

All About Affidavits: Their Crucial Role in Your Title Coverage

Presented by Jeremy Poetker
Deputy Chief Underwriter



Back To Basics

– How Is Title Insurance Done?

- Search and exam
- Title commitment / title report
- Schedule A: effective date, estate, vesting, legal description
- Schedule B: exceptions from coverage to appear on the policy, unless otherwise disposed of
- All determined by review of public record

What About Things We Can't See?

- Interests that affect title but cannot be learned from a title search
- Special set of exceptions on Schedule B: “General Exceptions”
- Exceptions stay on policy unless disposed of



General Exceptions:

- Gap Exception
- Parties in Possession Exception
- Mechanic Lien Exception
- Easements not shown by the public records
- Survey Exception
- Taxes not shown by the public records
- Other location-specific

The Problem:

- Buyers and Lenders don't want to be subject to the general exceptions.
- They want title insurer to delete them from Schedule B.
- How can the title insurer underwrite the deletion of exceptions for matters we cannot search?
- The answer: Affidavit.

Affidavit From Who?

- The current owner. A party we find credible, qualified to sign, who has familiarity with the facts at issue.
- In a sale, the seller. In a refinance, the borrower.
- The affiant discloses knowledge otherwise inaccessible to the insurer.
- Insurer makes an underwriting decision: we will believe the owner – but we'll need it in writing.

Affidavit – Language Examples

- Subject to state-specific revisions. Subject to negotiation as applicable.
- Jane Smith, the Managing Member of Property Owner LLC a Delaware limited liability company (“Owner”) the owner of the premises described in Title Commitment No. 12345678 (the “Title Commitment”), and in consideration of Stewart Title Guaranty Company (the “Company”) issuing its policy or policies of title insurance insuring an interest in the real estate described therein (the “Premises”), and being duly sworn, deposes and states as follows:



Ownership

1. That Owner is the owner of the Premises described in said Title Commitment.



Quiet Possession, Disputes To Title

2. That Owner's possession of the Premises has been peaceable and undisturbed, and that title to the Premises has not been disputed or questioned during the time Owner held title to the Premises.



Bankruptcy

3. That no proceedings in bankruptcy or receivership have been instituted by or against the Owner within the last ten (10) years, and that the Owner has never made an assignment for the benefit of creditors.



Litigation, Tax Liens

4. That there is not any action or proceeding now pending in any state or federal court in the United States, to which the Owner is a party; nor is there any state or federal court judgment, state or federal tax lien, or any other state or federal lien of any kind or nature against the Owner, which could constitute a lien or charge upon the Premises.

Entity Status, If Applicable

5. That the certificate of formation and operating agreement of said limited liability company are in full force and effect and no proceeding is pending for its dissolution or annulment. That all license, state franchise and other taxes, if applicable, due and payable by said limited liability company have been paid in full.

Improvements, Alterations, Changes

6. That Owner has not contracted for, received any notice regarding, and does not know of any improvement, alteration or change to be made on, in, or about the Premises.



Taxes, Assessments, Municipals

7. That there are not any delinquent real estate taxes or unpaid current real estate taxes affecting the Premises. That Owner has not received notice of any pending or levied assessments on the Premises, including but not limited to those for trees, sidewalks, streets, sewers and water lines. That there are no delinquent amounts owed for water, sewer, refuse, or other municipal charges that could constitute a lien on the Premises, and Owner has received no notices with regard to such delinquencies.

Mechanic Liens

8. That there has not been any new construction or major repair work performed on the Premises during the preceding one hundred eighty (180) days. That the Owner has not contracted for any labor to be supplied to the Premises or for any materials to be delivered thereto, that might become the subject of a lien upon the Premises and that have not been paid for.

Other Off-record Matters:

9. That there are not any unrecorded mortgages, conditional bills of sale, retention of title agreements, security agreements, agreements not to sell or encumber, financing statements, or personal property leases, which affect the Premises or which affect any fixtures, appliances, or equipment now installed in or on the Premises

Possession, Tenants, Leases

10. (a) That Owner is in sole possession of the Premises, and that no other party has possession, or has a right of possession under any tenancy, lease or other agreement, written or oral;

OR

(b) That the only tenants occupying the Premises are as set forth on the rent roll annexed hereto as Exhibit “A”. That no tenant or any other party has any rights to the Premises other than as tenants, and no party has any option or right of first refusal to purchase the Premises, except: NONE.

[STRIKE OUT 10(a) OR 10(b), WHICHEVER IS NOT APPLICABLE]

Covenant Violations

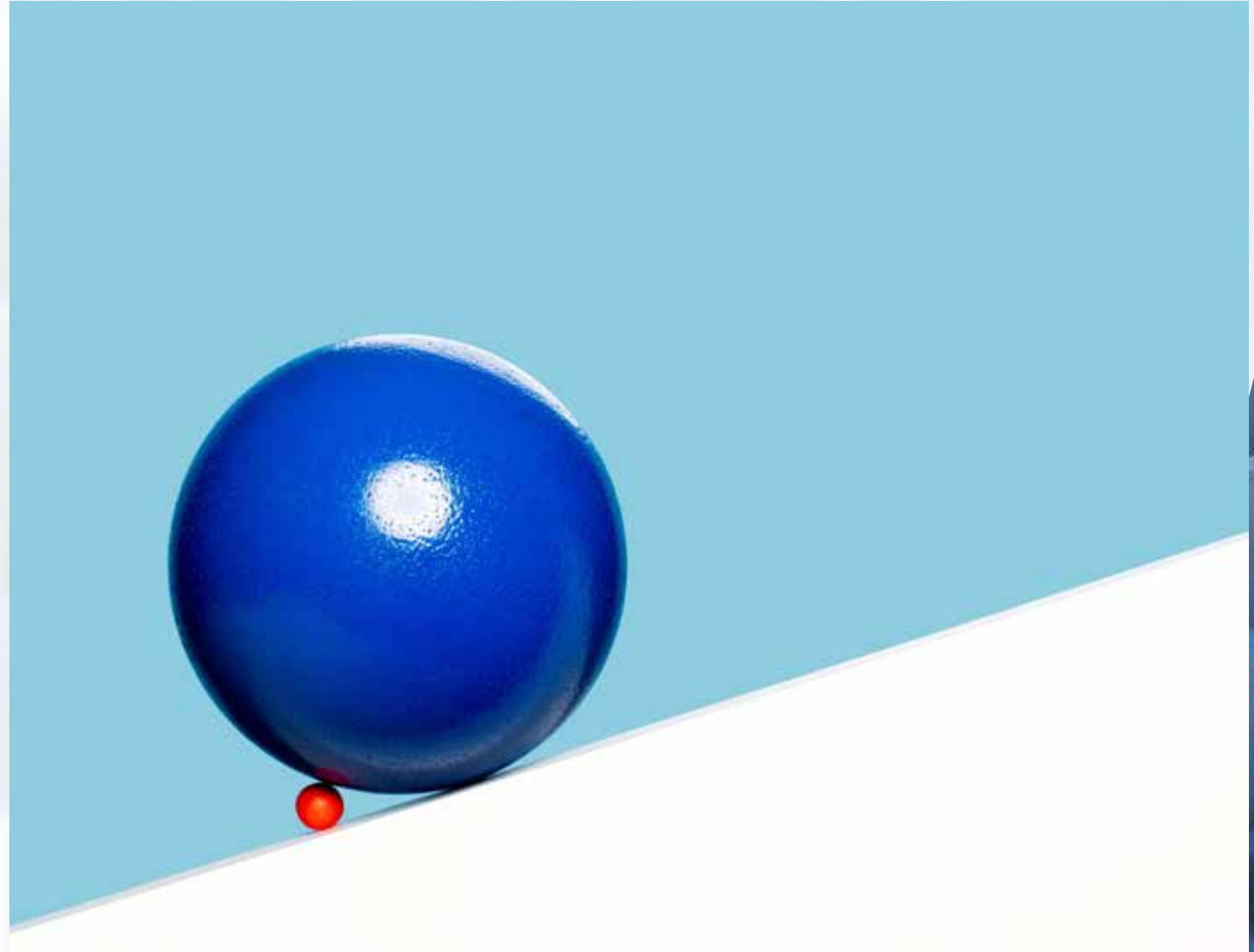
11. That Owner has received no written notice of past or present violations of any covenants, conditions or restrictions set forth in the Title Commitment for the Premises which remains uncured and any charge or assessment provided for in the covenants, conditions and restriction have been duly paid as of the date hereof.

GAP Indemnification

12. In order to effectuate a New York style closing the Owner has not taken and will not take any action or fail to take any action that would result in a defect, lien, encumbrance, adverse claim, or other matter (each a “Title Defect”) being filed or recorded against the Premises between the effective date of the Title Commitment and the date of recording of the insured documents (the “Gap Period”). In consideration of the Company issuing its policy or policies of title insurance, without an exception on Schedule B thereof for any Title Defect arising or being recorded during the Gap Period, Owner hereby agrees to promptly defend, remove, bond, or otherwise dispose of any Title Defect arising or recorded during the Gap Period, and to indemnify and hold harmless the Company against actual loss or damage, including attorneys’ fees, which the Company may sustain under its policy or policies of title insurance by reason of such Title Defect.

Inducement

13. This affidavit is made for the purpose of inducing the Company to issue its policy of title insurance, and Owner acknowledges that, in issuing its policy, the Company is placing material reliance upon the facts stated in this affidavit.



Some Other Provisions In An Owner's Affidavit:

- Other municipal charges
- Homeowner association fees or assessments
- Property manager (Illinois)
- Real estate broker (Georgia and others)

Other Affidavits

- Affidavit of non-production of oil/gas
- Homeowner association fees
- Rights of first refusal – notice given, response received
- Affidavit of trustee

Thank you. Questions?

2024 Title Tenets Webinar Series

**Stewart Title Guaranty
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Jeremy Poetker

Deputy Chief Underwriter

203.209.3665

jeremy.poetker@stewart.com

