

Minimize Your Risk

The area and boundary amendment to the Owner Policy of Title Insurance protects buyers and agents. Here's why:

It is common and convenient practice to use the seller's existing survey for a new transaction; however, this practice puts both the buyer and the agent at risk in the event that the survey proves to be inaccurate. Because the survey was issued to a prior owner, the new property owner cannot turn to the surveyor for recourse. In this instance, the agents involved offer the only choice for remedy. Unfortunately, not only prior surveys bear risk. Even a new survey may have errors or be challenged by a third party claim.

An easy strategy at covering your liability is to make sure your buyers are aware that they can purchase an amendment to the survey exception in their title policy, protecting them from loss in the event of a survey error. For as little as 5 % of the basic premium rate, your buyers can protect themselves and you.

How do I ask for the amendment?

Simply add the following TREC contract language to special provisions:

Buyer elects under Paragraph 6 A (8) to amend the standard printed exceptions as to discrepancies, conflicts, shortages in area or boundary lines, encroachments or protrusions, or overlapping improvements to read "shortages in area" only. Buyer will pay the ____% for the coverage as part of the closing costs.

What does an owner receive when the exception is amended?

A. Amending the exception provides additional coverage under the terms of the policy by eliminating the exception for (1) any discrepancies, (2) conflicts, (3) boundary lines, (4) or any encroachments, (5) protrusions, or any (6) overlapping of improvements. Common examples include: (a) coverage

for anyone claiming the improvements are over a property line into a neighboring tract; (b) a utility company requiring removal of improvements that are in their easement on the property; and (c) a home owners association claiming the improvements are built over a building line and demanding improvements be removed.

B. When combined with using a prior survey done for a different owner, it gives the purchaser insurance against the inaccuracy of the work of a surveyor who has done the work relied on by the title company to allow the coverage. The purchaser would not have privity with the surveyor in case of an error in the work, so could not sue the surveyor for errors.

C. Even with a current survey, the coverage provides insurance in the policy for matters in the survey that, if in error, result in a claim that will be handled by filing a claim under the title policy. The title policy provides a remedy, both for an error in the survey and for possible defense costs associated with any assertion by a neighbor of error in the survey, and a claim by a third party as to any of the matters covered by the deletion.

D. The Owner Policy is backed by the financial stability of the title insurance underwriter for any claims made by the insured, and as regulated by the Texas Department of Insurance.

For more information on survey deletion, please contact Heritage Title Company.

