

Survey Matters

SURVEYS

Most lending institutions require that our loan policy be issued free of any exception as to matters of survey. In the few cases where survey coverage is not required, the policy must contain an exception substantially similar to the following:

Facts which would be disclosed by a comprehensive survey of the premises herein described.

This general exception as stated is currently used by Old Republic Title on most commitments and is then restated on the policy in Schedule B unless the policy is to be issued free of the survey exception. Since case law is slight on the exact meaning of the terms "comprehensive survey" and "facts" as used in the exception, some underwriters use other language for the exception, e.g. "encroachments, overlaps, boundary line disputes and any other matters which would be disclosed by an accurate survey and inspection of the premises." Such language more particularly describes the kinds of "facts" or defects which would be disclosed.

In cases in which the policy is to be issued free of the exception, you must be furnished a copy of the survey properly certified, or an alternative approved inspection report (see below for circumstances where survey exception can be waived without a survey or inspection report). Use caution to closely examine the survey or report, for experience has shown that easements, encroachments, restrictions, violations and variance between the record description and the description of the land as used and occupied are frequently disclosed only by the survey, and are sometimes not reported by the approved attorney or settlement agent in the certificate.

If a survey is needed, be sure to require it at the time the commitment is issued. The lender to be insured needs to know of the requirement as early as possible so it can arrange for preparation of a survey. On commercial transactions, any removal of the exception should be based on a complete, fully certified survey; not on any limited certificate or partial survey.

Surveyor's Certificate

For a proper certification, the certificate should read substantially as follows:

I, _____, a registered land surveyor in and for the state of _____, do hereby certify to the Old Republic National Title Insurance Company that this is a true and correct plat of a survey of:

(insert description)



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also described as (street), (town), (county), (state), that said plat correctly shows the location of all buildings, structures and improvements on said described property; that there are no party walls, visible right of way and easements, or visible encroachments except as shown on said plat of survey.

Dated: _____

By: _____

The ALTA and American Congress on Surveying and Mapping have adopted joint minimum standards for surveys. These minimum standards are revised and updated from time to time (check the ALTA or ACSM websites for the most current version). The certification provided for in those standards is acceptable.

If the survey is dated more than a reasonable time prior to the date of the policy, and the same is acceptable to the insured, use language like the following:

It is stipulated this policy guarantees nothing with respect to any changes which may have been made in the location of fences, easements or improvements since April 29, 1988.

or

Facts which would be disclosed by a comprehensive survey subsequent to the survey of John Jones, Registered Surveyor, dated April 29, 1988.

Encroachments Appearing on Survey

Encroachments which affect title to property may be divided into three classifications, namely: (1) encroachments upon abutting property, (2) encroachments upon the property insured, and (3) encroachments upon streets and alleys. These encroachments vary in degree of importance depending upon the size of the encroachments, the length of time each has existed, the cost of removal and the effect upon the property in question when removal is necessitated.

Any encroachment, no matter how slight, either upon the insured property or upon the abutting property, should be made an exception in the policy. Likewise, an encroachment upon a street or alley should be made an exception, but in this case, collapsible appendages such as awnings or minor encroachments, such as window sills and cornices, not exceeding six inches, may be treated as negligible and no reference thereto need be made in the policy.

With respect to encroachments upon abutting property, agents are cautioned to carefully examine the survey. In some instances, particularly in old properties, it is found that a wall of the property insured is wholly or partly upon the land of the abutting property. This could probably render a property



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uninsurable. An appropriate agreement as to the use and maintenance of such wall from the adjoining owner would be needed.

Slight encroachments are usually not objectionable to federal agencies and lending institutions, but in all such cases, the discretion should be left with the lending institution or agency, and the matter should be cleared with them prior to the issuance of the policy. Remember, the owner also has a vital interest in these matters, so the owner's consent should be obtained as to any arrangement agreed upon.

Sample exceptions for encroachments follow:

Survey - General

Any facts, rights, interests or claims which would be shown by an accurate and correct survey.

Survey – Adjoining Improvements Upon Subject Land

An encroachment of the (describe improvements) situated upon land adjoining on the _____ upon the land described in Schedule _____ as is shown by a survey.

Encroachment of Improvement Upon Adjoining Land

An encroachment of the (describe improvements) situated upon said land upon the land adjoining on _____, as shown by a survey.

Encroachment – Upon Street, Alley or Easement

An encroachment of the (describe improvements) situated upon said land upon _____ Street (or alley or upon easement referred to in paragraph _____ of Schedule B) as shown by a survey.

Survey Coverage Without Survey

For some time, Old Republic Title has allowed agents and field offices to provide loan policies giving coverage over survey matters without requiring a survey (except in states that will not allow this procedure). This is permitted on loan policies which insure loans secured by residential one-to-four family units. In many markets, this procedure is a valuable sales tool since it reduces the borrower's closing costs and allows faster closing of the transaction.

Coverage of survey matters may be given only if the following guidelines are met:

1. The property must be an existing single family residence which includes townhouses and condominiums.



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2. The property should have received some degree of care and attention over the years, so the completed structure should be in an area that requires the issuance of building permits. Additionally, the home should be of the type eligible for FHA, VA, FNMA or Freddie Mac financing, although the actual loan being insured need not be one of these.
3. On completed older structures, we are relying on the fact that the passage of time will probably render any adverse condition harmless as far as a mortgagee is concerned.
4. As to newly completed structures, we are looking for properties in well-staked, engineered developments where it is common for permits to be issued or inspections made by professional engineers or city employees.

We recognize that the circumstances we want to depend on, with respect to older properties and newer properties, may not exist in all parts of a town. Also, there may be certain areas with a past history of underlying survey problems in a number of communities. Such things may render it impossible to provide any coverage unless an actual survey is conducted. In those cases, it is proper for you to advise your customer that you are unable to give the coverage on a particular case without requiring a survey.