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Responding to the Title Commitment and Survey

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Comments on the materials: The materials consist of a commentary on the title Commitment promulgated by the Texas Department of Insurance (referred to in this paper as the "TDI"). The TDI regulates all aspects of the title insurance business from the rates charged, the forms used for policies, endorsements, closing statements, the methodology of escrow accounting and reporting, to the Rate and Procedural Rules which are set forth in the Texas Title Insurance Basic Manual of Rates Rules and Forms (referred to as the "Manual"). Hopefully, as real estate practitioners, you are familiar with the Manual. It is available online at http://www.tdi.texas.gov/title/titleman.html. Also, the Texas Land Title Association (TLTA) has a much "easier" online Manual to use and a subscription is available for those who want to use it daily. This TLTA interactive Manual is currently being revised to be much more user friendly by compiling rates, rules and forms into one place based on the insuring form being utilized. If you are interested in a subscription, it is available at the Texas Land Title Association Basic Manual website http://www.tlta.com/tlta/basic_manual.aspx.

Note: The format of this paper consists of the **Commitment form in black print** and the ***commentary in bold italics (which will also be in RED print on the downloaded version).***

The Commitment "Jacket"

Introduction

As counsel representing a buyer or a borrower in purchasing or borrowing money secured by real estate you will receive from a title insurance company or its agent, the commitment for title insurance ("Commitment") on a promulgated form designated by the Texas Department of Insurance ("TDI"). What does it say?

The following pages are the Commitment "jacket" which is designed to get you to read the jacket at least once, and it provides general information as follows:

COMMITMENT FOR TITLE INSURANCE (Form T-7)

TEXAS TITLE INSURANCE INFORMATION

Title insurance insures you against loss resulting from certain risks to your title.

The commitment for Title Insurance is the title insurance company's promise to issue the title insurance policy. The commitment is a legal document. You should review it carefully to completely understand it before your closing date.

El seguro de título le asegura en relación a pérdidas resultantes de ciertos riesgos que pueden afectar el título de su propiedad.

El Compromiso para Seguro de Titulo es la promesa de la compañía aseguradora de títulos de emitir la póliza de seguro de título. El Compromiso es un documento legal. Usted debe leerlo cuidadosamente y entenderlo completamente antes de la fecha para finalizar su transacción.

Your Commitment for Title Insurance is a legal contract between you and us. ***The Commitment is NOT a title opinion or a title report. It is a legal contract to issue the policy described. Claims can be made under a Commitment because it is a contract.*** The Commitment is not an opinion or report of your title. It is a contract to issue you a policy subject to the Commitment's terms and requirements.

Before issuing a Commitment for Title Insurance (the Commitment) or a Title Insurance Policy (the Policy), the Title Insurance Company (the Company) determines whether the title is insurable. This determination has already been made. Part of that determination involves the Company's decision to insure the title except for certain risks that will not be covered by the Policy. Some of these risks are listed in Schedule B of the attached Commitment as Exceptions. Other risks are stated in the Policy as Exclusions. These risks will not be covered by the Policy. The Policy is not an abstract of title nor does a Company have an obligation to determine the ownership of any mineral interest.

- **MINERALS AND MINERAL RIGHTS** may not be covered by the Policy. The Company may be unwilling to insure title unless there is an exclusion or an exception as to Minerals and Mineral Rights in the Policy. Optional endorsements insuring certain risks involving minerals, and the use of improvements (excluding lawns, shrubbery and trees) and permanent buildings may be available for purchase. ***This is the T-19 "family of endorsements" which consists of the T-19 for the Loan Policy, the T-19.1 for the Owner Policy and the T-19.2 and T-19.3 for Owner and Loan Policies.*** If the title insurer issues the title policy with an exclusion or exception to the minerals and mineral rights, neither this Policy, nor the optional

endorsements, ensure that the purchaser has title to the mineral rights related to the surface estate. ***The title company has no obligation to determine ownership of any mineral interest, but the title company may do so and insure it as part of the insured estate. Competition in commercial title insurance transactions may allow you to find a title company that will determine mineral ownership, state the mineral exceptions and remove the promulgated "general" exception for "minerals" which, in effect, provides title insurance to both the "surface" and "mineral" estates.***

Another part of the determination involves whether the promise to insure is conditioned upon certain requirements being met. Schedule C of the Commitment lists these requirements that must be satisfied or the Company will refuse to cover them. You may want to discuss any matters shown in Schedules B and C of the Commitment with an attorney. These matters will affect your title and your use of the land. ***Conditions are usually found in Schedule C of the Commitment.***

When your Policy is issued, the coverage will be limited by the Policy's Exceptions, Exclusions and Conditions, defined below. ***Insurance coverage is not provided for the Exceptions, Exclusions and Conditions.***

- **EXCEPTIONS** are title risks that a Policy generally covers but does not cover in a particular instance. Exceptions are shown on Schedule B or discussed in Schedule C of the Commitment. They can also be added if you do not comply with the Conditions section of the Commitment. When the Policy is issued, all Exceptions will be on Schedule B of the Policy. ***There is no Schedule C in the issued policies. The matters shown on Schedule C in the Commitment will appear in Schedule B of the policies if they are not addressed and removed from the Commitment.***

- **EXCLUSIONS** are title risks that a Policy generally does not cover. Exclusions are contained in the Policy but not shown or discussed in the Commitment.

- **CONDITIONS** are additional provisions that qualify or limit your coverage. Conditions include your responsibilities and those of the Company. They are contained in the Policy but not shown or discussed in the Commitment. The Policy Conditions are not the same as the Commitment Conditions.

You can get a copy of the policy form approved by the Texas Department of Insurance by calling the Title Insurance Company at 1-___-___-____ or by calling the title insurance agent that issued the Commitment. The Texas Department of Insurance may revise the policy form from time to time.

You can also get a brochure that explains the policy from the Texas Department of Insurance by calling 1-800-252-3439.

Before the Policy is issued, you may request changes in the policy. Some of the changes to consider are:

- Request amendment of the "area and boundary" exception (Schedule B, paragraph 2). To get this amendment, you must furnish a survey and comply with other requirements of the Company. On the Owner's Policy, you must pay an additional premium for the amendment. If the survey is acceptable to the Company and if the Company's other requirements are met, your Policy will insure

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Title search: Responding to the Title Commitment and Survey

Also available as part of the eCourse
Answer Bar: The Ins and Outs of Commercial Real Estate Loans and Title Insurance

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