

Title Insurance Basics

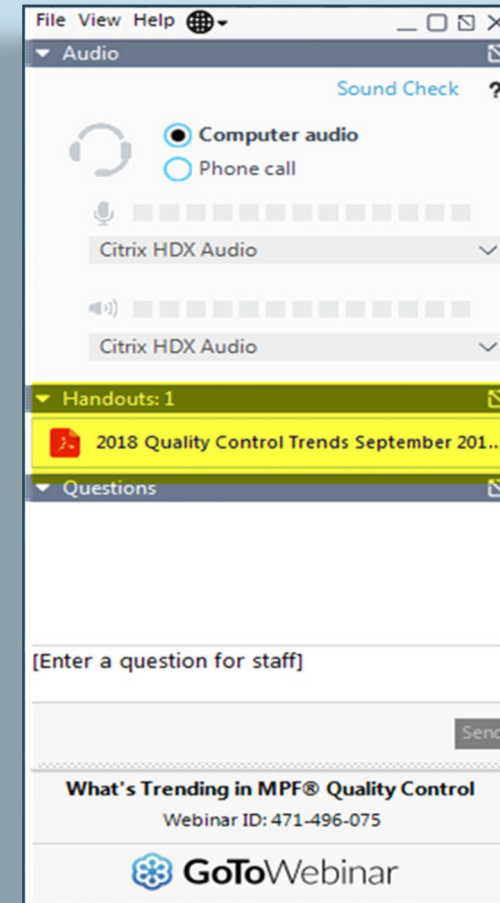
August 29, 2023



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Agenda

- **What is Title Insurance?**
- **How are Lenders and Owners Protected?**
- **Understanding a Title Commitment and Terminology**
- **Understanding a Title Policy**
- **MPF Program Requirements**
- **Endorsements to the Loan Policy**



Knowledge Check

In what year was the first law enacted that required all land sales to be recorded?

- a. 1626
- b. 1702
- c. 1745
- d. 1779

a. 1626

First enacted in the English colony of Virginia, the law required that all land sales be recorded within one year of the date of transfer in the General Court of Jamestown.



Before We Begin

Every state has its own regulations and terminology related to real estate transactions

- There may be information/terminology in this presentation that may not apply to all markets.
- Formed in 1907, the American Land Title Association (ALTA) is an organization responsible for developing many of the title insurance forms used by over 6,000 title insurance agents, abstracters and underwriters across the nation.
- Nearly all large title insurance companies, abstracters and title agents hold ALTA membership.
- There are many affiliated state title associations that work closely with the ALTA.



What is Title Insurance?

Unlike homeowner's or automobile insurance, title insurance protects against things that occurred in the past, not the future.

In most purchase transactions, both a **lender's** and **owner's policy** are issued.

- Borrower's typically pay for the lender's policy.
- It varies from state to state as to who pays for the owner's policy.
 - ✓ It may be negotiable, divided equally, or paid entirely by either the buyer or seller.
- In almost all cases, refinance transactions will only include a lender's policy.

Title insurance protects both real estate **owners** and **lenders** against losses they may experience due to **legal defects**.

Knowledge Check

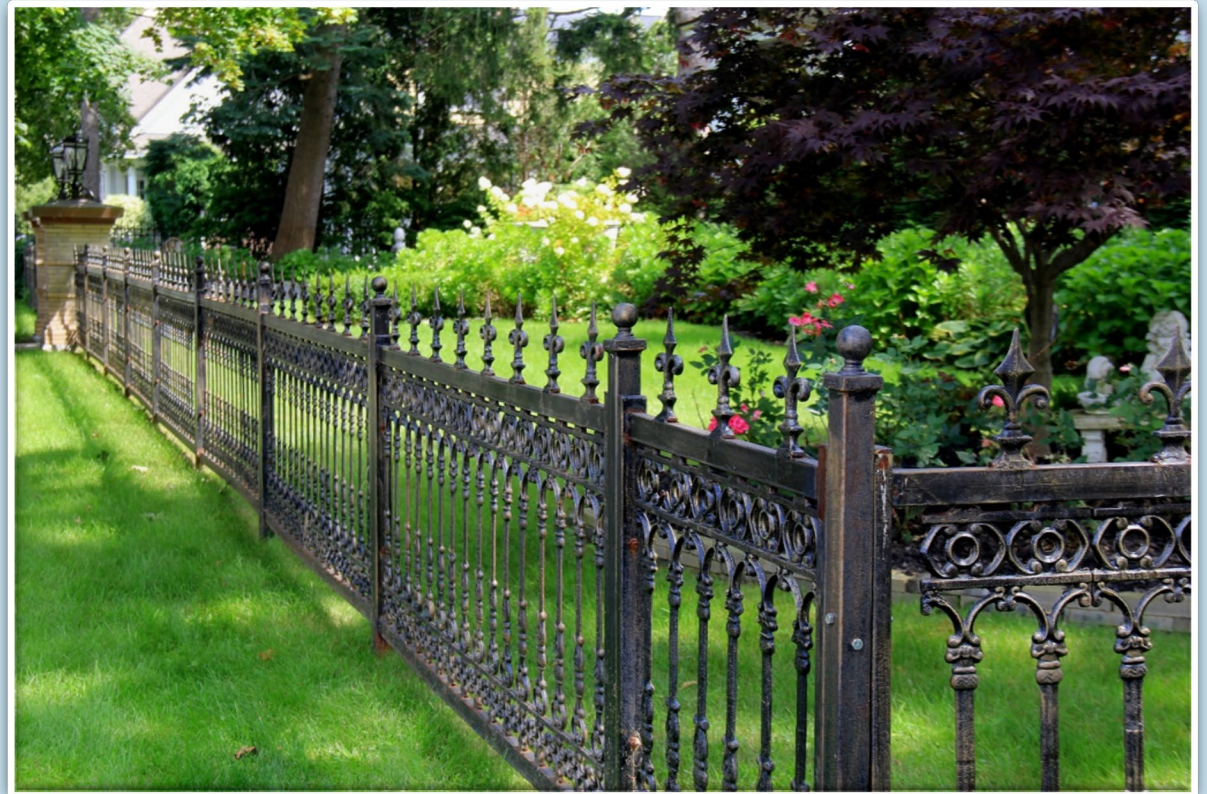
Which of the following could be considered a “legal defect”?

- a. Forgeries
- b. Errors in the Public Records
- c. Fraud
- d. Unknown Liens
- e. Missing Heirs

All of the above can be legal defects.

Others may include:

- Boundary or Survey Disputes
- Encroachments
- Unknown Easements
- Illegal Deeds
- Liens for Child Support
- Judgements



Terminology

- **Adverse Possession**- A manner in which a person in possession of a property owned by someone else is granted valid title when specific criteria are met (typically after a set period of time within the statute of limitations).
- **Appurtenance** – An appendage detached from the main structure that is also included in the property (i.e. additional building).
- **Chain of Title** – The chronological order of conveyance of a parcel of land from the original owner to present owner.
- **Covenants, Conditions and Restrictions (CCRs)** – A set of rules established by either a subdivision or homeowners association.
- **Easement**- A right to use property in a limited manner, such as a utility having a pipe running beneath the ground.
- **Egress** – Refers to the right to exit a property.



Terminology

- **Encroachment** –The extension of a structure from a property across a boundary line and onto an adjoining property.
- **Encumbrance** – A claim, lien or liability attached to a property.
- **Endorsement**- Specific provisions that enhance or restrict title insurance coverage.
- **Exception**- Any item to be excluded from coverage on the final title policy.
- **Grantee**- The entity receiving the property (buyer).
- **Grantor**- The entity in possession of the property/seller or the lending institution.
- **Ingress**- The right to enter a property.
- **Lis Pendens**- Written notice of a pending lawsuit.



Reviewing the Title Commitment

What is a Title Commitment?

A title commitment is the document by which a title insurer discloses to all parties connected with a particular real estate transaction all the liens, defects, burdens, and obligations that affect the subject property.

A title commitment generally outlines five things

1. Who is being insured
2. The amount of insurance
3. What is being insured
4. What is required to insure the title
5. What is not insured

Title Searches

Which of the following would not be reviewed for a title search/title commitment?

- a. Public Records
- b. Real Estate Tax Records
- c. IRS Transcripts
- d. Property or Deed Restrictions
- e. Credit History

Both c. and e. are not part of a title search.



In addition to public records, real estate tax records and property/deed restrictions, title searches also include information on such items as special assessments, encroachments, and easements.

Title Commitment Breakdown Schedule A

1. **Commitment Date:** the date and time through which the public records have been searched.
 - Any matters appearing in the public records after this date are not covered by the commitment.
2. **Proposed policies to be issued:**
Owner's Policy in the name of the purchaser
The amount of the policy is the purchase price.
3. **Loan Policy** in the name of the purchaser's/owner's lender
The amount of the policy is the loan amount.
4. **Who is the current owner(s) of record?**
5. **Legal description of the property**

Transaction Identification Data for reference only:

Issuing Agent:
Issuing Office:
ALTA® Universal ID:
Loan ID Number:
Commitment Number:
Issuing Office File Number:
Property Address: 742 Evergreen Terrace Springfield, [State]

SCHEDULE A

1. Commitment Date: November 1, 2017 at 8:00AM

2. Policy to be issued:

(a) 2006 ALTA® Owner's Policy

Proposed Insured: **Wendy L. Buyer**

Proposed Policy Amount: **\$250,000**

(b) 2006 ALTA® Loan Policy

Proposed Insured:

Springfield Bank and Trust

Proposed Policy Amount: **\$200,000**

3. The estate or interest in the Land described or referred to in this Commitment is: **Fee Simple.**

4. Title to the estate or interest in the Land is at the Commitment Date vested in:

Joseph Sellers, a single individual

5. The Land is described as follows:

Lot 3 of Crazy Acres Estates, according to the recorded plat thereof. Said land lying and being in the City of Springfield, County of Springfield, and State of [State].

Schedule B, Part I

Explains what **requirements** must be met for the title insurer to issue the policies called for in Schedule A.

1. Notify the insurer of changes in the transaction.
2. Honor contractual amounts for the purchase price and loan amount.
3. Pay premiums and fees.
4. Lists documents that must be supplied to create an insurable interest in the real estate.
Typically a deed and mortgage/deed of trust



SCHEDULE B, PART I

Requirements

All of the following Requirements must be met:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company.
4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public

A. Warranty Deed from **Joseph Sellers, a single individual to Wendy L. Buyer, a single individual**

B. Mortgage from **Wendy L. Buyer, a single individual to Springfield Bank and Trust securing the principal amount of \$200,000.**

Schedule B, Part II

Lists items that affect the subject real estate that are not covered by the title policy.

1. This refers to items that appear in the public records after the commitment date and issuance of the policy (the gap).

- Typically cleared by the execution of an ALTA Owner's or Seller's Statement*.

2. Boundary line problems

- Can be removed by providing a current survey of the property.
- In many states, this exception will be deleted for a **loan policy** covering a 1-4 family residence without a survey.



SCHEDULE B, PART II
Exceptions

THIS COMMITMENT DOES NOT REPUBLISH ANY COVENANT, CONDITION, RESTRICTION, OR LIMITATION CONTAINED IN ANY DOCUMENT REFERRED TO IN THIS COMMITMENT TO THE EXTENT THAT THE SPECIFIC COVENANT, CONDITION, RESTRICTION, OR LIMITATION VIOLATES STATE OR FEDERAL LAW BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN.

The Policy will not insure against loss or damage resulting from the terms and provisions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I "Requirements" are met.
2. Any discrepancies or conflicts in boundary lines, any shortages in area, or any encroachment or overlapping of improvements.

*May go by a different name depending upon the location.

Schedule B, Part II (continued)

3. Parties in Possession

- ALTA Statement*, Survey

4. Unrecorded Easements

- ALTA Statement, Survey

5. Construction or Mechanic's Liens

- ALTA Statement or Construction Lien and Possession Affidavit*, Lien Waivers

6. Special Assessments

- Statement from municipality that nothing is due or confirmed amount with evidence of payment.

7. Deferred Charges

- Same as number six

8. Future Taxes

- Non-payment of future taxes is never insured.



3. Any facts, rights, interests or claims which are not shown by the public record but which could be ascertained by an accurate survey of the land or by making inquiry of persons in possession thereof.



4. Easements or claims thereof, which are not shown by the public record.



5. Any lien or right to lien for services, labor, or material imposed by law and not shown by the public record.



6. The lien of special taxes or assessments, if any.



7. Deferred charges, if any, for mains, laterals and connections with respect to sewer and water service.



8. Taxes, general and special for the year 2018 and subsequent years, not yet due and payable.

*May be referred to by a different name depending upon the location.

Schedule B, Part II (continued)

The following exceptions apply to the specific parcel of real estate:

- | | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 9. Delinquent Taxes <ul style="list-style-type: none">• Pay the taxes due! | → | 9. Delinquent taxes for the year 2017 in the amount of \$467.32, exclusive of interest and penalties. |
| 10. Homeowner's or condo association dues, fees <ul style="list-style-type: none">• Letter from the association that nothing is due or that amounts are paid up to the date of closing. | → | 10. Dues, Fees or Assessments, if any, payable to Crazy Acres Estates Homeowners' Association. |
| 11. Mortgage(s) <ul style="list-style-type: none">• Released by recording a release or satisfaction of mortgage. | → | 11. Mortgage from Joseph Sellers to Loansmart Mortgage Company for the originally stated amount of \$150,000.00 recorded in the Office of the Register of Deeds for Springfield County, [State] on April 1, 2015 in Volume "782" of Records, Pages 56-68, Document Number 678123. |
| 12. Federal Tax Lien <ul style="list-style-type: none">• Recording of a "Release of Federal Tax Lien". | → | 12. Federal Tax Lien in the amount of \$2,222.22 filed by the United States of America against Joseph Sellers 742 Evergreen Terrace, Springfield [State], and recorded in the Office of the Register of Deeds for Springfield County, [State] on October 31, 2016 in Volume "801" of Records, Page 123, Document Number 695897, exclusive of interest and penalties. |
| 13. State Tax Lien <ul style="list-style-type: none">• Recording of a "Release of State Tax Lien". | → | 13. State Tax Lien Number 16-000839273 filed by the State of [State] against Joseph Sellers 742 Evergreen Terrace, Springfield, [State], and docketed in the Circuit Court for Springfield County, [State] on November 18, 2016 for \$1,111.11, exclusive of interest and penalties. |
| 14. Money Judgment <ul style="list-style-type: none">• Filing of a "Satisfaction of Judgment" document. | → | 14. Judgment docketed in the Circuit Court Civil Division for Springfield County, [State] on December 1, 2016, Case Number 2016-CV-1313, against Joseph Sellers 742 Evergreen Terrace, Springfield, [State], in favor of Ace Supply 101 Maple Street, Springfield, [State] for \$2,549.00 Lionel Hutz , attorney for judgment creditor. |

Schedule B, Part II (continued)

These three exceptions are matters that “run with the land” and are not removed except in highly unusual cases:

15. Restrictive covenants

- What’s allowed to be built on the property and the use of the property.



15. Covenants and Restrictions contained in an instrument recorded in the Office of the Register of Deeds for Springfield County, [State] on January 8, 1976 in Volume “345” of Records, Pages 333-347, Document Number 205876.



16. Building setback line of 25 feet from Evergreen Terrace, as delineated on the recorded plat of said subdivision.

16. Building set-back lines

- Designates the distance that improvements to the property must be from lot lines.



17. Easement for utilities granted Springfield Electric Power Company and Springfield Telephone Company recorded in the Office of the Register of Deeds for Springfield County, [State] on February 14, 1976 in Volume “348” of Records, Pages 222-225, Document Number 206999. Affects the east 5 feet of the within described premises.

17. Utility Easement

- Gives a utility company or municipality the right to use a portion of the real estate for the installation and maintenance of facilities necessary to provide services such as electricity, telephone, cable, internet, sewer and water.
- Fannie Mae’s guides state that if underground, easements should not run under any buildings and if over ground, they shouldn’t be less than 12 feet from the property.

Schedule B, Part II (continued)

The last two exceptions are matters that have been disclosed by a prior survey:

18. Encroachment of an improvement onto a neighboring property

- Stays on the loan policy but sometimes insured over if minor, or on a case by case basis.
- May be removed upon presentation of evidence that the encroachment no longer exists.



18. Encroachment upon the premises to the north to the maximum extent of 0.3 feet by shed appurtenant to the insured premises as disclosed by survey number 42584 dated August 5, 2014 by Rodney Chain, surveyor.



19. Rights of the adjoining owners in so much of the premises described in Schedule A hereof which lies north of the wire fence due to the fact that said fence is not on the boundary line, but is located wholly on the premises described in Schedule A hereof, to the maximum extent of 0.4 feet from the boundary line, as disclosed by survey number 42584, dated August 5, 2014 by Rodney Chain, surveyor.

19. Fence not on boundary line

- This is a common issue when adjoining owners over time accrue rights to that part of the subject property which is on their side of the fence.
- Handled similarly to #18 above.

What about Surveys?

Why do many title companies give the lender survey coverage without a survey?

- Usually the survey coverage only impacts the owner as they are typically responsible should survey issues arise.
- The lender's policy is only called upon if a lender repossesses the property.
- The risk to the title company is minimal and the lender's risk is even less.
 - ✓ If no survey is provided and coverage is not provided, the property owner is typically the party at risk.



Clearing Old Liens and Exceptions

Liens sometimes continue to appear even when paid off through a previous transaction

- Releases/satisfactions many not have been recorded.
- Must be cleared by obtaining a [release/satisfaction](#) or a [hold harmless letter](#).
- Hold harmless letters are obtained through the title underwriter who issued a title insurance policy subsequent to paying off the lien(s) still showing of record.

Contact the title company if not certain about how to handle specific exceptions

- A “marked-up” commitment may be provided to illustrate what exceptions will be covered or has been cleared.

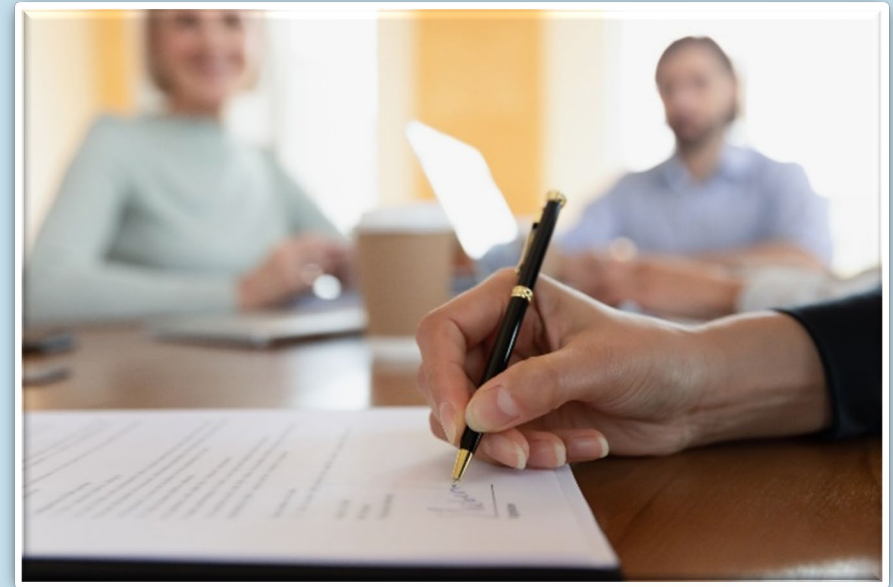


Affidavits at Closing

Usually signed by sellers, buyers and/or owners at closing, the **ALTA Owner's or Seller's Statement (or similar)** provides written assurances that that certain situations do not exist that could impact the property.

Some attestations include:

- There has been no unpaid construction or improvements in the last six months that could result in a mechanic's lien.
- No other liens exist besides those listed on the commitment.
- HOA, management fees are fully paid.
- No unrecorded contracts, leases, or easements.
- Purchaser certifies that a current survey was not supplied (if applicable).



Title Searches

Which of the following are hidden items that a title search/commitment may not reveal?

- a. Fraud
- b. Forgery
- c. Incorrectly stated marital status
- d. Clerical errors in the public records
- e. Issues arising from identical names

All of the above are possible issues that are not always discoverable through a title search.



The Title Policy

Example of a Loan Policy

Schedule A

- Amount of insurance
- Date of the policy
- Name of the insured lender
- Fee simple? Leasehold?
- Who holds title?
- Details about the recorded mortgage
- Legal description of the property

ALTA Loan Policy
Adopted 6-17-06

SCHEDULE A

Name and Address of Title Insurance Company: XYZ Title Insurance Company

Policy No.: SPECIMEN

Address Reference: 742 Evergreen Terrace Springfield, [State]

Amount of Insurance: \$200,000.00 ✓

Date of Policy: November 17, 2017 at 8:00 a.m. ✓

1. Name of Insured: Springfield Bank ✓

2. The estate or interest in the Land that is encumbered by the Insured Mortgage is: Fee Simple ✓

3. Title is vested in: Wendy L. Buyer ✓

4. The Insured Mortgage and its assignments, if any, are described as follows:

Mortgage executed by Wendy L. Buyer, a single person to Springfield Bank in the originally stated amount of \$200,000.00 dated November 15, 2017 and recorded in the office of the Register of Deeds for Springfield County, [State] on November 16, 2017 in Volume "835" of Records, pages 94-112, Document Number 699998. ✓

5. The Land referred to in this policy is described as follows:

Lot 3 of Crazy Acres Estates, according to the recorded plat thereof. Said land lying and being in the City of Springfield, County of Springfield, and State of [State]. ✓

Schedule B, Part I

Lists items that were not cleared at or before the closing of the transaction:

- Subsequent taxes not yet due
- Covenants and restrictions
- Building line
- Utility easement
- Encroachment (shed)
- Wire fence

SCHEDULE B	
Policy No. SPECIMEN	
EXCEPTIONS FROM COVERAGE	
This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:	
PART I	
✓	1. Taxes, general and special for the year 2018 and subsequent years, not yet due and payable. (Tax Key Number SPRING-9999)
✓	2. Covenants and Restrictions contained in an instrument recorded in the Office of the Register of Deeds for Springfield County, [State] on January 8, 1976 in Volume "345" of Records, Pages 333-347, Document Number 205876.
✓	3. Building setback line of 25 feet from Evergreen Terrace, as delineated on the recorded plat of said subdivision.
✓	4. Easement for utilities granted Springfield Electric Power Company and Springfield Telephone Company recorded in the Office of the Register of Deeds for Springfield County, [State] on February 14, 1976 in Volume "348" of Records, Pages 222-225, Document Number 206999. Affects the east 5 feet of the within described premises.
✓	5. Encroachment upon the premises to the north to the maximum extent of 0.3 feet by shed appurtenant to the insured premises as disclosed by survey number 42584 dated August 5, 2014 by Rodney Chain, surveyor.
✓	6. Rights of the adjoining owners in so much of the premises described in Schedule A hereof which lies north of the wire fence due to the fact that said fence is not on the boundary line, but is located wholly on the premises described in Schedule A hereof, to the maximum extent of 0.4 feet from the boundary line, as disclosed by survey number 42584, dated August 5, 2014 by Rodney Chain, surveyor.

Schedule B, Part II

In the case that there is a subordinate lien on the property, that Mortgage/Deed of Trust would appear in Schedule B, Part II

PART II

In addition to the matters set forth in Part I of this Schedule, the Title is subject to the following matters, and the Company insures against loss or damage sustained in the event that they are not subordinate to the lien of the Insured Mortgage: NONE

MPF Program Requirements

Each mortgage loan must have a paid up lender's title insurance policy, or attorney's title opinion or certificate prior to delivery under the MPF Program.

- Additional liens listed on the mortgaged property must be subordinate.
- Title insurance must protect the Mortgagee up to at least the original principal balance of the mortgage loan.
- The effective date of the policy must be as of or later than the date of recording of the mortgage/deed of trust.
 - ✓ If re-recording of the instrument is required, an endorsement must be obtained showing the re-recording information with first lien position intact.
- Unless a final title policy is issued at settlement, the title insurance binder or commitment must be retained in the mortgage file.
 - ✓ The binder and the final policy must be issued by the same company.

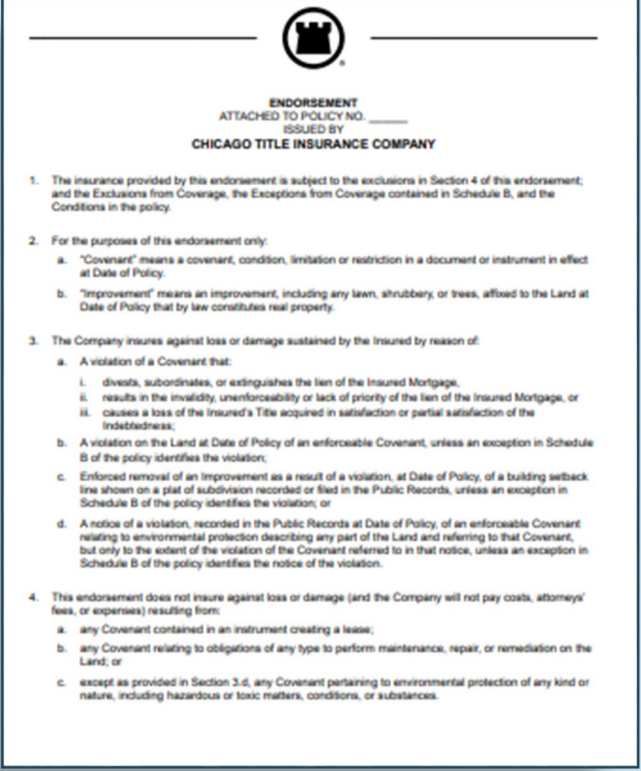
Endorsements

MPF Program Endorsement Requirements

The following special endorsements (or equivalent) must be attached to the ALTA Lender's Policy (when applicable)

- EPA Endorsement
- ALTA Form 9.3-06 (also referred to as ALTA 9 or Comprehensive Endorsement)
- Manufactured Home Endorsement
- Leasehold Property Endorsement
- Condominium Endorsement
- PUD Endorsement

Other form versions that may be acceptable are listed in 9.3.4 of the MPF Traditional Product Guide and B7-2 in the Fannie Mae Selling Guide.



The image shows a sample of an endorsement form from Chicago Title Insurance Company. At the top center is a circular logo featuring a castle. Below the logo, the text reads: "ENDORSEMENT ATTACHED TO POLICY NO. _____ ISSUED BY CHICAGO TITLE INSURANCE COMPANY". The form contains four numbered sections of text, each detailing specific insurance provisions and exclusions. Section 1 states that the insurance is subject to exclusions in Section 4 of the endorsement and the policy. Section 2 defines "Covenant" and "Improvement". Section 3 lists various violations of covenants that are covered, including those related to the insured mortgage, title, and environmental protection. Section 4 lists exclusions, such as covenants in lease instruments, maintenance obligations, and hazardous substances.

ENDORSEMENT
ATTACHED TO POLICY NO. _____
ISSUED BY
CHICAGO TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement, and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.

2. For the purposes of this endorsement only:

a. "Covenant" means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.

b. "Improvement" means an improvement, including any lawn, shrubbery, or trees, affixed to the Land at Date of Policy that by law constitutes real property.

3. The Company insures against loss or damage sustained by the Insured by reason of:

a. A violation of a Covenant that:

i. divests, subordinates, or extinguishes the lien of the Insured Mortgage;

ii. results in the invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage, or

iii. causes a loss of the Insured's Title acquired in satisfaction or partial satisfaction of the Indebtedness;

b. A violation on the Land at Date of Policy of an enforceable Covenant, unless an exception in Schedule B of the policy identifies the violation;

c. Enforced removal of an Improvement as a result of a violation, at Date of Policy, of a building setback line shown on a plat of subdivision recorded or filed in the Public Records, unless an exception in Schedule B of the policy identifies the violation; or

d. A notice of a violation, recorded in the Public Records at Date of Policy, of an enforceable Covenant relating to environmental protection describing any part of the Land and referring to that Covenant, but only to the extent of the violation of the Covenant referred to in that notice, unless an exception in Schedule B of the policy identifies the notice of the violation.

4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:

a. any Covenant contained in an instrument creating a lease;

b. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land; or

c. except as provided in Section 3.d, any Covenant pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances.

For illustration purposes only.

MPF Program Endorsement Requirements

On or after January 1, 2024 title policies must be written on one of the following forms:

- The **2021 ALTA** Loan Policy
- An ALTA short form if it provides coverage equivalent to the 2021 ALTA Loan Policy.
- In states where the standard ALTA forms of coverage are by law or regulation not used, the widely accepted state standard or short form that provides the same coverage as the 2021 ALTA loan form is permitted.
- Prior to January 1, **ALTA 2006** forms or their equivalent should be used.



Other Common Endorsements

Date Down Endorsements

- Changes the effective date of the lender's title policy.
- Discloses any items recorded after the date of the original policy effective date or from the last change in effective date.
- Used primarily for single-close construction loans or when a mortgage may have to be re-recorded.



Minor Impediments to Title

**In some cases, final policies can be issued “subject to” some minor items.
Fannie Mae provides a complete list, however here are a few examples:**

- Encroachments of one foot or less on adjoining property by eaves or other overhanging projections or driveways as long as there is at least a 10-foot clearance between the building on the subject property and the property line affected by the encroachment.
- Encroachments on adjoining properties for hedges or removable fences.
- Mutual easement agreements that establish joint driveways or party walls constructed on the subject property as long as future owners have unlimited and unrestricted access to use them.



See Fannie Mae's Selling Guide B7-2-05 for more information.

Summary

- If there's something showing up on title that you are unsure about, contact the title company or issuing attorney for guidance.
- While the chance of a title insurance claim may be rare in many cases, when claims do arise, they can be considerable.
- Title insurance is a small expense compared to the benefit it provides.

MPF Contacts and Resources

MPF Service Center

Email: MPF-Help@FHLBC.com

Hours: 8:30 am to 4:30 pm CST

Phone: (877) 345-2673



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