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**Maximizing Title Insurance Coverage in
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I. Introduction – Work with the Title Company, Not Against Them.

- Pursuant to §2551.003 of the Texas Insurance Code, the Commissioner of the Texas Department of Insurance (“TDI”) is authorized to adopt the rules and practices for title insurance in the State of Texas. The *Texas Title Insurance Basic Manual* (“*Basic Manual*”) contains the rates, rules and forms promulgated by the TDI. **The promulgated forms can only be issued or altered as provided for in the rules.**
- Therefore, you must understand that there are some exceptions that cannot be removed from the title policies to be issued, and there are some exceptions that cannot be amended unless a specific rule in the Basic Manual allows the wording to be amended, no matter how much you dislike the wording or believe that an exception does not apply to your transaction.
- Also, remember that title insurance is a “backwards looking” insurance policy, not a “forwards looking” policy, like auto insurance or health insurance. The title company has searched the chain of title to the property to be insured to ensure that there are no unreleased liens or other clouds on title that could come back to haunt the current owner or their lender. As a general rule, title insurance policies do not provide coverage for events that occur subsequent to the date of the policy.
- Anticipate requests that will be made by the title company, and be prepared with the documentation they will require as early as possible.
 - For example, if the seller and/or purchaser is an entity or a trust, satisfactory entity/trustee authority documentation must be provided by the parties and reviewed by the title company prior to closing. The title company is looking for proof (1) of who is authorized to act on behalf of the entity or trust, and (2) that that person has authority to take the action they purport to take in the current transaction.
 - Similarly, if there are curative items on Schedule C, work to aid the title company in resolving the title problems or defects that are set out in that schedule. Many people have the attitude that “the title company found the problem, so they have to resolve it.” **It is not the duty of the title company to cure title problems and defects.** Nonetheless, the title company is often unfairly blamed for a delay in closing because none of the parties to the transaction have attempted to help address the Schedule C requirements. Be proactive: read Schedule C and do what you can to help resolve the matter. Don’t just write an objection letter that this item “must be resolved and removed from the commitment prior to closing.”

- Finally, understand that a request for what a title insurance underwriter deems to be an “extra-hazardous policy coverage” will require approval from the title underwriter’s Regional Underwriting Department. Therefore, the sooner you start working with the title company who is to close and insure the transaction, the better, as this will give the title company the opportunity to work with the underwriter’s Regional Underwriting Department to get the requested title coverage approved. Extra-hazardous risks include for example, knowingly insuring around the following matters:

- Liens;
- Restrictive covenant violations;
- Substantive encroachments or adverse survey matters; and/or
- Miscellaneous title defects such as missing heirs, easements, etc.

The decision to provide an extra-hazardous coverage may require:

- The review of miscellaneous documents;
- The execution of indemnity agreements;
- A review of financial statements; and/or
- Senior underwriting approval.

So again, any request for an unusual or extra-hazardous coverage must be communicated to the title company, so they can contact their underwriter’s Regional Underwriting Department as soon as possible.

II. Endorsements

Although every transaction is different, some insurance coverages are routinely requested in a high liability commercial transaction. Knowing in advance what these coverages are, and which endorsements your client will require in a given transaction, will facilitate the closing.

A. MOST OFTEN REQUESTED ENDORSEMENTS

1. Owner Policies - The following is a list of some of the most often requested endorsements to an owner policy in a high liability commercial real estate transaction:

Owner Policy Endorsements		
Endorsement	Purpose	Premium
Access (T-23) * Land must be improved [P-54]	Insures there is actual vehicular and pedestrian access to the land via a specifically identified street.	\$100
Additional Insured (T-26) * The additional insured must fall within one of the three categories. In a commercial transaction, the additional insured would be a partner, member, or stockholder that has purchased the interest of the other owners in the insured pursuant to a written agreement that was in existence at the date of the policy. [P-57]	Names an additional insured under the policy, but does not change the date of the policy.	10% of BPR

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