

TITLE REVIEW

The Basics

March 2018

Otten, Johnson, Robinson, Neff & Ragonetti, P.C.
950 17th Street, Suite 1600
Denver, Colorado 80202

Amanda S. Greenberg agreenberg@ottenjohnson.com

TITLE INSURANCE REVIEW

A. Title Insurance Overview

1. Basic Terms

- (a) Title commitment – Commits to issue a title insurance policy upon satisfaction of certain requirements, and provides that such policy will be subject to certain exclusions and exceptions from coverage.
- (b) Preliminary title report (sometimes referred to as a “Prelim”) - Most commonly issued in California and Oregon and, unlike a title commitment, a title report does not commit to issue a title insurance policy. It simply reports the ownership of and encumbrances on the property. A policy can still be issued from a title report. However, when using a title report, it is especially useful to obtain a pro forma policy prior to closing.
- (c) Title policy – The insurance policy issued by the title company upon closing and under which a claim for a defect in title can be made by an insured party. Note that it is important to proof the policy when it is received, as they may contain errors or do not provide the coverage the title company had agreed to provide.

2. Types of Policies – ALTA (American Land Title Association) 2006 owner’s and loan title policies are what we typically obtain for every transaction. NOTE: ALTA is going through changes to policy jackets to be effective later in 2018.

3. Policy coverage - The standard language in the jacket for every owner’s policy or loan policy states what is insured by the policy, which includes insurance against loss resulting from:

- (a) Title vested other than as stated;
- (b) Any defect or lien on title (except as otherwise indicated in the policy);
- (c) Unmarketability of title;
- (d) Lack of legal access;
- (e) Violation of laws relating to occupancy, use and enjoyment of the property, location of improvements on the land, subdivision of land or environmental protection *if* notice of the violation is recorded in the public records;
- (f) Exercise of right of eminent domain *if* notice is recorded in the public records;
- (g) Lack of priority of the lien of the insured deed of trust (loan policy only);
- (h) Invalidity of assignment of insured mortgage (loan policy only); and
- (i) In the case of a loan policy, the invalidity of lien of insured mortgage, by reason of avoidance of transfer constituting fraudulent conveyance under bankruptcy laws occurring before the lien was created or resulting from untimely or improper recording.

4. Exclusions from Coverage – In addition to the *Exceptions to Coverage* contained in Schedule B of a title policy, the standard language in jacket for every owner's policy or loan policy *excludes* from coverage under the policy losses resulting from the following:
 - (a) Zoning or other land use matters (unless notice of record);
 - (b) Eminent domain (unless notice of record);
 - (c) Defects caused by the insured or known by the insured and not disclosed to the title company;
 - (d) The insured mortgagee's failure to comply with doing business laws (loan policy only);
 - (e) Unenforceability due to violation of usury laws (loan policy only);
 - (f) Claims under bankruptcy laws that the insured mortgage is a fraudulent conveyance (loan policy only); and
 - (g) Liens for taxes or assessments imposed between the date of the policy and the recording of the insured deed or mortgage.

B. Insured Closing Protection Letter

When the closing of a transaction is handled by a title agent, rather than directly by and through the title insurance underwriter, it is always advisable to obtain an insured closing protection letter ("CPL") from the underwriter. A CPL confirms that the agent is authorized to issue title policies for the underwriter and that the underwriter will stand behind its agent and indemnify the addressee on the CPL against any loss resulting from (i) the agent's failure to comply with the addressee's written closing instructions for a specific transaction, or (ii) any errors, theft, dishonesty, fraud or negligence by the agent in handling funds or documents in connection with a specific transaction.

C. Schedule A of the Title Commitment

1. Effective Date – The date through which the county records have been searched by the title company. Should be fairly current (within a couple weeks) and should be updated as the transaction progresses. (In the final policy, the effective date is generally a date and time immediately following the recording of the deed or deed of trust.
2. Policies to be Issued and Proposed Insured – Including (i) owner's policy and/or loan policy, (ii) the form of policy(ies) (e.g. ALTA 2006 loan policy), (iii) the amount(s) of the policies, which should match the final purchase price for an owner's policy and the final loan amount for a loan policy, and (iv) the name(s) of the parties to be shown as insured on such policy(ies), which should be the ultimate purchaser for an owner's policy and the lender, *its successors and/or assigns*, for a loan policy.
3. Estate or Interest in Land – Whether the interest in the property being insured under the policy is a fee interest, a leasehold interest, and/or an easement interest.

4. Title Holder – The name of the record owner of the interest in the property as of the effective date of the commitment. This should match the seller under a purchase contract if issuing an owner’s policy, and should match the borrower under a loan agreement if issuing a loan policy. If the record owner differs from your seller or borrower, a deed from the record owner to the seller or borrower should be required under Schedule B-1.

5. Legal Description – The legal description of the property in the commitment, whether it is a platted lot and block, a condominium with related parking or storage spaces, or a longer “metes and bounds” description, should match (a) the descriptions (both written and depicted) on the survey exactly, (b) the description on the purchase contract, and (c) the deed vesting title in the buyer, and the deed of trust from the borrower. If there are discrepancies between the legal descriptions that cannot be reconciled by the surveyor and the title company, it is good to obtain a “same as survey” endorsement and/or use the historic legal description of record “also described as” the newly surveyed description. If a review of the title exceptions indicates there are one or more easements that benefit the property, it is usually a good idea to ask the title company to include the beneficial rights under such easements in the legal description of the insured property, either as a separate parcel or adding a “together with” paragraph that describes the beneficial easement by its name and recording information.

When the property is described by a metes and bounds description, the surveyor should include (and depict on the survey) a Point of Commencement and a Point of Beginning, and the end of the description should return to the Point of Beginning to confirm that the description closes. When the property is described by a platted description (i.e. a subdivision plat has been recorded against the property to divide the property into lots and blocks), review the plat to confirm that the lot, block and subdivision name and recording information are all correct. Note that the name of the subdivision at the top of the plat may sometimes differ slightly from the name set forth in the dedication language on the plat, and the legal description should use the subdivision name in the dedication.

In Colorado, when a newly created legal description is used for the first time in a recorded instrument, the name and address of the surveyor who created the description must be included at the end of the description pursuant to C.R.S. §38-35-106.5.

In some states, such as California or Illinois, the Assessor’s Parcel Number (“APN”) is included at the end of the legal description.

6. Title Premiums. Like all insurance, the premiums are based on the amount of coverage. In Colorado, title companies generally include in Schedule A the list of premiums that will be charged for each policy to be issued and for each endorsement to the policies; these charges are not listed in commitments in many other states and are not listed in title reports, but can be obtained from the

title company. When a loan policy is issued at the same time as an owner's policy, the title company will only charge a nominal "simultaneous issue rate" for the loan policy, although any extra endorsements the lender obtains will result in additional charges. If a loan is not going to close simultaneously with the closing of the acquisition, but is expected to close shortly thereafter, it is sometimes advisable to pay an additional premium (usually 10%) for the title company to "hold open" the owner's policy until the loan is ready to close, rather than to pay full charge for the loan policy at a subsequent closing.

Schedule A in a title *report* will also include an effective date, the name of the title holder, the type of estate and the legal description, but it will not indicate the policies to be issued or the premiums to be paid.

D. Schedule B-1 of the Title Commitment – Requirements

Schedule B-1 in a title commitment lists those conditions which must be satisfied in order for the title company to issue the title insurance policy. They always include payment of the title company's premiums, as well as requirements for: (1) the release of any existing deeds of trust or other liens; (2) execution and recording of a deed conveying the property to the buyer and/or borrower, if the buyer / borrower does not yet own the property; (3) execution and recording of a deed of trust from the borrower to the public trustee, for the benefit of the lender; (4) evidence of the authority of (i) the seller to execute the deed conveying the property to the buyer, and (ii) the borrower to execute the deed of trust encumbering the property for the benefit of the lender; and (5) delivery of a survey, and (6) execution and delivery of a title affidavit from the seller (in the case of an owner's policy) and the buyer/borrower (in the case of a loan policy), if the standard exceptions relating to survey matters, parties in possession and mechanics' liens are to be deleted. Review the requirements to confirm that they can all be satisfied by one or another of the parties at or before closing.

E. Schedule B-2 of the Title Commitment – Exceptions to Title

Schedule B-2 in a title commitment lists all matters that constitute an encumbrance on the title to the property. If these matters are not disposed of in some manner (such as the release of an existing deed of trust), they will appear in Schedule B of the final title policy. In the final title policy, the title company insures that the title to the property is free and clear of all matters *except* those listed in Schedule B, and there is no insurance provided over the matters listed in Schedule B of the title policy unless the insured obtains some affirmative insurance. (Note that the exceptions to title are contained in Schedule B in a Texas title commitment and in a title report, as neither of these include a Schedule B-2.)

Standard Exceptions:

In addition to exceptions for specific matters affecting title to a property, such as specific recorded easements, restrictive covenants, mineral reservations, etc., all title commitments take exception in Schedule B-2 to the so-called "standard exceptions."

We request that title companies delete or modify the standard exceptions as indicated below. They will usually do so, although they will generally require a survey and an affidavit in order to delete them. Deletion of the standard exceptions is referred to as "Extended Coverage." The standard exceptions include the following:

1. Unrecorded/Survey Matters – Although the language in one title company's commitment may differ slightly from that in another title company's commitment, they all generally include three exceptions that can and should be deleted if the title company receives an acceptable survey or, in some cases, an improvement location certificate or even an older survey together with an affidavit from the property owner that there have been no material changes on the property since the date of the survey. The standard survey exceptions include:
 - (a) Facts, rights, interests or claims not shown by the public records which could be ascertained by an inspection of the land or by inquiring of persons in possession thereof;
 - (b) Easements, liens or encumbrances or claims thereof, not shown by the public records; and
 - (c) Encroachments, discrepancies in boundary lines, shortages in area or other facts which a correct survey would disclose and which are not shown by the public records.

The title company will delete these standard exceptions for survey matters upon receipt of a survey, but they may also add specific exceptions for items affecting title that are shown on the survey, such as specific encroachments of improvements over easements or onto adjacent land, or rights of third parties to use existing trails or pathways on the property. Still, a specific exception for a limited matter is preferable to these broader standard exceptions and endorsements may be obtained insuring over loss relating to such specific survey matters.

2. Mechanics' Liens – The title company should delete the standard exception for mechanics' liens based on an affidavit from the seller and/or the borrower that there has been no recent work done on the property by the respective seller or borrower that has not been paid for yet. If the deed of trust being insured secures a construction loan, however, it may be difficult to get this exception deleted, depending on the priority of mechanics' liens in the state where the property is located. In Colorado, for example, the priority of mechanics' liens dates to the time the first work on the project was done by any party (not just the party filing the lien), including the first set of drawings by an architect. For that reason, Colorado title companies are usually unwilling to completely delete this exception on a policy insuring a construction loan without the parties satisfying a number of additional requirements and paying additional – and very costly – premiums. Ask the title company what is available and what will be required in order to obtain coverage.

3. Subsequent Matters (Gap) – The title company should delete from the final title policy the exception in the commitment for matters appearing of record between the effective date of the commitment and the date of the policy. This period is called the “gap” and deletion of this exception is often referred to as “gap coverage.” A title company may delete this exception from Schedule B of the policy itself or it may provide the coverage by a separate “gap endorsement.” In order to provide this coverage, title companies in some states, but not generally in Colorado, may require that a seller or borrower sign a gap indemnity at closing, confirming that it has not caused anything to be recorded in that gap and indemnifying the title company against any loss if a document does appear of record in the gap.
4. Taxes and Assessments – You should have the title company obtain a tax certificate from the county that evidences that taxes for all prior years have been paid, and this standard exception should be revised to refer only to “Taxes and assessments for [the year of closing] and for subsequent years, a lien not yet due or payable.” Be sure to review the tax certificate (i) to confirm it relates to the property and only the property (if the property is assessed together with other property it will need to be separated by the taxing authority, although this may not be possible until after closing); (ii) to determine whether there are any delinquent taxes owing on the property; (iii) to get an idea of what the future taxes on the property will be; and (iv) to determine if there are any assessments by special districts or other governmental agencies that could lead to unexpected increases in future taxes.
5. Unpatented Mining Claims, Reservations in Patents, Water Rights or Claims or Title to Water – While the title company may include specific exceptions for specific mining or mineral rights or specific ditch rights reserved in a U.S. or state patent, or specific water rights appearing in recorded documents, they should delete the standard exception for unrecorded mining claims, patents or water rights. Most title companies are willing to do this upon request, although some title companies have become more and more reluctant to delete the exception for water rights and, in cases where they will not delete the water exception, a water rights endorsement insuring against any loss resulting from owners of water rights entering the property to remove water may be desired.
6. Parties in Possession – The title company should delete any standard exception for parties in possession. This exception generally relates to tenants under written leases of the property, but could also include anybody who could claim a prescriptive easement or a right of adverse possession (also excepted in the standard survey exceptions). For non-residential properties, if there are tenants on the property, and if the leases are not subordinate by their terms to the lender’s deed of trust or are not made subordinate by separate subordination agreements, then the title company should attach a rent roll and revise this exception to refer to “Rights of tenants, as tenants only, under the leases described in Exhibit A, which leases contain no purchase options or rights of first refusal.” The title company will require an affidavit from the seller or borrower to

confirm that there are no other parties in possession except as specifically listed on the affidavit.

Non-Standard / Specific Exceptions:

After the standard exceptions, a commitment or title report will list as additional exceptions from coverage those specific matters affecting the property that are reflected in the county records or shown on the survey. It is important to confirm whether the exceptions do in fact burden the property and, if so, determine what effect they will have on the property, what obligations they may place on the property owner, and whether they present any risk that needs to be addressed by the parties or insured over by the title company. Reviewing the specific title exception documents is the “meat” of most title reviews, and it is helpful to keep a few things in mind during this process:

First, title companies are not always correct in determining that a document affects a particular property, so check the legal description in the document against the legal description of the property. Similarly, a title company may overlook that a particular agreement has expired by its terms, so check the terms of the document to confirm there is no provision for the expiration or termination of the document upon the occurrence of a certain date or event. The survey is usually helpful in identifying exceptions such as easements that do not affect the property, but sometimes surveyors do not closely review exceptions for items that are not plottable and so may miss the fact that some items do not in fact affect the property or have expired by their terms. Finally, double-check that the exception correctly describes the document, with the correct recording information.

Second, it is important to know the existing or intended use of the property in order to determine whether anything reflected in the title work or on the survey would adversely affect the property. Do the title exceptions include any restrictions that would prohibit the planned use for the property, or any easements that would make planned development difficult?

Third, the risk to a lender resulting from a title defect is somewhat less than the risk to a purchaser/owner, and this lesser degree of risk sometimes allows lenders to obtain affirmative title insurance that title companies are unwilling to provide to owners. Keep in mind, however, that a lender may eventually become the owner, so that risk could eventually increase.

Title exceptions that are specific to a property most often include the following:

7. Patent Reservations – The patent by which the property was first conveyed from the U.S. or state government to a private owner often contains reservations for ditches or canals and/or for the right of a proprietor of a vein or lode of ore to follow that vein or lode into the property.
8. Mineral Reservations / Mineral Leases – Title commitments often take exception for reservations in deeds of all or a portion of the rights to the minerals underlying the surface to the property, or to mineral leases recorded against the property. A

mineral endorsement will insure against any loss resulting from such reservations or leases, although in rural areas where mineral development is increasing, such endorsements are becoming more difficult to obtain, particularly over active mineral leases. In addition, note that Colorado law requires developers to send notice to the owners of mineral rights, advising them of any planned new development.

9. Burdening easements – There often are utility, drainage, slope, access or other easements burdening the property and giving a third party a right to use a portion of the property for the purposes described in the easement. Review the terms of the easement, in particular whether it prohibits construction of improvements within the easement area and whether it terminates upon any set date or occurrence of any particular event. Then locate the easement area on the survey and determine whether any existing improvements encroach over the easement area or whether any planned improvements may encroach over the easement area. (For unimproved land, it is helpful to have the development plan or some other document showing where proposed improvements will be constructed.) Some easements are “blanket” in nature and cover the entire property.
10. Beneficial easements - There may be some easements which benefit the property by, for example, providing access or drainage areas for the property. These easements are usually proper exceptions because they may also place maintenance or other obligations on the owner of the benefited property. They may even be reciprocal easement agreements (REA’s) which provide adjacent property owners with easements across the insured property as well. We often ask the seller or borrower to obtain an estoppel letter from the other parties to the easement agreement, confirming that the easement is in effect, that it has not been amended, and that there are no existing defaults under the terms of the easement agreement. The beneficial easement should be shown on the survey to the extent possible, but if the easement area is large (such as the balance of a shopping center or a lengthy roadway) we usually don’t require that it be fully surveyed since the additional work can be costly and time-consuming. The title company should include the beneficial rights under the easement in Schedule A as part of the insured legal description. The title company will then search the property burdened by the easement and determine if there are any liens that could foreclose out the easement rights or any other matters that would affect the right to use the easement. We also confirm that the easement “runs with the land” and does not need to be specifically assigned to the owner of the benefited property.
11. Covenants, Conditions and Restrictions – “CC&R’s” may be contained in deeds in the chain of title to the property, in declarations (including condominium declarations) recorded against the property by prior owners, in agreements among owners of the property and adjacent properties, in subdivision plats or in other documents of record. Review the terms of the document to determine what obligations it places on the property owner, what restrictions it places on the use

or development of the property and what lien rights other parties may have under the document. Again, we will often require that a seller or a borrower obtain an estoppel from the controlling party under the document – which may be the declarant, an owners' association, a design review board, adjacent property owner(s) or some other party – to confirm that the document is still in effect, that it has not been amended, and that there are no existing defaults or violations under the document.

12. Subdivision, Land Use or Other Governmental Documents – The commitment or title report may take exception for subdivision plats, subdivision improvement agreements, zoning documents such as preliminary or final site plans, and government ordinances placing restrictions on the property or obligations on the property owner. Review these to determine what obligations the property owner may inherit under these documents, including obligations to construct public improvements, dedicate land for public purposes or pay various governmental fees. Also try to confirm that the existing improvements do comply or that the planned improvements will comply with setback, height, density and other development restrictions set forth in any documents of record, as well as any unrecorded ordinances, regulations, plans or other land use documents. Try to obtain a letter from the appropriate governmental authority confirming what obligations remain outstanding under a subdivision improvement agreement, for example, or confirming that the property is in compliance with the land use restrictions.

Title Endorsements:

In most states, there are numerous endorsements to title policies available to owners and lenders that provide additional protection over various risks. (Texas and New Mexico are notable exceptions to this and provide very few endorsements to lenders and even less to owners, but it never hurts to ask.) The costs of the endorsements vary and are sometimes negotiable, and the requirements that the title company may need the parties to satisfy before it agrees issue to certain endorsements may also vary. Weigh the cost and difficulty of obtaining the endorsement against the protection it provides and the risk level the owner or lender is willing to accept in order to determine if the endorsement should be obtained.

By way of limited example only, endorsements on owner's and loan title insurance policies may include:

1. Separate tax parcel – (ALTA 18-06 for one tax parcel or ALTA 18.1-06 for multiple tax parcels, or Colorado 129 - owner's or loan policies.) This endorsement insures that the property is not taxed together with other property.
2. Access (ALTA 17-06 or Colorado 103.7; and ALTA 17.1-06 or Colorado 103.4 - owner's or loan policies.) The ALTA 17 and Colorado 103.7 endorsements insure that the property has legal access directly to a public right of way. The ALTA form 17 is preferable because it also specifically insures that the property

has physical access to the right of way, while the Colorado form simply insures that it “abuts” the right of way. ALTA 17.1 and Colorado 103.4 insure that the property has legal access to a public right of way by means of an access easement.

3. Same as survey (ALTA 25-06 or Colorado 116.1 - owner’s or loan policies.) This endorsement insures that the property described in the title policy is the same as that shown on the survey. This is useful if the property is described by metes and bounds or if there is any question about the legal description or the property boundaries.
4. Contiguity (ALTA 19-06 or Colorado 116.4 - owner’s or loan policies.) If the property is comprised of separate, contiguous parcels, this will insure that the parcels together comprise one contiguous parcel with no gaps or gores.

There are, of course, numerous other endorsements available to owners and lenders. If the title commitment or survey reveals a risk relating to the property that the purchaser or lender is unwilling to take and that is not covered by any other endorsement that the title company has filed with the insurance commission, the title company may be willing to issue either a CLTA Form 110.2 endorsement, which completely insures over a stated exception, or it may also be willing to issue an endorsement that the attorney crafts to cover the specific issue.

F. A Few Notes About Surveys

1. Types of Surveys

- (a) Land Survey Plat – Commonly called a “boundary survey,” this shows property lines, easements of record, the type of monuments set at the property corners and any encroachments or conflicting boundary evidence. A land survey plat does not show improvements on the subject property, except where they are adjacent to the property lines.
- (b) Improvement Survey Plat - A land survey plat which also shows the location of all improvements such as buildings, roads, fences, walls or utilities situated on the property and within five feet of all boundaries of the property, any conflicting boundary evidence or visible encroachments, and all easements and other plottable matters for which recorded evidence is available.
- (c) ALTA/NSPS Land Title Survey – Complies with the specific “Minimum Standard Detail Requirements” of the American Land Title Association and the National Society of Professional Surveyors. These standards can be found on the ALTA website (<http://www.alta.org>). The standards include a “Table A,” listing optional items that can be included in the survey upon request (and payment of the cost for the surveyor’s additional work).

We most often see ALTA/NSPS Land Title Surveys (sometimes just referred to simply as “ALTA’s”) on commercial projects, but any of these three forms is generally acceptable to a title company in order to delete the standard survey exceptions. Some lenders will require an ALTA level survey, but some will accept a lesser form of survey as long as the title company agrees to delete the standard survey exceptions. Some lenders will even accept a subdivision plat of vacant land, a condominium map, or a survey that is several years old, as long as the title company will delete the survey exceptions, and title companies often will agree to do this, but they may require a “survey affidavit” from the property owner confirming that there have been no material changes to the property since the date of the survey or the subdivision plat.

An Improvement Location Certificate, which is a lesser animal, is often used on residential transactions but may also be used in lieu of a survey on commercial property in certain circumstances. If an ILC is all that is provided, ask the title officer if it will be accepted in lieu of a survey for purposes of deleting the standard survey exceptions.

2. Reviewing a Survey

- (a) Legal Description. Legal descriptions will either be metes and bounds descriptions of the property boundary, or they will be platted descriptions, reflecting the recording of a subdivision plat or a condominium map on the property.

- (b) Discrepancies in Legal Descriptions. Compare the printed legal description shown on the survey with the legal description shown in the title commitment or preliminary title report. The legal description set forth in the commitment is initially taken from the current vesting deed and, if it does not match the description on the survey, determine why there are discrepancies. In addition, compare the printed survey legal against the survey drawing of the property. It is typical in metes/bounds descriptions to find typographical errors in the printed legal description, and you should alert the surveyor to any discrepancy. Normally the drawing will be correct since all calls and distances are calculated by CAD software (i.e. the typos normally show up in the re-typed printed description on the survey). Any discrepancies between the printed legal description on the survey, the survey drawing and the title commitment should be resolved, either by correcting the survey, correcting the title commitment, using the vesting legal description “being the same property described as” the survey legal description, or, in some cases, obtaining a corrected vesting deed. A “same as survey” endorsement to the title policy will also insure that the property shown on the survey is the same as that described in the title policy.

If the insured property is going to be platted prior to closing, you can request that the title commitment be revised to include the legal description in its current (as vested – metes/bounds) form TO BE KNOWN AS the new platted lot/block description. The title commitment will then include a requirement for recording the new plat.

- (c) Survey Certification. The survey should be certified to the buyer/borrower, the lender and the title company; if requested, the seller can also be included in the certification. The form of survey certification is important because it tells the surveyor what information needs to be included on the survey. We sometimes use a variation of the form of certification provided in the ALTA/NSPS standards, and always list the specific Table A optional items to be included in the survey. An example of a survey certification is provided, although the new 2016 Minimum Standard Detail Requirements state that the survey shall bear “only the following certification, unaltered,” so it is possible that surveyors will no longer allow any variations to the standard form of certification. Note that the survey standards and form of certification itself can often serve as a checklist for your review of the survey, as they list the items that are to be included on the survey.
- (d) Access. Confirm that the property has both legal access – it is adjacent to a publicly dedicated right of way or it has the right to use an easement that leads to a publicly dedicated right of way – and physical access – there are no physical impediments, including steep grades, that would prevent the use of the right of way.

- (e) Encroachments Onto Or Off Of The Property. Identify any possible encroachments along the perimeter of the property, including buildings, fences, parking spaces or other improvements. Confirm whether the title company will take exception for such encroachments. If so, the title company may be willing to issue an endorsement insuring over loss or forced removal of improvements due to the encroachments. In addition, a purchaser or a lender may require as a condition to closing that an encroachment be removed or that an easement allowing the encroachment be obtained from the adjacent property owner. Be aware of the particular concern raised by fences that are not located on the property line and that could give an adjacent property owner an adverse possession claim.
- (f) Improvement Survey Plat and ALTA/NSPS Land Title Survey review should also include:
- (i) Title Exceptions. The exceptions to title listed in the commitment or title report should be listed again on the survey.
 - (ii) Location of Improvements. Identify all buildings, parking spaces, landscaping, signs, curb cuts, observed evidence of utilities and other improvements shown on the survey.
 - (iii) Table A Items. In reviewing ALTA/NSPS Land Title Surveys, check for the Table A items that you may be requiring. Some items may take the surveyor more time and work to complete and, as a result, may increase the cost of the survey. Ask the surveyor if there are any requirements in the certification that are especially onerous and, if so, you may want to re-evaluate whether the items really need to be included.