

## HOUSEKEEPING

- Note: PowerPoint and audio for the March "Alternative Probate Procedures" webinar is now available at [www.stewarttexas.com](http://www.stewarttexas.com)
- For Escrow Officer Credit please email password and attendees names to [ken.wrider@stewart.com](mailto:ken.wrider@stewart.com) for certificate (Please do this as soon as possible. Certificates will not be produced after the start of our next webinar)
- Attorneys e-mail bar card number to Ken Wrider for CLE credit
- Send to your training administrator if applicable
- We are now recording!

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## A POTPOURRI OF TITLE ISSUES AND EXCEPTIONS

Richard L. Black  
Senior Texas Underwriting Counsel  
5900 Shepherd Mt. Cove, Bldg. 2, Suite 200  
Austin, TX 78730  
WATS (800) 252-9229  
[richard.black@stewart.com](mailto:richard.black@stewart.com)

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## TITLE ISSUES AND EXCEPTIONS

-2-

- LOAN POLICY SCHEDULE "B"—Basic Exception For Pretended Sale of Homestead:

**--. Any claim, loss, or damage alleging or resulting from acquisition of title to the land by the mortgagor of the Insured Mortgage through pretended or simulated sale of homestead in violation of Section 50(c), Art. 16, TEXAS CONSTITUTION.**

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**TITLE ISSUES AND EXCEPTIONS**

-3-

- o LOAN POLICY SCHEDULE "B"—Exception for Pretended Sale of Homestead with Added Exception for Sale/Leaseback DTPA Statute:

**--. Any claim, loss, or damage alleging or resulting from acquisition of title to the land by the mortgagor of the Insured Mortgage through pretended or simulated sale of homestead in violation of Section 50(c), Article 16, TEXAS CONSTITUTION, and/or through prohibited sale/leaseback of homestead in violation of TEXAS PROPERTY CODE Section 41.006.**

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**TITLE ISSUES AND EXCEPTIONS**

-4-

- o LOAN POLICY SCHEDULE "B" EXPRESS INSURANCE—Tax/Insurance Escrow Account Advance Included in the New Loan:

**--. Possible defect in the lien of the Insured Mortgage because of the Insured's inclusion of reserves for impounds for taxes and insurance in the original principal of the indebtedness secured by the Insured Mortgage. Company insures the Insured against loss, if any, sustained by the Insured under the terms of this Policy by reason of a final, non-appealable judgment of a court of competent jurisdiction that divests the Insured of its interest as Insured because of this right, claim, or interest. Company agrees to provide defense to the Insured in accordance with the terms of this Policy if suit is brought against the Insured in accordance with the terms of this Policy if suit is brought against the Insured to divest the Insured of its interests as Insured because of this right, claim, or interest.**

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**TITLE ISSUES AND EXCEPTIONS**

-5-

- o CO-TENANCY EXCEPTION (UNDIVIDED INTEREST)—Schedule "B" of any Policy covering less than 100% interest in the surface estate of the insured land, except an Owner Policy issued to a purchaser who owns all remaining undivided surface interest:

*(from Virtual Underwriter:)*

**--. Rights and claims of co-tenants and those persons claiming by, through, or under them, including rights of possession, partition, and reimbursement, and rights of the United States to sell the land.**

*(from Escrow Manual:)*

**--. Rights and claims of co-tenants in and to the land, both surface and mineral estates, and of those persons claiming under co-tenants, including, but not limited to, rights of partition, claims for improvements, claims for reimbursement, owelty of partition, and agreements between co-tenants.**

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**TITLE ISSUES AND EXCEPTIONS**

-6-

- o COMMITMENT SCHEDULE "C"—Underground Storage Tank Disclosure:

**--. FOR INFORMATION/DISCLOSURE PURPOSES ONLY:** Examination of the real estate record or other information received indicates that wholesale or retail-sale distribution of petroleum products may have been conducted on the land. One or more underground storage tanks may now be or have been located on the land. The consequences of federal, state, or local laws regulating hazardous-waste conditions are expressly excluded from the coverage of all proposed Policies under the promulgated Exclusions From Coverage contained therein. This Commitment and all subsequently issued Policies shall not be construed as making any representation, either favorable or unfavorable, concerning the physical condition of the land.

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**TITLE ISSUES AND EXCEPTIONS**

-7-

- o SCHEDULE "B", OWNER/LOAN POLICIES— Internal Revenue Service Right of Redemption (Date of Policy is 120 Days or Less Following Foreclosure Conducted after Pre-Foreclosure Notification to IRS by Reason of Notice of Federal Tax Lien Filed Against the Foreclosed Owner):

**--. Right of the Internal Revenue Service to redeem title to the land within 120 days following Trustee's Sale conducted on [date of foreclosure sale].**

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**TITLE ISSUES AND EXCEPTIONS**

-8-

- o CEMETERY EXCEPTION, OWNER/LOAN POLICY SCHEDULE "B"—Unsurveyed Within the Subject Land, Without Separate Access, and Not Excepted From Schedule "A" Land Description:

**--. Rights and claims of others now asserted or that may later be asserted with respect to that part of the land lying within the boundaries of "[name] Cemetery" [or the unnamed cemetery] referred to in Vol. \_\_\_\_, Page \_\_, Records of \_\_\_\_ County, Texas, including rights to utilize, maintain, and visit burial plots and/or for access to and from the cemetery.**

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**TITLE ISSUES AND EXCEPTIONS**

-9-

- o COMMITMENT AND POLICY SCHEDULE "B"—Removables Exception (Pre-Foreclosure Mechanic's Lien Not Yet Barred; Claimant's Lien-Claim Affidavit Indicates That Materials Installed May Be Subject to Post-Foreclosure Removal-Right in Favor of the Claimant):

--. Any right to remove materials or other personal property furnished to or installed as improvements on the land, which is exercisable by [affidavit-claimant's name] in connection with [title of recorded lien-claim affidavit] dated \_\_\_\_\_ and recorded in/under [affidavit recording data] \_\_\_\_\_, \_\_\_\_\_ County, Texas, but no exception is made to this Affidavit as a claim of lien against the land.

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**TITLE ISSUES AND EXCEPTIONS**

-10-

- o COMMITMENT SCHEDULE "C" REQUIREMENT—Isolated Release of Lien:

--. A Release of Lien covering a Deed of Trust has been filed within the past year and does not appear to be associated with any identifiable transaction. The closer must obtain confirmation in writing from [releasing lienholder's name] that the note secured by the following Deed of Trust has in fact been paid in full: Deed Trust dated \_\_\_\_\_, from [grantor's name(s)] as grantor(s) for the benefit of [beneficiary's name] as beneficiary, securing a \$ \_\_\_\_\_ note, and last assigned to [name of last assignee of record] (Note: Releasing lienholder's address appears to be \_\_\_\_\_.)

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**TITLE ISSUES AND EXCEPTIONS**

-11-

- o COMMITMENT SCHEDULE "C" (TRCC Compliance in Mechanic's Lien Contract for Construction, Repair, or Renovation of Borrower's Residence):

--. Any Mechanic's Lien Contract or other contract for improvements involved in this transaction must comply with Chapter 420, TEXAS PROPERTY CODE, concerning inclusion of the builder's/contractor's Texas Residential Construction Commission certificate-of-registration number and the required statement of disclosure in the Contract. Failure of the Contract to comply with these statutory requirements may result in a Schedule "B" coverage exception with respect to consequent lack of enforceability of the Contract or of a Deed of Trust given in renewal and extension of the Contract.

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**TITLE ISSUES AND EXCEPTIONS**

-12-

- o LOAN POLICY SCHEDULE "B" (Lack of TRCC Registration and/or Statutory Disclosure in Mechanic's Lien Contract):

--. Any claim, loss, or damage suffered by the Insured which asserts or arises from failure of the Mechanic's and Materialman's Lien Contract or other contract for improvements underlying the insured mortgage to comply with Chapter 420, TEXAS PROPERTY CODE, concerning inclusion of the builder's/contractor's Texas Residential Construction Commission certificate-of-registration number and/or required statement of disclosure.

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**TITLE ISSUES AND EXCEPTIONS**

-13-

- o COMMITMENT/POLICY SCHEDULE "B", NO. 1—Common Scheme of Development Restrictions Exception (Restrictions Appear in Majority of First Deeds from Subdivider/Developer, But Were Omitted from First Deed Conveying Insured Lot/Tract):

---. Restrictions, covenants, and conditions that may be applicable to the land by reason of a common scheme of development within the subdivision, a representative example of such restrictions, covenants, and conditions being those appearing of record in Vol. \_\_\_\_ (\*) at Page(s) \_\_\_\_ (\*), Deed of Records of \_\_\_\_ County, Texas.

[(\*) Insert exact volume/page reference where restrictions occur in the first deed conveying another nearby lot in the same recorded/unrecorded subdivision.]

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**TITLE ISSUES AND EXCEPTIONS**

-14-

- o COMMITMENT/POLICY SCHEDULE "B"—Unrecorded Utility Easement (Line in Place Traverses Insured Land Without Benefit of Any Recorded Easement, Blanket or Otherwise):

--. Any unrecorded easement, either public or private, which exists or may later be claimed as existing for construction, maintenance, repair, and/or replacement of the [electrical line, sewer line, pipeline, etc.] crossing the land as shown by plat of survey dated [date of survey], made by [surveyor's name], R.P.L.S.

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**TITLE ISSUES AND EXCEPTIONS**

-15-

- o OWNER POLICY SCHEDULE "B"--Non-cash Consideration Exception:

--. Any claim, loss, or damage suffered by the Insured and asserting or arising from failure or inadequacy of the consideration given for the Insured's purchase of the land, including, but not limited to, any portion of the consideration represented by transfer of other property, either real or personal.

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**TITLE ISSUES AND EXCEPTIONS**

-16-

- o OWNER POLICY SCHEDULE "B"—Implied Lien Exception (Payment of Cash Consideration by Source Other Than Purchase or Lender):

--. Any claim, loss, or damage suffered by the Insured which asserts or arises from the existence of a resulting trust, equitable/implied lien, or other right or interest in favor of *[unsecured source of purchase money]* as the source of all or part of the funds used by the Insured for purchase of the land.

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**TITLE ISSUES AND EXCEPTIONS**

-17-

- o COMMITMENT SCHEDULE "C"—Consent Requirement for Prior Unreleased Lien Covered by Master Indemnity:

--. The Company has determined that an Owner Policy was issued to the proposed seller(s)/mortgagor(s) without exception to the following lien and that this lien is covered by a Master Indemnity previously issued to Stewart Title Guaranty Company by the insurer of the same Policy. If the Company is furnished with a written consent from each proposed Insured (purchaser and/or mortgagee) as required by Rule P-11 (b) (7), Basic Manual of Rules, Rates, and Forms, no exception will be made to this lien in the proposed Policy/Policies: *[Describe prior unreleased Deed of Trust or other lien covered by Master Indemnity.]*

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## TITLE ISSUES AND EXCEPTIONS

-18-

- o SCHEDULE "B", OWNER/LOAN POLICIES—Inset Fence Exceptions:

*(SPECIFIC FENCE INSET SHOWN BY SURVEY:)*

--. Rights and claims, if any, of adjoining owner(s) in and to that portion of the land lying between its \_\_\_ boundary and inset fence, as shown by plat of survey dated \_\_\_\_\_, made by \_\_\_\_\_, R.P.L.S.

*(MULTIPLE FENCE INSETS SHOWN BY SURVEY:)*

--. Rights and claims, if any, of adjoining owner(s) in and to those portions of the land lying between various boundaries and inset fences, as shown by plat of survey dated \_\_, made by \_\_\_\_\_, R.P.L.S.

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## TITLE ISSUES AND EXCEPTIONS

-19-

- o COMMITMENT SCHEDULE "C"—Home Office Issue Disclaimer:

--. NOTICE: By agreement between [*examining company*] and [*issuing company*], this Commitment for Title Insurance is issued solely for the purpose of furnishing examined title evidence for issuance of a directly-issued ("Home Office Issue") Policy pursuant to TEX. INSURANCE CODE Sec. 2704.001 and Rules P-1(z) and P-24, Basic Manual of Rules, Rates and Forms (Texas Department of Insurance). [*Examining company*] shall itself have no obligation under this Commitment to issue any Policy of Title Insurance, and all matters of title insurance underwriting and risk determination are the responsibility of [*issuing company*].

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## TITLE ISSUES AND EXCEPTIONS

-20-

- o COMMITMENT SCHEDULE "C"—Optional Continuation of Home Office Issue Disclaimer:

*(Optional to add:)* As required by TEX. INS. CODE Sec. 2704.003 and Rule P-26, Basic Manual, a legible complete copy of each such directly-issued Policy must be furnished to [*examining company*] no later than thirty (30) days after the date of the Policy.

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## THANK YOU!

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- Attorneys email bar card number to Ken Wrider for CLE credit
- Next Texas TIPS Online May 21, 2009, "T-19 and Express Insurance (Oil & Gas?)" by Fred Schraub
- Questions/Comments? Email [fred.schraub@stewart.com](mailto:fred.schraub@stewart.com)
- Visit [www.stewarttexas.com](http://www.stewarttexas.com) for presentation materials within 5 business days of the webinar

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