

Title Commitment

A title commitment is given to Buyers prior to closing to inform the Buyer regarding title to the property. The Buyer is allowed to review the commitment and talk to an attorney or the Title company or their agent if they have any questions on any of the information on the commitment. The Buyer usually only has several days to let the Seller know if anything on the commitment is unacceptable to the Buyer.

Protection against hazards of title is available with a unique insurance called title insurance. Other insurance policies are purchased for possible futures issues; however, title insurance is purchased with a one-time payment to safeguard against loss arising from hazards or defects. Title insurance is all about risk elimination before insuring.

There are two types of insurance:

1. Owners' policy lasts as long as the insured or the heirs have an interest in the property.
2. The Lenders' policy decreases and eventually disappears as the loan is paid off. Most Lenders require this insurance policy just as they require the fire insurance.

Title insurance starts with the search of public records for matters that could affect the title. Any issues that are found that do not allow for a clear transfer of title must be corrected or a clear transfer cannot occur. Here are some examples that present concerns: Incorrect names, outstanding mortgages, judgements, tax liens, easements, incorrect notary acknowledgements. However, even the most careful search to eliminate risk cannot find hidden hazards of title.

Some hidden hazards that could occur are things like:

- A forged deed.
- Transfer documents that were executed under an expired or false power of attorney.
- Heirs that have claims to a property.
- Mistakes in the public records, to name a few.

Understanding the Title Commitment

The Title Commitment is divided into several sections:

- Schedule A
- Schedule B, which includes the Requirements, the Exceptions, and the Exclusions. The title commitment should be accompanied by the documents referred to in Schedule B. *Schedule B may be the most important part of the Title Commitment*

Schedule A:

1. Commitment Date
2. Policies to Be Issued, Amount, and Proposed Insured
3. Interest in the Land and Owner
4. Description of the Properties being insured

Schedule B:

The Requirements section lists what things must be done before escrow can close and title insurance will be issued. If a requirement can not be met, close of escrow may be prevented or delayed. Talk to the escrow officer about fulfilling any unusual requirements as soon as possible to avoid a delay in close of escrow.

Examples of Requirements:

1. Payment of taxes
2. Recording a release
3. Re-conveyance of the deed currently encumbering the property
4. Recording the new deed
5. Recording the documents securing the new loan.
6. Other requirements may include approval by the trustee in bankruptcy
7. Recording a disclaimer deed from a spouse
8. Recording a court order evidencing the authority for one person to act on another's behalf
9. Copy of a trust, Corporation, or LLC paperwork
10. Releases of various other types of liens.
11. Proof of Identity

The Exceptions section discloses the exceptions that the title company will not cover against. It also generally includes certain standard exceptions such as mineral and water rights. The title insurance policy will not insure against loss, nor will the title insurer pay costs, attorney fees, or expenses, resulting from title problems listed in Schedule B. *Buyers are often unaware that they need to read the exceptions to coverage.* If an exception is unacceptable to the buyer, the buyer and the agent may be able to convince the title company to remove it, insure over it (with an endorsement), or eliminate the exception by obtaining a release, affidavit, waiver, quitclaim deed or other document. However, if the unacceptable exception is not discovered and objected to within a short period of time from date of receipt, there may not be time to address the unacceptable exception and the buyer may be forced to close escrow subject to the exception. Talk to the escrow officer or an attorney if there are questions or concerns regarding the exceptions on the Title Commitment for disclosure items and for restrictions on the use of the property.

Examples of Exceptions:

1. Any facts, rights, interests, or claims that are not shown in the Public Records but that could be ascertained by an inspection of the Land or by making inquiry of the persons in possessions of the land.
2. Any encroachments, easements, measurements, variations in area or content, party walls or other facts which a correct survey of the premises would show.
3. Road ways, streams or easements, if any, not shown by the public records, riparian rights and the title to any filled in lands.
4. Unpatented mining claims, water rights, and claims or title to water.
5. Possible additional tax assessment by reason of new construction or improvements pursuant to the provisions of the Acts of Assembly relating thereto, not yet due and payable.
6. Further exceptions will be noted on the title commitment.

The Exclusions section discloses the exclusions that the title company will not cover.

Examples of Exclusions:

1. Any law, ordinance or governmental regulation relating to the use of the property
2. Any governmental police power, unless recorded
3. Rights of eminent domain, unless recorded
4. Defects, liens, encumbrances, adverse claims or other matters agreed to by the buyer
5. Claims arising from bankruptcy or other creditors' rights laws

Specific Title Commitment Issues

Easements: An easement gives persons other than the owner access to or a right of way over the homeowner's property. Common easements include utility easements and roadway or access easements. Easements may be an issue if the buyer is planning on building a pool or adding improvements to the home.

CC&R's and other Deed Restrictions: A declaration of covenants, conditions and restrictions ("CC&Rs") for a homeowner's association is recorded against the property. The CC&R's empower the homeowner's association, if there is one, to control certain aspects of the home. If there is no homeowner's association, the CC&R's can be enforced by the other homeowners. A homebuyer should always carefully read the CC&R's (and any other association documents) because the buyer will be obligated to comply with all the rules and restrictions.

Access: Failure of the public record to disclose a right of access to the land will be noted in the Title Commitment. Although landlocked property can be sold the lack of access must be disclosed to the buyer.

Military Airports: Buyers in areas in the vicinity of a military airport will find this information on a title commitment.

Judgments: A recorded judgment is a lien on all real property of the judgment debtor. A judgment lien against the seller usually must be paid prior to close of escrow.

Bankruptcy: If the seller has filed bankruptcy, the bankruptcy trustee will have to approve of the sale prior to close of escrow or a court order may be necessary. The seller's bankruptcy attorney should be able to assist in obtaining the approval, but be sure to allow enough time for the process.

Liens: There are numerous types of liens that may need to be paid and released before escrow can close. These liens may include state and federal tax liens. State tax liens are extinguished if the state takes no action for six years. By filing a Notice of Federal Tax Lien, the government establishes its interest in the property and any property acquired after the lien is filed. Mechanics liens and liens arising from environmental laws may also become an issue.

Endorsements

In addition to the coverage available under the title insurance policy, a buyer can obtain additional coverage through endorsements. These endorsements may be available for little or no cost.

The Title Insurance Policy

The title insurance policy will be issued as of close of escrow. Title insurance does not insure that a title defect will not occur; it insures that if a defect that occurred prior to the policy date becomes apparent, the buyer will be indemnified if the defect cannot be cured. A standard policy generally insures against the title to the property being vested other than stated in the policy; any defect in or lien or encumbrance on the title; un-marketability of title; and lack of a right of legal (not necessarily physical) access. The policy generally contains the same sections as the Title Commitment.

I always suggest that you talk to the title company that is issuing the title policy and/or an attorney if you have any questions.

Here is an example of the Schedule B

 First American Title Guaranty Company	Commitment For Title Insurance T-7 ISSUED BY First American Title Guaranty Company
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G.F. No. or File No. 2

EXCEPTIONS FROM COVERAGE

In addition to the Exclusions and Conditions and Stipulations, your Policy will not cover loss, costs, attorney's fees, and expenses resulting from:

- The following restrictive covenants of record itemized below (We must either insert specific recording data or delete this exception):

Restrictive covenants described in instrument recorded in Volume 97234, Page 4585, Real Property Records, Dallas County, Texas. Any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c), is deleted.
- Any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements.
- Homestead or community property or survivorship rights, if any, of any spouse of any insured. (Applies to the Owner's Policy only.)
- Any titles or rights asserted by anyone, including, but not limited to, persons, the public, corporations, governments or other entities,
 - to tidelands, or lands comprising the shores or beds of navigable or perennial rivers and streams, lakes, bays, gulfs or oceans, or
 - to lands beyond the line of the harbor or bulkhead lines as established or changed by any government, or
 - to filled-in lands, or artificial islands, or
 - to statutory water rights, including riparian rights, or
 - to the area extending from the line of mean low tide to the line of vegetation, or the rights of access to that area or easement along and across that area.(Applies to the Owner's Policy only.)
- Standby fees, taxes and assessments by any taxing authority for the year, and subsequent years; and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership, but not those taxes or assessments for prior years because of an exemption granted to a previous owner of the property under Section 11.13, Texas Tax Code, or because of improvements not assessed for a previous tax year. (If Texas Short Form Residential Loan Policy of Title Insurance (T-2R) is issued, that policy will substitute "which become due and payable subsequent to Date of Policy" in lieu of "for the year and subsequent years.")
- The terms and conditions of the documents creating your interest in the land.

- Materials furnished or labor performed in connection with planned construction before signing and delivering the lien document described in Schedule A, if the land is part of the homestead of the owner. (Applies to the Loan Title Policy Binder on Interim Construction Loan only, and may be deleted if satisfactory evidence is furnished to us before a Binder is issued.)
- Liens and leases that affect the title to the land, but that are subordinate to the lien of the insured mortgage. (Applies to Loan Policy (T-2) only.)
- The Exceptions from Coverage and Express Insurance in Schedule B of the Texas Short Form Residential Loan Policy of Title Insurance (T-2R). (Applies to Texas Short Form Residential Loan Policy of Title Insurance (T-2R) only). Separate exceptions 1 through 8 of this Schedule B do not apply to the Texas Short Form Residential Loan Policy of Title Insurance (T-2R).
- The following matters and all terms of the documents creating or offering evidence of the matters (We must insert matters or delete this exception):
 - Rights of parties in possession (Owner's Title Policy only).
 - Rights, if any, of third parties with respect to any portion of the subject property lying within the boundaries of a public or private road. (May be amended or deleted upon approval of survey.)
 - All visible and apparent easements or uses and all underground easements or uses, the existence of which may arise by unrecorded grant or by use. (May be amended or deleted upon approval of survey.)
 - All leases, grants, exceptions or reservations of coal, lignite, oil, gas and other minerals, together with all rights, privileges, and immunities relating thereto, appearing in the Public Records whether listed in Schedule B or not. There may be leases, grants, exceptions or reservations of mineral interest that are not listed.
 - The following easements and/or building lines, as shown on plat recorded in Volume 97212, Page 2413, Real Property Records, Dallas County, Texas.

30' building line along the front property line(s).



First American
Title Guaranty Company

Commitment For Title Insurance T-7
ISSUED BY
First American Title Guaranty Company

SCHEDULE C

G.F. No. or File No.

Your Policy will not cover loss, costs, attorney's fees, and expenses resulting from the following requirements that will appear as Exceptions in Schedule B of the Policy, unless you dispose of these matters to our satisfaction, before the date the Policy is issued:

1. Documents creating your title or interest must be approved by us and must be signed, notarized and filed for record.
2. Satisfactory evidence must be provided that:
 - no person occupying the land claims any interest in that land against the persons named in paragraph 3 of Schedule A,
 - all standby fees, taxes, assessments and charges against the property have been paid,
 - all improvements or repairs to the property are completed and accepted by the owner, and that all contractors, sub-contractors, laborers, and suppliers have been fully paid, and that no mechanic's, laborer's or materialmen's liens have attached to the property,
 - there is legal right of access to and from the land,
 - (on a Loan Policy only) restrictions have not been and will not be violated that affect the validity and priority of the insured mortgage.
3. You must pay the seller or borrower the agreed amount for your property or interest.
4. Any defect, lien or other matter that may affect title to the land or interest insured, that arises or is filed after the effective date of this Commitment.
5. With respect to item 2 of Schedule C above, the Company will not except in any policies to be issued pursuant to this commitment to 'Lack of a right of access to and from the land'.
6. Require Affidavit as to Debts and Liens and Parties in Possession executed by owner at or prior to closing.
7. In accordance with Section 11.008 of the Texas Property Code, all deeds and deeds of trust transferring an interest in real property to or from an individual and disclosing that individual's social security number or driver's license number must include the following notice on the top of the first page of the instrument in 12 point bold or uppercase font: NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.
8. Ascertain marital and homestead status of record owner(s) from date of acquisition. If homestead, or community property require joinder of spouse.
9. General index search shows numerous abstracts of judgment, federal tax liens, state tax liens and/or lawsuits or other matters which may affect LAN XUAN NGUYEN. Company requires an acceptable affidavit of non-identity, or payment in full and release.

The items below 11 & 12 would need to be addressed and cleared by the title company before the house could be sold.

11. Company finds a bankruptcy filed by or against _____
In the event debtor is determined to be record owner, Company requires a final, non-appealable order from the Bankruptcy Court authorizing this transaction or satisfactory evidence that its jurisdiction has been otherwise removed.
12. Federal tax lien against _____ in the amount of \$ _____ filed 11/07/_____, recorded in cc# _____, Real Property Records, Dallas County, Texas.

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