

Basic Manual Update Series

Countdown to November 1

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INSTALLMENT 6

THE WORLD OF PRIOR SURVEYS AND THE “AREA AND BOUNDARY” EXCEPTION TO TITLE POLICY COVERAGE

The Owner’s Policy T-1 provides in Covered Risks that the title insurance company insures against loss or damage sustained or incurred by the Insured by reason of:

2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from

(c) Any encroachment, encumbrance, violation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land....

The lead-in clause to Covered Risks also states:

SUBJECT TO...THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B...

Schedule B - Exceptions From Coverage indicates:

This policy does not insure against loss or damage...that arise by reason of...the following matters:

2. Any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements.

The T-1R does not have a similar insuring provision, but it does have the same Schedule B exception. The T-2 Loan Policy contains language similar to the T-1, but the exception in Schedule B also includes a checkbox for: *Item 2 of Schedule B is hereby amended to read: ‘shortages in area.’*

The Title Commitment T-7 includes the same language in Schedule B - Exceptions From Coverage and references the policy forms discussed above to be used for insuring purposes. However, the Title Commitment also includes the following language:

Before the Policy is issued, you may request changes in the policy. Some of the changes to consider are:

– Request amendment of the ‘area and boundary’ exception (Schedule B, paragraph 2). To get this amendment, you must furnish a survey and comply with other requirements of the Company. On the Owner’s Policy, you must pay an additional premium for the amendment. If the survey is acceptable to the Company and if the Company’s other requirements are met, your Policy will insure you against loss because of discrepancies or conflicts in boundary lines, encroachments or protrusions, or overlapping of improvements. The Company may then decide not to insure against specific boundary or survey problems by making special exceptions in the Policy. Whether or not you request amendment of the “area and boundary” exception, you should determine whether you want to purchase and review a survey if a survey is not being provided to you.

SO HOW DOES A CONSUMER GET A SURVEY “PROVIDED TO YOU?”

The contract, such as the TREC contracts in paragraph 6, may require the Seller to purchase and provide a survey. Alternatively, the Buyer may choose to purchase a new survey, or the Seller and Buyer may agree to use a prior survey under the terms of the contract.

This entire process can be confusing, especially when using a prior survey. Therefore, two key changes are being made to the title insurance policies for clarification.

1. New language is being added to the Covered Risks section in the T-1, following the “survey” or “area and boundary” coverage in Covered Risks 2(c), to state:
[This coverage is deleted by Schedule B Exceptions From Coverage, Paragraph 2, unless a survey of the Land acceptable to the Company is timely provided and the applicable premium is paid to amend the exception to “shortages in area.”]
2. Language is being added to Schedule B at the end of paragraph 2 in both the T-1 and T-2 policies to state:
“Covered Risk 2(c) is hereby deleted.”

This change aims to make it clearer to consumers that no “area and boundary” (or “survey coverage,” as it’s sometimes incorrectly called) is available unless a survey of the Land is provided, approved by the title Company, potential specific objections are made based on the survey, and an additional premium is paid.

USING A PRIOR SURVEY

Many buyers prefer using a prior survey instead of obtaining a new one. The authority to use a prior survey is found in P-2. *Amendment of Exception to Area and Boundaries*, particularly in P-2.a, which outlines the requirements. A T-47 Residential Real Property Affidavit is required. You can [review P-2.a here](#). Additionally, most TREC contracts allow for the use of a prior survey along with a T-47, except for resale of a condominium.

UPDATES TO T-47 AFFIDAVIT REQUIREMENTS

The T-47 form will also undergo some changes with the November 1 revisions. It will have a new companion form, T-47.1, allowing for a statutory declaration (under Texas Civil Practice and Remedies Code section 132.001) instead of a jurat required for an affidavit. This declaration can be signed electronically, simplifying the process of providing the prior survey electronically along with other contract documents. Most contracts provide a short window for submitting the prior survey and T-47 after the Effective Date, and the T-47.1 will help meet this deadline. Whether or not the title company requires the affidavit signed at closing will depend on the company’s policy.

A common issue with the T-47 arises when the prior survey is not from the current Seller but from a previous owner. The T-47 requires a date to be entered indicating the date from when there have been no changes to the property, which often causes confusion. To clarify, the new T-47 will have a section specifying the “Date of Survey,” and Paragraph 4 will now ask the signatory to confirm no changes “since Date of the Survey.”

The T-47 affidavit also includes four specific requirements, including a blank area for indicating any changes. Two key updates include:

- **Deckings Added:** “Deckings” is now listed in subparagraph 4.a, due to frequent boundary and encroachment concerns.
- **Clarified Construction Language:** Subparagraph 4.c now asks simply whether “construction occurred on or near the boundary of the Property,” rather than determining if neighboring activities caused encroachment.

Additionally, the affidavit has been modified to allow independent signatures when there are multiple sellers involved.

[View the revised T-47 affidavit »](#)

INTRODUCTION OF T-47.1 DECLARATION

The T-47.1 Declaration, included through P-2.f and Texas Civil Practice and Remedies Code section 132.001, mirrors the T-47 with the addition of Paragraph 7, which states:

ALL STATEMENTS IN THIS DECLARATION ARE TRUE TO THE BEST OF MY KNOWLEDGE. I UNDERSTAND THAT ANY PERSON INTENTIONALLY MAKING A FALSE STATEMENT MAY BE LIABLE FOR ACTUAL AND/OR PUNITIVE DAMAGES.

This paragraph was added to impress upon the signer(s) the importance of this declaration. However, some users may hesitate to use the T-47.1 due to the requirement of including private details like birth date and address, even though this information remains private and is not recorded or published.

The T-47.1 is designed for convenience, allowing early compliance with contracts electronically, but it is not mandatory if the T-47 is provided. You can access the T-47.1 Declaration [\[here\]](#).

[Access the T-47.1 Declaration »](#)

SURVEY CONSIDERATIONS AND TITLE COMPANY RESPONSIBILITIES

While these updates should help clarify coverage and assist real estate agents and parties using a prior survey, title companies must be cautious when accepting older surveys and T-47 affidavits.

- **Title Company's Right to Reject:** Title companies can reject an outdated survey, especially if the survey is inadequate or changes have occurred.
- **Buyer's Considerations:** Buyers planning to remodel or make changes should consider getting a new survey, as technology improves, and the prior surveyor has no legal duty to the buyer. Lenders may also require a new survey for underwriting or loan package purposes.

Title companies must be careful in how they communicate when reviewing surveys. While a survey might be acceptable for title commitment preparation, using terms like "approved" could mislead real estate agents or parties into thinking they have full area and boundary coverage. As noted, among other requirements, a premium must be paid for the coverage and the exception amended.