Enterprise Community Partners

Title Reports / Surveys

This training is made possible by the generous sponsorship of US Bank
Title Report Basic Information

- Date
- Type of policy
- Quality of Estate
- Policy Limits
- Legal Description
- Extended Coverage
- Special Exceptions
- Survey
- Endorsements
- Proforma Policy
- After Closing
Date

• Differences between:
  • Title insurance report – no protection; small cost
  • Title commitment – commitment to provide title insurance; no cost
  • Title insurance policy – permanent protection; premium

• How old is report?

• Should it be updated?
Type of Policy

• Generally shows if an ALTA policy will be issued and in which form (note there are various requirements based on version – i.e. the 1984 form versus 1992 form versus the 1970 form)
Quality of Estate

- Fee simple
- Mortgagee (does not protect buyer)
- Leasehold
- Seller’s policy (not common outside of Oregon) – cuts off subrogation
- Vendee’s interest (for a real estate contract where title delivered in future)
- Easement
Policy Limits

- Purchase – normally the sale price
- Property to be constructed – generally full cost to acquire land and construct improvements
- Title company liability limited to lesser of:
  - Policy Amount
  - Property value at date of issuance
  - Loss
  - Policy amount
  - If policy amount is less than 80% of property value, loss claim reduced by the under-insurance percentage
- Lender or mortgagee policy usually loan amount
Legal Description

- Be sure you are dealing with the correct property (I speak from experience)
- Compare to prior deed
- Compare to survey
- Check for typographical errors
- Include appurtenant easements (but not burdened easements)
Extended Title Policy

- ALTA extended policy turns policy into a real insurance policy
- ALTA extended policy provides that general exceptions are eliminated:
  - easements not shown in recorded documents (e.g. prescriptive easements) (insurance risk); and
  - mechanics liens (insurance risk)
  - facts discoverable with a survey,
  - taxes and assessments which are not a lien,
  - encroachments,
- Requires an ALTA survey (not required for a mortagee’s policy)
- Lenders require
- Owner’s policy typically require for new construction and commercial properties
- Additional cost
- Mortgagee’s ALTA extended policy does not protect owner
Special Exceptions – Requires Document Review

• Easements (burdened property - I didn’t know that line meant a highway could go there)
• Covenants (e.g. recorded lease or typical land use restrictive covenants recorded to require affordable use)
• Conditions (e.g. agreement to limit parking)
• Restrictions (height limit agreement)
• Encumbrances (e.g. mortgage)
• Court actions
• Taxes
Survey

• Review location of easements
• Review encroachments
  • Look for encroachments such as overhang element of neighboring structure
  • Possible to record revocable consent to encroachment to prevent adverse possession
• Survey’s certification should normally run to fee owner, partners or members of fee owner and lenders
Endorsements

• Access – right of legal access to / from land
• Survey – insures that survey and legal description match
• Contiguity – insures two parcels are contiguous
• Zoning – insures current zoning permitted uses
• Legal lot – insures that what is being sold is a legal lot (not available in Oregon)
Endorsements - continued

- Fairway – insures owner against lapse in coverage as a result of change in partners of a partnership (does not apply to LLCs or corporations)
- Nonimputation – insures insured entity that knowledge of title defect by owner will not cancel coverage
- Foundation – insures construction lender that foundation is within property boundaries, does not encroach on easements, and does not violate covenants, conditions and restrictions which are of record
Proforma Policy

- Draft of actual title insurance policy at closing
- Not a title commitment
- Good practice for a tax credit and other complex transaction
- Ensures that policy will be issued immediately after closing
After Closing

- Mark calendar to ensure policy is timely received
- Review policy to make sure it is consistent with:
  - Proforma policy
  - Escrow instructions
  - Endorsements included?
  - Exceptions deleted as required?