

TITLE ISSUES

OBTAINING EXTENDED COVERAGE ON AN OWNER'S TITLE INSURANCE POLICY IN THE CHICAGO METROPOLITAN AREA (Counties of Cook, Lake, Kane, McHenry, Will, DeKalb, DuPage & Kendall)

Schedule B of the American Land Title Association (ALTA) Owner's Policy (*revised April 6, 1990; hereafter referred to as the 1990 Owner's Policy*), consists of two parts.

The first part lists five "General Exceptions". These exceptions are "general" because they apply to all property.

The second part lists "Special Exceptions", which apply specifically to the property covered by the policy. These would include recorded mortgages, covenants, real estate taxes, etc.

The five General Exceptions read as follows:

1. Rights or claims of parties in possession not shown by the public records.
2. Encroachments, overlaps, boundary line disputes and any matters which would be disclosed by an accurate inspection and survey of the premises.
3. Easements, or claims of easements, not shown by the public records.
4. Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
5. Taxes or special assessments which are not shown as existing liens by the public records."

These exceptions address issues that are covered by the insuring provisions of the 1990 Policy. However, the normal examination of the record performed by a title insurer preparatory to issuing a title commitment or policy would not discover these off-record matters. Additional documentation is needed to insure against these items.

"Extended Coverage" is a term of art which refers to the deletion of one or more of the General Exceptions from a

1990 Owner's Policy. The exceptions are deleted by an endorsement.

It is important to note that obtaining Extended Coverage may be the first step of a two-step process. If the documentation required to provide Extended Coverage discloses matters which fall within the General Exceptions, e.g., a survey shows an encroachment, the insurer will raise that matter as a Special Exception. Thus, even though Extended Coverage has been given by the insurer, there may still be additional title issues. This is one reason why Extended Coverage documentation should be delivered to the insurer as far in advance of closing as possible.

With Extended Coverage, the insured obtains protection against those items which would be insured against by the 1990 Owner's Policy but for the General Exceptions. This is a significant increase in coverage.

Outlined below are the requirements of Chicago Title to delete each of the General Exceptions.

A. Residential Property

The General Exceptions are not contained in the ALTA Residential Title Insurance Policy (Revised June 1, 1987; hereafter the Residential Policy). This policy applies only to land that is improved with a completed one-to-four family dwelling or a residential condominium unit.

However, with respect to the items covered by the General Exceptions, said policy does not provide the precise coverage of a 1990 Owner's Policy with the General Exceptions deleted. The insuring provisions of the Residential Policy do not insure over a boundary wall or fence which extends onto adjoining land or on to any easement, or which violates a restriction shown on the policy.

Although the Residential Policy does not contain the General Exceptions, in order to obtain the coverage provided under the

policy with respect to the items included within the General Exceptions, the same documentation as outlined below for obtaining Extended Coverage on a 1990 Owners Policy must be furnished.

If an insured has requested the issuance of a 1990 Owner's Policy on residential property (a completed one-to-four family residence or a residential condominium unit) with Extended Coverage, Chicago Title requires a completed ALTA Loan and Extended Coverage Owner's Statement executed by the seller and the buyer.

If, within the last six months, any work which is lienable under the Mechanics Lien Act (770 ILCS 60/0.01 et seq.), has been performed, i.e., the completion of the structure or repairs or alterations to the structure, appropriate owner's statements, contractors statements, and final lien waivers will have to be furnished. There is a charge for examining this documentation. Additionally, indemnification may be required from the seller.

Remember that the work of a surveyor is lienable (770 ILCS 60/1). Thus, if a survey has been done within the last six months, a lien waiver from the surveyor should be furnished.

Note that the ALTA Statement specifically addresses the issue of the property manager's lien (770 ILCS 60/1). Although it is rare that a property manager would be involved with residential property, larger condominiums often utilize management companies.

If contracts have been let but not fully performed so that final statements and waivers are not available, an underwriter at Chicago Title should be contacted immediately to discuss the type of coverage which can be given to the buyer.

Matters disclosed by the ALTA Statement, such as leases, contracts, etc., will be shown as Special Exceptions on the policy.

Although a survey is not required to give Extended Coverage on residential property, if any of the parties to the transaction has a survey in its possession, Chicago Title requires a copy of it. Again, any matters, such as encroachments, building line violations, etc., will be raised as Special Exceptions. Depending on the facts, endorsements may be obtainable with reference to these matters through the payment of an additional risk premium.

There is a no charge for Extended Coverage on policies insuring residential property.

B. Non-Residential Property

For an additional premium, Extended Coverage can be obtained on 1990 Policies covering non-residential property. Non-residential property is all property which is not improved with a completed one-to-four family residence or a residential condominium unit. The requirements to obtain this coverage depend on the type of property being issued.

1. Vacant Property

If the property to be issued is vacant, i.e. no structure is located on the property, Chicago Title must be furnished the following documentation with respect to the General Exception being deleted:

a. General Exceptions 1 and 4

With respect to General Exceptions 1 and 4 (Rights of parties in possession and unrecorded mechanic's lien claims, respectively), an ALTA Statement executed by all parties holding title to the land within the last six months and by the buyer is required. Again, matters disclosed by the statement will be shown as Special Exceptions.

As to unrecorded mechanics liens, the most likely situation is that no contracts have been let (other than perhaps with a surveyor). If contracts have been let, since the land is vacant, it is probable that they have not been completed. As noted above, an underwriter should be consulted as to what coverage over unrecorded mechanics lien claims is available to the buyer.

If the statement discloses unrecorded leases, the description of the leases should be as specific as the buyer (or the buyer's lender, since the ALTA Statement is used for loan policies also) requests. For example, if the buyer asks Chicago Title to describe the length of the leases in its policy, the term of each lease should be shown on the statement. Chicago Title may require that the leases themselves be furnished for our inspection.

b. General Exceptions 2

With respect to General Exception 2 (Survey matters), Chicago Title should be furnished a survey, no more than six months old, made to ALTA Standards or the Joint Illinois Land Survey/Illinois Bar Association Standards. The survey must be certified to Chicago Title. In certain circumstances, an underwriter may approve a survey older than six months if accompanied by an affidavit that there have been no changes in the property since the date of the survey.

As noted above, matters disclosed by the survey will be raised as special exceptions, and may, if approved by an underwriter, be dealt with upon payment of additional risk premiums.

c. General Exceptions 3

With respect to General Exception 3 (Easements not of record), a survey meeting the standards noted above should be furnished.

In addition, "utility letters" addressed to Chicago Title are required from all utility companies serving the area, including electricity, gas, telephone, cable television, water and sewer (the letter re water and sewer will usually come from the municipality where the land is located). These letters indicate whether the entity involved has any easements or other rights in land which are not disclosed by the public records. Be aware that different utility companies serve different parts of the metropolitan area.

Any rights of utilities disclosed by the letters will be raised as Special Exceptions on the policy.

d. General Exceptions 5

With respect to General Exception 5 (taxes and special assessments not of record), Chicago Title usually can obtain, through its internal procedures, the information necessary to delete the exception. In rare instances some additional material may be required.

2. Improved Property

If the property is improved with a non-residential structure, the requirements for obtaining Extended Coverage are essentially the same as for vacant property.

The major difference is that in some cases utility letters may not be necessary. If the land is so substantially covered by improvements that further expansion of existing improvements or the construction of additional improvements appears unlikely, an underwriter may waive the requirement of utility letters.

Also, unlike vacant property, improvements on the land may have been completed within the last six months. As with residential property, appropriate statements and lien waivers should be furnished. If the work is not complete, exceptions will be raised as to liens which may result from the contracts that have been let.

Additionally, the likelihood of such a property manager's lien is obviously greater on non-residential property. The statement should indicate that any property manager has been paid, and an appropriate lien waiver by the manager furnished.

C. Special Procedures Regarding Utility Letters for Property in the City of Chicago

Until very recently, owners obtained utility letters for property in the City of Chicago by applying to the Board of Underground. The Board requested letters from the appropriate utilities and city departments. The Board then delivered the letters to the applicant.

By letter dated January 4, 1993, the Board indicated that it would no longer "...process any utility requests that are not directly related to work involving construction adjacent to or in the Public Way."

In cases where the Board will not supply letters, Chicago Title requires that if utility letters are necessary under the above guidelines for Extended Coverage, letters be obtained from Commonwealth Edison, People's Gas, Illinois Bell, and the appropriate cable company. Because of the increased risk to Chicago Title caused by the inability to obtain letters from the City of Chicago departments, the risk premium for Extended Coverage on policies on property in the city (where utility letters are required) is higher than for comparable property outside the city.

We are soliciting ideas for possible subjects for future *TITLE ISSUES*. If you are interested in submitting ideas for subjects, complete the form below and submit to:

Chicago Title Insurance Company

171 N. Clark Street, ML 04RS

Chicago, Illinois 60601-3294

Attn: Sharon Marszalek, Chicago Metro Marketing

SOLICITATION FOR IDEAS: Subjects for future *TITLE ISSUES*

NAME: _____

DATE: _____

TITLE: _____

COMPANY / FIRM: _____

ADDRESS: _____

TELEPHONE NUMBER: _____

SUBJECT: _____