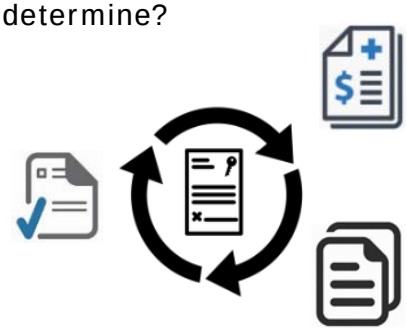
Lesson 7 – Title Examination and Issue Title Commitment



After receiving the results of a title search, the title/settlement agent reviews it and evaluates the findings. This work is called the "examination process." This task is one of the most important in the entire property transfer process.

Background Notes

What does the title examination determine? 	The title/settlement agent's examination determines the insurability of the property's title. The title/settlement agent's examination conclusions will be drafted into a document called a "title commitment." This is an offer to the lender for title insurance coverage that will be provided in the final title policy. 
What does the title commitment accomplish? 	The title commitment contains information about the specific property related to the title matters revealed by the title search and examination. It serves as an offer to insure the title as set forth in the commitment provided that certain requirements are met prior to closing.
What is the title examination?   	Based on the results of the title search, the title/settlement agent will review the findings. There are issues that could compromise the insurability of the title, which includes but are not limited to:  • Gaps in the title such as missing documentation or critical information being out of order (chain of title) • Open encumbrances (or loans) that need to be satisfied • Outstanding liens that must be satisfied • Discrepancies in the title such as spelling errors or typos 
What is done with the findings from the title examination? 	• These issues will be categorized as "requirements" that must be satisfied in order to issue the title policy prior to the closing.

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Any discoveries remaining must be noted in the policy. These items will not prevent the underwriter from insuring the title but will be listed as "exceptions" which include but are not limited to:

- Easements benefiting the property (such as street access, driveway access and utility line access)
- Restrictive covenants affecting the property (often outlined by the local government or an HOA)
- Taxes for the year that aren't yet due
- Encroachments or boundary issues an accurate survey would disclose



The title/settlement agent is working on multiple tasks at this point—it's a stressful time for the title/settlement agent. Many tasks have to be done on a tight schedule and correctly!

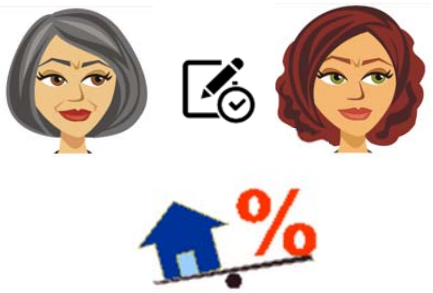


What happens if the agent is unclear about a title question?



If there are any items that are unclear, the title agent will consult with their local underwriter. In this case, the underwriter would be the legal counsel for the local First American office.

The local underwriter will review the issue and make a decision whether First American will insure title over a certain issue, or whether any additional requirements need to be met in order to place insurance on the property.



In addition to clearing questionable title findings, the title agent will often seek the underwriter's approval for other matters relating to the transaction, such as:

High Liability authorization

This is in the event that the amount of insurance coverage being requested is above the approved limit for the agent to insure (write a policy) for the property.



Closing Protection Letter (CPL) Modification

With a high liability authorization, a special CPL must be generated as well to reflect the authorized amount.

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Special Pricing

If the title agent needs to negotiate a special premium on the policy for the transaction, they must get authorization from the underwriter. There could be other findings that may require underwriting approval.



Mechanics' Lien coverage

In the event a third party (e.g., a contractor for roofing or plumbing) placed a lien on the property, it indicates that there is a dispute or a pending lawsuit between the current owner and the contractor.

For example, the current owners of the property hired a contractor to repair the roof, but the roofer did not complete repairs or made the roof worse, so the owner refused to pay for the poor or incomplete work.



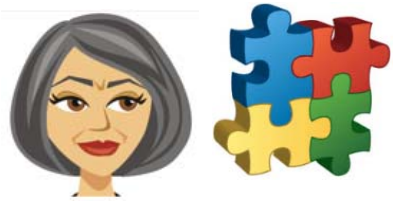
Despite the poor quality work delivered, the contractor could still place a lien on the property for payment, and that lien may become disputed in court. In this case, the title/settlement agent may ask that the underwriter insures over the lien without resolution. It is the underwriter's role to determine the risk in doing so, and whether or not to allow a policy to be issued.

Issue Title Commitment



Once the title agent has concluded the examination and has determined what is required for issuance of a title insurance policy, they will issue a title commitment.

The title commitment is exactly as it sounds—it's a commitment to issue a title insurance policy insuring the property based on the outlined specifications and pursuant to the requirements identified and listed.



A title commitment contains 4 sections:

- Schedule A
- Exhibit A
- Schedule B, Part I
- Schedule B, Part II

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Schedule A:

- Schedule A details the terms of the policy to be written (provided that the requirements are met)
- The Schedule A will contain letterhead displaying who the underwriter will be for the title policy (in this case, First American Title Insurance Company) and will also disclose the title agent who has prepared the title commitment and will be preparing the title policy

What elements makeup schedule A?



Schedule A will always contain the following elements:



- The name and address of the title insurance company = First American Title Insurance Company
- The file number used by the issuing title/settlement agent
- The policy number provided by First American Title Insurance Company
- The loan number provided by the lender
- The address reference of the county and state
- The amount of insurance provided by the policy
- The amount of premium to be paid
- The mortgage amount
- The mortgage date
- The date and time of the commitment
  - This is important because this document must be time-stamped in case there are amendments or changes in the future
- The name of the insured (the lender)
- The name of the borrower/buyer





The policy (or policies) to be issued. Schedule A will disclose:

- The type of policy
- The loan policy and/or owner's policy
- The type of policy, such as the ALTA standard form policy or, expanded coverage (which is First American's "Eagle" policy)



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- The coverage amount:
  - Loan policies = loan amount
  - Owner's policies = sales price (these policies are not fixed and can have additional coverage requested)
  - The proposed insured = who will be insured and receive the policy
  - The mortgage amount = dollar amount shown on the insured mortgage
  - The mortgage date = date shown on the insured mortgage
  - The date of policy = date of the settlement (closing)
- The loan policy = the lender or bank issuing the loan
  - The lender usually has a clause associated with their name. It's how the company wants to be listed when receiving title insurance. This is known as the "mortgagee clause"
  - The mortgagee clause will be listed as the proposed insured for the Lender
  - An example of a common mortgagee clause is: "ABC Lending Inc., its successors and/or assigns as their interest may appear"
  - The owner's policy = the buyers/borrowers (names)



- Interest in the land/estate:
  - The title insurance policy will include the type of interest in the land that the insured has
  - The most common listing in this field is "fee simple"
  - Fee simple interest is basically the highest form of ownership
  - Another form of ownership that is less than a fee simple would be a "leasehold," where the occupant must deliver occupancy of the property back to the owner when the lease ends.
  - For the focus of this lesson, the commitment is going to list the interest in the land estate as "fee simple"

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What is a land description? 	• The land description: o A legal land description of a real property identifies the property that is insured by the title insurance policy o Example: *Lot 1, District Lot 555, New Westminster District, Plan 12345* 
What is Exhibit A? 	Exhibit A contains the legal description of the property. The legal description is different from a property or mailing address. The address of the property discloses where the property is located. However, the legal description is more detailed. Legal descriptions are provided in the title search results. 
	• Legal descriptions can be paragraphs long or as short as a sentence • There is another form of legal description called a "metes and bounds" description. This description is highly detailed and sometimes required o These descriptions list the dimensions of the property o Metes and bounds descriptions can be lengthy and extremely specific 
 	• Legal descriptions often include details of a parcel of land such as the: o County o Lot o Block o Subdivision o Plat book number and plat book page number o Drawings o Maps 

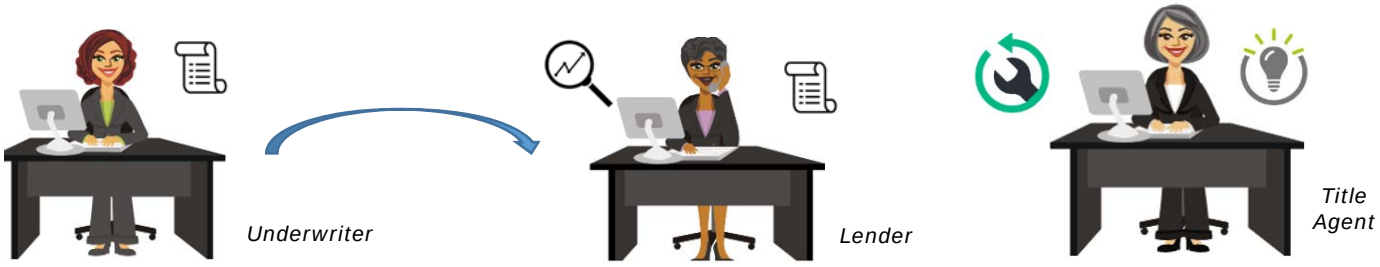
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What is Schedule B, Part I? 	Schedule B, Part I: • Schedule B, Part I will list all the requirements that must be met before the title policy can be issued as determined during the examination of title • These requirements will be found on the numbered list of Schedule B, Part I • Most underwriters (including First American) will have standard requirements that will be listed in every title commitment. The standard requirements will be listed first, followed by any specific requirements based on the examination • Standard requirements usually are generic in nature and help the underwriter ensure that no key requirements are left out. They can include: o Paying First American for premiums o Paying the agreed amounts for acquiring the property o Accurate names on the documents o Accurate documentation o Standard requirements can vary by state but are usually similar
What is Schedule B, Part II? 	Schedule B, Part II: • Schedule B, Part II will list all of the exceptions that will be taken in the title policy as determined during the examination of title • Exceptions are just what they say. The underwriter will write insurance with the coverage that will be detailed in the policy, but make exceptions for these items • As with requirements, there are standard exceptions and they are listed first • In addition to standard exceptions, Schedule B, Part II will contain specific exceptions for matters the policy will not cover. • These specific exceptions can include: o Taxes and assessments that are yet due and payable o Any rights or interests held by others o Easements, restrictions, covenants or conditions affecting the property o Rights retained by previous owners

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Completion of commitment:

- Once the commitment is written, it's ready to print and send it to the lender. On the lender's side, they will track any requirements and retain the commitment
- Meanwhile, the title/settlement agent will be working to resolve any requirements
- All this must be completed prior to closing



Practice Exercise

Now it's time for you to do a practice exercise in the system.

Draft and Print a Title Commitment in an SMS Platform

You will create a title commitment in the system.

Activity – Create and Print a Title Commitment

Draft and print a title commitment. Use this Commitment Example to gather the title data/information needed to complete the title commitment and input the information into the system.

Manager Review and Approval

Once the activity is completed, meet with your manager to review the activity and lesson.

END OF LESSON



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Appendix

CC and R

CC and R stand for Covenants, Conditions, and Restrictions, which are three items frequently contained in a single document that governs a common community such as a condominium and some subdivisions. If so, it is included as an exception in Schedule B of a final Title Insurance Policy. Each is described below.

Covenants (Restrictive)

A covenant is a promise in a written contract or a deed of real property. There are different types of covenants, such as a covenant of warranty, which is a promise to guarantee the title to the property is free of any claims against it, a promise agreeing to joint use of an easement for access to real property, or a covenant not to compete for a certain period of time, which is commonly made by a seller of a business.

Mutual covenants among members of a homeowners association are promises to respect the rules of conduct or restrictions on the use of property, which govern peaceful use, and limitations on intrusive construction in a development or condominium project.

Covenants that run with the land, such as a permanent easement of access or restrictions on use, are binding on future owners of the property. Covenants can be concurrent (mutual promises to be performed at the same time), dependent (one promise needs to be performed if the other party performs his/hers), or independent (a promise to be honored without reference to any other promise).

Conditions

The conditions in a CC and R refer to the occurrence of an event which will cause some obligation of the landowner to do or refrain from an action. An example would be that as a condition of purchasing a property in a subdivision with a homeowner's association, the buyer agrees to pay the homeowner's association dues and to permit the association to place a lien on the property if they fail to do so.

Restrictions (Private)

The CC&Rs are the rules of your neighborhood. They describe the requirements and limitations of what you can do with your property. The goal of the CC&Rs is to protect, preserve, and enhance property values in the community. Most of the time, the rules make sense and are easy to accept. For example, it is pretty easy to agree with a covenant that requires you to mow your lawn and keep it weed-free.

However, other rules might interfere with your plans or seem downright unreasonable to you. For example, perhaps you want to park your car in the street and store your extra belongings in the garage. An HOA might require you to park your car in the garage. Or, perhaps you are counting on the fact that you will be able to fence the yard to contain your dog, but after reading the CC&Rs, you find out that the community doesn't allow fences. Not to mention the fact that some HOA communities don't allow certain sizes or particular breeds of dogs, which means that if you have a 120-pound Rottweiler, you might need to look at buying a home in a different neighborhood since changing the rules is usually difficult.

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Easements
An easement is the right of use over the property of another. Common examples of easements are those for driveways, bike paths, and access roads.

Encumbrances
An encumbrance is a claim against a property by a party that is not the owner. An encumbrance can impact the transferability of the property and restrict its free use until the encumbrance is removed. The most common types of encumbrances that apply to real estate are mortgages and property tax liens. Not all forms of encumbrances are financial, easements being an example of non-financial encumbrances.

Liens (Outstanding Liens)
The right to retain the lawful possession of the property of another until the owner fulfills a legal duty to the person holding the property, such as the payment of lawful charges for work done on the property. A mortgage is a common lien.

Mechanics, plumbers, electricians and other general contractors or persons who furnish materials for the erection of houses or other buildings, are entitled to a lien in the payment of debts out of those house(s) built on the property.

Exceptions
An exception is a condition that is excluded from title coverage listed in the policy.

Requirements
A requirement is a matter that must be corrected before a title insurance policy can be issued. Generally, the seller will need to fix it so the sale can proceed or let the buyer out of the transaction. These include gaps in title, liens and other encumbrances.

Restrictions
Laws and ordinances at all levels of government (federal, state, county and municipal) restrict what you can do with the real property that you own. Enforcement of these laws typically resides with government agencies, normally local government but occasionally on the state or federal level. The three most common restrictions imposed by government are:

(1) Zoning - restricting the use of the property to residential, industrial, agricultural, or commercial purposes is very common. The size and height of improvements attached to the property are likewise subject to restriction.

(2) Environmental Hazards - statutes and ordinances outline what materials can be stored on the real property. Responsibility for remediation of environmental hazards (such as asbestos, lead paint, petrochemicals and toxic wastes) is also government-regulated.

(3) Public Easements and Right of Way - a portion of certain real property may need to be open for others to use. Governments use easements and right of way laws to regulate access to other property, provide for roads and sidewalks and to enable installation of electric/gas/telephone/sewer lines.

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