



COVER YOUR ASSETS: WHAT ENDORSEMENT IS YOUR TITLE POLICY MISSING?

In a [prior newsletter article](#), I discussed how title insurance coverage can be maximized by reviewing and objecting to certain exceptions to title insurance coverage shown on a title commitment. Although the reduction of title exceptions is one way to expand title insurance coverage, purchasing endorsements to insure otherwise uninsured title risks is an often-overlooked aspect of title review. Endorsements are an effective tool for enhancing title insurance protection and tailoring insurance coverage to specific concerns related to the property. Endorsements, like the Owner's Policy, are issued on promulgated forms, which can be found on the Texas Department of Insurance [website](#). While there are many endorsements covering a broad array of title concerns, below are some of the more applicable endorsements for both improved and unimproved commercial real estate.

Survey Exception Amendment

Unlike the other endorsements discussed herein, the Survey Exception Amendment is a revision to language in the Owner's Policy itself. The Survey Exception Amendment revises the promulgated language in Schedule B, Item 2 of a title commitment, which initially excepts from coverage "Any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements", to read "Shortages in area" only. Such change adds title insurance coverage for any boundary line differing from the insured legal description, gaps or overlaps from adjoining tracts, and improvements encroaching onto and off of the property. To approve this amendment, an underwriter will request a recent survey of the property to review. The underwriter will specifically except to any survey matters noted or depicted on such survey elsewhere in Schedule B, which will not be covered under the Owner's Policy. The Survey Exception Amendment costs an additional fee of 15% of the Owner's Policy premium.

Restrictions, Encroachments, Minerals Endorsement (T-19)

In connection with an Owner's Policy, the T-19 endorsement comes in four forms; T-19.1, T-19.2, T-19.3, and T-19.4 (which applies to energy projects and will not be discussed herein). The T-19.1 endorsement is the most comprehensive endorsement offered under T-19, and as suggested by the name, the T-19.1 endorsement provides enhanced coverage for certain title matters that may arise from (1) restrictions, (2) encroachments, and (3) minerals.

1. Restrictions: T-19.1 insures against loss or damage sustained by (a) a violation of a restriction that extinguishes or invalidates the priority of a mortgage held by the insured,

(b) a violation of a restriction on the property as of the policy date, (c) enforced removal of an improvement on the property resulting from a violation of a setback line as of the policy date, or (d) a notice of a violation, recorded in the public records, of a restriction relating to environmental protection.

2. **Encroachments:** T-19.1 insures against loss or damage sustained by (a) an encroachment of (i) an improvement located on the property onto adjacent land or an easement, which exists as of the policy date or (ii) an improvement located on adjacent land onto the property, which exists as of the policy date, (b) a final court order requiring removal from adjacent land of an encroachment identified in Schedule B of the Owner's Policy, and (c) damage to an improvement located on the property on the policy date that encroaches onto land subject to an easement excepted to in Schedule B of the Owner's Policy, if such damage results from the exercise of the easement holder's right to maintain the easement.
3. **Minerals:** T-19.1, T-19.2, and T-19.3 insure against loss or damage sustained by improvements located on the property on **or after** the policy date (unbuilt improvements as of the policy date are covered), resulting from the future exercise of rights existing as of the policy date to use the surface of the property for mineral exploration. It is worth noting that while the T-19 coverage for restrictions and/or encroachments is not severable from the T-19.1 policy, the mineral coverage is severable in the form of T-19.2 (for commercial property and residential property of 1 acre or less) or T-19.3 (for all property not covered under the T-19.2 endorsement).

It is also important to note that the T-19.1 endorsement will not provide protection for any violation of a restriction or any encroachment that is excepted to in Schedule B of the Owner's Policy (for example, if an Owner's Policy excepts to the violation of a building encroaching into a setback line).

The cost of the T-19.1 endorsement for a non-residential policy is 15% of the Owner's Policy premium, or 10% of the Owner's Policy premium if the Survey Exception Amendment is also purchased. The T-19.2 and T-19.3 endorsements only cost a flat fee of \$50.00. Due to the significant difference in the costs between these endorsements, it is especially important to consult a real estate attorney to discuss whether the added coverage from a T-19.1 endorsement is worth the additional cost.

Access Endorsement (T-23)

Another frequently requested endorsement is the T-23 Access Endorsement, which insures against loss or damage resulting from the property not having vehicular and pedestrian access to and from a named street, road, or highway. To issue this endorsement, the underwriter will typically require a recent survey of the property to ensure that the property does abut the street, road, or highway for which the T-23 endorsement is requested. The underwriter will also require that the property be improved. The T-23 Access Endorsement costs a flat fee of \$50.00 for each street, road, or highway for which it is requested.

Contiguity Endorsement (T-25)

Finally, the T-25 Contiguity Endorsement insures against loss or damage resulting from any gaps, strips, or gores separating two or more insured tracts or parcels. Like the T-23

endorsement, an underwriter will often request a recent survey of the property before issuing a T-25 endorsement. Although this endorsement is only available when the insured property under the Owner's Policy is broken into two or more tracts, the endorsement has been issued to insure contiguity of a parcel to an easement estate (such as an access easement connecting an otherwise landlocked property to a public road). Also like the T-23 endorsement, the T-25 endorsement costs a flat fee of \$50.00 for each boundary insured.

Conclusion

Although some title companies have occasionally suggested certain endorsements to purchasers, the endorsements described above do not automatically accompany an Owner's Policy and must be requested. Likewise, a title company is generally unwilling to discuss the various coverages available under any endorsements or their applicability to your specific property. It is important to consult a real estate attorney to ensure that you are maximizing the title coverage, while also avoiding purchasing any unnecessary or inapplicable endorsements with your Owner's Policy.

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