Session One

8:00 – 9:00 a.m.

Why I Mow My Lawn:

Insight on potential common title defects that are often overlooked, and why owner's title insurance is a must have for all immovable property purchases

Ashley Bynum

Legacy Title Baton Rouge

Ashley Bynum



Ashley Bynum is a Houston, Texas native, and graduated high school from Cinco Ranch High School in Katy, Texas. She moved to Baton Rouge in 2005 to attend Louisiana State University, from which she graduated in 2008 with a Bachelor of Science in Business Administration: Marketing. Ashley attended law school at Paul M. Hebert Law Center at Louisiana State University, where she earned her Juris Doctor, *magna cum laude*, as well as a Diploma in Comparative Law. While in law school, Ashley earned the highest grade in several classes, including Civil Law Property and Business Administration I. Ashley graduated in the top ten percent of her class, and was inducted into the Order of the Coif upon graduation.

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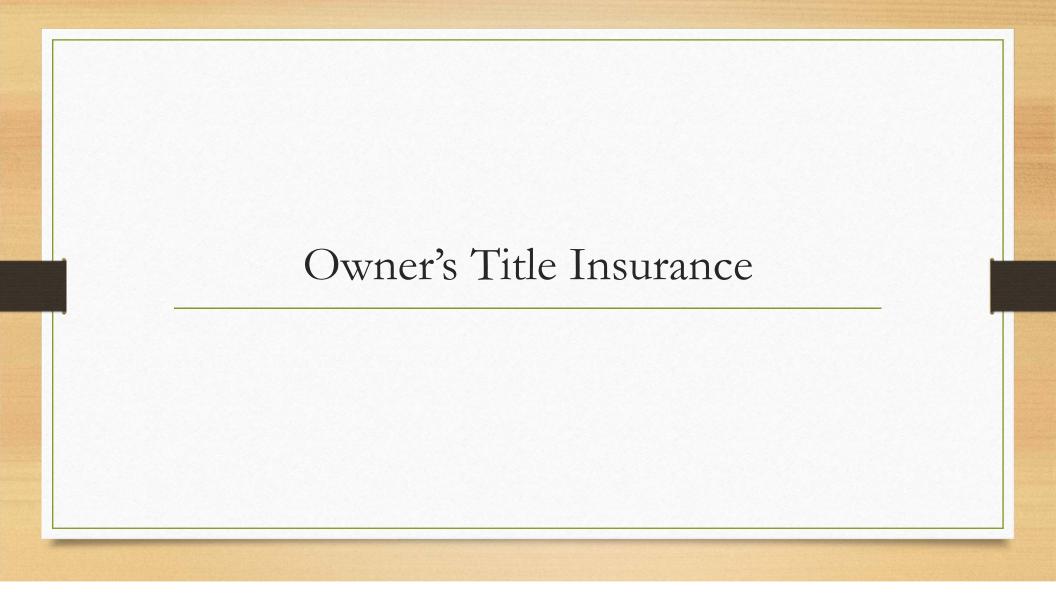
Why I Mow My Lawn.

Ashley Bynum ashley@legacytitlela.com

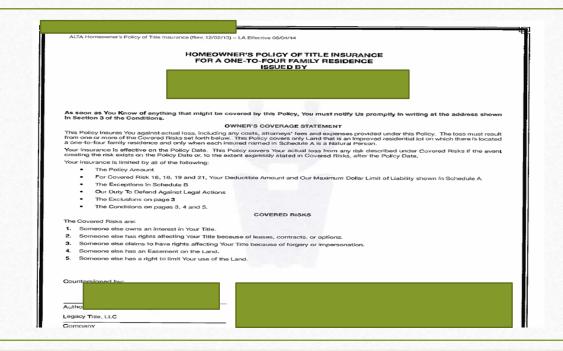
Attorney with Legacy Title, LLC Licensed Title Insurance Producer

Overview

- What is Owner's Title Insurance?
- What risks does Owner's Title Insurance cover, and what laws are at issue for those risks?



Owner's Title Insurance



Owner's Title Insurance

SCHEDULE A

Policy No.:

Premium: \$356.00

Name and Address of Title Insurance Company

Name and Address of Issuing Agency: Legacy Title, LL.C. 11813 Market Place Avenue, Baton Rouge, LA 70816

File No.: 14-1113

Policy Amount: \$\$165,000.00

Date of Policy: December 22, 2014

Deductible Amounts and Maximum Dollar Limits of Liability For Covered Risk 16, 18, 19 and 21:

	Your Deductible Amount	Our Maximum Dollar Limit of Liability
Covered Risk 16	1% of Policy Amount Shown in Schedule A or \$ 2,500.00 (whichever is less)	\$10,000.00
Covered Risk 18	1% of Policy Amount Shown in Schedule A or \$ 5,000.00 (whichever is less)	\$25,000.00
Covered Risk 19	1% of Policy Amount Shown in Schedule A or \$ 5,000.00 (whichever is less)	\$25,000.00
Covered Risk 21	1% of Policy Amount Shown in Schedule A or \$ 2,500.00 (whichever is less)	\$5,000.00

Street Address of the Land

- Name of Insured:
- 2. Your interest in the Land covered by this Policy is: FEE SIMPLE
- 3. The Land referred to in this Policy is described as:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

HOMEOWNER'S POLICY OF TITLE INSURANCE For a one-to-four family residence

Policy No.:

File No.: 14-1113

EXHIBIT A - LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE PARISH OF East Baton RougeSTATE OF LA AND IS DESCRIBED AS FOLLOWS:

ONE (1) CERTAIN LOT OR PARCEL OF GROUND, together with all the buildings and improvements thereon, and all of the rights, ways, privileges, servitudes, appurtenances, and advantages thereunto belonging or in anywise appertaining, situated in that subdivision of the Parish of East Baton Rouge, State of Louisiana, in that subdivision known as prepared by Toxle Crait, cryn Engmeer, uarea appur, 1977, entitled map Showing the Resubdivision of Lot 639, Jefferson Terrace Subdivision, Section No. 1, First Filing, East Baton Rouge Parish, Louisiana for Durward Gully," a copy of which is on file and of record in Original 100 of Bundle 7596 of the official records of the office of the Clerk and Recorder of this parish and state, as LOT NIMBER SIX HUNDRED THIRTY.NINE. 8 (639.8), said subdivision, said lot measuring one hundred in fourteen and 19/100 (114.19) feet between equal and parallel lines; being subject to a ten (10) foot servitude along the easterly sideline.

For informational purposes only:

Owner's Title Insurance

American Land Title Association

ALTA Homeowner Policy for LA Revised 12/02/13 (effective 08/04/14) STG Form 3160B

HOMEOWNER'S POLICY OF TITLE INSURANCE For a one-to-four family residence

Issued By

Policy No.:

File No.: 14-1113

SCHEDULE B - EXCEPTIONS

In addition to the Exclusions, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

- 1. Rights or claims of parties in possession not shown by the public records.
- 2. Taxes for the year 2014and thereafter, which are not yet due and payable.
- 3. Any covenant, condition and restriction, whether or not appearing in the public records. This policy insures you against loss if there is a lien on your title because of a charge by a homeowner's or condominium association that is due and payable at Date of Policy or if you are forced by court order to remove your existing improvements, other than a boundary wall or fence, because they violate any covenant, condition or restriction.
- 4. Any easement or servitude, whether or not appearing in the public records. This policy insures you against loss if your existing structures are damaged because of the exercise of a right to maintain or use any easement affecting the land or if you are forced to remove your existing structures, which encroach onto an easement.
- 5. Minerals of whatsoever kind, subsurface and surface substances, including but not limited to coal, lignite, oil, gas, uranium, clay, rock, sand and gravel in, on, under and that may be produced from the Land, together with all rights, privileges, and immunities relating thereto, whether or not appearing in the Public Records or listed in Schedule B. The Company makes no representation as to the present ownership of any such interests. There may be leases, grants, exceptions or reservations of interests that are not listed.
- 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.

Risks & Law of Owner's Title Insurance

• Any defect or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to the Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

ALTA Covered Risk 10

Applicable Law – Pre-Existing Liens

- Conventional Mortgages (La. C.C. art. 3358)
 - If any part of the debt matures nine years or more after the date of the instrument, then it prescribes 6 years from expressed maturity date (new law)
- MIMs/Collateral Mortgages (La. C.C. art. 3357)
 - 10 years after date of recordation
- Judicial Mortgages (La. C.C. arts. 3359 and 3501)
 - 10 years after date of recordation/10 days after signed by Judge
- UCC Fixture Filings

Applicable Law – Pre-Existing Liens

- HOA Liens (La. R.S. 9:1147)
 - 5 years from recordation & a notice of filing lawsuit is filed
- Private Works Act Liens (La. R.S. 9:4801 et seq.)
 - One year from the last date you should have filed a statement of claim + timely file a notice of lis pendens (La. R.S. 9:4823(a)(2) and 9:4833(e))
- Tax Liens
 - LDR/LWC Unemployment Tax Liens/other liens ifo State 10 years (La. R.S. 9:5685)
 - IRS Liens (26 U.S.C. 6322 and 6325(a))
- Lis pendens

Applicable Law – Pre-Existing Liens

- Minor's mortgage/tutor's mortgage (La. C.C. arts. 3360 and La. C.C.P. art. 4134)
 - Minor's Mortgage: Four (4) years after majority OR four (4) years from a judgment authorizing resignation or removal
 - Tutor's Mortgage: Four (4) years after minor reaches majority & may be cancelled by any interested party
- Child support obligations (9:322/9:323 & 13:4291)
 - Effective ten (10) years from majority

• Title being vested other than as stated in Schedule A.

SCHEDULE A Name and Address of Issuing Agency: Legacy Title, L.L.C. 11813 Market Place Avenue, Baton Rouge, LA 70816 Name and Address of Title Insurance Company File No.: 14-1113 Policy Amount: \$\$165,000.00 Premium: \$356.00 Date of Policy: December 22, 2014 Deductible Amounts and Maximum Dollar Limits of Liability For Covered Risk 16, 18, 19 and 21: Your Deductible Amount Our Maximum Dollar Limit of Liability 1% of Policy Amount Shown in Schedule A Covered Risk 16 \$10,000.00 or \$2,500.00 (whichever is less) 1% of Policy Amount Shown in Schedule A Covered Risk 18 \$25,000.00 1% of Policy Amount Shown in Schedule A Covered Risk 19 \$25,000.00 or \$5,000.00 (whichever is less) 1% of Policy Amount Shown in Schedule A or \$ 2,500.00 (whichever is less) Covered Risk 21 \$5,000.00 Street Address of the Lar John Snow Your interest in the Land covered by this Policy is: FEE SIMPLE The Land referred to in this Policy is described as: SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

ALTA Covered Risk 1

- This policy is in the name of "JOHN SNOW", so this would protect if there was an interest in ANYONE but "JOHN SNOW"
- Potential Claims:
 - Undisclosed heirs in probate claims
 - Forgeries in the chain of title
 - Mis-indexed documents in the chain of title
 - Prior owners not transferring their interests (usufructuaries)

- "Any defect in or lien or encumbrance on the Title."
- This Covered Risk includes, but is not limited to insurance against loss from a defect in the title caused by:
 - Failure of any person or Entity to have authorized a transfer or conveyance;
 - Forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation; or
 - A document executed under a falsified, expired, or otherwise invalid power of attorney.
- ALTA Covered Risk 2(a)(i), (ii) and (vi)

- Natural Persons
 - General Rule All persons have authority to contract except:
 - Unemancipated minors
 - Interdicts
 - Persons deprived of reason at the time of contracting
 - Presumption of possession of capacity
 - La. C.C. art. 1918

- Minors
 - Minor = under age of 18 (La. C.C. art. 29)
 - Emancipated Minor
 - Minor
 - Look for Tutor
 - Court authority required to sale or mortgage immovable property owned by a minor
 - Married parents -- typically father seeks authority
 - Divorced parents/one deceased parent tutor/undertutor seeks authority
 - Look for:
 - Driver's license

Reality Check

- Generally, a non-issue
- Cash Sale language protects the notary
- Driver's license confirms age

- Authority for Entities
 - Review the Entity's governing documents to determine who has authority to act on the company's behalf
 - Partnership → Partnership Agreement
 - LLC → Articles of Organization/Operating Agreement
 - Corporation → Articles of Incorporation/Bylaws
 - Trust → Trust documents
 - Acquire the authority needed
 - Partnership → Unanimous consent of the members
 - LLC → Unanimous consent of the members
 - Corporation → Resolution of the Board, certified by the Secretary of the Board
 - Trust → Extract of Trust indicating the name and scope of the Trustee's authority

- Prescriptive Period for Title Examiners
 - Lack of power of attorney 5 years from recordation
 - Covers lack of authority by agents
 - Covers invalid POAs
 - La. R.S. 9:5647
 - Lack of corporate authority 5 years from recordation
 - Applies to unincorporated entities, partnerships, LLCs, corporations, trusts or any legal entity
 - Private or public, foreign or domestic, business or nonprofit
 - Covers lack of authority by agent
 - Covers failure to record corporate resolution giving authority
 - La. R. S. 9:5645of

Reality Check

- Common Issues on Title for Lack of Authority:
 - Sales from Banks (often arising out of Sheriff Sale from foreign banks and their assigns)
 - One-member LLCs
 - Multi-level entities
 - Non-compliance with Trust documents

- "Any defect in or lien or encumbrance on the Title."
- This Covered Risk includes, but is not limited to insurance against loss from a defect in the title caused by a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered.
 - ALTA Covered Risk 2(a)(iii)

- General Rule: Transfer of immovable property must be in Authentic Act or Act under Private Signature (La. C.C. art. 1839)
 - Exception: An oral transfer is recognized if actual delivery and acknowledged sworn under oath by the transferor (La. C.C. art. 1839)
- Exceptions:
 - Donations → Authentic Act or else invalid (La. C.C. art. 1536)
 - Matrimonial Agreement → Authentic Act or AUPS duly acknowledged (La. C. C. art. 2331)

- Cash Sales can be in AA or in AUPS, but AA is preferred
 - AA = Self-proving
 - Cash sale singed by the vendor (SELLER) alone is sufficient to transfer title, and is effective to third parties when recorded
 - Lepine v. Marrero, 116 La. 941, 41 So. 216 (1906)
 - Practice note: You want the buyer to initial the "AS-IS/WHERE IS" waiver in the cash sale, so why not get them to sign? (La. C.C. art. 2520 & 2548)

- Form Requirements Do NOT effect the validity of the document, but subject the notary to penalty
 - Printed/Typed names of all persons signing, including witnesses and notary
 - Marital Status of the parties (La. R.S. 35:11)
 - Names of the parties(La. R.S. 35:12)
 - Permanent mailing address declaration (La. R.S. 17(A))
 - Last 4 of social of all parties (La. R.S. 35:17(B))
 - Date (effective v. 3Ps when recorded see Overmier v. Traylor, 484 So. 2d 676 (La. App. 1st Cir. 1986)

Reality Check

- Title Examiners should carefully review for signatures of VENDORs, but a lack of a signature of a VENDEE will not impact title
- Title Examiners should review cash sales for compliance with the marital status requirements, as this can impact ownership and necessary VENDEEs
 - Louisiana is a community property state thus things acquired during the marriage are presumed to be community (La. C.C. art. 2340), but third parties can rely on statements of a married persons claiming property being sold is SEPARATE property (La. C.C. art. 2342)

- "Any defect in or lien or encumbrance on the Title."
- This Covered Risk includes, but is not limited to insurance against loss from a defect in the title caused by Failure to perform those acts necessary to create a document by electronic means authorized by law.

ALTA Covered Risk 2(a)(iiii)

- NONE Louisiana does not currently have any such law for documents that need to be notarized
 - NOTE: HB 218 asks for the Louisiana State Law Institute to look into the "remote" presence notaries
 - Virginia and Montana have already enacted these remote notary statutes

- "Any defect in or lien or encumbrance on the Title."
- "This Covered Risk includes, but is not limited to insurance against loss from a defect in the title caused by:
 - A defective judicial or administrative proceeding.

ALTA Covered Risk 2(a)(vii)

Applicable Law – Foreclosure Proceedings

- Foreclosure proceedings
 - Correct parties named?
 - Community property → make sure non-borrowing spouse named & signed mortgage as intervenor
 - Proper advertisement
 - Two required one more than 30 days prior; second within 7 days of sale
 - Proper Mennonite notice(s) given?
 - All inferior lien holders must receive notice
 - Compare mortgage certificate with the abstract judgments
 - Are there any superior liens still affecting the property?

Applicable Law – Succession Proceedings

- Small successions Not an issue (La. C.C.P. art. 3421 et. Seq.)
- Independent administration successions Not an issue
 - Note: You will need a certified copy of the Letters of Independent Administration
- Successions under Administration Comply with La. C.C.P. arts. 3261 et. Seq.
 - A succession representative is REQUIRED to get authorization from the Court, and the sale (usually for cash) shall be sold as authorized by the Court

Applicable Law – Tutorship/Curatorship Proceedings

- Failure to have court authority to sell/exchange property (La. C.C.P. art. 4271)
- Failure to have the concurrence of the tutor/undertutor/ or the curator/undercurator in the application for authority (La. C.C.P. art. 4271 (tutorship)
- Failure to comply with the requirements for public sales (La. C.C.P. art. 4321-23) or for private sales (La. C.C.P. art. 4341)
- Selling property of a minor to a parent without complying with requirements of La. C.C. art. 4361-4363
- Exchanging the property without complying with the requirements of La. C.C.P. art. 4371
- Note: La C.C.P. art. 4566 states curators are to manage in accordance with the provisions for tutors

- "Any defect in or lien or encumbrance on the Title."
- This Covered Risk includes, but is not limited to insurance against loss from the lien of real estate taxes and assessments imposed on the Title by a governmental authority due or payable, but unpaid.

• ALTA Covered Risk 2(b)

- Taxes are paid in arrears and due 12/31 of the current year
- Notice of tax assessment requires "reasonable efforts" by "written notice by United States mail of taxes due, at the address listed for each tax debtor on each tax roll." (La. R.S. 47:2127(C))
- Unpaid tax debtors may be assessed a penalty of reasonable interest (La. R.S. 47:2127(C))
- Creates potential for TAX SALES

Applicable Law – Tax Sales

- In order to be insurable, the underwriters may consider:
 - Whether the three year period has passed since tax adjudication;
 - Whether the tax deed holder complied with notice requirements (La. R.S. 47:2151 et. seq.);
 - Notice of delinquent taxes in beginning of February giving 20 days to pay (La. R.S. 47:5153);
 - Advertisement of tax sale (La. R.S. 47:2154);
 - Post-sale notices to any and all tax sale parties re: right to redeem w/n three years (La. R.S. 2156);
 - End of redemption period (La. R.S. 47:2157);
 - Notices to mortgage holders who have written requests for notices (La. R.S. 47:2159);

Applicable Law – Tax Sales

- In order to be insurable, the underwriters may consider (continued):
 - Whether the tax deed holder acquired a quitclaim from all prior interest holders;
 - Whether there is a judgment quieting title (La. R.S. 47:2266 et. seq.) and/or
 - Whether there is a judgment recognizing ownership under acquisitive prescription (10 or 30 years).

Reality Check

- Current year unpaid taxes will be excepted from the insurance policy
- Unpaid taxes from past years will be collected at closing, including any needed redemption
- Clients should be aware that tax sales are virtually uninsurable because of the due process concerns with notice of tax sales

- "Any defect in or lien or encumbrance on the Title."
- This Covered Risk includes, but is not limited to insurance against loss from Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting Title that would be disclosed from an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
- ALTA Covered Risk 2(c)

Applicable Law & Reality Check

- Neighborhoods \rightarrow not generally an issue (reliance on plat maps), but COULD protect from things such as fences built anywhere but the fence line
- Acreage → much more of an issue
- Use of a Seller Affidavit:
 - Boundaries?
 - Encroachments?

• Unmarketable Title.

• ALTA Covered Risk 3

Applicable Law

• Louisiana Title Standard 1.1: A title which does not expose the client to the unreasonable risk of serious litigation is marketable. To be marketable, a title need not be free from every technical defect, from all suspicion or all possibilities of litigation, but rather the title must be free of rational and substantial doubt to the extent that a purchaser may reasonably assume that he can hold the property in peace without the probability of litigation and with reasonable assurance that the property will be readily saleable on the open market. Objections and requirements should be made by the examining attorney only when the unremedied defects would render title unmarketable.

Reality Check

- Sometimes, you just have to consider who is the party plaintiff
- Biggest issues:
 - Pre-existing liens
 - Lack of full ownership

• No right of access to and from the Land.

• ALTA Covered Risk 4

Applicable Law

- Subdivisions → Plat map showing dedication of streets in plat
 - Public spaces may only be accepted by the governing body of the parish or municipality (La. R.S. 33:5051(C))
- Tracts of Land
 - Contiguous access to public roads
 - Surveys signed by both parties establishing a servitude/survey showing a servitude of passage with denotation of intent to run with the land (use with servitude by destination La. C.C. art. 741)
 - Servitude created in writing and recorded in the public records in accordance with the laws governing alienation of immovable property (La. C.C. arts. 708, 772)

Reality Check

- It is OKAY to require a survey
- Get an ALTA 9 endorsement
 - 9.5 Owner's Improved Land
 - 9.4/9.6 Owner's Unimproved Land



- The violation or enforcement of any law, ordinance, permit, or government regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to:
 - The occupancy, use, or enjoyment of the Land;
 - The character, dimensions, or location of any improvement erected on the Land;
 - The subdivision of land; or
 - Environmental protection,
- If a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
- ALTA Covered Risk 5

• An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.

ALTA Covered Risk 6

- The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
- Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.

ALTA Covered Risks 7 & 8

- Title being vested other than as stated in Schedule A or being defective as a result of the avoidance in whole or in part or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown on Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights law.
- ALTA Covered Risk 9(a)

- Title being vested other than as stated in Schedule A or being defective because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recorded in the Public Records to be timely or to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
- ALTA Covered Risk 9(b)

Questions?

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About the Presenter

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