



Basic Overview of:

**Title Policy Standard Exceptions,
The Owner's Affidavit, and,
Survey Affidavits**

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Overview of:
Title Policy Standard Exceptions



What title policies are used to insure ownership to real property?

- ALTA Standard Owner's Policy, with standard exceptions.
- ALTA Standard Owner's Policy, without standard exceptions. This is referred to as providing extended coverage.
- ALTA Homeowner's Policy ("HOP"). This may be called other things dependent on your underwriter. This provides expanded coverage beyond the ALTA Standard Owner's Policy in that its most current form has 33 v. 10 Covered Risks, and more! Requests for a HOP often also ask for removal of standard exceptions. Be familiar with the requirements your underwriter has for issuing a HOP.



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What title policies are most commonly used to insure a lienholder's interest in real property?

- ALTA Standard Lender's Policy, with standard exceptions.
- ALTA Standard Lender's Policy, without standard exceptions. This is referred to as providing extended coverage.
- ALTA Expanded Residential Lender's Policy. This provides expanded coverage beyond the ALTA Standard Lender's Policy (like the HOP, but there are some differences). These are seldom used though.

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Who decides what policy will be issued?

- Your Insured(s) should instruct you on which policy they want and you should confirm it is applicable to the transaction.
- Common Issue: You have a purchase agreement which specifies that a HOP should be issued, but you find the transaction is not one in which a HOP can be issued. In said case, you should alert the parties to revise their agreement to reflect a standard OP (they can advise on with or without exceptions, further). For example, you may have a request for a HOP on a commercial property, or a buyer/Insured that is outside the definition of a “Natural Person” or “Estate Planning Entity” under the current form of a HOP that wouldn’t allow for a HOP to be issued.

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Generally, what are exceptions and what types are found in a title commitment/policy?

- Exceptions: Items that are excluded from coverage under the Covered Risks in the applicable title policy.
 - Standard Exceptions: Pre-printed off-record matters.
 - Specific Exceptions: Matters found of record and known that may not be able to be cleared/insured unique to your property (e.g. building and use restrictions, easements, oil/gas/mineral leases, encroachments, misc. liens, rights of first refusal, riparian rights, etc.).
- Exceptions are contained in Schedule B-II of the commitment and carry over to the policy unless otherwise resolved. Insured parties under the policy must agree to take their title policy with the exceptions that remain and can’t otherwise be cleared.

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Disclaimer:

While title policy standard exceptions and guidelines for removal are often similar amongst title underwriters, there can be variances that need to be observed.

Check with your underwriters to make sure you are using their required standard exceptions and following their guidelines for removal. Any requests for modification to standard exceptions should be approved by your underwriter.

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What are common standard exceptions?

1. Unrecorded rights or claims of parties in possession.
2. Unrecorded adverse matters that could be depicted on a survey (encroachments, overlaps, boundary disputes, etc.).
3. Unrecorded easements.
4. Unrecorded mechanic's/construction liens.
5. Unrecorded reserved oil, gas, water, mineral or mining rights.
6. Matters recorded after the commitment's effective date, but before the Insured acquires an interest in the property (when the instrument insured is recorded). This is commonly known as the "gap exception."
7. Unrecorded tax or assessment liens. (Note, this one differs from another typical standard tax/assessment exception that generally remains on the policy for those that become due and payable/lien subsequent to the interest insured).

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How are standard exceptions removed?

- They can only be removed if the conditions your underwriter specifies are met!

For example, your underwriter may allow you to delete certain exceptions via things such as a clear Owner's Affidavit, an acceptable survey, or survey affidavits, endorsements, etc.

- Also note, there may be some standard exceptions that generally can't be deleted or modified.

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MOST IMPORTANT?



It is important to confirm that the Insured(s) accept what exceptions will remain on the policy to reflect the necessary information on your 'marked up commitment' and policy.

All closers should - **Stop** - if the parties ask for removal of exceptions at the last minute. Make sure you have in fact met the requirements to remove.

Any concerns should be addressed with an examiner or supervisor, and underwriter, where necessary.

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Overview of: The Owner's Affidavit



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- **Disclaimer:**

While Owner's Affidavits are often similar amongst title underwriters, there is variance that needs to be observed.

Check with your underwriters to make sure you are using their required Owner's Affidavit form and that it's appropriate depending on who the owner is (are you dealing with an individual, entity, fiduciary, etc. - there may be specific forms for each).

Any requests for modification to an Owner's Affidavit should be approved by your underwriter.

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What is an Owner's Affidavit?

- Insured real estate transactions depend heavily on an ***Owner's Affidavit***, which offers a legal certification of ownership and property status that the property owner provides to a title agent and its underwriter. This helps protect buyers/lenders from legal issues that may affect the property and promotes transparency re: the property's history to allow for a smooth transaction. It guards against false declarations by the owner and can be used to defend in the event of a title policy claim. The Owner's Affidavit should indemnify and hold harmless, the agent and its underwriter. In a split closing, make sure not to solely rely on the other side's Owner's Affidavit. It is crucial that it be executed fully and close attention be paid to any new information revealed by it.
- You may notice the Owner's Affidavit being called by other names as well (e.g. Borrower's Affidavit/Seller Affidavit, etc.).

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What kind of information might a standard Owner's Affidavit generally include?

- The owner's name(s), age, citizenship, and marital status.
- Who is in possession of the property and if there are any known claims by others.
- Information about access to the property and whether it is vacant or not.
- The property's status as it pertains to any liens, judgments, new construction or improvements, and bankruptcy or receivership proceedings which may affect it.
- If the property abuts water.
- If there are any pending or recent land divisions.
- Any known encroachments or easements.
- Any known documents that may affect land.
- Any known violations of any CCRs.
- Any known oil, gas, mineral or mining rights.
- Confirmation of the status of payment of real estate taxes, special assessments, and any other fees.

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What Owner's Affidavit do you use when issuing a Homeowner's Policy?

- If a Homeowner's Policy is being issued, be sure to also have the additional HOP Owner's Affidavit signed to account for the additional coverages the HOP provides. The HOP Owner's Affidavit has additional questions that the owner needs to answer which affirm they don't know of additional off-record matters being covered in the HOP and more (e.g. Is there pedestrian and vehicular access to the property? Are there any known zoning or permit violations? Is the property a SFR/condo?, etc.).
- Some agents have combined both the standard Owner's Affidavit and Homeowner's Policy Owner's Affidavit to encompass all that both require. That said, remember to make sure you are doing what your underwriter requires.

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How might an Owner's Affidavit help remove standard exceptions?

1. Unrecorded rights or claims of parties in possession:

If the Owner's Affidavit discloses that there are specific parties in possession (i.e. if the owner is aware of renters or squatters living on the property) the standard exception and/or a specific exception need be raised. If there are none revealed, you may be able to remove.

2. Unrecorded adverse matters that could be depicted on a survey:

If the Owner's Affidavit discloses any encroachments, encumbrances, violations, variations, or adverse circumstances that would be depicted on a survey, the standard exception and/or a specific exception need be raised. If there are none revealed, you may be able to remove on certain properties.

*Is a survey also needed to remove the survey exception?

In some cases a survey may be required, but your underwriter should confirm what they require to delete the survey exception. Underwriters typically take into consideration things like: property and policy types, policy amount, property size, any known new construction or issues with the legal description/boundaries, if the property abuts water, etc.

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3. Unrecorded easements:

If the Owner's Affidavit discloses that there are unrecorded easements or claims of easements, the standard exception and/or a specific exception need be raised. If there are none revealed, you may be able to remove.

4. Unrecorded mechanic's liens:

If the Owner's Affidavit discloses any new construction on the property, the standard exception and/or a specific exception need be raised or additional requirements may be needed (e.g. sworn statements and waivers of lien). If there is none revealed, you may be able to remove.

5. Unrecorded reserved oil, gas, water, mineral or mining rights:

If the Owner's Affidavit discloses that there are any unrecorded water, oil, gas, mineral, mining rights and/or reservations, the standard exception and/or a specific exception need be raised. If there are none revealed, you may be able to remove, but note, more may be required based on the property type and overall circumstances (e.g. could you need a survey and/or EGLE and/or patent search to determine rights further?).

Generally, be aware of where your property is located. Is it in a known mining/drilling area? Does your Schedule B-II have any exceptions for riparian rights, an oil and gas lease, or other mining/mineral rights?

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6. Matters recorded after the commitment's effective date, but before the Insured acquires an interest in the property ("gap exception"):

If the Owner's Affidavit discloses any potential defects, liens, encumbrances, adverse claims, or other matters that are not shown that could be recorded after the commitment's effective date, but before the Insured acquires an interest in the property, the standard exception and/or a specific exception need be raised. If there are none revealed, you may be able to remove.

7. Unrecorded tax or assessment liens:

If the Owner's Affidavit discloses that there are any taxes or special assessments that are not shown, the standard exception and/or a specific exception need be raised. If there are none revealed, you may be able to remove.

*Remember, this one differs from another typical standard tax/assessment exception that generally remains on the policy for those that become due and payable/lien subsequent to the interest insured. In other words, don't delete the wrong tax exception with an Owner's Affidavit.

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MOST IMPORTANT?



It is important to review the final Owner's Affidavit/Homeowner's Policy Owner's Affidavit when completed and to reflect the necessary information on your 'marked up commitment' and policy.

All closers should - **Stop** - if the owner has not completely answered something or if an answer reveals new information that may prompt the need for the policy exceptions to be changed.

Any concerns should be addressed with an examiner or supervisor, and underwriter, where necessary.

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Overview of: Survey Affidavits



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Disclaimer:

Check with your underwriters to make sure you are aware of their survey requirements and their options for using survey related affidavits. Any requests for modification to survey affidavits should be approved by your underwriter.

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Survey Affidavit of No Change

What is it and when might it be commonly used?

- An affidavit from a knowledgeable party (often the owner) that affirms that no changes have been made since a recent existing survey that would affect its reliability to remove the standard survey exception. Any issues raised on the survey would still need to be raised as a specific exception though.
- It may be used related to recent transactions and for low-risk properties (based on type, size, location, and lack of potential legal description/boundary issues, etc.).

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Affidavit in Lieu of Survey

What is it and when might it be used?

- It seems to be used in addition to the Owner's Affidavit/HOP Owner's Affidavit for certain properties that don't require a survey to delete the standard survey exception, elaborating/confirming if there are any known issues that would be depicted on a survey.
- Check with your underwriter to see if they require this kind of affidavit in addition to the Owner's Affidavit/HOP Owner's Affidavit.

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A General Note

By signing survey affidavits, the affiant is legally stating that they are responsible for any inaccuracies in the information provided, should a discrepancy arise later. Accordingly, the affidavits should indemnify and hold harmless, the agent and its underwriter. In a split closing, make sure not to solely rely on the other side's survey affidavit(s).

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What if a new survey v. a survey affidavit is provided to remove the survey exception otherwise?

Make sure to carefully review the survey to determine if any specific exceptions need to be raised on the policy for all issues depicted on the survey, as raised by the surveyor, and confirm the legal description matches your insured description.



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MOST IMPORTANT?



It is important to review the completed survey affidavit(s) to reflect the necessary information on your 'marked up commitment' and policy.

All closers should - **Stop** - when there is an answer from the owner that reveals any change/issue related to the land/survey that may prompt the need for the policy exceptions to be changed.

Any concerns should be addressed with an examiner or supervisor, and underwriter, where necessary.

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Thank you for attending!