

# The Title Policy--Covered Risks, Exclusions, and Conditions

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## **What Does Title Insurance “Insure”?**

- **Title is Vested in Named Insured**
- **Title is Free of Liens and Encumbrances**
- **Title is Marketable**
- **Full Legal Use and Access to Property**

## **Title Vested in Named Insured--Chain of Title**

- **Unbroken Chain of Title**
- **Created by Transfer of Title– Deed by Deed**
- **Each Deed is a Written Promise from Grantor to Grantee that is Title Conveyed**

# Encumbrances

- **Monetary and Non-Monetary Encumbrances**
- **Voluntary and Involuntary**

# Encumbrances

- **Monetary:**
  - **Voluntary Liens:**
    - **Mortgages, Equity Loans**
  - **Involuntary Liens:**
    - **Taxes/Assessments, Judgment Liens, Mechanics' Liens**
- **Non-Monetary:**
  - **Restrictions, Easements, Encroachments, Licenses**
    - **Voluntary [Consensual] Liens Created by Contract with Consent of the Owner; and**
    - **Involuntary [Statutory] Liens Created by Law and Affecting the Property Without Consent of the Owner.**

## Legal Use and Access --Survey

- The automatic survey coverage shown below is Covered Risk 2(c) of the ALTA 2006 policies:
- Loss or damage.....by reason of any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjacent land, and encroachments onto the Land of existing improvements located on adjacent land.

## Marketable Title (Different from Insurable Title)

- **Insurable Title: Title that Insurer is Willing to Insure (Risk Analysis).**
- **Insurable is Not the Same as Marketable as Some Insurers may be Willing to take on More Risk**
- **Marketable Title: Higher Standard than Insurable that Turns on the Contractual Rights of the Buyer.**
- **If a Reasonably Prudent Buyer Accepts Title it is Considered Marketable.**
- **However, if a Reasonably Prudent Buyer Objects to Title and Seller Cannot Cure it, and the Buyer is Entitled under State Law to be Released from the Contract Based on “delivery of Marketable Title” Clause, Title is then Unmarketable.**

## **Covered Risks—Title Not Vested in Named Insured**

- **Covered Risk 1**
- **Unbroken Chain of Title**
- **Deed Gaps**
- **Surrogates Court Issues**



## **Covered Risks—Fraud and Capacity**

- **Covered Risk 2**
- **Forgery**
- **Fraud**
- **Undue Influence**
- **Incapacity**
  - **Person who is Mentally Incompetent**
  - **Minor**
  - **Corporation, Unauthorized Under Corporate Bylaws**
  - **Corporation, Given Under Falsified Corporate Resolution**

## **Covered Risks—Authorization and Notarization**

- **Covered Risk 2**
- **Notarizations, Witnesses etc.**
- **Authority to Transfer**
- **Power of Attorney**
  - **Correct Form of Power (State Specific)**
  - **Expiration, Limitations in Power**
  - **Affidavit of Full Force**
  - **Foreign Notarizations (Treaty of The Hague/Apostile)**

## **Covered Risks—Public Record Errors**

- **Covered Risk 2**
- **Improper Recordings and Filings**
- **Misindexed Instruments**
- **Missing Records**
- **Defective Judicial Proceeding**

## **Covered Risks— “Hidden” Issues**

### **Deed Challenged Due to:**

- Execution Under Fraud, Undue Influence or Duress**
- Defective Judicial Proceedings**
  - Service of Process Issues**
  - Failure to Name Proper Parties**
  - Actions Beyond Scope of Court Order**

## **Covered Risks—Other**

- **Taxes (Covered Risk 2(b))**
- **Improper Recordings and Filings**
- **Misindexed Instruments**
- **Missing Records**
- **Defective Judicial Proceeding**

## **Covered Risks—Other**

- **Unmarketable Title (Covered Risk 3)**
- **Use and Access to Land (Covered Risk 2(c))**
- **Eminent Domain (Covered Risk 7)**
- **Public Records Gap Period (Covered Risk 10)**

## **Exclusions from Coverage (Exclusion 1(a))**

- **Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to**
  - (i) the occupancy, use, or enjoyment of the Land;**
  - (ii) the character, dimensions, or location of any improvement erected on the Land;**
  - (iii) the subdivision of land; or**
  - (iv) environmental protection; or the effect of any violation of these laws, ordinances, or governmental regulations.**
- **Does not modify or limit the coverage provided under Covered Risk 5.**
- **State of Facts vs. Enforcement of Violation**

## **Exclusions from Coverage (Exclusions 1(b) and 2)**

- **Any Governmental Police Power.**
- **This Exclusion does not modify or limit the coverage provided under Covered Risk 6.**
- **Rights of Eminent Domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.**
- **Power vs. Exercise of that Power**



## **Title Policy—Exclusions from Coverage (Exclusion 3)**

**Defects, liens, encumbrances, adverse claims, or other matters**

- **Created, suffered, assumed, or agreed to by the Insured Claimant  
(Acts of the Insured)**
- **Not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy  
(Knowledge of the Insured)**
- **Resulting in no loss or damage to the Insured Claimant**
- **Attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10)**

# **Title Policy—Conditions and Stipulations**

- **Continuation of Coverage (Condition 2)**
- **Timely Notification of Claim (Condition 3)**
- **Defense and Prosecution of Claim (Condition 5)**
- **No Duty to Appeal**
- **Full Payment Terminates the Policy (Condition 7)**

# **Title Policy—Conditions and Stipulations**

- **Non-Monetary Cures to Resolve Claims (Condition 9)**
- **Payment Reduces Coverage (Condition 10)**
- **Non-Cumulative Liability--Mortgage Policy Reduction (Condition 11)**
- **Right to Settle with Anyone (Condition 13)**

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