

Seller'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.”
- Dwight Bickel recommends that a Seller should request a title report before listing the property for sale. If title defects are found, the Seller may need some time to solve those defects. For example, the title report may show an owner that is deceased so a probate may be needed, a prior mortgage that needs to be released, or a lien against the seller that will need negotiation of the amount needed to get it removed. A Purchase & Sale Agreement that requires the Seller to close earlier could be a major problem causing the Seller to fail.
- 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 to the Purchaser that it will issue a title insurance policy insuring that Purchaser. The Commitment will list paragraphs that are matters that will be exceptions to the coverage of that policy.

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

- The typical type of title insurance policy provided for residential transactions is the Homeowner's Policy. The standard form Purchase & Sale Agreement states that the Seller is obligated to pay the premium for the Homeowner's Policy. Some Sellers choose to change the policy type to the 2006 Owner's Policy [also known as “standard coverage”] to reduce the cost to the Seller.
- If the Seller only offers to pay for standard coverage, the Purchaser has the right to upgrade the policy to the Homeowner's form by paying the additional premium.
- 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. The Seller actually is benefitted too because if the Purchaser suffers those types of title problems, it is best for the Purchaser to have reimbursement from the title insurance company rather than to seek damages against the Seller.
- The vested owner should match the Sellers. Any variation between the names on the title report and the proposed Sellers will need to be resolved before the closing.
- If the title report shows a vested owner that is deceased, the title company will require a Lack of Probate Affidavit from an heir, a copy of the Will, if there is one, and may require a probate to appoint a Personal Representative with authority to convey on behalf of the estate. The Seller should contact the title company early to determine the requirements to change the vesting prior to the closing. For high value properties, the title company will also require evidence of the payment of State and sometimes also Federal Estate tax.

- Verify the map and the legal description are the property the Seller intends to buy. The legal description should match the description on the deed that previously conveyed to the Seller. Sometimes a Seller intending to sell only a portion mistakenly conveys all of the property by mistake.

Review the Requirements Section.

- The title companies differ on how they list matters that the Seller is required to do for the proposed sale. The use of this section just started in 2019 and is still evolving. The design of this section is to list matters that the Seller will be required to produce for the closing to be insured. Some title companies instead put those matters in Schedule B Special Exceptions, sometimes numbered exceptions and sometimes called Notes.
- The title report will specify the documentation expected from the Seller to show authority for the vested owner. For example, a single owner may need a quitclaim deed from a spouse, or a former spouse. A corporate owner will need to show a corporate resolution. A trust owner will need to show who is the Trustee and document the authority of the Trustee.
- If one of the Sellers is no longer competent to convey, either a Durable Power of Attorney from that Seller, signed when that Seller was competent, or a legally appointed Guardian will be required for the closing.
- If there has been a divorce, a bankruptcy, or the death of an owner since the Seller acquired this property, the title company may require documentation in order to insure all those with rights to the property now will convey or release their claims.
- If one of the Sellers is involved with pending divorce proceedings, the other spouse will need a Stipulation in that divorce or a deed to release any rights to the land or to the Seller's proceeds. 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 Seller's funds.
- If one of the Sellers 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 the Seller to convey the property.

Review Schedule B Special Exceptions.

- The Seller should review every single paragraph, whether numbered or called a "Note."
- There may be exception paragraphs that disclose title matters that the Purchaser will not agree to accept. In that event, the Seller may be able to solve that issue so the title company will remove that exceptions.
- 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 Seller should focus upon each exception paragraph that is something the Seller must remove before or at the closing, such as mortgages and liens against the seller, that can be paid by Seller's proceeds by the escrow agent.
- Any indication of an improvement that is over a property line will require negotiation with neighbors for easements or boundary agreements

- The Seller should consider uses on the property by neighbors, such as driveways, walking paths, shared wells that the Purchaser's inspection might reveal that could be adverse possession or prescriptive easement claims that are not shown by the public records. If known by the title company, those might be numbered exceptions. The Purchaser might require those to be documented by easements or maintenance agreements.
- The Seller should consider if there has been any improvement upon the property that was completed more recently than 90 days before the closing. Possible mechanic's liens are not required to be recorded for 90 days. If the title company is aware, the title company will require indemnity from the Seller and might also require proof of payment. If a mechanic's lien was recorded, the title company will require its release or a statutory bond to be obtained that will allow that exception to be removed.
- Often the Seller may prefer to negotiate with the person claiming a lien or a judgment to reduce the amount needed for the release. The escrow agent will not do that, and will prejudice the Seller's leverage by disclosing the closing. The Seller should instruct the escrow agent not to contact that lien claimant to ask for a full payoff demand. But the Seller will be required to have that completed so the release is obtained before the closing date.
- 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 may be able to persuade the title company to remove those as exceptions without requiring payment or a Satisfaction of Judgment.
- 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 all Sellers to provide information to show those are different people.
- Identify assessments that should be paid by seller; not assumed by the Purchaser. In our area, typically assessments are paid current by the Seller and the Purchaser pays the remaining payments. The Purchase & Sale Agreement sometimes requires the Seller to pay all future installments too.
- The Seller may be required to solve and remove exceptions that mention encroachments. Often there are known encroachments caused by improvements. Sometimes the Purchaser and new lender will be willing to accept that issue. The Purchase & Sale Agreement states "encroachments, not materially affecting the value of or unduly interfering with Buyer's reasonable use of the Property" are not required to be removed.
- Review covenants, restrictions and easements for potential violations that the Purchaser might require to be cured prior to closing.