

**COMMERCIAL TRANSACTIONS
CHECKLIST FOR APPROVED ATTORNEYS FOR TITLE INSURANCE MATTERS**

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In addition to Attorneys Title's growing residential business, Attorneys Title does a considerable, and growing, volume of commercial transactions. Attorneys Title has a staff of experienced attorneys and underwriters familiar with every title insurance aspect of commercial transactions, including the latest policies, endorsements and procedures. Attorneys Title's commitment and policy preparing computer systems contain these forms and specially tailored requirements and exceptions. These systems are being even further enhanced.

Attorneys Title can issue the title insurance of either United General Title Insurance Company or First American Title Insurance Company. United General can issue policies up to \$4,000,000.00 without reinsurance and can issue policies exceeding \$4,000,000.00 with automatic reinsurance of amounts over \$4,000,000.00 pursuant to an automatic reinsurance treaty with First American. Very few First American policies require reinsurance. Both companies have superb financial ratings and have been acceptable to clients.

Attorneys Title has recently issued policies on complex transactions of \$77,000,000.00, \$38,000,000.00 and several over \$10,000,000.00, particularly in Charlotte and Raleigh.

Set forth below is a suggested checklist for the Attorneys Title approved attorney. Obviously, its use is suggested, but not required! It is intended to help the busy commercial transaction attorney to "stay ahead of the game", including giving the title insurer sufficient information for the best ultimate result for the approved attorney's client. The checklist is not intended to be a complete explanation of all items on the checklist. From time to time, we will revise the checklist to improve it. Your comments are welcome. We will also be discussing certain issues in future newsletters. Please let us have your suggestions for those as well. Please feel free to call upon us for assistance. A directory of our offices and staff can be found at: <http://www.attorneytitle.com/officelocations.html>

Checklist Begins on the Following Page

COMMERCIAL TRANSACTIONS

TITLE INSURANCE CHECKLIST FOR APPROVED ATTORNEYS

(Order of items responsive to using NCBA/NCLTA form opinions)

1. Preliminary Opinion on Title

a. Current owner

- If title is vested in individual, is the individual married?
- Is the individual dead?
- If dead, are estate matters pending?
 - Intestate or testate administration?
 - Probated will?
 - First notice to creditors published or posted under G.S. 28A-17-12?
 - Sale by devisees/heirs under G.S. 28A-17-12 after first publication or posting of notice to creditors? If so, joinder of P.R. is necessary unless first publication or posting of notice to creditors does not occur within two years of death.
 - Sale by P.R.? By court order? Pursuant to power of sale in will? Has title insurer agreed that power of sale in will allows P.R. to make the transfer without joinder of devisees and spouses?
 - Estate or inheritance taxes?
- If title is vested in entity, is entity still in existence?
- Ordinarily, title should not be vested in a trust. If title is vested in trustee (as opposed to title vested in the trust which is ordinarily not a legal entity), have you satisfied yourself that trustee has power to make the transfer to be insured? Is title insurer willing to rely on the trust document(s), statutory protection under G.S. 36C-10-1012, or the trustee's certification under G.S. 36C-10-1013?
- If power of attorney is to be used, is it properly recorded and does it allow the attorney-in-fact to make the transfer? Has title insurer approved its use? Has title insurer approved affidavit of attorney-in-fact under G.S. 32A-40(d)?
- If title has been obtained by foreclosure, was the foreclosure properly conducted?

b. Type of estate to be transferred.

- Fee simple owned, fee simple to be conveyed
- Fee simple owned, leasehold estate to be granted
- Leasehold owned, leasehold to be assigned or subleased. Permission of landlord required?
- Easement appurtenant in addition to fee or leasehold.

c. Property description

- Lot and block
- Metes and bounds
- Does legal description currently include easements? If so, are they exclusive?
- Is the current description legally adequate? If questionable, has title insurer approved it?
- Will the description be revised to match a new or existent survey? For example, if existing description is of several tracts, will a new composite description be used?
- Will the current owner-grantor be giving a general warranty deed for the description in the deed to the grantor and a limited warranty deed for the new description based on the survey or just a general warranty deed for the new description?

d. Taxes

- _____ Status of real property advalorem taxes?
- _____ Deferred taxes?
- _____ Status of personal property taxes?
- _____ Are taxes to be paid?

Note: If title was not subject to advalorem tax on January 1, 200X because of exempt status and non-exempt grantee will acquire title after January 1, 200X but prior to July 1, 200X, the land shall be listed by grantee and will be taxed for fiscal year beginning July 1, 200X (200X taxes for July 1, 200X through June 30, 200Y). If non-exempt grantee acquires title on or after July 1, 200X, property does not lose exempt status for 200X taxes. See G.S. 105-285(d). X and Y denote consecutive years.

Note: Taxes levied on improvements owned by X located on Y's land are a lien on X's improvements and on Y's land. Taxes levied on A's leasehold are a lien on A's leasehold and on B's fee. Business personal property taxes levied against A, who is a tenant, attach to A's leasehold, but not to B's fee. G.S. 105-355(a).

- _____ How will taxes be prorated under the contract of purchase and sale? If contract silent, see G.S. 39-60.
- _____ Are there special assessments constituting liens to be paid?
- _____ Estate or inheritance taxes (see 1 a. above).

e. Restrictive covenants

- _____ Known violation on survey or otherwise?
- _____ Does any document contain
 - _____ Requirements for plan approval?
 - _____ Restrictions in conflict with planned use of land, including manufactured home or unit or use of land for commercial purposes when the restrictions are residential? Have you furnished the title insurer all information if affirmative coverage is needed?___
 - _____ Easements?
 - _____ Options to purchase or rights of first refusal?
 - _____ Assessments and assessment liens? If liens, are the liens subordinate to deed of trust to be given by virtue of subordination in the document?
 - _____ Forfeiture or reversionary clauses?
 - _____ Setbacks?
 - _____ If the restrictions are to be amended, does the developer/declarant have the unilateral right to do so? ___ If not, has the issue of who must sign the amendment been cleared with the title insurer? ___
 - _____ See 1 n. and 1 o. below for ALTA Endorsements 9, 9.1, or 9.2.

f. Survey and surveyor

- _____ Current survey to be used? Date of survey? _____
- _____ New or updated ALTA survey required by party to the transaction? _____
- _____ Legal to be redrafted to comply with the existing or new survey?
- _____ Lender's requirements for survey?
 - _____ ALTA survey?
 - _____ Legal description on survey?
 - _____ Must legal description match the commitment legal description?
 - _____ Must easements be shown, located and labeled or determined and noted to be general and unlocatable or inapplicable?
 - _____ Has surveyor been furnished all exception documents including recorded plat?
 - _____ Does the survey meet all requirements?

- _____ Does the survey show encroachments? If so, how long have they been there? _____ Will title insurer provide coverage? _____ Owner coverage? _____ Lender coverage? _____
- _____ Surveyor to be sent copy of title insurance commitment?
- _____ Survey to be certified to the title insurer?
- _____ Survey sent to title insurer?

g. Recorded plat

- _____ Shows setbacks?
- _____ Shows setbacks according to zoning?
- _____ Shows easements?
- _____ Is the plat a revision? If so, have all the parties with rights vested by virtue of the earlier plat(s) consented to the revision? _____ If not, does the original plat, or covenants allow the developer to unilaterally revise the recorded plat? _____
- _____ Are there violations of setbacks? If so, for how long? _____
- _____ Are there known encroachments onto easements? If so, for how long? _____
- _____ Will title insurer provide coverage? _____ Owner coverage? _____ Lender coverage? _____

h. Access

- _____ Does the land abut a publicly dedicated and accepted right of way? If so, is the access controlled or restricted? _____ Are there curb cuts? _____
- _____ If the land does not abut a publicly dedicated and accepted right of way, does the land have access to one over a valid private easement of record? _____ Is the easement for a specified route? _____ Is it contained in a REA? _____ Is it adequate for anticipated use of the land, including being in accord with zoning ordinances? _____ Have you searched the title to the servient tract and listed prior encumbrances on the servient tract recorded ahead of the easement? _____ If there is a lien recorded ahead of the recordation of the easement, has the lienor joined in the easement to subordinate its lien to the easement? _____ If not, will the lienor subordinate of record? _____ Does prior title policy cover the easement? _____

i. Occupancy

- _____ Tenant(s) under unrecorded lease(s)? If so, will SNDA(s) be obtained and recorded? _____
- _____ Tenant(s) under recorded lease(s)? If so, will SNDA(s) be obtained and recorded? _____
- _____ Does any lease contain an option to purchase or right of first refusal? _____ If so, is it recurring? _____ Is it subordinate by its terms to the deed of trust to be given? _____ If not, will it be subordinated of record? _____
- _____ Is an assignment of rents and leases to be given to further secure the lender?
- _____ Will any lease be assigned? _____ Is assignment prohibited or does it require consent?
- _____ Will there be a sublease? Is sublease prohibited or does it require consent? _____

j. Updating from prior policy

- _____ Is the prior policy an owner's policy? If so, is current title insurer satisfied it can be used? _____ If a loan policy, does current title insurer consent to its use? Will you update the current owner in the prior policy for all outconveyances and liens? _____ Has client consented to use of prior policy? _____

k. Other easements, liens, deeds of trust, objections or defects

- _____ Are there easements that affect the land?
- _____ Are there prior deeds of trust? If so, will the prior deeds of trust be cancelled of record? ___; released of record as to the land ___; assumed ___; assigned of record (with the note) ___; has any deed of trust been assigned of record or by virtue of assignment of note ___?
- _____ As to any prior deed of trust, is there a related assignment of leases and/or UCC fixture filing that will also be separately handled of record as will the deed of trust discussed above?
- _____ If prior deed of trust secures an equity line, will the letter closing the equity line after it is reduced to zero be sent under G.S. 45-81 (c)?
- _____ Do you have adequate and clear payoff letter from each lender responding to your written request?
- _____ Are there filed liens for labor, services, materials or equipment? If so, is the 180 day enforcement period still open? ___ Has the title insurer agreed to insure if these liens are discharged of record, including insurance against other such liens that can be recorded after closing and relate back?
- _____ As to unfiled liens for labor, services, materials, or equipment, has there been no construction within the last 120 days? ___ If there has been construction, is it complete? ___ If not complete, has title insurer agreed to proposed lien subordinations? ___ If the proposed loan is a construction loan, will the deed of trust be recorded prior to commencement of construction, with an affidavit of non-commencement approved by the title insurer, with the surveyor and architect having been paid or subordinating liens? ___
- _____ Are there valid judgments or other liens of record? ___ Are they to be cancelled? ___
- _____ As to any lien to be cancelled or released of record prior to closing, has title insurer agreed to rely upon payoff letter and disbursement in order to have policy coverage effective?
- _____ Is there an option to purchase or a right of first refusal? ___ Will it be released of record? ___
- _____ Bankruptcy? (Is there an 11 U.S.C. Sec. 549 notice of bankruptcy filed in the county's register of deeds office where the land lies evidencing a bankruptcy pending elsewhere? ___) If so, is the case closed and the proposed transaction unaffected? ___ Have you noted that mere discharge of a debt will not remove an existing lien on property (securing that debt) to which it has attached prior to bankruptcy? ___ If the case is open, will appropriate permission to sell or mortgage the property be obtained, with any required notice to parties? ___ If a sale is to be free and clear of liens, has the title insurer approved the procedure, including required notice to parties? ___
- _____ As to any of the above issues, if the title insurer will be asked to rely upon an indemnity or affidavit, has title insurer approved it?

l. Search period if not updating from prior policy or if updating from prior policy

m. Title insurance application

- _____ Name of proposed owner insured. If insured is a trustee of a trust, will deed be to the trustee as opposed to the trust? ___
- _____ Name of proposed lender insured.
- _____ Amounts of coverage. Owner _____ Lender _____
- _____ Loan is: Permanent ___; Temporary ___; Construction ___; Construction/Permanent ___; Other future advances or line of credit ___; Letter of credit ___; FHA ___; VA ___; SBA ___; Conventional ___; other ___
- _____ Insured Closing Protection Letter?

n. Lender endorsements and requirements

- _____ Have you furnished the title insurer a list of lender requirements of lender including endorsements?
_____ Lender endorsements:
- ___ ALTA 3 (zoning-vacant land);
 - ___ ALTA 3.1 (zoning-improved land);
 - ___ ALTA 6 (variable rate);
 - ___ ALTA 6.2 (negative amortization);
 - ___ ALTA 7 (manufactured housing);
 - ___ ALTA 8.1 (environmental/commercial);
 - ___ ALTA 9 (comprehensive);
 - ___ ALTA 13.1 (for a leasehold loan policy only);
 - ___ ALTA 14 (future advances);
 - ___ ALTA 14.2 (future advances-letter of credit);
 - ___ ALTA 17 (access);
 - ___ ALTA 17.1 (indirect access);
 - ___ ALTA 18 (tax parcel);
 - ___ Contiguity (specify type);
 - ___ Deletion of creditors' rights exclusion (ALTA 21 or equivalent);
 - ___ Deletion of arbitration provisions;
 - ___ Same land as on survey;
 - ___ Affirmative coverage regarding encroachments;
 - ___ 103.1 (or similar) (non-interference by general, unplottable easements);
 - ___ Other _____
 - ___ What are the title insurer's requirements for endorsements, including zoning letters and creditors' rights situation explanation and questionnaire?

o. Owner's endorsements and requirements

- _____ Have you furnished the title insurer a list of new owner requirements including endorsements?
_____ Owner endorsements:
- ___ ALTA 3 (zoning- vacant land);
 - ___ ALTA 3.1 (zoning-improved land);
 - ___ ALTA 7 (manufactured housing);
 - ___ ALTA 9.1 (comprehensive-vacant land);
 - ___ ALTA 9.2 (comprehensive-developed land);
 - ___ ALTA 13 (for a leasehold owner's policy only);
 - ___ ALTA 15 (non-imputation-full equity transfer);
 - ___ ALTA 15.1 (non-imputation-additional insured);
 - ___ ALTA 15.2 (non-imputation- partial equity transfer);
 - ___ ALTA 16 (Mezzanine Financing);
 - ___ ALTA 17 (access);
 - ___ ALTA 17.1 (indirect access);
 - ___ ALTA 18 (tax parcel);
 - ___ Contiguity (specify type);
 - ___ Deletion of creditors' rights exclusion (ALTA 21 or equivalent);
 - ___ Deletion of arbitration provisions;
 - ___ Same land as on survey;
 - ___ Other _____
 - ___ What are the title insurer's requirements for endorsements, including zoning letters and creditors' rights situation explanation and questionnaire?

2. Commitment

_____ Is it satisfactory?
_____ Revisions?

3. Additional pre-closing and formal final opinion items

a. Gap exception

_____ Does proposed insured require transaction to close based on a GAP indemnity and if so, has title insurer approved this?

b. Marked commitment and Proforma policy

_____ Does proposed insured require a marked commitment showing recording, satisfaction of commitment requirements, proposed insured approval of the marked commitment and then funding?

_____ In lieu of, or in addition to, marked commitment, does proposed insured require a "proforma policy"?

c. Other title insurance matters

_____ If proposed insured wants exceptions deleted or limited, have you furnished them to title insurer and gained consent?

d. Documents

_____ Are documents to be recorded properly executed and acknowledged and do they have proper legal description attached?

e. Escrow and disbursement

_____ Is title insurer or title agent required to be escrow agent? If so, has title insurer approved terms of escrow? ____ If so, are the funds to be held for any time in an interest bearing account with the interest to be reported to a taxpayer with a particular social security number or tax I.D. number? ____ Is this a 1031 Exchange? ____ Has the title insurer or agent been furnished with instructions for disbursement, including parties' names, addresses for checks, wiring instructions for wiring and a list of disbursements confirming this, pursuant to final agreement of the parties? ____

4. Final Opinion on Title

a. Commitment requirements

_____ All requirements met? Any not met? _____

b. Additional exceptions?

_____ Are there any additional exceptions? _____

c. Taxes

_____ Paid through what year?

d. Documents

_____ Have you given the title insurer a copy of the face page of all recorded documents to assist in accurate policy preparation? _____ Is there a reason to give the title insurer the entire document, such as to verify legal descriptions or to review terms of a subordination? _____

e. Policies

_____ Email to attorney first for review and approval?

_____ Where and how sent? Will email originals do? _____

_____ Time limit for delivery of policies?