlaps are identified, the surveyor must, prior to or upon delivery of the final plat or map, disclose this to the insurer and client.
 - viii. When, in the opinion of the surveyor, the results of the survey differ significantly from the record, or if a fundamental decision related to the boundary resolution is not clearly reflected on the plat or map, the surveyor must explain this information with notes on the face of the plat or map.
 - ix. The location of buildings on the surveyed property dimensioned perpendicular to those perimeter boundary lines that the surveyor deems appropriate (i.e., where potentially impacted by a setback line) and/or as requested by the client, lender or insurer.
 - x. A note on the face of the plat or map explaining the site conditions that resulted in a Relative Positional Precision that exceeds the maximum allowed pursuant to Section 3.E.v.
 - xi. A note on the face of the plat or map identifying areas, if any, on the boundaries of the surveyed property, to which physical access within five feet was restricted (see Section 5.C.ii.).
 - xii. A note on the face of the plat or map identifying the source of the title commitment or other title evidence provided pursuant to Section 4, and the effective date and the name of the insurer of same.

C. Easements, Servitudes, Rights of Way, Access, and Documents

- i. The location, width, and recording information of all plottable rights of way, easements, and servitudes burdening and benefitting the surveyed property, as evidenced by documents provided to or obtained by the surveyor pursuant to Section 4.
- ii. A summary of all rights of way, easements, and other survey-related matters burdening the surveyed property and identified in the title evidence provided to or obtained by the surveyor pursuant to Section 4. Such summary must include the record information of each such right of way, easement, or other survey-related matter, a statement indicating whether it lies within or crosses the surveyed property, and a related note if:
 - (a) its location is shown;
 - (b) its location cannot be determined from the record document;
 - (c) there was no observed evidence at the time of the fieldwork;
 - (d) it is a blanket easement;
 - (e) it is not on, does not touch, and/or – based on the description contained in the record document – does not affect, the surveyed property;
 - (f) it limits access to an otherwise abutting right of way;
 - (g) the documents are illegible; or
 - (h) the surveyor has information indicating that it may have been released or otherwise terminated.In cases where the surveyed property is composed of multiple parcels, indicate which of such parcels the various rights of way, easements, and other survey-related matters cross or touch.
- iii. A note if no physical access to an abutting street, highway, or other public or private way was observed in the process of conducting the fieldwork.
- iv. The locations and widths of rights of way abutting or crossing the surveyed property and

- the source of such information (a) where available from the controlling jurisdiction, or (b) where disclosed in documents provided to or obtained by the surveyor pursuant to Section 4.
- v. The identifying titles of all recorded plats, filed maps, right of way maps, or similar documents that the survey represents, wholly or in part, with their recording or filing data.
 - vi. For non-platted adjoining land, recording data and, where available, tax parcel number, identifying adjoining tracts according to current public records. For platted adjoining land, the recording data of the subdivision plat.
 - vii. Platted setback or building restriction lines that appear on recorded subdivision plats or that were disclosed in documents provided to, or obtained by, the surveyor.
 - viii. If in the process of preparing the survey the surveyor becomes aware of a recorded easement not otherwise listed in the title evidence provided, the surveyor must advise the insurer prior to delivery of the plat or map and, unless the insurer provides evidence of a release of that easement, show or otherwise explain it on the face of the plat or map, with a note that the insurer has been advised.

D. Presentation

- i. The plat or map must be drawn on a sheet of not less than 8 ½ by 11 inches in size at a legible, standard engineering scale, with that scale clearly indicated in words or numbers and with a graphic scale.
- ii. The plat or map must include:
 - (a) The boundary of the surveyed property drawn in a manner that distinguishes it from other lines on the plat or map.
 - (b) If no buildings were observed on the surveyed property in the process of conducting the fieldwork, a note stating “*No buildings observed.*”
 - (c) A north arrow (with north to the top of the drawing when practicable).
 - (d) A legend of symbols and abbreviations.
 - (e) A vicinity map showing the surveyed property in reference to nearby highway(s) or major street intersection(s).
 - (f) Supplementary or detail diagrams when necessary.
 - (g) Notes explaining any modifications to Table A items and the nature of any additional Table A items (e.g., 20(a), 20(b), 20(c)) that were negotiated between the surveyor and client.
 - (h) The surveyor’s project number (if any), and the name, registration or license number, signature, seal, street address, telephone number, company website, and email address (if any) of the surveyor who performed the survey.
 - (i) The date(s) of any revisions made by the surveyor who performed the survey.
 - (j) Sheet numbers where the plat or map is composed of more than one sheet.
 - (k) The caption “ALTA/NSPS Land Title Survey.”
- iii. When recordation or filing of a plat or map is required by state statutes or local ordinances, such plat or map shall be produced in the required form.

7. Certification - The plat or map of an ALTA/NSPS Land Title Survey must bear only the following unaltered certification except as may be required pursuant to Section 3.B. above:

To (name of insured, if known), (name of lender, if known), (name of insurer, if known), (names of others as negotiated with the client):

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2021 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items _____ of Table A thereof. The fieldwork was completed on _____ [date].

Date of Plat or Map: _____ (Surveyor’s signature, printed name and seal with Registration/License Number)

8. Deliverables - The surveyor shall furnish copies of the plat or map of survey to the insurer and client and as otherwise negotiated with the client. Hard copies shall be on durable and dimensionally stable material of a quality standard acceptable to the insurer. A digital image of the plat or map may be provided in addition to, or in lieu of, hard copies pursuant to the terms of the contract. If the surveyor is required to record or file a plat or map pursuant to state statute or local ordinance it shall be so recorded or filed.

TABLE A
OPTIONAL SURVEY RESPONSIBILITIES AND SPECIFICATIONS

NOTE: Whether any of the nineteen (19) items of Table A are to be selected, and the exact wording of and fee for any selected item, may be negotiated between the surveyor and client. Any additional items negotiated between the surveyor and client must be identified as 20(a), 20(b), etc. Any additional items negotiated between the surveyor and client, and any negotiated changes to the wording of a Table A item, must be 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 20.

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 surveyed 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, with originating benchmark, when appropriate.
6. _____ (a) If the current zoning classification, setback requirements, the height and floor space area restrictions, and parking requirements specific to the surveyed property are set forth in a zoning report or letter provided to the surveyor by the client or the client's designated representative, list the above items on the plat or map and identify the date and source of the report or letter.
_____ (b) If the zoning setback requirements specific to the surveyed property are set forth in a zoning report or letter provided to the surveyor by the client or the client's designated representative, and if those requirements do not require an interpretation by the surveyor, graphically depict those requirements on the plat or map and 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 client. If no location is specified, the point of measurement shall be identified.
8. _____ Substantial features observed in the process of conducting the fieldwork (in addition to the improvements and features required pursuant to Section 5 above) (e.g., parking lots, billboards, signs, swimming pools, landscaped areas, substantial areas of refuse).
9. _____ Number and type (e.g., disabled, motorcycle, regular, and other marked specialized types) of clearly identifiable parking spaces on surface parking areas, lots, and in parking structures. Striping of clearly identifiable parking spaces on surface parking areas and lots.
10. _____ As designated by the client, a determination of the relationship and location of certain division or party walls with respect to adjoining properties.

11. Evidence of underground utilities existing on or serving the surveyed property (in addition to the observed evidence of utilities required pursuant to Section 5.E.iv.) as determined by:

_____ (a) plans and/or reports provided by client (with reference as to the sources of information)

_____ (b) markings coordinated by the surveyor pursuant to a private utility locate request.

Note to the client, insurer, and lender – With regard to Table A, item 11, information from the sources checked above will be combined with observed evidence of utilities pursuant to Section 5.E.iv. to develop a view of the underground utilities. However, lacking excavation, the exact location of underground features cannot be accurately, completely, and reliably depicted. In addition, in some jurisdictions, 811 or other similar utility locate requests from surveyors may be ignored or result in an incomplete response, in which case the surveyor shall note on the plat or map how this affected the surveyor's assessment of the location of the utilities. Where additional or more detailed information is required, the client is advised that excavation may be necessary.

12. _____ As specified by the client, Governmental Agency survey-related requirements (e.g., HUD surveys, surveys for leases on Bureau of Land Management managed lands). The relevant survey requirements are to be provided by the client or client's designated representative.

13. _____ Names of adjoining owners according to current tax records. If more than one owner, identify the first owner's name listed in the tax records followed by "et al."

14. _____ As specified by the client, distance to the nearest intersecting street.

15. _____ Rectified orthophotography, photogrammetric mapping, remote sensing, airborne/mobile laser scanning and other similar products, tools or technologies as the basis for showing the location of certain features (excluding boundaries) where ground measurements are not otherwise necessary to locate those features to an appropriate and acceptable accuracy relative to a nearby boundary. The surveyor must (a) discuss the ramifications of such methodologies (e.g., the potential precision and completeness of the data gathered thereby) with the insurer, lender, and client prior to the performance of the survey, and (b) place a note on the face of the survey explaining the source, date, precision, and other relevant qualifications of any such data.

16. _____ Evidence of recent earth moving work, building construction, or building additions observed in the process of conducting the fieldwork.

17. _____ Proposed changes in street right of way lines, if such information is made available to the surveyor by the controlling jurisdiction. Evidence of recent street or sidewalk construction or repairs observed in the process of conducting the fieldwork.

18. _____ Pursuant to Sections 5 and 6 (and applicable selected Table A items, excluding Table A item 1), include as part of the survey any plottable offsite (i.e., appurtenant) easements disclosed in documents provided to or obtained by the surveyor.

19. _____ Professional liability insurance policy obtained by the surveyor in the minimum amount of \$_____ to be in effect throughout the contract term. Certificate of insurance to be furnished upon request, but this item shall not be addressed on the face of the plat or map.

20. _____

Adopted by the American Land Title Association on October 1, 2020. More at: www.alta.org.
Adopted by the National Society of Professional Surveyors on October 30, 2020. More at: www.nspss.us.com.

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 (liens 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.