

The 11th Hour: Avoiding the Closing Crisis

Presented by

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TITLE TENETS Webinar Series



TITLE CLEARANCE: DETERMINING CLOSING ROADMAPS THROUGH OUR TITLE COMMITMENT REQUIREMENTS

REVIEW TITLE COMMITMENT REQUIREMENTS: YOUR ROADMAP



Debt

Taxes

Liens

Owner's Affidavit

Leases/Rent Roll/Subordinations

DEBT ON THE PROPERTY

- More than record security interest.
- Unsecured debt.



Debt – Real World Examples

- Old institutional Deed of Trust paid off 15 years ago
- Landlord consent to Leasehold Deed of Trust. Estates: why they matter.
- Uninsured transfers. The importance of title insurance.
- “In this world nothing can be said to be certain, except death and taxes.”

Uncle Sam: Property Taxes are Paramount



Tax Certificates

Municipal Lien
Searches:

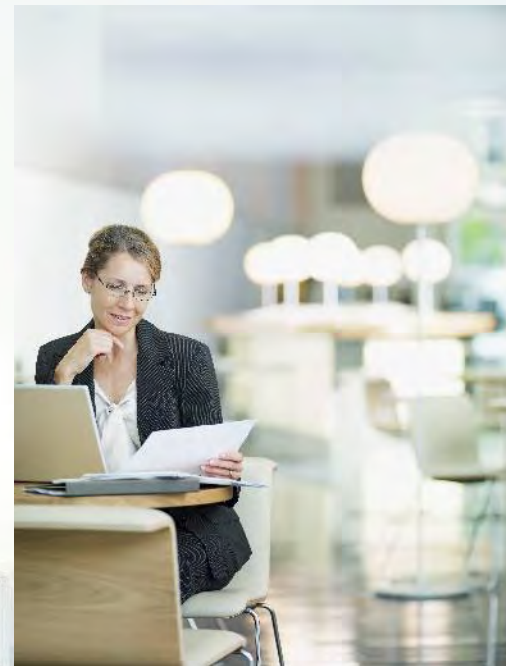
Utilities

Other liens

More on Property Taxes

- Paid/ Unpaid/ Delinquent
- Community Facility Districts/ Mello Roos
- Supplemental Taxes

“None Due & Payable as of Date of Policy”



Parties in Possession: 9/10th of the law?

Subordination
Agreements/SNDAs

Leases and rent roll:
parties in possession

LEASE
AGREEMENT



Owner's Affidavit

Key Title Due Diligence

- Rights of parties in possession
- Right of ROFR/Option to Purchase
- Recent/ongoing work
- Knowledge of Affiant

(4-089.)

HOMESTEAD AFFIDAVIT

Under Section 2294, Revised Statutes, for settlers who cannot appear at the District Land Office.

Office of the Clerk of the Court

In King County, W.D.

Aug 29th, 1887

I, Peter Lundqvist, of Seattle King Co. W.D., having filed my Homestead Application No. _____, do solemnly swear that I am a single man over twenty-one years of age and have declared my intention to become a citizen of the United States

that said application No. _____ is made for the purpose of actual settlement and cultivation; that said entry is made for my exclusive use and benefit, and not directly or indirectly for the use or benefit of any other person or persons whomsoever; that I am now residing on the land I desire to enter, and that I have made a good improvement and settlement thereon; that said settlement was commenced on July 5th 1887 that my improvements consist of a House built of split cedar twelve by fourteen feet and two acres slashed and burned and that the value of the same is \$50.00; that owing to the distance

I am unable to appear at the District Land Office to make this affidavit, and that I have never before made a homestead entry except.

Peter Lundqvist

Sworn to and subscribed before me this 29th day of August, 1887, and I certify that affiant personally known to me to be as sworn

Clerk of the Court for 3rd Judicial Dist. W.D.
By H. H. Cameron Deputy,

Note.—The claimant must fill up the blank places above, showing whether he is the head of a family or over twenty-one years of age; whether a native citizen; or has declared his intention to become a citizen; whether he and his family or some member thereof, is residing on the land, giving the date of actual settlement, describing the improvements and improvements, and stating the value of the same, and stating reasons for not appearing at the District Land Office. If claimant ever before made a homestead entry, describe the same. If so, draw a line over the word "except."

(73-1046.)

Commitment vs. Preliminary Report

PRELIMINARY REPORT

Please read the exceptions shown or referred to below and the exceptions and exclusions set forth in Exhibit A of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.

COMMITMENT TO ISSUE POLICY

Subject to the Notice; Schedule B, Part I - Requirements; Schedule B, Part II - Exceptions; and the Commitment Conditions, STEWART TITLE GUARANTY COMPANY, a Texas corporation (the “Company”), commits to issue the Policy according to the terms and provisions of this Commitment. This Commitment is effective as of the Commitment Date shown in Schedule A for each Policy described in Schedule A, only when the Company has entered in Schedule A both the specified dollar amount as the Proposed Amount of Insurance and the name of the Proposed Insured.

If all of the Schedule B, Part I - Requirements have not been met within six months after the Commitment Date, this Commitment terminates and the Company's liability and obligation end.

What is a Preliminary Report?

Statement of Terms and Conditions of the Offer to issue a Title Policy as of a Particular Date

- The estate or interest to be insured
- Ownership
- Legal description
- Title Exceptions: Defects, Liens and Encumbrances
- Exclusions from Coverage
- Conditions
- Requirements



stewart
COMMERCIAL SERVICES

Latelia Colon
Commercial Escrow Officer

Stewart Title Guaranty Company
Commercial Services
100 Pine Street, Suite 450
San Francisco, CA 94111-5106
(415) 394-9272 Phone
(415) 398-4621 Fax
latelia.colon@stewart.com

PRELIMINARY REPORT

Order No. : 0000
Title Unit No.
Your File No.
Buyer/Borrower Name : Borrower under Trust Agreement dated November 22, 2013
Seller Name

Property Address: 1100 Main Street, San Mateo, CA 94402

In response to the above referenced application for a Policy of Title Insurance, Stewart Title Guaranty Company Commercial Services (ST) hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Stewart Title Guaranty Company Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referenced to as an Exception on Schedule B or not excluded from coverage pursuant to the printed Schedules, Conditions, and Stipulations of said Policy forms.

The printed Exceptions and Exclusions from the coverage and Limitations on covered Risks of said policy or policies are set forth in Exhibit A attached. The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the insured as the exclusive remedy of the parties. Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limits of Liability for certain coverages are also set forth in Exhibit A. Copies of the policy forms should be read. They are available from the office which issued this report.

Please read the exceptions shown or referred to below and the exceptions and exclusions set forth in Exhibit A of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters, which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.

This report, (and any supplements or amendments thereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance a binder or commitment should be requested.

Dated as of September 1, 2022 at 7:30 a.m.

Nicholas Mercado, Title Officer

When replying, please contact: Nicholas Mercado, Title Officer

File No: 22000300408
Prelim Report COM

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What is a Title Commitment?

Commitment to Issue a Policy based on terms in the Commitment for a stated period of time if all requirements have been met

- 2021 Transactions Data
- Commitment Date
- Type of Policy to be issued
- Estate to be insured
- Vesting
- Legal
- Requirements
- Exceptions

ALTA Commitment (Without Arbitration) (7-1-21)

08/10/2021
V 9

ALTA Commitment for Title Insurance (7-1-21)

Issued By
Stewart Title Guaranty Company

NOTICE

IMPORTANT - READ CAREFULLY: THIS COMMITMENT IS AN OFFER TO ISSUE ONE OR MORE TITLE INSURANCE POLICIES. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN CONTRACT.

THIS COMMITMENT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO EXTRACONTRACTUAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.

THE COMPANY'S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A PROPOSED INSURED IDENTIFIED IN SCHEDULE A IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT. THE COMPANY HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON.

COMMITMENT TO ISSUE POLICY

Subject to the Notice; Schedule B, Part I - Requirements; Schedule B, Part II - Exceptions; and the Commitment Conditions, STEWART TITLE GUARANTY COMPANY, a Texas corporation (the "Company"), commits to issue the Policy according to the terms and provisions of this Commitment. This Commitment is effective as of the Commitment Date shown in Schedule A for each Policy described in Schedule A, only when the Company has entered in Schedule A both the specified dollar amount as the Proposed Amount of Insurance and the name of the Proposed Insured.

If all of the Schedule B, Part I - Requirements have not been met within six months after the Commitment Date, this Commitment terminates and the Company's liability and obligation end.

SPOTTING RED FLAGS

- Uninsured Deeds in Chain of Title
- Recent Foreclosures
- Old Deeds of Trust
- Old Restrictions



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PRACTICE POINTER

Order title in advance



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CONSTRUCTION TIMELINES: RECENT, ONGOING, FUTURE?

Disclose early, disclose often, material
deal facts effecting underwriting or
coverage requests.

- What is broken priority?
- Knowledge
- Disclosure



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Real World Example

The devil is in the details.

Underwriting the project, not
just mechanics' liens

Subcontractor, General
Contractor, who can lien



Lis Pendens – Real World Examples

- Husband and Wife divorce decree



- Access Easement Issue



Entity organizational documents and organizational charts for review.

The essential inventory for a stress-free closing.

- New entities being formed? Please send us unsigned drafts of the new org docs so that we can review in advance.
- Powers of the manager/managing member. Are they sufficient for the subject transaction or is written consent required? Major decisions typically require consent of a majority of the members, or all members required. Definition of “Major Decisions”: why is that important.
- Corporate resolutions, who’s signing

CONTEMPLATED OWNERSHIP CHANGES? HOW AND WHY THEY MATTER.

- State up-front, even if ownership changes are underlying any sort of deed transfer.
- Transfer tax implications, even if no deed is recording, 51% change in ownership

Trust
Example -
Easy

Authority
Example -
Complicated



Policy

PROFORMA POLICY REQUIREMENTS – TITLE POLICY EXPECTATIONS AND UNDERSTANDING THEIR IMPORTANCE

- Title objection letters and proforma requests memos
- Standard coverage vs. Extended Coverage
- What is a Proforma Policy?

What is a Proforma?

Proposed version of the Policy of Title Insurance

- When issued
- To Whom issued
- Limitations
 - It is *NOT* a Policy!
 - It is *NOT* a Commitment!
 - It is *NOT* a Binder!

This is a Pro Forma Policy, which provides no insurance coverage, furnished to or on behalf of the proposed insured. This proforma does not reflect the present status or condition of title and is not a commitment to insure the estate or interest or to provide any affirmative coverage shown herein. Any commitment must be an expressy written undertaking issued on the appropriate terms of the Company. This Pro Forma Policy solely indicates the form and content of the Policy which the Company may issue if all necessary documents are furnished, all acts are performed, and all requirements set forth in the title commitment covering this property (or that may be required by underwriting) are met to the satisfaction of the Company.

PROFORMA ALTA OWNER'S POLICY OF TITLE INSURANCE

ISSUED BY
STEWART TITLE GUARANTY COMPANY

Any notice of claim and any other notice or statement in writing required to be given the Company under this Policy must be given to the Company at the address shown in Section 18 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS, STEWART TITLE GUARANTY COMPANY, a Texas corporation, (the "Company") insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the insured by reason of:

- Title being vested other than as stated in Schedule A.
 - Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from:
 - A defect in the Title caused by:
 - forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - failure of any person or Entity to have authorized a transfer or conveyance;
 - a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
 - failure to perform those acts necessary to create a document by electronic means authorized by law;
 - a document executed under a falsified, expired, or otherwise invalid power of attorney;
 - a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
 - a defective judicial or administrative proceeding.
 - The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
 - Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments or existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
 - Unmarketable Title.
 - No right of access to and from the Land.
 - The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to:
 - the occupancy, use, or enjoyment of the Land;
 - the character, dimensions, or location of any improvement erected on the Land;
 - the subdivision of land; or
 - environmental protection.
- If a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
- An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
 - The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
 - Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without knowledge.

Countersigned by:

Stewart Title Guaranty Company
100 Pine Street, Suite 400
San Francisco, CA 94111-5106
(800) 366-7839
Agent ID:

For coverage information or assistance resolving a complaint, call (800) 729-1902 or visit www.stewart.com. To make a claim, furnish written notice in accordance with Section 3 of the Conditions.

Copyright

Proforma Details

- Legal Description
 - Address
 - Tax Number
 - Map
 - New Survey Issues



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Surveys

- Existing survey for review?
- “No-Change” Survey Affidavit.
- New improvements?
- New survey needed?
- Survey Matters



Common Endorsements

- Same As Survey (ALTA 25) – Survey Required
- Location (ALTA 22) – Physical vs. Street Address
- Access & Entry (ALTA 17 Series) – Physical access vs. legal access.
- Utilities (ALTA 17.2) – Survey Required
- Zoning (ALTA 3 Series) – Zoning Report/Letter Required
- Usury (ALTA 27) – Usury laws vary State from State
- Mechanic Liens (ALTA 32/33) – Significant Lead Time for Underwriting Review



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Thank You

Stewart Title Guaranty Company **National Commercial Services**

100 Pine Street, Suite 450
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