

BEST PRACTICES #1 Garbage Exceptions

1. The implication of Colorado Revised Statute, Section 10-11-106(1) and Colorado Division of Insurance Regulation 3-5-1, Section 7(B) and (C) is to require a title entity to perform such a title search of the county real estate records as is necessary to conduct a reasonable examination of title . To the extent such a search discloses impairments of record, it would be best to disclose those impairments of record in the title insurance commitment by recording information, such as a reception number or by book and page numbers, provided the recording information is reasonably available.
2. It is improper for a title entity to avoid performing a reasonable search and examination of title by providing exceptions in the title insurance commitment that fail to identify specific recorded impairments against the title to the property to be insured. This form of an exception is commonly referred to as a “garbage exception.” Garbage exceptions are exceptions that are overly broad and void coverage without reference to the public records that such avoidance maybe based upon.

Examples of garbage exceptions include, but are not limited to, the following:

1. “Any and all documents of record.”
2. “Any and all judgments of record.”
3. “Any and all encumbrances of record.”
4. “Any and all easements of record.”
5. “Any covenants and conditions of record.”
6. “Any and all plats of record.”
7. “Any easements, servitudes, leases, grants, exceptions, covenants, conditions and restrictions, appearing in the public records.”

The American Land Title Association (“ALTA”) and many title insurance underwriters recognize exceptions to title that are commonly referred to as “Standard Exceptions”. The use of these standard exceptions is deemed to be proper unless they are required to be deleted or affirmatively insured over pursuant to the terms and conditions of the closing instructions and/or real estate contract. Common Standard Exceptions may include language similar to:

1. Taxes and assessments not appearing of record in the Office of the Treasurer of the County where the insured land is situate.
2. Rights or claims of parties in possession not shown by the public records.
3. Any encroachment, encumbrances, violation, or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the land.
4. Any lien or right to a lien for services, labor, or materials heretofore or hereafter furnished, imposed by law and not shown by the public records.

5. Easements, liens or encumbrances or claims thereof, which are not shown by the public records.
 6. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
 7. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
 8. Any claim, which arises out of the transaction vesting in the Insured estate or interest insured by the policy to be issued hereunder, by reason of the operation of federal bankruptcy, state insolvency or similar creditor's rights laws.
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3. Title entities are advised to review CRS 10-11-123 concerning disclosure of the severance of minerals or mineral estates.

In addition, the ALTA has created numerous title insurance products for owners and lenders that may use general language, to some extent, relating to title exceptions. Nothing contained in this Statement is intended to prohibit the use of these various title insurance products nor to prohibit the individual negotiation of insurance coverage between the insured and the title insurance entity. Examples of these products include, but are not limited to, the ALTA Short Form Owner's and Lender's policies.

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