

**Title Insurance:** A contract between the Title Insurance Company and the insured party (owner/lender). Insures an estate or interest in real property subject to exceptions shown in the public record. Protects the insured against loss or impairment of title. Unlike other types of insurance, insures the past not the future.

Insures owner and lender against:

- Errors in deeds
- Forgery
- Fraudulent conveyances
- Mistakes in public record
- Errors in estate proceedings
- And many other matters

Also insures the lender as to the:

- Priority of the insured lien
- Validity of the lien
- Enforceability of the lien

In order to provide the above assurances a search of the title on the property must be performed. The public records are searched in the county where the insured property is located - Clerk & Recorder's office, District Court records, County Court records, Bankruptcy Court records and the Public Trustee's office. The documents in the chain of title must be checked carefully for sufficiency (deeds) and as to their effect on the property.

## **Recording Statute:**

Colorado statutes provide that the County Clerk is the official recorder of deeds, thus the title Clerk and Recorder. The method of keeping records and the types of instruments which may be recorded are also set by law (statute).

Along with preserving evidence of deeds and other instruments, the recording statute also gives notice to all the world of transactions dealing with real property, its ownership and encumbrances.

### ***Types of Notice:***

**CONSTRUCTIVE NOTICE** - Legal notice; notice imparted by publication of information in the public record. The records in the Clerk and Records office are open to the public and anyone dealing with real estate is presumed by law to have knowledge of the contents in the recorded instruments.

*Example:* Recorded documents

**ACTUAL NOTICE** - Knowledge of a fact concerning the real property acquired directly through information received or from personal experience.

*Example:* An encroachment shown on a survey;  
Information given to you indicating the existence of a possible lien or defect

**PRESUMPTIVE NOTICE** - Notice that results from information received that would lead a reasonable and prudent person to inquire further as to the existence of some claim that is not of public record.

*Example:* A reference to an interest set out as an exception in a deed.

# **THE TITLE COMMITMENT**

## **Schedule A**

contains information about the transaction. It includes charges, certification date, names of the proposed insureds, current owner and legal description.

## **Schedule B-1**

contains the requirements that the proposed insured must satisfy prior to the issuance of the policy. These include the documents to create the estate to be insured as well as the documents necessary to clear prior liens from the property. These liens may be voluntary liens (liens intentionally created by the debtor, e.g., deed of trust or mortgage) or involuntary liens (liens that attach to the property without the owners consent, e.g., judgment or tax lien).

## **Schedule B-2**

contains exceptions, or other interests over which title insurance may not guarantee priority.

## **EXCEPTIONS TO TITLE**

Those items that appear on schedule B-2 of the commitment and are not insured. These include standard exceptions to title and those exceptions that are specific to the property to be insured.

**STANDARD EXCEPTIONS:**

1. Rights or claims of parties in possession not shown by the public records.
2. Easements, or claims of easements, not shown by the public records.
3. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, and any facts which a correct survey and inspection of the premises would disclose and which are not shown by the public records.
4. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.
5. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.

**Survey Protection:** Delete Standard Exceptions Nos. 2 and 3

**Mechanic's Lien Protection:** Delete Standard Exception No. 4

**Gap Protection:** Delete Standard Exception No. 5

### ***COMMON EXCEPTIONS:***

**Covenant** - An agreement or promise to do or not to do a particular thing. A restrictive covenant is a promise that exists as part of an agreement restricting the use of real property or the kind of buildings that may be erected thereupon. The covenant must "run with the land" in order for the grantor to enforce the covenants against subsequent owners.

**Restrictions** - A limitation, often imposed in a deed or lease, restricting the use of the property.

**Easement** - A limited right or interest in land of another that entitles the holder of the right to some use, privilege or benefit over said land. An easement burdens the land that it passes over. The purpose of the easement should be stated, i.e., view, ingress/egress, utilities, or slope.

**Mineral Reservation** - An interest in the minerals in the land, with or without ownership of the surface land. A right to take minerals or a right to receive a royalty from mineral production.

**Special District** - A limited governmental structure created to provide services in otherwise unincorporated areas or to accomplish a primarily local benefit or improvement. Special districts are usually formed to raise funds or levy taxes.

### ***UNCOMMON EXCEPTIONS***

- Lack of Access
- Marketability of Title

## ENCUMBRANCES

A claim, lien, or right on the title to the real property, held by someone other than the property owner. Encumbrances may be monetary or non-monetary.

The liability may be created by a contract such as a mortgage, or by operation of law, as with a mechanic's lien. The encumbrance, or lien, may be *voluntary* (intentionally created by the debtor such as a deed of trust) or *involuntary* (a lien that attaches to the property without the owners consent, such as a judgment).

## **VOLUNTARY LIENS:**

**Deed of Trust** - A recorded instrument that secures a loan made to the owner of the real property. In Colorado the property is given in trust to the Public Trustee of the County in which the property is located. The Public Trustee acts on behalf of the lender to conduct the foreclosure in the case of a forced sale. In some cases a private trustee is designated (usually in the case of an out of state lender) and the foreclosure is then carried out through the court system.

The parties to the deed of trust are:

- Grantor or debtor who is the first party

- Trustee - party of the second part; holds the property for or acts on behalf of the lender (may be a public or private trustee)

- Grantee or lender - the beneficiary or secured party

After the loan has been paid, the lender requests a Release of Deed of Trust and the trustee then executes the Release of Deed of Trust.

**Mortgage** - A lien upon real property similar to a Deed of Trust, however, there are only two parties to the transaction, the owner of the property or Mortgagor and the secured party or Mortgagee. If there is a default on the loan and the lender is forced to sell the property the foreclosure must be carried out through the court system.

The release of a mortgage is executed by the lender upon payment of the loan.

**Financing Statement** - A security document usually recorded in conjunction with a Deed of Trust in order to perfect the lender's collateral on personal property. It is another method of securing an indebtedness. The filed Financing Statement indicates whether fixtures or personal property are encumbered with a debt. The Financing Statement is filed with the Clerk and Recorder when the collateral is fixtures, crops, oil, gas or minerals and with the Secretary of State for all other collateral.

A Termination of Financing Statement is used to release the debt from the property.

**Property Tax** - Rate or sum of money assessed on a person's property for the support of the government. These include general taxes, special assessments, local improvement districts and other special districts. When the homeowner takes title to the property there is an implied consent to pay the taxes. If the taxes are not paid the property may be sold for taxes. A redemption certificate is issued when the property has been redeemed from the tax sale (when unpaid taxes are paid).

In Colorado, property taxes are paid in arrears (taxes for 2009 are due and payable in 2010). Real estate taxes are always a first lien on the property and are therefore always shown as an exception to title.

## **INVOLUNTARY LIENS:**

**Judgment:** The final decision of a court resolving a dispute and determining the rights and obligations of the parties in a lawsuit. The Judgment becomes a lien on the defendant's property upon recordation of the transcript of judgment in the counties where the defendant owns property or subsequently acquires title to property.

Due to similarities in names, the debtor may or may not be the proposed insured or the present/previous owner. Based on research one of the following procedures is followed.

***Debtor is the proposed insured and/or present/previous owner:***

A Certificate of Satisfaction of Judgment must be obtained from the court and recorded in the county or counties where the insured property is located. The payoff amount will come from the creditor or creditor's attorney. The payoff amount will be collected at closing, the debt is paid and a Creditor's Satisfaction of Judgment will be received. This is taken to the court and a Certificate of Satisfaction is issued by the court.

***Debtor is not the proposed insured or the present/previous owner:***

The requirement for the satisfaction of judgment will be deleted by Land Title.

***Cannot determine if the debtor is the proposed insured or the present/previous owner:***

A self serving affidavit must be signed by the person whose name is similar to the name on the lien and returned to Land Title and we may be able to delete the requirement.

On larger judgments, a Creditor's Affidavit must be signed by the creditor or the creditor's attorney and sent prior to closing. The affidavit must state that after comparing the information sent to the creditor or attorney it has been determined that the person on the commitment is not the same person as the person named on the judgment.

**Federal Tax Lien:** A statutory lien provided by the Internal Revenue Code. The lien attaches to a person's property upon recordation of the Federal Tax Lien in the county or counties where the person owns property or subsequently acquires property.

Due to the similarities in names, the party named on the lien may or may not be the proposed insured or present/previous owner. To help make this determination, obtain the Social Security number of the person whose name matches the name on the lien. Provide this information to Land Title and we may be able to delete the requirement if the number does not match.

***The lien is against the proposed insured or present/previous owner:***

A Release of Federal Tax Lien must be obtained from the IRS. The payoff will be collected at closing.

***Person named on the lien doesn't appear to be the proposed insured or present/previous owner:***

Fill out an application for the Certificate of Non-Attachment of Federal Tax Lien and submit same to the IRS. They will issue a Certificate of Non-Attachment which can be recorded in the county or counties where the subject property is located.

**State Tax Lien:** A statutory lien for taxes due, existing in favor of the State of Colorado upon the property of the person charged with taxes. The lien attaches to the person's property upon recordation of the State Tax Lien in the county or counties where the person owns property.

Similarities in names exist and the person named on the lien may not be the person set out on the commitment. Obtain the Social Security number of the person whose name matches the name on the lien and provide this information to Land Title and we may be able to delete the requirement if the numbers do not match.

***The lien is against the proposed insured or present/ previous owner:***

A Release of State Tax Lien from the Colorado Department of Revenue must be obtained and recorded in the county or counties where the subject property is located.

***Cannot determine if the person named on the lien is the same person as the proposed insured or the present/previous owner:***

A self serving affidavit must be signed by the person whose name is similar to the name on the lien and returned to Land Title and we may be able to delete the requirement.

**Homeowner's Association Lien:** A lien assessed by the Homeowner's Association for non-payment of homeowner's dues.

A Release of Lien must be obtained from the Homeowner's Association. Verify that the legal description on the Release of Lien matches the legal description on the commitment.

**Mechanic's Lien:** A claim created by statute for the purpose of securing priority of payment of the price or value of work performed and materials furnished in construction or repair of a structure that attaches to the land. The lien covers materialsmen, tradesmen and suppliers who furnish services, labor or materials on construction or improvement of property.

Contact the lien claimant or the lien claimant's attorney and obtain the payoff amount for the lien. The Release of Mechanic's Lien signed by the lien claimant will be sent for recording in the appropriate county. Check that the legal description on the release matches the legal description of the subject property.

If the Mechanic's Lien is in dispute, the owner may ask to have a formal escrow set up until the dispute is settled. An escrow agreement equal to one and one half the lien amount will be held by Land Title. This amount covers the lien amount and any costs incurred.

**Lis Pendens:** A pending lawsuit. A Notice of Lis Pendens is recorded to give constructive notice to all persons that the title to a specific piece of property is in litigation.

A Certificate of Dismissal issued by the court and recorded in the county (counties) in which the property is located is necessary to remove this requirement. The payoff amount comes from the attorney for the claimant. When the payoff amount is received, the attorney will provide the Certificate of Dismissal for recording. If an attorney's release is provided, this must be taken to the court and the Certificate of Dismissal will be issued by the court for recording.

## ***NON-MONETARY ENCUMBRANCES:***

**Lease** - An agreement between the owner (lessor or landlord) of the property and the tenant (lessee), whereby the owner relinquishes immediate possession of the property while retaining legal title. The lease remains an encumbrance on the property until the lease is terminated or released, expires by its terms (check for automatic renewals) or the tenant deeds his/her interest under the lease back to the owner.

**Homestead Exemption** - A right to have the property that is occupied as a home exempted from forced sale. Colorado, along with most other states, grants a homestead exemption to a householder (owner of the property) or head of family as to the personal residence that is exempt from the claims of creditors. The Colorado Homestead Act sets the homestead exemption at \$60,000.00. The exemption attaches automatically at the time the owner or owner's family occupies the real property as a home. No recorded instrument is necessary to claim this right. The owner may convey or encumber the property free and clear of the homestead and no signature other than the owner's is required on the documents.

The owner of the property or the owner's spouse may record a written instrument describing the property, setting forth the nature and source of the owner's interest therein and stating that the owner or owner's spouse is homesteading the property.

**Installment Land Contract** - An agreement between the vendor (owner) and the vendee (purchaser) for the purchase of real estate on an installment basis (also referred to as a Sales and Purchase Agreement). The purchaser takes possession of the property and the owner retains legal title. The purchaser has the right to sell or assign his/her interest unless otherwise prohibited in the agreement. The purchaser does not receive the deed to the property until all or a specified portion of the purchase price is paid.

A deed from the purchaser to the present owner of the property is necessary to dispose of the purchaser's interest if the terms of the agreement are not fulfilled.

**Option to Purchase** - A right given to purchase the property upon specified terms within a specified time. The owner agrees not to sell the property to anyone else during this time period. The purchaser does not take possession of the property.

If the purchaser has not exercised his/her option and it is still within the statutory period, a deed from the purchaser to the present owner of the property is necessary to dispose of the purchaser's interest.

**Life Estate** - An interest in real property reserved or granted to an individual for his or her natural life. The granting of a life estate is considered to be for the extent of the grantee's life unless otherwise stated in the granting document.

A life estate is taken subject to all taxes, liens, encumbrances and defects that existed on the property at the time the estate was created. The life estate terminates upon the death of the person holding the life estate. The death certificate of the person holding the life estate must be recorded in order to insure the title to the property free and clear of the life estate. The life estate may also be extinguished if the person holding the life estate conveys his/her interest back to the fee owner.

## ENDORSEMENTS

An endorsement is a rider attached to a Mortgage or an Owner policy to expand or limit the policy coverage. The title policy is designed for standard real estate transactions. Attaching an endorsement to the policy adapts the coverage to meet the needs of the insured. By issuing an endorsement the insurer (Land Title) may take on additional risk normally not covered under the policy. A premium is usually charged for issuing any endorsement.

There are a number of endorsements that have been adopted by the American Land Title Association (ALTA) for general use across the country. These are referred to as standard form endorsements and are usually referenced by their ALTA number, which run from 1 through 9. State title organizations have also developed endorsements for use in their state and in other states (California's are the most widely used). Some states also require that the endorsements and their applicable premiums be filed with their state insurance commission.

Additional information not disclosed by the title search may be necessary before an endorsement can be attached to a policy. This may include facts set out on a survey or a check with the zoning department. Most of the approved endorsements may be issued with Mortgage policies, but not with Owner policies.