

TITLE INSURANCE OVERVIEW



U.S. Small Business Administration

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Instructor

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Jessica Mullen is President of CREATE Land Transfer Solutions, Starfield & Smith's in-house title insurance company.

Jessica specializes in and provides expertise when insuring complex Commercial Real Estate title insurance transactions. Over the span of nearly fifteen years with the company, Jessica has independently managed and settled hundreds of these types of transactions.

Jessica is a licensed Title Insurance Agent in Pennsylvania and in New Jersey and possesses close to twenty years of experience as a title and settlement officer.

Agenda:

- ❑ Definitions
- ❑ Policy Limits
- ❑ Commitment Structure
- ❑ Endorsements
- ❑ Best Practices
- ❑ Post-Closing
- ❑ Surveys



Definitions

- ❑ Title Insurance
- ❑ Title Commitment
- ❑ Closing Protection Letter
- ❑ Owner's Policy
- ❑ Loan/Lender's Policy
- ❑ Endorsements
- ❑ Cover Date
- ❑ Bring Down Search
- ❑ Marketable Title
- ❑ Easement
- ❑ ALTA
- ❑ Underwriter
- ❑ Agent



What is Title Insurance, anyway?

□ What Title Insurance IS:

- A snapshot of the state of title
- “Backward-looking”
- Risk eliminating
- Insures against unmarketable title
- Insures lien position for lenders
- Title company error

□ What Title Insurance IS NOT:

- “Forward-looking”
- Risk assumption
- Credit/Loan insurance
- Hazard insurance
- A guarantee of the state of title in the future
- Acreage insurance

Policy Limits

- Policy claims are limited to the **LESSER** of:
 - The Fair Market Value of the Insured Property;
 - The face amount of the policy; or
 - The actual loss sustained

TITLE DEED BOARDWALK	
RENT \$50.	
With 1 House	\$ 200.
With 2 Houses	600.
With 3 Houses	1400.
With 4 Houses	1700.
With HOTEL \$2000.	
Mortgage Value \$200.	
Houses cost \$200. each	
Hotels, \$200. plus 4 houses	
<i>If a player owns ALL the Lots of any Color-Group, the rent is Doubled on Unimproved Lots in that group.</i>	

How much title insurance do you need?

- So, how much title insurance do you need?
 - It depends.

- What is general good practice?
 - The amount of the loan (purchase price for owner's).
 - Limit a personal residence or investment property to 150% of the equity rather than the loan amount, especially if there are tax implications associated with the lien amount in the particular state where the lien is filed.
 - Note that the lien amount should reflect the note amount even if the insured amount is being limited; some states may require additional language before title will insure under these circumstances
 - Varies per transaction and jurisdiction

Commitment Structure Overview

- Three (3) basic sections:
 - Policy Information
 - Requirements for policy issuance
 - Exceptions from coverage
- Schedules A, B-I and B-II (sometimes) and C (sometimes)
- Varies per transaction and jurisdiction
- New 2016 format for approved states
 - Includes a new cover signed by underwriter
 - Includes additional notices and limitations regarding commitment
 - No longer allows for TBD – commitments must state proposed insured and insured amounts

Schedule A

- ❑ Cover Date
- ❑ Policy Form (2006)
- ❑ Owner's Policy
 - Insured purchaser and amount (no TBD)
- ❑ Lender's Policy
 - Insured lender and amount (no TBD)
- ❑ Record owner
- ❑ Policy Issuer (underwriter/agent)
 - Should include signature of agent

Schedule A (continued)

- ❑ Legal Descriptions (often incorporated in a separate section – “C”)
 - Source
 - Compare to most recent deed to owner
 - Compare to draft warranty deed
 - Common mistakes in Schedule A
 - ❑ Transcription errors
 - ❑ Failure to include all collateral property
 - ❑ Wrong or incomplete source

Schedule B-I

- Requirements for policy issuance:
 - Documents to be executed/delivered
 - Conveyance/encumbrance
 - Entity documents
 - Premium payment
 - Rates may vary depending upon transaction
 - Rates may vary from state to state
 - Payment of all taxes, levies & charges that are liens on the property
 - Existing Mortgages
 - Public liens
 - Condo Assessments

Schedule B-I (continued)

- Requirements for policy issuance:
 - Disclosure of all parties to the transaction and matters affecting the property
 - Lien Searches
 - County searches
 - State searches

Schedule B-II

- “Standard” Exceptions:
 - Gap
 - Survey
 - Parties in possession
 - “Rights of the following tenants, as tenants only, pursuant to written leases, without rights of first refusal or options to purchase the property”
 - Mechanic’s liens
 - Additional taxes for future (re)assessments
 - Acreage
 - Varies per transaction and jurisdiction
 - Additional standard exceptions appearing:
 - Taxes/levies not shown by public records
 - Possible unfiled local municipal claims
 - Easements not shown by public records

Schedule B-II (continued)

□ “Property Specific” Exceptions

■ Types, to name a few:

- Recorded easements
- Condominium declarations
- Development plans
- Utility easements
- Rights of way
- Leases
- Mineral leases
- Varies per transaction and jurisdiction

Schedule B-II (continued)

- Which documents do we need to see?
 - Can you tell what the exception is for?
 - Do you have a survey?
- What are we reviewing exceptions for?
 - Risk to lien priority
 - Potential costs to borrower/lender
 - Potential negative impact
 - Other adverse conditions (e.g. restrictions on use)

Endorsements

□ Common Endorsements

- **ALTA 6: Variable Rate**

- **ALTA 8.1/8.2: Environmental Lien**

- **ALTA 9: Comprehensive - now several variations available (restrictions, encroachments, minerals, etc.)**

- **ALTA 14-06(A): Future Advance (Construction)**

- **ALTA 4: Condominium**

Endorsements (continued)

- Changes to the ALTA 9 Endorsement
 - Added definitions (Covenant, Improvement)
 - Narrower coverage-violation vs existence of Covenants
 - Separated minerals (availability varies)
 - Separated private rights (availability varies)
 - Removed encroachments coverage from some forms

- So what endorsements do we need?
 - ALTA 9 in some variation, possibly in combination with ALTA 9.6 (private rights), ALTA 35 options (minerals), ALTA 28.1 (encroachments)
 - ALTA 6 (variable rate)
 - ALTA 8.1/8.2 (environmental lien)

Endorsements (continued)

- “Exotic” Endorsements:
 - ALTA 11: Mortgage Modification
 - ALTA 12: Aggregate
 - ALTA 13.1-06: Leasehold Loan
 - ALTA 17: Access/Entry
 - ALTA 18/18.1: Single Tax Parcel/Multiple Tax Parcel
 - ALTA 22: Location
 - ALTA 25-06: Legal same as survey
 - ALTA 32: Construction Loan – Loss of Priority

- Certain states issue their own form policy endorsements—ask for ALTA equivalents

Best Practices

- ❑ Confirm title status and order early
- ❑ Communicate transaction to title; provide prior policies, existing survey, purchase agreement, transactional details, required endorsements
- ❑ Surveys – determine need and order early
- ❑ Consider the specifics of this transaction and its jurisdiction – will you need closing and funding?
- ❑ Closing Protection/Authorized Agent letters
 - Insures against malfeasance and negligence of Agent
- ❑ Executed Instruction Letters
- ❑ Exception documents
 - always obtain copies - let title know when ordering

Best Practices, continued

□ Settlement Statements

- Drafts as far ahead of closing as possible
- Double check numbers for all parties
- Payoffs of existing liens (borrower or seller)
- Copies of all disbursements

□ Marked-up or pro-forma commitment

- Drafts as far ahead of closing as possible
- Verify policy amounts and insured parties
- Verify approved remaining exceptions
- Verify lien position

Post-Closing

- ❑ What do you do with the final policy?
 - Confirm it meets requirements from closing instructions/marked commitment/pro forma
 - ❑ Owner as required by transaction (sale/refinance)
 - ❑ Correct insured amount
 - ❑ All recording information filled in
 - ❑ Correct legal description
 - ❑ Only exceptions that were approved remaining
 - ❑ All required endorsements
 - ❑ Additional loan documents (Assignment of Leases and Rents and Fixture Filing; seller financing docs) shown on Schedule B-II as subordinate

Surveys

- ❑ What's a survey?
- ❑ Do I need a survey?
- ❑ ALTA Survey standards
- ❑ Survey review suggestions
- ❑ Optional Items



What is a survey?

- A legal x-ray of the property.
 - Shows more than the eye can see (or google street, although very helpful)
 - Geared toward title issues
- Not an “exact science”
- Can take 3-4 weeks to obtain
 - Cost varies based on scope, location, size of property, etc.
 - May be substantially quicker/cheaper if property was recently surveyed & same surveyor is used

Do I need a survey?

Q: Do I need a survey?

A: Yes.

B: Maybe.

□ Common alternative considerations:

- Existing survey with affidavit of no change acceptable to title company
- Eastern PA (we like to live dangerously here)
- Condominiums, typically

□ Title may consider existing plats, development plans, boundary surveys as alternatives

□ Should survey be certified to the Lender?

- Yes, if newly prepared

Reasons to Obtain a Survey

- ❑ To find out more about the property
 - Verification of legal description
 - ❑ Does it match the Commitment and Deed?
 - ❑ Can it be traced?
 - Where are items affecting the property located?
- ❑ To be able to obtain more comprehensive title insurance
 - Endorsements available only with a survey (land same as survey, contiguity, sometimes ALTA 9)

Survey Standards

- “Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys” jointly established and adopted by the American Land Title Association (ALTA) and the National Society of Professional Surveyors (NSPS), the legal successor organization to the American Congress on Surveying and Mapping (ACSM).
 - General standard of what is required to obtain survey coverage
 - Current standards became effective on 2/23/16 and supersede previous standards

What do the ALTA/NSPS “minimum standard” requirements include?

- ❑ “Performed on the ground”
- ❑ Bearings, distances, etc. for each segment of the boundary
- ❑ Notes regarding discrepancies between record bearings/distances and measured bearings/distances
- ❑ Notes regarding failure of record description to form a “mathematically closed figure”
- ❑ Notes regarding contiguity and overlaps
- ❑ Names of abutting streets
- ❑ Visible evidence of access to abutting streets
- ❑ Platted setback lines on recorded subdivision plats in any recorded document delivered to the surveyor
- ❑ Location of all buildings

What do the ALTA/NSPS “minimum standard” requirements include (cont’d)?

- ❑ Easements in recorded documents delivered to the surveyor
 - Easements that burden and benefit the surveyed Property
 - Observable evidence of easements and/or servitudes not disclosed in record documents, including rights of way and utilities
- ❑ Character and location of all walls, buildings, fences and other observable improvements within five feet of each side of the boundary lines
- ❑ Potential encroachments by or onto adjoining properties or onto streets, easements or setback lines
- ❑ The location of driveways, alleys, sidewalks and other forms of access
- ❑ Cemeteries and burial grounds observed or disclosed in record documents
- ❑ Waterways, bodies of water, streams, etc.

ALTA/NSPS Table A: “Optional Survey Responsibilities and Specifications”

□ Table A “Options” that should be considered:

- 3. Flood zone designation
- 2. Address if disclosed or observed
- 4. Land area
- 6(a). Zoning classification “as provided by the client”
- 6(b). Building setback requirements, height and floor space area restrictions “as provided by the client”
- 7(a). Exterior dimensions of buildings at ground level
- 8. Substantial features observed (in addition to buildings) such as billboards, signs, parking lots, swimming pools, etc.
- 9. Number and type of parking spaces
- 10. Party walls determination as designated by client
- 11. Locations of utilities “existing on or serving the surveyed property.”

Survey Review

- Certification re: 2016 ALTA/NSPS standards and additional required items from Table A
 - Certified to the owner, lender and title company
 - “The plat or map of an ALTA/NSPS Land Title Survey shall bear only the following certification, unaltered, 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 2016 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 of Plat or Map: _____ (Surveyor’s signature, printed name and seal with Registration/License Number).”

Survey Review (cont'd)

- ❑ Does the survey set forth the same legal description (in text paragraphs) as the title report?
- ❑ For a metes & bounds parcel description, check the correspondence of the text description with the labeled segments around the surveyed boundary of the parcel
- ❑ Check carefully for encroachments (across boundaries, onto easements, etc.), both from the property and onto the property
 - Do buildings or other structures extend over property lines or easements?
 - Does the location of any fence, wall, pavement, row of shrubs, etc., indicate that someone at some point may have had a different idea about where the boundary is?
 - Any gaps or overlaps indicated between the property and any adjoining property?

Survey Review (cont'd)

- ❑ Check locations of setback lines and their relation to existing and planned improvements
- ❑ Make sure all of the title commitment easements are shown on the survey and check to see if they impact the property
- ❑ Does the survey show any documented easements that failed to show up on the title commitment?
- ❑ Does the survey show physical evidence of possible easements (rights-of-way, utility installations, etc.) that don't seem to correspond to any documented easement?
- ❑ Check access: Does the property either abut one or more open streets or have easements providing access to the streets used by the property?
- ❑ Read through the "legend" list for unusual references
- ❑ Verify with title that survey is acceptable to provide necessary coverage

In conclusion...

- ❑ Communicate with title early and often
- ❑ Ask for what you require early
- ❑ Verify if a survey is required early
- ❑ Review commitment, mark-up and policies thoroughly
- ❑ Keep in mind title requirements and procedures will change based on transaction, jurisdiction; no two will ever be alike
- ❑ Legal disclaimer: The content herein does not constitute legal advice, and if you need specific legal advice, please consult an attorney.

Questions



Links

- ❑ Fidelity National Title Insurance Company

<http://www.fntic.com/>



- ❑ Chicago National Title Insurance Company

<http://www.ctic.com/>



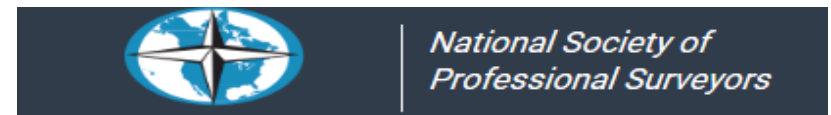
- ❑ American Land Title Association

<http://www.alta.org/>



- ❑ National Society of Professional Surveyors

<http://www.nsps.us.com/>



Thanks!

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