



## To Object or Not to Object: An Overview of Exceptions to Title Insurance Coverage

Title insurance is a crucial part of every real estate transaction. It provides protection to a purchaser against defects in the title to a property. Unlike other forms of insurance, which may be renewed or revised upon the policy's expiration, title insurance will cover the insured until the insured no longer owns the property or a new policy is purchased. To ensure maximum coverage and protection of your investment, it is important to read through the title commitment during the due diligence period and iron out any objections before a title policy is issued at closing.

In Texas, title insurance is governed by strict rules, including a promulgated form for title commitments, limiting the changes title companies can make to this form, and setting standard premiums. A title commitment is composed of the following four parts:

- 1) **Schedule A** covers the general "who, what, when, and where" of the transaction, including the effective date of the title commitment (which may be several days or even weeks earlier), the type of policy or policies, the coverage amount(s) and proposed insured(s), the current owner(s) of record and their respective ownership interests in the property, and a legal description of the property;
- 2) **Schedule B** lists the exceptions to the title policy's coverage, including promulgated general exceptions (often called "standard" exceptions) and exceptions specific to the property, such as deed restrictions, restrictive covenants, easements, agreements, certain recorded leases of oil, gas, and other mineral interests, and other documents appearing in the property records which may burden the property;
- 3) **Schedule C** addresses requirements that will need to be met to the satisfaction of the title company prior to closing on the property, including lien(s) on the property requiring release (typically through payoff at closing), furnishing copies of entity documents showing the parties in good standing and having approved the transaction, and any other documentation required by the title company to issue coverage; and
- 4) **Schedule D** covers various other matters, such as the title company's disclosures and estimated premium amounts.

Schedule B of the standard form of title commitment contains numerous standard exceptions. This article will not address all of these standard exceptions but rather will touch on a few that can be modified or removed.

**Survey Exception:** This exception appears as item #2 on Schedule B and broadly excludes from coverage issues relating to any discrepancies, conflicts, shortages in area or boundary lines, or encroachments or overlapping improvements on the property. Upon request, the title company's receipt of a satisfactory survey of the property, and payment of a premium, the title company will reduce exclusion to coverage to issues relating to shortages in area. The premium for this modification is one of the more expensive, but the change affords far greater coverage if boundary line disputes later arise from issues not specifically described elsewhere on Schedule B. It is worth noting that if the survey reveals any actual discrepancies, conflicts, encroachments, or other issues, they will likely be specifically excepted to elsewhere on Schedule B.

**Tax Exception:** This exception appears as item #5 on Schedule B and excludes coverage issues with taxes for a stated calendar year and subsequent years. Although the title company will not be able to substantially alter or remove this exception, the title company can make corrections to the stated calendar year. It is important to ensure that the tax year referenced in this exception is the first calendar year in which there will be a tax bill that is not paid in full at or before closing. Particularly if the transaction occurs over two (2) calendar years, it is important to make sure this remains current so that issues with past due property taxes are not unintentionally excluded from coverage.

**Parties and Tenants in Possession Exception(s):** These exceptions appear under item #10 of Schedule B as one or more items and excludes from coverage issues relating to persons physically occupying the property under a claim of right, such as adverse possession or a leasehold interest. Although a title company may remove the exception to parties in possession from the title commitment, these issues will still be excluded from coverage unless an inspection of the property is conducted to the satisfaction of the title company. However, a purchaser may request removal of the exception to tenants in possession or request that this exception be limited to tenants expressly identified by the title commitment or a rent roll provided by the seller. The title company will often require that the seller execute an affidavit certifying that there are no tenants or, if there are tenants on the property, list such tenants.

**Oil, Gas, Mineral, and Geothermal Interest Exception(s):** These exceptions appear under item #10 in Schedule B as one or more items and excludes from coverage all leases, grants, exceptions, or reservations of mineral and geothermal interests whether recorded in the public records or not and whether listed on the title commitment or not. Although the title company often will not remove the exception to oil, gas, and mineral interests, there are endorsements to the title policy available for purchase which provide some protection from this exception (most notably the T-19.1, T-19.2, and T-19.3 endorsements). As for the geothermal energy exception, a [recent law](#) in Texas has caused this exception to become much more prevalent on title commitments. Some title companies have been willing to remove such exception upon the seller executing an affidavit stating that there has been no geothermal exploration on the property while other title companies have required that this exception remain on the title commitment.

Schedule B will also reference recorded documents specifically affecting the property (and the title company should provide copies of these documents). While there is no standard objection to procure the removal of these exceptions, it is important to review, or have an attorney review, all referenced documents and ensure that each document is current (and has not expired), affects the property (which can often be confirmed by a survey of the property), and burdens the property. Depending on the terms of each document, you may be able to request that the title company limit certain exceptions (for example, limiting an exception to a particular tract it affects if multiple tracts are being purchased). It is also important to request and ensure that all Schedule C items are satisfied on or before the closing, as unsatisfied Schedule C items could become Schedule B items (and excluded from coverage) on the title policy issued at the closing.

As a purchaser, it is important to review, or have an attorney review, the title commitment, object to all objectionable matters on the title commitment, and ensure these matters are removed from the title commitment, as doing so will ultimately provide you with greater coverage. Diligent and careful review also ensures a better understanding of any potential rights, obligations, liabilities, or issues which might impact the use and feasibility of the property.

**For more information, please contact [Andrew Kidda](#).**