

THE TEXAS MORTGAGEE POLICY:

What Does It Insure?

By Bill Pratt

House Keeping

Please do not place the conference on hold.

Background/Hold music makes it hard to hear the speaker.

Please mute your phones. (Un-mute to ask questions)

Everything you say, every paper that gets shuffled can be heard by all participants. We are voice recording the conference.

Please Note: Materials for the May webinar on the Owner Policy will be available by email for those that are interested. Due to staffing constraints, our website management company is not able to post the materials to www.StewartTexas.com at this time. Please email Allison.James@stewart.com if you would like a copy of either presentation.

THE TEXAS MORTGAGEE POLICY: What Does It Insure?

William S. Pratt
Texas Underwriting Counsel
5900 Shepherd Mt. Cove, Bldg. 2, Suite 200
Austin, TX 78730
WATS (800) 252-9229
bpratt@stewart.com

MORTGAGEE POLICY OF TITLE INSURANCE

Issued by

STEWART TITLE GUARANTY COMPANY

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, Stewart Title Guaranty Company, a Texas corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

- 1. Title to the estate or interest described in Schedule A being vested other than as stated therein;**
2. Any defect in or lien or encumbrance on the title;
3. Lack of a right of access to and from the land;
4. The invalidity or unenforceability of the lien of the insured mortgage upon the title;
5. The priority of any lien or encumbrance over the lien of the insured mortgage;
6. Lack of priority of the lien of the insured mortgage over any statutory or constitutional mechanic's, contractor's or materialman's lien for labor or material having its inception on or before Date of Policy;

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1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
- 2. Any defect in or lien or encumbrance on the title;**
3. Lack of a right of access to and from the land;
4. The invalidity or unenforceability of the lien of the insured mortgage upon the title;
5. The priority of any lien or encumbrance over the lien of the insured mortgage;
6. Lack of priority of the lien of the insured mortgage over any statutory or constitutional mechanic's, contractor's or materialman's lien for labor or material having its inception on or before Date of Policy;

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1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
- 3. Lack of a right of access to and from the land;**
4. The invalidity or unenforceability of the lien of the insured mortgage upon the title;
5. The priority of any lien or encumbrance over the lien of the insured mortgage;
6. Lack of priority of the lien of the insured mortgage over any statutory or constitutional mechanic's, contractor's or materialman's lien for labor or material having its inception on or before Date of Policy;

CONDITIONS AND STIPULATIONS:

1. DEFINITION OF TERMS.

The following terms when used in this policy mean:

- ...
- (g) "access": legal right of access to the land and not the physical condition of access. **The coverage provided as to access does not assure the adequacy of access for the use intended.**

PROCEDURAL RULE P-37. Lack of a Right of Access - If the company is not satisfied as to the insurability of access to and from the land, the title to which or a lien thereon is to be insured, it may make the following exceptions to the insuring form:

- a. To the Owner Policy (Form **T-1**): **"Lack of a right of access to and from the land. Insuring provision number 4 is hereby deleted."**
- b. To the Mortgagee Policy: **"Lack of a right of access to and from the land. Insuring provision number 3 is hereby deleted."**
- c. To the Residential Owner Policy (Form **T-1R**): **"Lack of a right of access to and from the land. Company deletes the insurance of access under Covered Title Risks".**

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1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Lack of a right of access to and from the land;
4. **The invalidity or unenforceability of the lien of the insured mortgage upon the title;**
5. The priority of any lien or encumbrance over the lien of the insured mortgage;
6. Lack of priority of the lien of the insured mortgage over any statutory or constitutional mechanic's, contractor's or materialman's lien for labor or material having its inception on or before Date of Policy;

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SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, Stewart Title Guaranty Company, a Texas corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Lack of a right of access to and from the land;
4. The invalidity or unenforceability of the lien of the insured mortgage upon the title;
5. **The priority of any lien or encumbrance over the lien of the insured mortgage;**
6. Lack of priority of the lien of the insured mortgage over any statutory or constitutional mechanic's, contractor's or materialman's lien for labor or material having its inception on or before Date of Policy;

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SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, Stewart Title Guaranty Company, a Texas corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Lack of a right of access to and from the land;
4. The invalidity or unenforceability of the lien of the insured mortgage upon the title;
5. The priority of any lien or encumbrance over the lien of the insured mortgage;
6. **Lack of priority of the lien of the insured mortgage over any statutory or constitutional mechanic's, contractor's or materialman's lien for labor or material having its inception on or before Date of Policy;**

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STEWART TITLE GUARANTY COMPANY

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, Stewart Title Guaranty Company, a Texas corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

5. The priority of any lien or encumbrance over the lien of the insured mortgage;
6. Lack of priority of the lien of the insured mortgage over any statutory or constitutional mechanic's, contractor's or materialman's lien for labor or material having its inception on or before Date of Policy;
7. **The invalidity of unenforceability of any assignment of the insured mortgage, provided the assignment is shown in Schedule A to vest title to the insured mortgage in the named insured assignee free and clear of all liens;**
8. Lack of good and indefeasible title.

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STEWART TITLE GUARANTY COMPANY

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, Stewart Title Guaranty Company, a Texas corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

5. The priority of any lien or encumbrance over the lien of the insured mortgage;
6. Lack of priority of the lien of the insured mortgage over any statutory or constitutional mechanic's, contractor's or materialman's lien for labor or material having its inception on or before Date of Policy;
7. The invalidity or unenforceability of any assignment of the insured mortgage, provided the assignment is shown in Schedule A to vest title to the insured mortgage in the named insured assignee free and clear of all liens;
8. **Lack of good and indefeasible title.**

The Company also will pay the costs, attorneys' fees and expenses incurred in defense of the title or the lien of the insured mortgage, as insured, but only to the extent provided in the Conditions and Stipulations.

STEWART TITLE GUARANTY COMPANY

By

President

Secretary

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations), restricting, regulating, prohibiting or relating to
 - (i) the occupancy, use, or enjoyment of the land;
 - (ii) the character, dimensions or location of any improvement now or hereafter erected on the land;
 - (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or
 - (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to

- (i) the occupancy, use, or enjoyment of the land;
- (ii) the character, dimensions or location of any improvement now or hereafter erected on the land;**
- (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or
- (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

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 - (i) the occupancy, use, or enjoyment of the land;
 - (ii) the character, dimensions or location of any improvement now or hereafter erected on the land;
 - (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or
 - (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to
 - (i) the occupancy, use, or enjoyment of the land;
 - (ii) the character, dimensions or location of any improvement now or hereafter erected on the land;
 - (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or
 - (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to
 - (i) the occupancy, use, or enjoyment of the land;
 - (ii) the character, dimensions or location of any improvement now or hereafter erected on the land;
 - (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or
 - (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

. . .

2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking that has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

• • •

3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or material); or
 - (e) resulting in loss or damage that would not have been sustained if the insured claimant had paid value for the insured by mortgage.

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

. . .

4. **Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the land is situated.**

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

. . .

5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit or truth in lending law.

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

. . .

6. Any statutory or constitutional mechanic's, contractor's, or materialman's lien for labor or material having its inception date subsequent to Date of Policy.

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

. . .

7. The refusal of any person to purchase, lease or lend money on the estate or interest covered hereby in the land described in Schedule A because of unmarketability of the title.

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

. . .

8. Any claim which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or other state or federal creditors' rights laws that is based on either (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer or a voidable distribution or voidable dividend, (ii) the subordination or re-characterization of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination or (iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure of the Company or its issuing agent to timely file for record the instrument of transfer to the insured after delivery or the failure of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

CONDITIONS AND STIPULATIONS

1. DEFINITION OF TERMS.

The following terms when used in this policy mean:

(a) **“insured”**: the insured named in Schedule A. The term **“insured”** also includes:

- (i) The owner of the indebtedness secured by the insured mortgage and each successor in ownership of the indebtedness except a successor who is an obligor under the provisions of Section 12(c) of these Conditions and Stipulations (reserving, however, all rights and defenses as to any such successor that the Company would have had against any predecessor insured, unless the successor acquired the indebtedness as a purchaser for value without knowledge of the asserted defect, lien, encumbrance, adverse claim or other matter insured against by this policy as affecting title to the estate or interest in the land);
- (ii) Any governmental agency or governmental instrumentality that is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage, or any part thereof, whether named as an insured herein or not;
- (iii) The parties designated in Section 2(a) of these Conditions and Stipulations.

CONDITIONS AND STIPULATIONS

1. DEFINITION OF TERMS.

The following terms when used in this policy mean:

- ...
- (d) **“land”**: the land described or referred to in Schedule A, and improvements affixed thereto that by law constitute real property. The term **“land”** does not include any property beyond the lines of the area described or referred to in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

CONDITIONS AND STIPULATIONS

2. CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE.

(a) After Acquisition of Title. The coverage of this policy shall continue in force as of Date of Policy in favor of

- (i) an insured who acquires all or any part of the estate or interest in the land by foreclosure, trustee's sale, conveyance in lieu of foreclosure, or other legal manner which discharges the lien of the insured mortgage;
- (ii) a transferee of the estate or interest so acquired from an insured corporation, provided the transferee is the parent or wholly-owned subsidiary of the insured corporation, and their corporate successors by operation of law and not by purchase, subject to any rights or defenses the Company may have against any predecessor insureds; and
- (iii) any governmental agency or governmental instrumentality that acquires all or any part of the estate or interest pursuant to a contract of insurance or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage.

CONDITIONS AND STIPULATIONS

2. CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE.

- (b) **After Conveyance of Title.** The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

CONDITIONS AND STIPULATIONS

2. CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE.

(c) Amount of Insurance. The amount of insurance after the acquisition or after the conveyance shall in neither event exceed the least of:

- (i) the Amount of Insurance stated in Schedule A;
- (ii) the amount of the principal of the indebtedness secured by the insured mortgage as of Date of Policy, interest thereon, expenses of foreclosure, amounts advanced pursuant to the insured mortgage to assure compliance with laws or to protect the lien of the insured mortgage prior to the time of acquisition of the estate or interest in the land and secured thereby and reasonable amounts expended to prevent deterioration of improvements, but reduced by the amount of all payments made; or
- (iii) the amount paid by any governmental agency or governmental instrumentality, if the agency or instrumentality is the insured claimant, in the acquisition of the estate or interest in satisfaction of its insurance contract or guaranty.

SCHEDULE B

File No. Policy No.

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorney's fees or expenses) that arise by reason of the terms and conditions of the leases or easements insured, if any, shown in Schedule A and the following matters:

- 1. The following restrictive covenants of record itemized below, but the company insures that any such restrictive covenants have not been violated so as to effect, and that future violation thereof will not affect, the validity or priority of the mortgage hereby insured (insert specific recording data or delete this exception):**
- 2. Any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements.**
- 3. Standby fees, taxes, and assessments by any taxing authority for the year and subsequent years; and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership, but not those taxes or assessments for prior years because of an exemption granted to a previous owner of the property under Section 11.13, *Texas Tax Code*, or because of improvements not assessed for a previous tax year.**

SCHEDULE B

File No. Policy No.

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorney's fees or expenses) that arise by reason of the terms and conditions of the leases or easements insured, if any, shown in Schedule A and the following matters: . . .

- 4. **Liens and leases that affect the title to the estate or interest, but that are subordinate to the lien of the insured mortgage.**

- 5. **(INSERT HERE ALL OTHER SPECIFIC EXCEPTIONS AS TO SUPERIOR LIENS, EASEMENTS, OUTSTANDING MINERAL AND ROYALTY INTERESTS, ETC.)**

Thank you

Please email password and attendees name to Ken
Wrider at Ken.Wrider@stewart.com

Certificates will be emailed to you next week.

Next Texas TIPS Online

7/19/07 Title Search Periods per Stewart Title
Guaranty Bulletin TX000065 by Sarah Schneider

See www.StewartTexas.com for calendar