



Back to Basics, Part 1: Understanding the Title Commitment

May 16, 2018

Presented by:

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The Commitment

- **What is a Title Commitment?**
 - The Commitment is an offer to create a binding contract of indemnification between the Insurer and the Insured.
 - It contains exceptions that need to be satisfied at or before closing, as well as exceptions that will remain on title before an underwriter will issue a policy.



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The Commitment

- **The commitment consists of three parts:**
 - The Commitment Cover
 - Schedule A
 - Schedule B
 - Part I
 - Part II



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The Commitment

- **In 2016, changes were made to the 2006 ALTA Commitment to make it easier to understand by removing legalese and simplifying the language so that the Insured and the Courts can more easily interpret the policy language.**



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The Commitment

■ The Commitment Cover

- explains the purpose of the commitment;
- provides information as to when the commitment will be effective and binding;
- outlines what the title company promises to the proposed Insured(s);
- includes Conditions and Stipulations.



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The Commitment

■ The Commitment Cover Includes:

- Notice
- Commitment Conditions
- Definition of Terms
- Company's Right to Amend
- Limitations of Liability
 - Liability must be based on the issued Commitment
- Definition of the Agent's role
- Arbitration Clause



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The Commitment

NOTICE

IMPORTANT—READ CAREFULLY: THIS COMMITMENT IS AN OFFER TO ISSUE ONE OR MORE TITLE INSURANCE POLICIES. ALL CLAIMS OR REMEDIES SOUGHT AGAINST ATTORNEYS' TITLE GUARANTY FUND, INC., (ATG®) INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN CONTRACT.

THIS COMMITMENT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY ATG TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO ATG, WERE PERFORMED SOLELY FOR THE BENEFIT OF ATG, AND CREATE NO EXTRACTIONAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.

ATG'S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A PROPOSED INSURED IDENTIFIED IN SCHEDULE A IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT. ATG HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON.



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The Commitment

- **Changes to the 2016 Commitment Cover include:**
 - The Notice to the Insured
 - Specifies that all claims/remedies are based solely in contract.
 - The commitment is not an Abstract of Title and creates no extra-contractual liability.
 - Specifies there is no liability or obligation to any person other than the Insured.



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The Commitment

- **Changes to the 2016 Commitment Cover include:**
 - An Expanded Definition Section
 - Knowledge
 - Actual or imputed knowledge, but not constructive notice imparted by Public Records.



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The Commitment

- **Changes to the 2016 Commitment Cover include:**
 - An Expanded Definition Section
 - Land
 - Does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is to insured by the Policy.



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The Commitment

- **Changes to the 2016 Commitment Cover include:**
 - An Expanded Definition Section
 - Public Records
 - Records established under state statutes at the Commitment Date for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge.



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The Commitment

- **Changes to the 2016 Commitment Cover include:**
 - Right to Amend – Condition 4
 - Provides for amendment of the Commitment at any time and liability is limited by Condition 5.



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The Commitment

- **Changes to the 2016 Commitment Cover include:**
 - Limitations on Liability – Condition 5
 - Liability is limited to the actual expense incurred between the issuance of the original Commitment and the amended Commitment, upon which the Proposed Insured relied in good faith to:
 - comply with the Schedule B, Part I – Requirements;
 - eliminate, with ATG’s written consent, any Schedule B, Part II – Exceptions; or
 - acquire the Title or create the Mortgage covered by this commitment.



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The Commitment

- **Changes to the 2016 Commitment Cover include:**
 - Agent’s Role – Condition 7
 - The issuing agent is the Title Company’s agent for the limited purpose of issuing title insurance and policies and is not the Company’s agent for the purpose of providing closing or settlement services.
 - Liability on the underwriter for any fraudulent or negligent action by the agent for closing or settlement services is to be determined solely under the Closing Protection Letter, not under the commitment or policies.



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The Commitment

- **Transactional Data**

- Preamble to Schedule A
 - For reference only
 - Not insured.
- ALTA Universal ID
 - A new national registry system for underwriters and agents.
 - All ATG agents have their own number to their identify their transactions.



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The Commitment

- **Transactional Data Includes:**

- Issuing Agent
- Issuing Office
- ALTA Universal ID
- Commitment Number
- Issuing Office File Number
- Property Address
- Revision Number




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The Commitment

 ATTORNEYS' TITLE GUARANTY FUND, INC.
ATG® COMMITMENT FORM – SCHEDULE A

Transaction Identification Data for reference only:

Commitment No.: 180999900003
Issuing Agent: Daffy Duck
Issuing Office's
ALTA® Registry ID: 1089489
Loan ID Number: 332234342342
Issuing Office File No.: 123456
Property Address: 4000 Tune Circle
Wheaton, IL 60056-1234
ATG licenses: Illinois: TU.0000002 Wisconsin: 000-51560



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The Commitment

- **Schedule A Includes:**
 - Commitment Date
 - Proposed Policies to be Issued
 - Interest Conveyed
 - Current Vesting
 - Legal Description of the Land
 - Note Regarding Validity



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The Commitment

1. Commitment Date: November 15, 2004 at 7:59 am
2. Policy or policies to be issued:
 - a. 2006 ALTA Owner's Policy
Proposed Insured: Wyle E. Coyote

Proposed Policy Amount: \$500,000.00
 - b. 2006 ALTA Loan Policy
Proposed Insured:
Proposed Policy Amount: \$250,000.00
3. The estate or interest in the Land described or referred to in this Commitment: is a Fee Simple
4. The Title is, at the Commitment Date, vested in:
Bugs B. Bunny
5. The Land is described as follows:
Lot 3 in Block 8 in the fifth addition to Elmer Fudd's Esates in the West half of the Northeast quarter of Section 32 ,
Township 39, Range 12, East of the Third Principal Meridian, in Cook County, Illinois.



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The Commitment

- **Commitment Date**
 - The Effective Date of the Commitment, which is the date through with the county records are posted.
 - There will always be a gap in that period.



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The Commitment

- **Policy/Policies to be issued**
 - Proposed Insured
 - Buyers
 - Lender
 - Proposed Policy Amount
 - Sale price for Owner's Policy
 - Loan amount for Loan Policy



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The Commitment

- **Estate or Interest in Land**
 - Fee simple
 - Leasehold interest



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The Commitment

- **Title is vested in**
 - The person or entity found in the last deed.
 - If titleholder is deceased, proper vesting should be:
 - The heirs and devisees of the Decedent's name, deceased.
(Title vests at moment of death.)
 - ATG may require a Joint Tenancy Affidavit; Letters of Office, or Affidavit of Heirship.



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The Commitment

- **Legal Description**
 - Lot and Block
 - Metes and Bounds



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The Commitment

- **Note Regarding Validity**

- *This page is only a part of a 2016 ALTA Commitment for Title Insurance. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I Requirements; Schedule B, Part II Exceptions; and a counter-signature by ATG or its issuing agent that may be in electronic form.*



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The Commitment

- **Schedule B, Part I – Requirements**

- The requirements that must be met to give clear title and a policy:
 - The Proposed Insured must notify the Company in writing of any party who is not referred to in the commitment, yet will obtain an interest in the Land or who will make a loan on the Land.
 - Pay the agreed amount for the estate/interest to be insured.



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The Commitment

▪ Schedule B, Part I – Requirements

- The requirements that must be met to give clear title and a policy:
 - Pay the premiums, fees, and charges for the Policy to the Company.
 - Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured or both, must be properly authorized, executed, delivered, and recorded in the Public Records.



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The Commitment

▪ Schedule B, Part I – Requirements

- Additional Requirements
 - Buyer and Seller must bring a valid governmental ID;
 - 1099 information and forwarding address;
 - Payoff letters must be current; no more than 30 days old and valid on the day of closing;
 - All incoming funds must be a wire or cashier's check and are subject to the good funds provision of the Illinois Title Insurance Act.



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The Commitment

Part I

ATTORNEYS' TITLE GUARANTY FUND, INC.

ATG® COMMITMENT FORM – SCHEDULE B

Commitment No.: anna10

Commitment Date: November 15, 2004 at 7:59 am

State Issued: IL

File Name: 3333member file

PART I Requirements

All of the following Requirements must be met:

1. The Proposed Insured must notify ATG® in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. ATG may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy.
4. Documents satisfactory to ATG that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.
5. The following additional requirements must be satisfied at or prior to the closing:
 - a. The borrower and seller must bring a valid government issued photo ID bearing their signature to the closing.
 - b. Each seller must provide a valid forwarding address and social security number to be submitted to the IRS for 1099 purposes.
 - c. Payoff letters must be current and not subject to additional terms. We reserve the right to verify payoff figures prior to disbursement. Any additional funds required to satisfy a lien in full must be deposited by the parties involved immediately.
 - d. All funds brought to closing must be in the form of wire transfer, certified check, or cashier's check.



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Part I

6. Note for information: The land lies within the area designated under the predatory lending database program (765 ILCS 77/70, *et seq.*). A Compliance Certificate or an Exempt Certificate must be obtained from the Illinois Department of Financial and Professional Regulation and recorded simultaneously with the mortgage to be insured hereunder. If the certificates are not obtained, the policy or policies to be issued will be subject to the following exception: "Consequences of the failure to obtain and record a Certificate of Compliance or an Exempt Certificate as required pursuant to the predatory lending database program (765 ILCS 77/70, *et seq.*)".
7. The Good Funds provision of the Illinois Title Insurance Act (215 ILCS 155/26) became effective January 1, 2010. This law imposes stricter rules on the type of funds that can be accepted for real estate closings and requires wired funds in many circumstances. Contact your settlement agent to confirm the type of funds that are required for your transaction.
8. Per Illinois law, for closings on or after January 1, 2011, ATG will issue Closing Protection Letters to the parties to the transaction if it is closed by ATG or its approved title insurance agent.
9. If you are a lender, your ATG Closing Protection Letter will be valid only if you receive it in one of the following two ways:
 - (1) as an email from the domain "@atgf.com," or
 - (2) as a fax from fax number 312.372.9509 or 217.403.7401.



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- **Schedule B, Part II – Exceptions**

- THIS COMMITMENT DOES NOT REPUBLISH ANY COVENANT, CONDITION, RESTRICTION OR LIMITATON CONTAINED IN ANY DOCUMENT REFERRED TO IN THIS COMMITMENT TO THE EXTENT THAT THE SPECIFIC COVENANT, CONDITION, RESTRICTION OR LIMITATON VIOLATES STATE OR FEDERAL LAW BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN.



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The Commitment

- **Schedule B, Part II – Exceptions**

- Standard Exceptions
 1. Rights or claims of parties in possession not shown by the Public Records.
 2. Any encroachment, encumbrance, violation, variation, or adverse circumstance that would be disclosed by an inspection or an accurate and complete land survey.



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The Commitment

▪ Schedule B, Part II – Exceptions

- Standard Exceptions
 3. Easements, or claims of easements, not shown by the Public Records.
 4. Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law, and not shown by the Public Records; and
 5. Taxes or special assessments that are not shown as existing liens by the Public Records.



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The Commitment

▪ Waiving Standard Exceptions

1. Rights or claims:
 - waived with a survey and ALTA Statement;
2. Encroachments:
 - waived with a survey;
3. Easements:
 - waived with a survey;
4. Liens:
 - waived with an ALTA Statement;
5. Taxes:
 - waived with an ALTA Statement.



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- **Schedule B, Part II – Exceptions**

- Special Exceptions

- 1. Defects, liens, encumbrances, adverse claims, or other matters, if any, created, first appearing in the Public Records, or attaching subsequent to the Commitment Date hereof but prior to the date of the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.



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The Commitment

- **Special Exceptions**

- Gap Exception

- 1. Defects, liens, encumbrances attaching after the commitment effective date and prior to the date of closing.



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The Commitment

▪ Special Exceptions

- 2 (a) & 2 (b) – Mechanic’s Lien Exceptions
 - If the transaction involves a construction loan. These exceptions will appear on Lender and Owner’s policies.
 - If rehab or construction was done in the last 6 months before the effective date of the title commitment, a final Lien Waiver/Contractor’s Sworn Statement exam is required in order to waive the exception.



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The Commitment

▪ Special Exceptions

- Transactional Data Exception
 - Remains on title because ATG does not insure the address of the property.
- Taxes
 - Must be paid current
 - Open item tax bills
 - Estimates of redemption



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▪ Other Exceptions

- Mortgages
 - Payoff Letters
 - Order 5 to 7 business days before closing.
 - If wiring the payoff, add one extra business day's interest.
 - If overnighting payoff, add two extra business days' interest.
 - If lender doesn't include release fee in payoff, charge a release verification fee.



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The Commitment

▪ Mortgages

- Statute of Limitations
 - If there is a due date, the Statute of Limitation is 20 years from the due date.
 - If there is no due date, the Statute of Limitation is 30 years from the date of the mortgage.
- Prior Sellers' Mortgages
 - Contact ATG Hold Harmless Department at holdharm@atgf.com.



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The Commitment

Releases

- Ask clients if they have their release or satisfaction of mortgage.
- Contact lender to reissue release if necessary.
- Record at closing.



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The Commitment

Paid Assessment Letters

- Generally
 - Order 10 business days in advance.
 - Make sure the letter is good through the end of the month of closing.



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The Commitment

▪ Paid Assessment Letters

- Condominium
 - PALs must provide that:
 - all assessments are paid current;
 - there are no outstanding liens or special assessments;
 - the board has waived their right of first refusal or there isn't a right of first refusal.
 - It must be signed by the President or Secretary of the Condominium Board.



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The Commitment

▪ Paid Assessment Letters – HOA

- A letter from the Association must state that:
 - all dues are paid current to date;
 - there are no outstanding liens or special assessments.
- It must be signed by the President or Secretary of the HOA.



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The Commitment

▪ Lis Pendens

- Check the docket to see if the case was dismissed.
- Foreclosure Actions
 - If very old, can be disregarded.
 - If it's recent, review the foreclosure case to make sure proper parties were served.



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The Commitment

▪ Lis Pendens

- City Actions
 - Pull any orders issued.
 - If there is an injunction, it remains on the commitment and policy until it is lifted.
 - See if judgments are satisfied and if so, record a release.



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The Commitment

▪ Liens

- Must be recorded.
- Check Statute of Limitations.
- In order to waive, a release or payoff at closing is required.



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The Commitment

▪ Lien Types

- Federal Tax Lien
 - 10 years and 30 days from lien issuance unless refiled.
 - *United States v. Drye*, 528 US 49, 58 (1999)
 - If title vests in the Heirs and Devisees of a Decedent, a federal tax lien attaches to their interest.
- Municipal Lien
 - Weed Cutting and Demolition Liens
 - No Limitations period
 - Most other Municipal Liens
 - Most expire after 10 years.



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▪ Lien Types

– Mechanic's Lien

- Has priority as of the date the construction contract was signed and as such, takes priority over the mortgage.
- Must be recorded within 4 months of completion of construction.
- Two-year statute of limitations.
- Claimant can file suit based upon the contract and, if successful, the lien is treated as a judgment lien.



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▪ Lien Types

– Illinois Department of Revenue Lien

- As of December 1, 2017, tax liens are no longer recorded.
- Liens now appear on the Illinois State Tax Lien Registry website; tax.Illinois.gov.
- State Tax Liens have a Statute of Limitations of 20 years from filing of lien.



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▪ Lien Types

- Judgment Liens
 - Recorded as a Memorandum of Judgment against the owner (or prior owner) of the property.
 - Statute of Limitations is 7 years from entry of the judgment by the court.
 - May be revived within 20 years of the date of the judgment.



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- Remember that when a lien is present, we need either a payoff or a release.
- Sometimes, we can insure over a lien with a Title Indemnity or a hold harmless letter from another title company.



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Trust Exceptions

– *Inter Vivos* Trusts

- Certification of Trust signed by Trustee or certified copy of the trust.
- No POAs allowed unless trust agreement specifically provides that the Trustee can appoint agents.
- If original Trustee is deceased, look to trust agreement for Successor Trustee.
- Trustee must accept property into trust.



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The Commitment

Land Trusts

– Seller

- Deed and ALTA Statement comes from Land Trustee;
- Land Trustee will issue a pay proceeds letter

– Buyer

- If loan transaction, land trustee executes the mortgage and mortgage must go to land Trustee to be identified with the trust.



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The Commitment

- **Decedent Estates**

- Probated Estate

- Letters of Office, Independent Executor, or Independent Administrator signs the deed.
 - Shortens claims period to 6 months.



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The Commitment

- **Decedent Estates**

- Unprobated Estates

- Affidavit of Heirship
 - Additional premium required if date of death is less than 2 years ago.
 - Personal Undertaking required signed by heirs and devisees.
 - Copy of Will
 - Copy of Death Certificate



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The Commitment

- **Covenants, Easements, and Building Lines**
 - Run with the land.
 - Remain on the final policies.



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The Commitment

- **Limited Liability Companies Require:**
 - Operating Agreement;
 - Certification of Good Standing;
 - Articles of Organization;
 - Resolution providing for the sale or purchase and stating who is authorized to execute the deed or mortgage on behalf of the LLC at the closing table.
- **An LLC can't delegate authority via a POA.**



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The Commitment

- **Corporations:**
 - Articles of Organization
 - Certification of Good Standing
 - Resolution signed by the President and Secretary authorizing the transaction and who can sign on behalf of the corporation.
 - Deed signed by President and Secretary



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Transfer Taxes

- **Illinois State Transfer Taxes**
 - \$1.00 per thousand, rounded up to the nearest \$500.00.
- **County Transfer Taxes**
 - \$0.50 per thousand, rounded up to the nearest \$500.00



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Transfer Taxes

- **Municipal Real Estate Transfer Ordinances**

- See ATG’s Real Estate Ordinance page:
 - <https://www.atgf.com/tax-ordinance/all>
- Information includes:
 - tax amounts;
 - water reading requirements;
 - inspection requirements.



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Zoning

- **Zoning Certifications**

- City of Chicago
- Unincorporated Cook County



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Water

- **Water Certificates**

- Municipal Water Certifications
 - City of Chicago
 - Real Estate Transfer Ordinances
 - <https://www.atgf.com/tax-ordinance/all>



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Underwriting Help

- **For underwriting help, call:**
 - 800.252.0402 or
 - 312.752.1990



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