

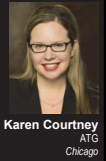


The Nuts and Bolts of Commercial Title Insurance, Part 1

October 2, 2019

Presented by:

- **Karen Courtney**
Commercial Underwriting Attorney
Attorneys' Title Guaranty Fund, Inc.

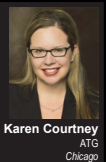


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Topics

- Overview of ATG Commercial Title Services
- Know the Deal
- Extended Coverage
- Surveys
- Access
- Common Commercial Title Exceptions



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Overview of ATG Commercial Title Services

- Commercial transactions are often complex, with each transaction having its own set of specifications depending upon the type of property and contract requirements.



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Overview of ATG Commercial Title Services

- ATG has implemented guidelines and forms to assist you in handling your commercial transactions.



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Overview of ATG Commercial Title Services

- ATG insures commercial property directly or through a direct agency relationship with First American Title Insurance Company, depending on the nature of the transaction.



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Overview of ATG Commercial Title Services

- You will work with a commercial underwriting attorney from ATG's staff.



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Overview of ATG Commercial Title Services

- **Your assigned commercial underwriter will:**
 - review/prepare the title commitment;
 - review the survey;
 - review and respond to title objection letters from buyer's counsel and lender;
 - underwrite and approve endorsements;
 - prepare pro forma policies;
 - negotiate policy and endorsement coverage;
 - help resolve title and closing problems; and
 - facilitate closing tasks, if needed.



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Overview of ATG Commercial Title Services

- **ATG's commercial underwriters and support staff have a deep understanding of title and closing matters and will be a valuable asset as you navigate due diligence, closing preparation, and closing.**



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Know the Deal

- **What type of property is it?**
 - ATG defines commercial property as *any property that is not residential*; therefore, commercial property includes the following:
 - retail;
 - office;
 - industrial;
 - un-platted vacant land;
 - farmland;
 - mixed-use property; and
 - apartment buildings of more than four units.



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Know the Deal

- **Are there any unusual risks?**
 - Most common:
 - Access concerns.
 - Survey issues.
 - Construction commenced, recently completed, or contemplated.
- **Identify unusual risks as early as possible to allow ATG time to work with you to resolve or underwrite them.**



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Extended Coverage

- Term of art that refers to insuring over one or more of the five Standard Exceptions in a 2006 ALTA Owner's Policy.
- This process is called "insuring over" because Standard Exceptions remain on Schedule B of the final Owner's Policy and an endorsement is attached to the policy to indicate which of the Standard Exceptions have been deleted.



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Schedule B - Standard Exceptions

PART II Exceptions

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

The Policy will not insure against loss or damage resulting from the terms and provisions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of ATG:

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 of the Land.
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.

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 Effective Date hereof but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
2. Any Loan Policy issued pursuant to this Commitment will be subject to the following exceptions (a) and (b), in the absence of the production of the data and other matters contained in the ATG ALTA Statement form or an equivalent form:



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Extended Coverage

- Most lenders also require extended coverage over Standard Exceptions on their Loan Policies.
- Standard Exceptions are automatically deleted from Schedule B of the Loan Policy form, but underwriting guidelines for approval of extended coverage should still be followed to make sure these exceptions can be waived/deleted.



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Extended Coverage Requirements for Commercial Transactions

- **Current ALTA/NSPS survey (dated not older than 6 months).**
 - **NOTE:** A boundary survey and/or an older survey may be accepted on a case-by-case basis.
- **Commercial Extended Coverage Affidavit executed by Seller/Owner of Record.**
- **ALTA Statements executed by both parties.**
- **Current tax and special assessment search.**
- **Extended Coverage Fee: \$450.00**



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ALTA Statement

ATG Form 3004 (page 1 of 2)

SAMPLE

ATTORNEYS' TITLE GUARANTY FUND, INC.
ALTA STATEMENT

Commitment to Insure Title No.:

The Owner/Seller and Purchaser certify to Attorneys' Title Guaranty Fund, Inc., that, with respect to the Land described in the above Commitment to Insure Title, and to their best knowledge and belief:

1. Within the last six (6) months: (a) no labor, services, or materials have been furnished to improve the Land, or to rehabilitate, repair, refurbish, or remodel the building(s) situated on the Land; (b) nor have any goods, chattels, machinery, apparatus, or equipment been attached to the Land or building(s) thereon, as fixtures; (c) nor have any contracts been let for the furnishing of labor, service, materials, machinery, apparatus, or equipment that are to be completed subsequent to the date hereof; (d) nor have any notices of lien been received, except the following, if any:
2. There are no open mortgages, revolving credit mortgages, line of credit mortgages, home equity loan mortgages, or other voluntary liens or mortgages on title, other than those shown on Schedule B of the Commitment to Insure Title, except the following, if any:
3. There are no unsatisfied or unreleased judgments, decrees, or liens of record against the Owner/Seller and Purchaser in the county in which the Land described in the above Commitment to Insure Title is located, and the Owner/Seller and Purchaser is not a party to any cases in any jurisdiction, except as follows:
4. All management fees are fully paid, except the following, if any:
5. There are no unrecorded security agreements, leases, financing statements, chattel mortgages, or conditional sales agreements regarding any appliances, equipment, or chattels that have or are to become attached to the Land or any improvements thereon as fixtures, except the following, if any:
6. There are no unrecorded contracts or options to purchase the Land, except the following, if any:
7. There are no unrecorded leases, easements, or other servitudes to which the Land or building, or portions thereof, are subject, except the following, if any:
8. If the Land is "commercial real estate," as defined per statute, there are no written agreements with any "broker," nor has anyone provided licensed services that resulted in the procuring of a person or entity for the purpose of buying, selling, leasing, subleasing, or otherwise conveying or acquiring any interest in the Land, except the following, if any:

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ALTA Statement

ATG Form 3004 (page 2 of 2)

Any person or entity signing this Statement who is also the mortgagor in a mortgage to be insured under a Loan Policy to be issued pursuant to the above Commitment to Insure Title certifies that the mortgage and the principal obligations it secures are good and valid and free from all defenses that any person purchasing the mortgage and obligations it secures, or otherwise acquiring any interest therein, may go so in reliance upon the truth of the matters herein recited; and that this certification is made for the purpose of better enabling the holder or holders, from time to time, of the mortgage and obligations to sell, pledge, or otherwise dispose of the same freely at any time, and to insure the purchasers or pledgees thereof against any defenses thereto by the mortgagor or the mortgagor's heirs, personal representative, or assigns.

The Owner/Seller and the Purchaser make this Statement for the purpose of inducing Attorneys' Title Guaranty Fund, Inc. to issue Owner's and Loan Policies of Title Insurance with respect to the Land described in the above Commitment to Insure Title.

Dated: _____

OWNER/SELLER	PURCHASER
Signature _____	Signature _____
Name (Print) _____	Name (Print) _____
Signature _____	Signature _____
Name (Print) _____	Name (Print) _____

NOTARY	NOTARY
Subscribed and sworn to before me this _____ day of _____, _____ Year	Subscribed and sworn to before me this _____ day of _____, _____ Year
Day _____ Month _____ Year _____	Day _____ Month _____ Year _____
Notary Public _____	Notary Public _____

LENDER'S DISBURSEMENT STATEMENT

The Lender hereby certifies to Attorneys' Title Guaranty Fund, Inc., that on _____ Date _____, complete and final disbursement of the proceeds of the loan secured by the mortgage to be insured pursuant to above Commitment to Insure Title was made to or on the order of the mortgagors; and that the Lender has no knowledge nor does the Lender require that the proceeds of the loan are to be used to pay for labor and material in the making of future improvements or repairs on the Land described in the mortgage or upon any building located thereon. Attorneys' Title Guaranty Fund, Inc., is authorized and directed to issue its Loan Policy of Title Insurance as of a date no earlier than the date of the complete and final disbursement set forth above.

Lender: _____ Loan No.: _____
By: _____ Signature _____

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Commercial Extended Coverage Affidavit

ATG Form 3039

SAMPLE

ATTORNEYS' TITLE GUARANTY FUND, INC.

COMMERCIAL EXTENDED COVERAGE AFFIDAVIT

STATE OF ILLINOIS }
COUNTY OF _____ } SS

Commitment No.: _____

The undersigned, being first duly sworn, deposes and states with respect to the above-named commitment for title insurance:

1. That Affiant is the record owner of the land or the owner of the beneficial interest in the land trust holding record title to the land;
2. That during the term of such ownership, Affiant has not entered into any unrecorded agreements granting utility or other easements over, across, or under the land to any public or quasi-public utility or to any other person, except the following, if any:

_____;
3. That during the term of such ownership, Affiant has not received any notice of unrecorded utility or other easements over, across, or under the land, except the following, if any:

_____;
4. That during the term of such ownership, Affiant has not received any notice or obtained any knowledge of the exercise or attempted exercise of unrecorded utility rights or other unrecorded easement rights by any public or quasi-public utility or by any other person over, across, or under the land, except the following, if any:

_____;

The Affiant makes this affidavit for the purposes of inducing Attorneys' Title Guaranty Fund, Inc., to issue its Owner Policy without exceptions for unrecorded easements.

Dated: _____ Signature of Affiant

Printed Name of Affiant

Address of Affiant

Subscribed and sworn to before me this

_____ day of _____, _____ Year
Day Month Year

Notary Public

ATG FORM 3039
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Surveys

- **What is an ALTA/NSPS Survey?**
 - Survey that conforms to the national standards adopted by the American Land Title Association (“ALTA”) and National Society of Professional Surveyors (“NSPS”), formerly known as the American Congress on Surveying and Mapping.



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Surveys

▪ What is an ALTA/NSPS Survey?

- Prepared in accordance with *Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, effective February 23, 2016* (“2016 ALTA/NSPS Survey Requirements”), and any *Table A Optional Survey Responsibilities and Specifications* (“Table A Items”) selected by the survey client.



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Surveys

▪ A complete ALTA/NSPS survey includes:

- On-site fieldwork per Section 5 of the 2016 ALTA/NSPS Survey Requirements:
 - monuments and lines that control the boundaries of the surveyed property;
 - rights of way and access;
 - lines of possession and improvements along the boundaries;
 - location of buildings on the surveyed property;
 - observed evidenced of easements and servitudes that burden the property, including surface indication of underground easements or servitudes;
 - cemeteries; and
 - water features.



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Surveys

- **A complete ALTA/NSPS survey includes:**
 - Preparation of a plat or map pursuant to Section 6 of the 2016 ALTA/NSPS Survey Requirements and its relation to documents provided to or obtained by the surveyor;
 - Any information from Table A Items requested by the client; and
 - Certification outlined in Section 7 of the 2016 ALTA/NSPS Survey Requirements.



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Surveys

- **Why is an ALTA/NSPS Survey required to approve extended coverage on commercial transactions?**
 - An ALTA/NSPS Survey shows a greater level of detail and is more comprehensive than an ordinary boundary survey.
 - Commercial transactions involve greater risk than residential transactions, and more detailed surveys can help title companies discover risks that may not be shown on boundary surveys.
 - May be necessary to underwrite other endorsements, such as ALTA 3.1-06 Zoning (Improved Land).



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Survey Review

- **Inspect the survey for:**
 - Legal description discrepancies when compared with the legal description contained in the Commitment and vesting deed.
 - Boundary lines and corresponding measurements.
 - Location of structures in relation to boundary lines.
 - Recorded easements, building setback lines, and other servitudes.
 - Apparent easements for public utilities and quasi-public utilities.



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Survey Review

- **Inspect the survey for:**
 - Encroachments:
 - Adverse encroachments
 - Encroachments of structures over public utility easements.
 - Encroachments of structures onto adjoining neighbor's property.
 - Encroachments of structures onto public alleys, roadways, walkways or other public property.
 - Violations of building setback lines.
 - Access (ingress and egress) to and from a public roadway.



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ALTA/NSPS Survey Review Checklist

(page 1 of 2)

ATTORNEYS' TITLE GUARANTY FUND, INC.
ALTA/NSPS SURVEY REVIEW CHECKLIST

1. Surveyor's name and contact information.
2. Survey Order Number or Job Number.
3. Surveyor's seal and certification. Survey should be certified to the Seller, Buyer, Lender, if any, and the title insurer. Certification should read as follows:
To (name of Seller), (name of Buyer), (name of Lender), (name of title insurer), (names of others as negotiated with the client):
This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes items of Table A thereof. The field work was completed on _____.
Date of Plat or Map: _____ (Surveyor's signature, printed name and seal with Registration/License Number)
4. Date of survey (should within the last 6 months – contact an ATG underwriter for approval of an older survey).
5. North arrow symbol.
6. Legend of all abbreviations and symbols shown on the survey.
7. Legal description:
 - a. Compare with the legal description in Schedule A of the title commitment to make sure both descriptions are identical.
 - b. If metes and bounds, map out legal description and make sure the legal description closes.
8. Location and character of buildings and other improvements located on the land.
9. Encroachments, if any, should be shown along with dimensions/measurements of any such matters.
10. Driveway(s) and curb cuts, if any.
11. Review the survey for evidence of unrecorded easements and unusual boundary matters, such as the following:
 - a. Party driveway: Check to see if driveway is situated on the land to be insured and adjoining land, and if so, this may be evidence of an unrecorded party/shared driveway easement;
 - b. Party wall: Check to see if the building situated on the land shares a wall with an adjoining building or buildings; if so, this may be evidence of an unrecorded party wall easement;
 - c. Common parking lot: If parking lot appears to serve more than one property, there may be shared parking;
12. Observed evidence of possession or occupation by anyone other than the owner of record, e.g. a concrete walkway meandering on the land and adjoining land.

1 of 2



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ALTA/NSPS Survey Review Checklist

(page 2 of 2)

ATTORNEYS' TITLE GUARANTY FUND, INC.

13. Location of utilities existing on or serving the land as determined by observed evidence collected pursuant to Section 5.E.V of the ALTA/NSPS Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, effective February 23, 2016, e.g. manholes, catch basins, electric meters, gas meters, overhead electric lines, etc.
Note: Raise an "apparent easements" exception on Schedule B of the commitment listing public or quasi-public utilities located outside of record easement areas.
14. Scale of the survey, e.g. (1 inch = 20 feet).
15. Summary of Schedule B Documents:
 - a. Are all survey-related Schedule B title exceptions reflected on the survey?
 - b. Does the surveyor note if they affect the property?
 - c. Are they drawn on the survey?
 - d. Are there any Schedule B title exceptions that don't affect the property? If so, delete from commitment and replace with language "intentionally deleted" so as to retain original commitment exception numbering.
 - e. If any Schedule B exceptions are blanket in nature and not plottable, the surveyor should so state in survey notes.
16. Confirm Access:
 - a. The survey should show the location and name of adjoining public street(s) or roadway(s), if any, to confirm direct access.
 - b. If access to a public street or roadway is "indirect" via an easement, the access easement should be added as an additional parcel to the legal description in Schedule A of the title commitment and should also be added as an additional parcel on the survey.
Note: In some cases, there will be both direct access to a public street or roadway, as well as indirect access to a public street or roadway via a recorded easement.
17. If the Buyer and/or Lender require the ALTA 3.1-06 Zoning Completed Structure Endorsement, the following Table A Optional Survey Responsibilities and Specifications ("Table A") attached to the ALTA/NSPS Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, effective February 23, 2016, should be shown on the survey:
 - a. Table A Item 4. Gross Land Area;
 - b. Table A Items 6(a), & 6(b). Zoning Information;
 - c. Table A, Item 7. Building Measurements/Height; and
 - d. Table A, Item 9. Number and type of parking spaces and striping of clearly identifiable parking spaces.*Note: See Table A for exact description of foregoing items.*

2 of 2



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Survey Review

Additional Useful Tools

- Google Earth Satellite/Street View
 - Useful to:
 - Confirm the nature of improvements located on the land to be insured.
 - Make risk decisions to approve affirmative endorsement coverage over encroachments.
 - Verify access.
 - Help determine if changes have been made to the property since the survey date.
 - Caution:
 - Check date of Google Earth image.
- Online broker listing

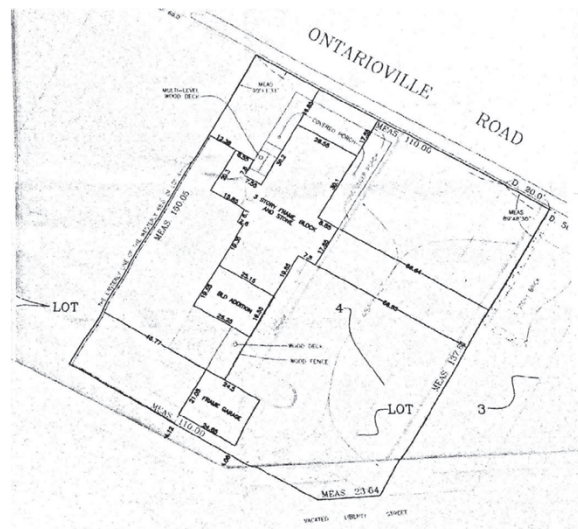


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Old Survey Compared with Google Earth Satellite View (page 1 of 3)

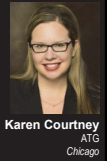


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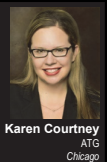
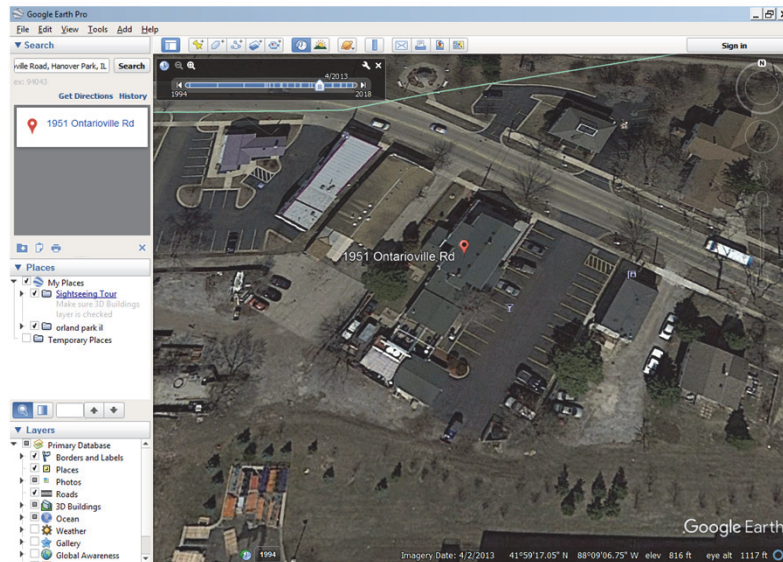


Old Survey Compared with Google Earth Satellite View (page 2 of 3)



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Old Survey Compared with Google Earth Satellite View (page 3 of 3)



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Surveys: Apparent Easements

- If the survey discloses public utilities or quasi-public utilities (e.g., overhead electric wires, electric meters, gas meters, manholes, water lines, sanitary sewer lines, gas lines, etc.) located outside of record easement areas, an “apparent easements” exception should be raised on Schedule B of the title commitment.



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Surveys: Apparent Easements for Public Utilities

- *Apparent easements for public utilities and drainage serving the land, as evidenced by the [overhead electric wires, electric meters, gas meters, manholes, water lines, sanitary sewer lines, gas lines, etc.] located on the land, together with the right of access and entry thereto for maintenance, repair, and replacement of said utilities, as shown on the survey dated *, made by *, and known as Job/Order No. *.*

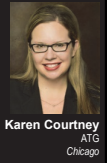
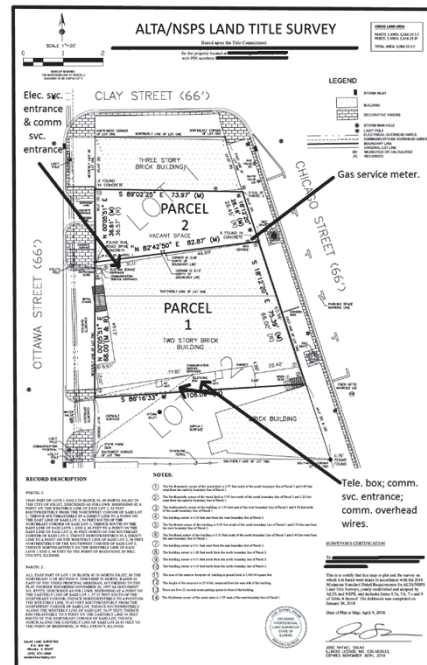


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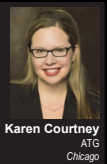
Survey – Apparent Easements for Public Utilities



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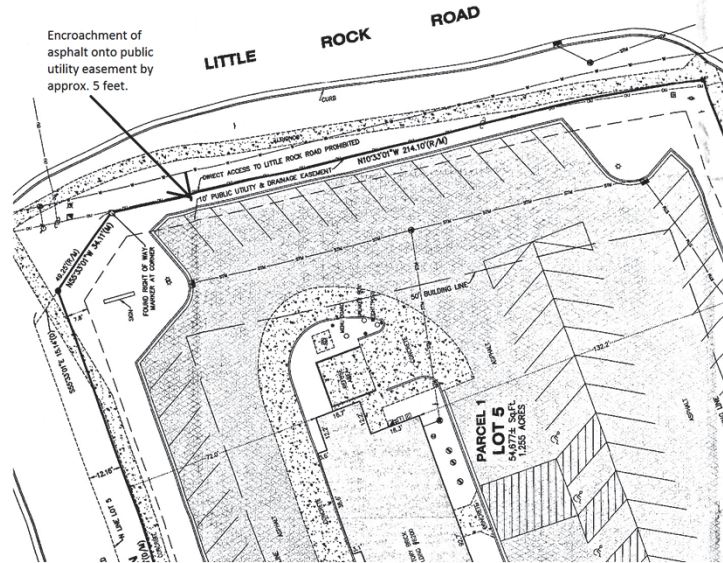
Surveys: Encroachments and Other Common Survey Issues

- **Encroachments onto Public Utility Easements**
 - **Loan Policy**
 - ATG will usually insure over any encroachment onto Public Utility Easements.
 - **Owner's Policy**
 - ATG will usually insure over encroachments onto Public Utility Easements if:
 - one foot or less; and
 - encroachment has existed for 5 years or more.



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Survey – Encroachment onto Public Utility Easement Example 1



Encroachment of asphalt onto public utility easement by approx. 5 feet.

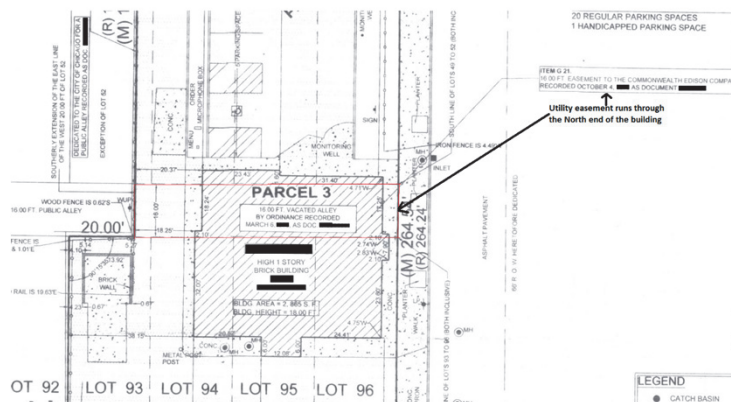


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Survey – Encroachment onto Public Utility Line Easement Example 2



Utility easement runs through the North end of the building



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Surveys: Encroachments and Other Common Survey Issues

Encroachments onto Adjoining Land

Loan Policy

- ATG will usually insure over any encroachment onto adjoining land.

Owner's Policy

- ATG will usually insure over encroachments of permanent structures onto adjoining land if:
 - one foot or less;
 - encroachment has existed for 20 years or more.

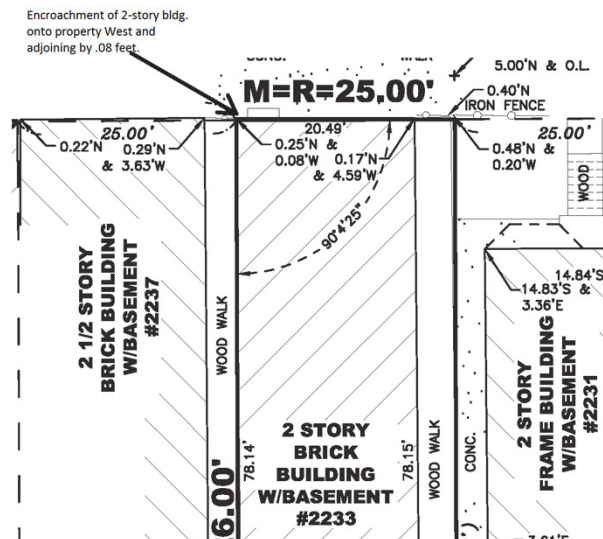


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Survey – Encroachment onto Adjoining Land



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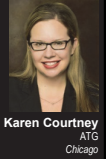
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Surveys: Encroachments and Other Common Survey Issues

▪ “Adverse” Encroachments

- Improvement located mainly on adjoining land encroaching onto the land to be insured.
- **Loan Policy**
 - ATG will usually insure over adverse encroachments if 5 feet or less.
- **Owner’s Policy**
 - ATG will not insure over adverse encroachments because to do so could give rise to an instant claim.

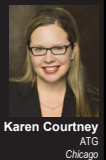
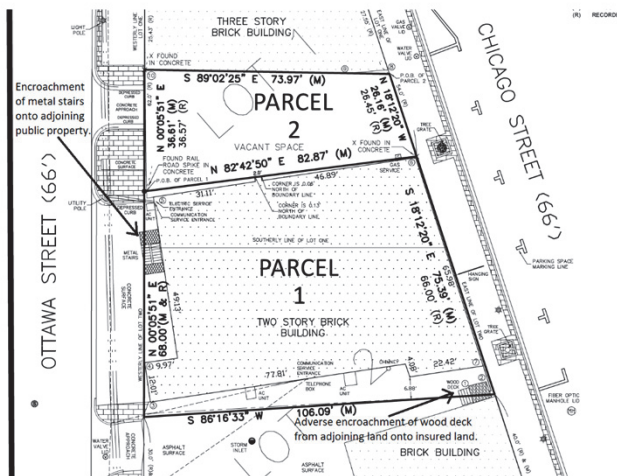


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Survey – Adverse Encroachment Example 1

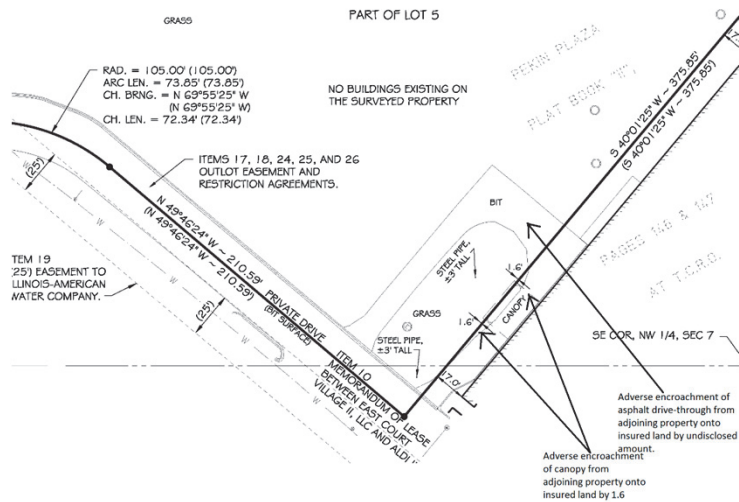


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Survey – Adverse Encroachment Example 2



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ATG LEGAL EDUCATION The Nuts and Bolts of Commercial Title Insurance, Part 1



Surveys: Encroachments and Other Common Survey Issues

■ Building Setback Line Violations

- Building Setback Line
 - Easement of unobstructed light, air, and vision for the benefit of owners of lots in the restricted area; also assures uniformity in the location of buildings burdened by the building line.
- Encroachment over platted building setback line.
- Insurable for both Loan and Owner's Policies if:
 - violation is less than 20% of required setback;
 - violation has existed for 5 years or more.
- Other Factors
 - Changes in character of neighborhood since creation of setback; whether there are other violations of the setback



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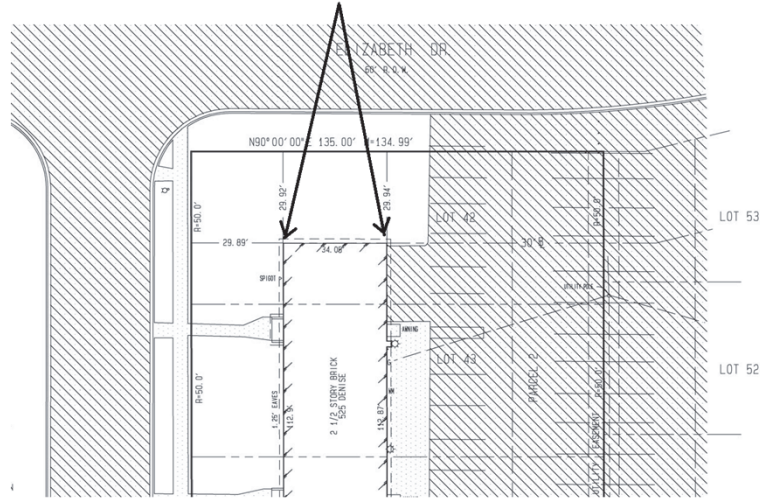
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Survey – Building Line Violation

Violation of the 30-foot building setback line by the 2 1/2 story building by .08 feet at the NW corner and by .06 feet at the NE corner.



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Surveys: Encroachments and Other Common Survey Issues

- ATG may still be willing to insure over encroachments or building line violations that do not meet the foregoing requirements with payment of a special risk premium.
- Contact an ATG underwriter for assistance in those cases.



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Access

- Paragraph 4 of the insuring provisions of the 2006 ALTA policies affirmatively insures the Insured against loss or damage sustained or incurred by the Insured by reason of “*No right of access to and from the Land.*”
- Accordingly, ATG must always ascertain that the land to be insured has “insurable” access.



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Access

- What is “insurable” access?
 - ATG insures *legal* access.
 - Example: ATG insures legal right to get to the property, regardless of whether the property is located at the top of a steep hill.
 - ATG does **not** insure physical access.
 - Example: ATG does not insure that the Insured will be able to reach the top of a steep hill covered by ice during the winter.
 - Certain cases have held that the legal right of access must be vehicular access, e.g., access that is at least eight feet wide.



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Access

■ What is “insurable” access?

- If there are several means of legal, insurable access, the Commitment and Policies do not insure a *specific location* for access, only that there is adequate legal access.
- If a specific location for access needs to be insured, the insured party can request issuance of a Direct Access and Entry Endorsement (ALTA 17-06) and/or Indirect Access and Entry Endorsement (ALTA 17.1-06).



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Access

■ What if there is no “insurable” access?

- If there is no insurable access, the land is “landlocked.”
- Raise the following exception on Schedule B:
 - *Attention is directed to the fact that the public records do not show any means of ingress or egress to or from the land, and, by reason thereof, this commitment and our policy, if and when issued, should not be construed as insuring against any loss or damage by reason of lack of access to and from the land.*



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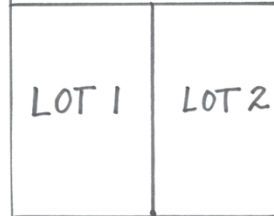
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Lack of Access (Landlocked Parcel)

MAIN STREET (public street)



LOT 1 has access
to public street

Lot 2 has no access
to public street and is
landlocked



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ATG LEGAL EDUCATION The Nuts and Bolts of Commercial Title Insurance, Part 1



Access

- **What if access is by means of an easement for ingress and egress?**
 - Access easement can be insured as an insured easement parcel in the legal description on Schedule A.
 - An ATG underwriter should be consulted to ensure that the access easement is insurable and can be added as an easement parcel on Schedule A.
 - If the access easement is insurable, then it is not necessary to raise an exception on Schedule B relating to the lack of access.



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ATG LEGAL EDUCATION The Nuts and Bolts of Commercial Title Insurance, Part 1



Access

- **Elements to look for in examining an easement to insure:**
 - Grantor, grantee, description of the property, consideration, and signature of the grantor;
 - Identifies the parcels that are benefited and burdened by the easement;
 - Make sure the easement has been or will be recorded;
 - Make sure different individuals owned the dominant and servient tenements at the time the easement was created.
 - Make sure that the grantor is/was owner of record of the land burdened by the easement;



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Access

- **Elements to look for in examining an easement to insure:**
 - Find out if the easement is exclusive to the dominant tenement or if other property owners use it as well;
 - Find out whether title in the grantees of the easement is held in the same way the grantees hold title to the dominant tenement, e.g., joint tenancy;
 - Find out if the easement is subject to any mortgages, liens, or other interests in the servient tenement, and so, verify lien holder consent; and
 - Determine if anything has occurred to terminate the easement.



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Access

- **Insured Easement Parcel Legal Description:**

- Parcel 1: [DOMINANT TENEMENT LEGAL DESCRIPTION]
- Parcel 2: Easement for the benefit of Parcel 1 as created by deed from * to * dated *, and recorded *, as Document No. * (in Book *, Page *) for the purpose of * over the following described land: [legal description of easement].



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Access

- **Insured Easement Parcel – Schedule B Exceptions:**

- 1. Terms, provisions and conditions relating to the easement described as Parcel No. 2 contained in the instrument creating such easement.
- 2. Rights of the adjoining owner or owners to the concurrent use of the easement described as Parcel No. 2.

- **NOTE:** If the easement is exclusive to the owner of the dominant tenement, exception number 2, above, need not be raised.



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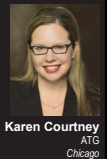
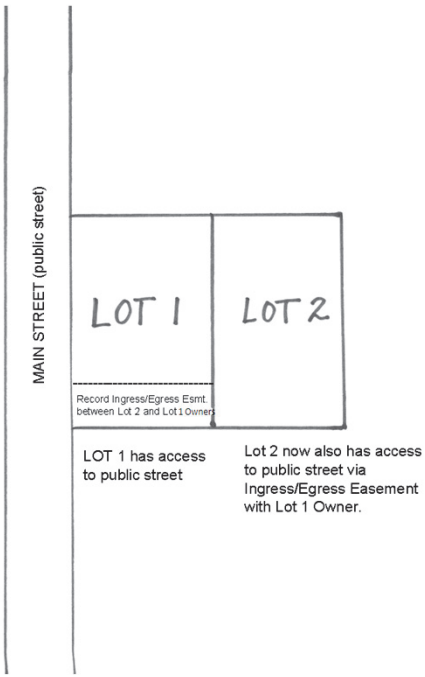
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Access Via Easement

Example 1



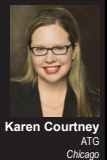
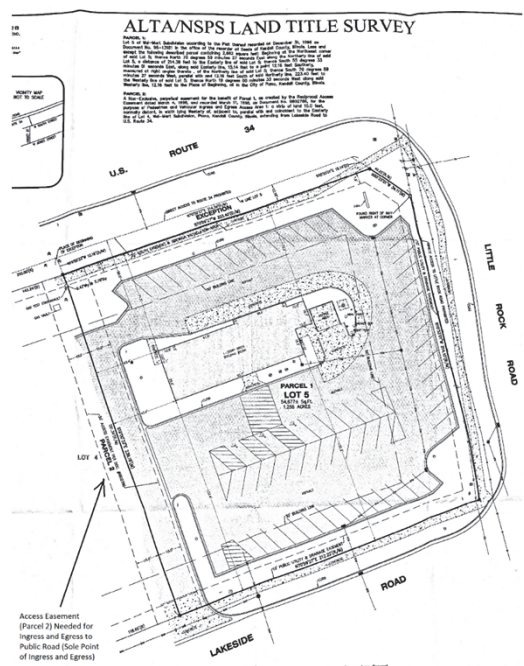
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Access Via Easement

Example 2



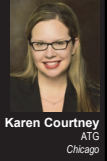
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Access Via Easement

Example 2 – Google Satellite View

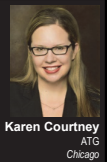
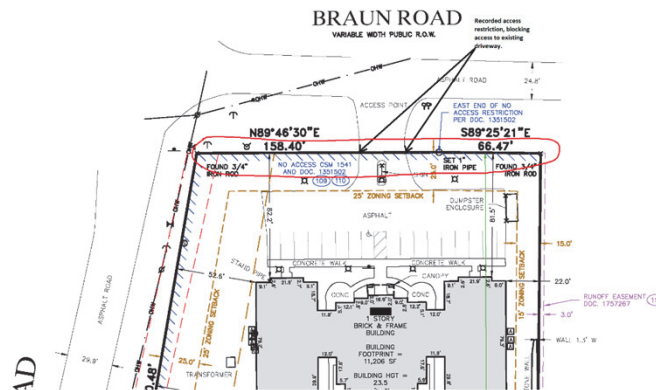


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Access Restriction Issue

(page 1 of 2)

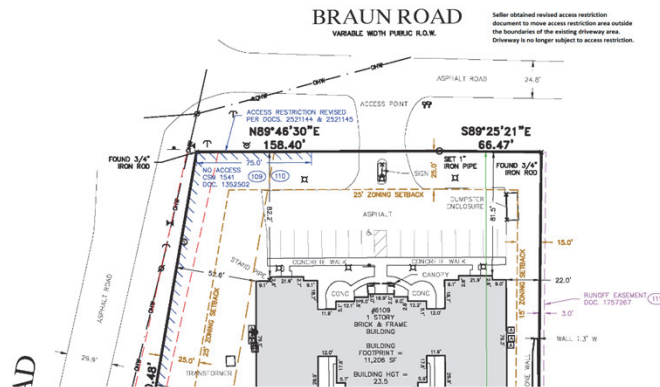


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Access Restriction Issue

(page 2 of 2)



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Common Commercial Title Exceptions

- Exceptions we raise on Schedule B of the title commitment on all commercial transactions.
- These exceptions are intended to assist ATG to discover and underwrite high-risk issues present in commercial transactions.



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Common Commercial Title Exceptions

- *If Extended Coverage over the five General Exceptions is requested, ATG should be furnished with the following:*

A. A current ALTA/NSPS Survey or Illinois Land Title Survey Certified to Attorneys' Title Guaranty Fund, Inc.;

B. A Properly executed ALTA Statement;

Matters disclosed by the above documentation will be shown specifically on Schedule B

NOTE: There will be an additional charge for this coverage.

- *Information should be furnished establishing whether any written agreement has been entered into by and between any party or broker for the purposes of buying, selling, leasing, or otherwise conveying any interest in the land described herein; and, if any such agreement has been entered into, satisfactory evidence should be furnished establishing that the compensation agreed upon in such agreement has been paid and the broker's lien, or right to a lien, for such amount has been extinguished. In the event the evidence is not furnished, our policy or policies when issued will be subject to the following exception:*

"Any lien, or right to a lien, imposed by law under the provisions of the Commercial Real Estate Broker Lien Act, and not shown in the public records, for compensation agreed upon by a broker and the broker's client or customer under the terms of a written agreement entered into for the purposes of buying, selling, leasing, or otherwise conveying any interest in the land described in Schedule A".

- *Rights of a property manager, if any, to a statutory lien on the premises for its property manager's fee.*

Note: Furnish ATG with an affidavit by the owner stating that there is no property manager for the insured premises. In the absence thereof, provide a waiver of lien by the property manager covering the date of recording of the deed and mortgage to the insured.

- *Existing leases and tenancies, and rights of tenants thereunder, and those claiming by, through, or under those tenants.*
- *Loss or damage by reason of there being recorded in the public records, any deeds, mortgages, lis pendens, liens or other title encumbrances subsequent to the Commitment date and prior to the effective date of the final Policy.*



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Common Commercial Title Exceptions

- **Extended Coverage requirements Exception**
 - See previous discussion regarding extended coverage requirements.



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Common Commercial Title Exceptions

- **“Commercial Real Estate Broker’s Lien” Exception**
 - Commercial Real Estate Broker Lien Act, 770 ILCS 15/1 *et seq.*
 - Can be waived upon receipt of:
 - Commercial Real Estate Broker’s Lien Act Affidavit executed by Seller; and
 - If a real estate broker has been engaged by Seller and/or Buyer, obtain an executed Waiver of Lien – Illinois Commercial Real Estate Broker Lien Act from the broker with whom brokerage agreement was signed.



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Commercial Real Estate Broker’s Lien Act Affidavit

ATG Form 3000

ATTORNEYS’ TITLE GUARANTY FUND, INC.
COMMERCIAL REAL ESTATE BROKER’S LIEN ACT AFFIDAVIT

SAMPLE
STATE OF ILLINOIS
COUNTY OF _____

The undersigned, being first duly sworn, deposes and states that with respect to the land described in Attorneys’ Title Guaranty Fund, Inc.’s commitment number _____:

(Strike inapplicable paragraph or language within paragraph.)

- a. Affiant is the owner of the land/ the lessee of the land/ the lessee of the building or space therein on the land/ a prospective buyer of the land/ a prospective buyer of a leasehold estate in the land or of the building situated on the land or of space in the building situated on the land;
- b. Affiant has entered into a written agreement with a “broker” as defined in the Real Estate License Act of 1983, for the purpose of selling, leasing, or otherwise conveying an interest in the aforesaid land, that the said broker has performed under the terms of said written agreement and is entitled to compensation pursuant to said agreement in the amount of \$ _____.
- c. Affiant has entered into a written agreement with a “broker” as defined in the Real Estate License Act of 1983, for the purpose of acquiring ownership of the land, or a leasehold estate in the land or building situated on the land or space in a building situated on the land, and that the said broker has performed under the terms of said written agreement and is entitled compensation pursuant to said agreement in the amount of \$ _____.
- d. Affiant has entered into no written agreement nor is affiant aware of anyone else entering into any written agreement with any “broker,” as defined in the Real Estate License Act of 1983, nor is affiant aware of anyone who has provided licensed services that resulted in the procuring of a person or entity for the purpose of buying, selling, leasing, subleasing, or otherwise conveying or acquiring any interest in the land.

The affiant makes this affidavit for the purpose of inducing Attorneys’ Title Guaranty Fund, Inc. to insure the title to the land described in the above commitment without exception for a lien arising under the Commercial Real Estate Broker’s Lien Act.

Dated: _____ Signature of Affiant _____
Name of Affiant _____

Subscribed and sworn to before me this _____ Address of Affiant _____
day of _____, _____
Day _____ Month _____ Year _____

Notary Public _____

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Waiver of Lien – Illinois Commercial Real Estate Broker Lien Act

ATG Form 3025

ATTORNEYS' TITLE GUARANTY FUND, INC.

**WAIVER OF LIEN
ILLINOIS COMMERCIAL REAL ESTATE BROKER LIEN ACT**

STATE OF ILLINOIS)
COUNTY OF) SS

WHEREAS, the undersigned has entered into an agreement with _____ (owner) for the purpose of procuring a buyer, seller, lessee, sublessee, lessor, or lender, for the purpose of buying, selling, leasing, subleasing, financing, or otherwise conveying or acquiring an interest in the premises commonly known as _____, and;

WHEREAS, the undersigned has performed all required of it under the terms of said agreement and is entitled to compensation provided for therein.

NOW, THEREFORE, the undersigned, for and in consideration of \$ _____ and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby acknowledge satisfaction in full of the compensation due it under the agreement and does hereby waive any and all claims of, or right to, a lien under the statutes of the State of Illinois relating to real estate broker liens with respect to and on the said premises, the building or buildings or other improvements thereon, and the tenant spaces therein, if any, and on the monies or other considerations due or that may become due to the owner on account of said sale, purchase, lease, sublease, or financing transaction, or other conveyance.

IN WITNESS WHEREOF, this instrument has been executed by the undersigned this _____ day of _____, _____ Year.

Subscribed and sworn to before me this _____ day of _____, _____ Year. (Seal)

Notary Public

NOTE: All waivers must be for the full amount received by the undersigned. If the undersigned is a corporation, the corporate name should be used, corporate seal affixed, and title of the corporate officer signing the waiver set forth. If the undersigned is a partnership, the partnership name should be affixed by the managing partner.

BROKER'S AFFIDAVIT

STATE OF ILLINOIS)
COUNTY OF) SS

TO WHOM IT MAY CONCERN:

The undersigned, being first duly sworn, on oath deposes and says that he/she is _____ of the firm of _____, which is the real estate broker for the sale, leasing, financing or other conveyance of the property commonly known as _____, and owned by _____; that the total compensation due under the agreement dated _____, with _____ (owner or agent) is \$ _____, on which payment of \$ _____ has been received prior to this payment; that to the best of his/her knowledge the following are the names of all other persons having an agreement or who have provided licensed services that resulted in the procuring of a person or entity for the purpose of buying, selling, leasing, subleasing, financing, or otherwise conveying or acquiring an interest in the premises: _____ (if none, state none).

Signed this _____ day of _____, _____ Year.

Subscribed and sworn to before me this _____ day of _____, _____ Year. (Affix Seal Here)

Notary Public

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Common Commercial Title Exceptions

- **“Property Manager’s Lien” Exception**
 - Raised to address property manager’s fee, which can include lienable costs for maintenance and repair of property.
 - Can be waived upon receipt of:
 - Property Manager’s Lien Affidavit executed by Seller (if no property manager); or
 - Statement of Owner Relating to Property Manager and Final Waiver of Lien by Property Manager executed by Property Manager and Seller (if there is a property manager).



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Property Manager's Lien Affidavit

ATG Form 3038

SAMPLE

ATTORNEYS' TITLE GUARANTY FUND, INC.
PROPERTY MANAGER'S LIEN AFFIDAVIT

STATE OF ILLINOIS)
COUNTY OF) SS

The undersigned, being first duly sworn, deposes and states that with respect to the land described in Attorneys' Title Guaranty Fund, Inc.'s Commitment Number _____.

- Affiant is a beneficiary, titleholder, or holder of a contract interest in the property;
- That no property manager is employed by the owner for services to be rendered in connection with the property.

The Affiant makes this affidavit for the purpose of inducing Attorneys' Title Guaranty Fund, Inc., to insure the title to the land described in the above-noted Commitment.

Further, Affiant sayeth not.

Dated: _____ Signature of Affiant

Name of Affiant (please print)

Address of Affiant

Subscribed and sworn to before me this

_____ day of _____, _____ Year

Notary Public

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Property Manager Waiver of Lien

ATG Form 3041

SAMPLE

ATTORNEYS' TITLE GUARANTY FUND, INC.
PROPERTY MANAGER WAIVER OF LIEN

WHEREAS, the undersigned, _____, has been employed by _____ to furnish services as the property manager at the premises commonly known as _____ and legally described in Attorneys' Title Guaranty Fund, Inc., Commitment No. _____, dated _____;

The undersigned, for and in consideration of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, the receipt whereof is hereby acknowledged, do/does hereby waive and release any and all lien or claim or right to a lien under the Statutes of Illinois relating to Mechanics' Liens on the above described premises and improvements thereon and on the fixtures or other considerations due or becoming due from the owner on account of labor or services, materials, fixtures, apparatus, or machinery heretofore furnished or which may be furnished at any time hereafter by the undersigned for the above described premises.

Dated this _____ day of _____, _____ Year

By: _____ Name of Property Manager

Address

City, State, Zip

By: _____ Signature of Owner or Agent

Address

City, State, Zip

AFFIDAVIT

The undersigned, _____, first duly sworn, deposes and says that he/she, _____, employed as the property manager by _____, owner of the land referred to above, for the building(s) located at _____.

Affiant states that there are no contracts for outstanding work and that there is nothing due to any person for material, labor, or work of any kind done or to be done upon or in connection with the premises noted herein. No contracts have been let, either verbal or written, by the undersigned as agent for the owner.

Dated this _____ day of _____, _____ Year

By: _____
Signature of Property Manager

Subscribed and sworn to before me

this _____ day of _____, _____ Year

Notary Public

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Common Commercial Title Exceptions

▪ “Existing Unrecorded Leases” Exception

- Can be waived upon receipt of an ALTA Statement executed by both parties, provided the ALTA Statement does not identify any existing leases.
- If the executed ALTA Statement identifies any unrecorded leases, the general existing leases exception cannot be waived. However, if requested, this exception can be modified to reference the specific leases (or Certified Rent Roll, which should be attached as an exhibit to the policy).



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Common Commercial Title Exceptions

▪ “Gap” Exception

- Removes coverage for defects that arise during the period between the effective date of the Commitment and the date of recording of the deed and/or mortgage to be insured, known as the “gap” period.
- To provide gap coverage on commercial transactions, ATG requires an executed Personal Undertaking (Gap) and a Commercial Gap coverage fee of \$300.00 (split equally).



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Personal Undertaking (Gap)

ATG Form 3040

SAMPLE

ATTORNEYS' TITLE GUARANTY FUND, INC.

PERSONAL UNDERTAKING (GAP)

Escrow No.:

WHEREAS, Attorneys' Title Guaranty Fund, Inc., hereinafter referred to as "ATG," is about to issue its title insurance policy, policies, or commitments, all hereinafter referred to as the "Title Insurance Policy" No. _____, in respect to the Land described:

AND WHEREAS, ATG has raised as title exceptions to title the following:

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

AND WHEREAS, ATG has been requested to issue the Title Insurance Policy, and may hereafter in the ordinary course of its business issue title insurance policies or commitments therefore in the forms now or then commonly used by ATG in respect to the Land or to some part or parts thereof, or interest therein, all of the foregoing being hereafter referred to as Future Policies, either fee and clear of all mention of the Exceptions to Title or insuring against loss or damage by reason thereof;

NOW THEREFORE, in consideration of the issuance of the Title Insurance Policy and the payment of \$1.00 to the undersigned by ATG, the sufficiency and receipt of which is hereby acknowledged, the undersigned, jointly and severally, for themselves, their heirs, personal representatives, and assigns do hereby covenant and agree with ATG: 1) to forever fully protect, defend, and save ATG harmless from and against all the exceptions to title or any rights growing out thereof, all loss, costs, damages, attorneys' fees, and expenses of every kind and nature which ATG may suffer, its consequence of the Title Insurance Policy on account of the exceptions to title or any rights growing out thereof, or of account of the assertion or enforcement or attempted assertion or enforcement thereof; 2) to provide for the defense, at their own expense, on behalf and for the protection of ATG and any parties now or hereafter insured against loss or damage under the Title Insurance Policy (but without prejudice to the right of ATG to defend if it so elects) in all litigation based on any exceptions to title, which may be asserted or attempted to be asserted, in respect to the Land, or any part thereof, or interest therein; 3) to pay, discharge, satisfy, or remove all the Exceptions to Title on reasonable demand; and 4) that each and every provision herein shall extend and be in force concerning future policies.

The foregoing notwithstanding, it is hereby covenanted and agreed, and expressly made a part of this agreement, that the liability of the undersigned hereunder shall cease and determine at such time as ATG shall have completed all of its various title searches covering the date of disbursement, including the final disbursement required for the issuance of the above policy, provided, however, that: 1) no exceptions to title or rights growing out thereof are disclosed by the said various title searches and examination thereof; 2) there is then pending no suit, action, or proceedings, either direct or collateral, to assert, establish, or enforce the said exceptions to title or rights growing out thereof; 3) that no judgment, order, or decree rendered in any such proceeding remains unsatisfied; and 4) that the undersigned is not in default in the performance of any of the terms, covenants, and conditions hereof.

It is understood and agreed by and between the parties hereto that this agreement, at the option of ATG, shall be converted to ATG's standard form Title Indemnity Agreement within fifteen (15) days of written demand for deposit in an amount not to exceed 150% of the total of any liens, rights, claims, encumbrances, or defects in title that may become subject to this agreement. Failure to deposit said funds shall constitute a full default under this agreement and all means to enforce this agreement shall become optional and at the disposal of ATG.

IN WITNESS WHEREOF, the parties have executed this agreement this _____ day of _____, _____.

Signature _____	Signature _____
Name (Print) _____	Name (Print) _____
Address: _____	Address: _____
City, State, Zip: _____	City, State, Zip: _____
Phone: _____	Phone: _____

Accepted: _____
 ATTORNEYS' TITLE GUARANTY FUND, INC.

By: _____
 Signature _____

ATG FORM 3040
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Karen Courtney
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Questions?

Karen Courtney
 Commercial Underwriting Attorney
 Phone: 312.752.1409
 Fax: 312.224.0259
 kcourtney@atgf.com

ATG Commercial Title and Escrow Department
 Phone: 312.752.1988
 Fax: 312.372.0464

Attorney's Title Guaranty Fund, Inc.
 One South Wacker Drive, Suite 2400
 Chicago, Illinois 60606
 Phone: 312.372.8361



ATTORNEYS' TITLE GUARANTY FUND, INC.



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