

Purchaser's Title Report Checklist



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This is an excerpt from the thorough essay entitled RECOGNIZING AND CURING TITLE DEFECTS written by Dwight Bickel, which is now available at his TitleAdvisor.com website for download. That essay was written for new lawyers aspiring to represent real estate clients.

- Usually the “title report” is prepared at the request of the real estate broker representing the seller before the property was listed for sale. The title report is prepared by a title insurance company that is offering to insure the proposed title transfer and issue the title insurance policy to the Purchaser. The document is named “Preliminary Commitment for Title Insurance.”
- If no Commitment has been prepared prior to the time that you submit an offer to purchase the property, your real estate broker should attach a Title Condition Addendum, that gives the Purchaser an opportunity to review matters affecting the title and to disapprove matters that are not acceptable to the Purchaser.
- The Commitment is not really a report about the title, because the title company does not promise to disclose everything that might affect the title and does not guaranty the accuracy of its search. The Commitment is a promise that if you purchase this land, it will issue a title insurance policy that insures you are the owner and protects against loss or damage you might suffer if the transfer was defective, if there are later challenges against the title arising prior to your purchase, or if there are recorded matters imposing liens, mortgages, covenants, easements or other matters that affect the land. The Commitment will list paragraphs that are matters that it does not protect you against.

Start your review with Schedule A. That describes the type of policy, the amount of insurance, the proposed Purchasers as the Insureds, and describes the real property using a legal description, never the street address.

- Verify that the title insurance offered by the Commitment is the Homeowner's Policy, not the 2006 Owner's Policy [also known as “standard coverage.”] The standard form residential Purchase and Sale provides that the Seller is obligated to pay the premium for the Purchaser to receive the Homeowner's Policy of Title Insurance. Some sellers, such as new construction builders or sales after foreclosures, will limit their responsibility to pay for the standard coverage basic owner's policy form that is lower premium.
- If the Seller only offers to pay for standard coverage, you should review the document entitled What is Different about the Homeowner's Policy? For most types of property, Dwight Bickel strongly recommends that the extra coverage is more valuable for the types of problems that an owner suffers most often, so the extra premium is worth that extra protection. Purchasers of a condominium apartment do not suffer problems like encroachments, nor other extra risks, so the standard coverage is generally adequate.
- The Purchaser has legal right to choose the type of title insurance coverage, without the consent of the Seller. The Purchase and Sale Agreement states the type of coverage that the Seller is obligated to provide and states that the Seller will pay the premium for that coverage. The Purchaser may upgrade by paying the additional premium.
- Verify the map and the legal description are the property the purchasers intend to buy. The legal description should match the description on the deed that conveyed to the Seller.
- Ensure the purchasers' names are accurately spelled. Dwight Bickel recommends using full middle names to assist the title company to determine that liens filed against similar names are not your names.
- Consider if purchasers will want to hold title differently. Review the document entitled Differences in Common Ways to Hold Title.

- Next review the Schedule B that starts with General Exceptions. General exceptions are matters that the title insurance company does not propose to provide any coverage against loss you might suffer due to these issues. These are the same for every property for the proposed type of policy. These are not related to the parties or the land.

Review Schedule B Special Exceptions. You should understand every single paragraph, whether numbered or called a "Note." These are issues that the title insurance company removes from coverage, or partially limits its coverage against loss you might suffer due to these issues.

- When a Purchaser reviews the title report, your goal is to make sure the exceptions are acceptable to you. A Purchaser can disapprove exceptions that would materially affect the value or would interfere with the Purchaser's intended use of the land. A Seller then may be able to cure that matter to remove the exception.
- The standard form residential Purchase and Sale provides that the Seller is obligated to provide "marketable title." There are complicated court decisions defining what is not marketable title. The agreement states "The following shall not cause the title to be unmarketable: rights, reservations, covenants, conditions and restrictions, presently of record and general to the area; easements and encroachments, not materially affecting the value of or unduly interfering with Buyer's reasonable use of the Property; and reserved oil and/or mining rights."
- The title report will show paragraphs that are matters that will be removed at the closing. You may disregard mortgages and liens against the seller, that are paid by the escrow agent. Without any action by Purchaser to request it, the escrow agent will be responsible to require the title company to issue a policy that does not show notes or exceptions related to the Seller. The escrow agent will be required by your purchase and sale agreement and by the title company to pay liens and mortgages due from the Seller. The escrow agent will also pay the amount of assessments or dues that are related to the past before your purchase.
- Review all covenants, restrictions, easements and agreements thoroughly. You cannot rely on the description in the exception paragraph. The source document will be provided by the title company without a fee. The title reports often have a hyperlink for documents referenced in the exception paragraph. The exception paragraph removes coverage for loss or damage due to everything that is disclosed by that recorded document, even if not described in the exception.
- Think carefully about how the burdens and limitations disclosed upon recorded documents will affect your use of the property. Think about your future intended plans. You should presume that limitations and requirements disclosed by covenants are enforceable. The Homeowner's Policy provides protection against many types of loss, such as being forced to remedy a violation of covenants, even if the document that creates the limitation upon the land is listed as an exception.
- Carefully review the plat maps that are referenced in the exception paragraph. The exception paragraph broadly removes coverage for loss or damage caused by the burden of any easement that is disclosed on that map, even though not a numbered exception.
- If one of the Purchasers is not yet divorced, even if the dissolution action is pending, the Purchaser will need a Stipulation in that divorce or a deed by the other party. A Property Settlement Agreement is not binding until the Decree. Sometimes a letter from an attorney will be relied upon by the title company. The other party may be asked to provide a direct assurance or instruction to the escrow agent that states no claim against the funds used by the Purchaser to close the transaction.
- If one of the Purchasers has filed for bankruptcy, and that is not yet fully closed, the title company will require additional documentation, depending upon the bankruptcy type. Typically no bankruptcy Order is required to authorize Purchasers to acquire new property. Further, the title company and a new lender will require proof of the source of funds used for the purchase was acquired after the bankruptcy was filed.
- Look for judgments and liens that the title report shows may affect the Purchasers upon closing. These might attach as liens, but usually the title company will insure the lien of the new lender is first priority based upon "purchase money priority" theory.

- If the title report has a paragraph that there are “Numerous matters with similar names,” that means there are many judgments or liens found. The title company will require an identity affidavit from the Purchasers to provide information to show those are different people.
- Identify assessments that should be paid by seller; not assumed. In our area, typically assessments are paid current by the Seller and the Purchaser pays the remaining payments.
- The title report may show Judgments against the Seller. If the property is the Seller’s home, they are not liens unless recorded, due to Washington Homestead exemption. The Seller is obligated to have those removed as exceptions from the Purchaser’s title insurance policy.
- Ensure there are no exceptions that mention encroachments that are not being solved by the Seller. Often there are known encroachments caused by improvements, but the Purchaser is willing to accept that issue anyway. The exception means that if that becomes an issue with the neighbor, there is no title insurance coverage to compensate for possible costs or loss of land.
- Any easement that burdens your land for the benefit of a neighbor, such as driveways, walking paths, drainfields, or shared wells may need maintenance provisions or new agreements.

ONLY YOU CAN PREVENT WIRE FRAUD STEALING YOUR WIRE TRANSFER!

This warning is not related to the title report checklist. Dwight Bickel wants to make sure you understand the one biggest risk to you related to this transaction. It is wire fraud that can steal your money that you think you are wiring to the escrow agent.

ALWAYS call the Escrow Officer to verify WIRE TRANSFER INSTRUCTIONS before sending your funds!

E-mail transmissions are subject to hacking. You should be very careful about using email related to real property transactions. Fraudsters steal BILLIONS of dollars from Purchasers by tricking them to believe that wiring instructions are coming from the escrow agent, or their real estate broker, after hacking into someone’s email. The fraudster will lurk monitoring messages, then send a message *faking to look like it is from your real estate broker, or from your escrow agent, or maybe even from me*, with new wiring instructions. If you get tricked by that fraud, your purchase money might be forever lost in China or the Ukraine. Seriously, this happens hundreds of times every month.