

Enterprise Community
Partners

Title Reports / Surveys

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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 mortgagee'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?