The Claims Corner: Spring 2026

Description

Article by Stephen C. Gregory

We hope this column will become a regular feature of this magazine (regular being somewhat undefined at this writing). Because this is the first foray into the wonderful world of title claims, letâ??s go over a few basics. (Those of you who feel you have a pretty good understanding of the basics are welcome to skip to the next article and come back when this feature resumes in future issues.)

Like other insurance, a Title Insurance Policy is a contract between an insurer and an insured. Both parties to the contract are bound by its terms and conditions. The provisions with which an agent should be familiar are segregated into categories: the covered risks, the exclusions from coverage, the exceptions from coverage, and the conditions. Of these, the exceptions are property specific (Schedule B of the policy), while the other categories are standard in the ALTA policy forms.[1]

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The policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured by reason of a Covered Risk. It contains a basic insuring agreement and a statement of specific matters that are excepted or excluded from coverage. The insuring agreement defines and describes generally the types of matters that are insured against. The exceptions or exclusions except or exclude from coverage specific types of matters that might otherwise be within the scope of the basic insuring agreement. Ordinarily, a particular loss is covered only if it results from a matter that: (1) is within the scope of the basic insuring agreement; (2) is not excepted or excluded from coverage by any of the exceptions or exclusions set forth in the title policy; and (3) conforms to the conditions in the policy as they may pertain to the particular matter.

For purposes of this first discussion, letâ??s consider the standard ALTA ownerâ??s policy; we can focus on loan and homeownerâ??s policies in later columns. Generally, a Title Insurance Policy covers defects in the title that were prior to the ownership of the insuredâ??â??looking backward,â?• as the saying goes. That is reflected in the Covered Risks introductory paragraph in the ownerâ??s policy:

> **COVERED RISKS**
>
> SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, WFG NATIONAL TITLE INSURANCE COMPANY, a Florida corporation (the â??Companyâ?•), insures *as of the Date of Policy* [emphasis added] and, to the extent stated in Covered Risks 9 and 10, after the Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

Following the introductory paragraph are the matters which, unless excluded or excepted, would be covered by the policy and subject to the insurerâ??s obligation to the insured. Some of these will be

familiar: an unreleased lien prior to the date of policy, another person or entity claiming an ownership interest in the property, lack of access to a public street or road from the property. Others listed as covered risks occur less frequently but are protected nonetheless. Covered Risk 9 relates to insolvency laws which may ensnare a prior owner and as such is covered even if the court determination occurs after the date of policy; covered risk 10 addresses defects recorded â??in the gapâ?•â??after the date of policy but before the deed is recorded.[2]

What, then, is the process when a claim is filed with an underwriter? First, the claims officer has to determine if the situation described in the claim falls under one of the covered risks. If it does, the next part of the analysis is to determine if the potentially covered risk is or may be excluded from coverage under that section of the policy; finally, if the claim passes the first two analyses, is it excepted from coverage under Schedule B of the policy?

After the claim is analyzed and coverage accepted, the claims officer next must decide how to proceed to protect the policy holder. The insurerâ??s options are set forth in the Conditions section of the policy. The remedy may be through litigation, either initiating a lawsuit or, if one has already been filed, stepping in to represent the insured. If the defect is a lien against the title, the insurer may pay the lienholder to clear the title. Sometimes, though, the defect may result in a total failure of title, in which case the insurer may pay policy limits to the insured. The insurer may also pay out policy limits to the insured if the cost of clearing the title would exceed the amount of insurance.

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Though the Virginia policy advises the insured how to make a claim[3], the insured nonetheless may first contact the settlement agent. Even if the agent realizes it made an error in the transaction, it usually should not attempt to rectify the problem on its own and certainly should not tell the insured its opinion on the validity of the claim. Rather, agents should encourage the insured to file the claim directly with the insured via the information in the policy; alternatively, the agent can forward it to the insurerâ??s claims department as a courtesy to the client.

In future columns, we will provide insight into the other considerations that are part of the claims process; we will also provide specific examples of claims and the analysis each goes through with the reasons for the decisions. Until then, we encourage agents to read the policies!

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[1] The covered risks, exclusions, and conditions may vary with the type of policyâ??ALTA Ownerâ??s policies, Homeownerâ??s policies, and Loan policiesâ??but will be consistent within each form. In other words, the â??boilerplateâ?• provisions will be the same in every policy of a certain type, say, ownerâ??s, but may be different in the other types.

[2] As one example, imagine a deed is rejected by the Clerk of Court and has to be resubmitted; if an IRS lien is filed against the seller before the deed can be recorded, the insured would be covered.

[3] The â??Important Information for Policy Holdersâ?• insert.



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