
ANATOMY OF A PRELIMINARY TITLE REPORT

The format for most preliminary title reports as issued by title insurance companies is consistently set forth in three sections, referred to as Schedules 'A', 'B', and 'C'. This publication strives to inform the consumer how to read a preliminary title report, and what "red flags" (indicated by a ?) to look for in each section. This publication in no way offers legal advice or stands in place of professional legal advice.

Schedule A

Vesting and Estate

The statement of vesting reflects the current title to the property subsequently described in Schedule C according to the information found in the public records. The statement may include the titleholder's marital status, tenancy, registration information (if the property is held by a corporation or partnership, etc.), and the degree of ownership interest or tenure (fee simple, leasehold, etc.).

- ? Are the titleholders identified consistent with those on the DROA?
- ? Is the estate tenure consistent with that indicated on the DROA?

Time of Search

The report includes a search of the public records from the source of title, which may be as early as 1846, up to the current date and time. The date and time of the report shows that all pertinent public records have been searched including all public records on file up to the minute indicated.

Customer Service Contact

The direct telephone number of the escrow company representative who may be contacted with any questions relating to the title report.

Signature

The authorized signature of the escrow company representative who reviewed and approved the findings contained in the report.

File Number

The escrow company's reference number.

Schedule B

Schedule B lists the encumbrances and exceptions affecting the subject property. An encumbrance is defined as any claim, lien, charge, interest, and/or liability which attaches to and binds the property, but does not necessarily prevent transfer of title. These encumbrances and exceptions are usually disclosed in the report in order of their priority.

Encumbrances that “run with the land” and bind all present and future ownership rights may include: mineral reservations, restrictive covenants and restrictions, easements, water rights, setbacks, and the location of any shoreline highwater marks.

Encumbrances that do not run with the land affect the ownership interest of the current owners – if they are not properly released, these encumbrances pass to succeeding owners: mortgage and other security interests, agreements of sale, liens and judgments.

Encumbrances that Run-With-the-Land

Real Property Taxes

Real property taxes, which take priority over all other liens, will be the first encumbrance. A copy of the current tax information will usually accompany the report.

- ? Are the real property tax payment installments current?
- ? Is there possible rollback or retroactive property taxes due?

Mineral Reservation

Mineral rights are rights to subsurface land and profits. It has been established that the State owns the mineral rights in most of Hawaii lands. Land Court property is usually free of any reservations or restrictions not expressly stated in the certificate of title. However, Land Court property with its origin in a Land Commission Award is probably subject to the State’s reservation for mineral and metallic rights whether or not stated in the certificate of title.

Covenants, Conditions, and Restrictions

Covenants, conditions and restrictions is a familiar expression used in title examining to include restrictions on use of land imposed in deeds or other instruments. A restriction is an encumbrance that limits the rights of the owner to use or enjoy his land. Restrictive covenants and conditions are contractual written promises agreeing to the performance or non-performance of acts relating to the ownership of the land. These restrictions may include:

- Association liens which may be superior to certain mortgages
- Right of first refusal
- Options/restrictions on resale
- Shared appreciation
- Water reservation
- Mineral reservation
- Agricultural activities, including sugar cane burning, on nearby lands

- Reservation of right to convey roadway easement(s)
- Prehistoric and historic remains

? Any of this type of restriction should be carefully considered and researched.

Setback Line

Restrictions on the amount of space required between the lot line and the building line may be established by a restrictive covenant on deeds and under subdivision general plans.

- ? Do the current improvements conform to these setback requirements?
- ? Can the plans of the Buyers be achieved within these setback limitations?

Easement

Easements may be set out on a File Plan Map, Tax Map, Survey Map, Land Court Order or other document. Recorded documents may also grant the right to use and enjoy an existing easement. Easements may be granted for access to utility companies for maintenance and delivery of water, electricity, cable, telephone, or other infrastructure. Easements may also be granted to other properties/entities for access or other purposes.

- ? Can the plans of the Buyers be achieved within the limitations of any easements reported?
- ? Are all of the granted easements still required?
- ? Have all of the known granted easements been recorded?

Building Affidavit

When an owner of a residential property applies to the County for a Building Permit, the said owner must sign an affidavit agreeing that the layout or use of the improvement will not be converted at a future date to some other layout or use which is illegal.

- ? Can the plans of the Buyers be achieved within the limitations of the Building Affidavit(s)?
- ? Are the improvements still in keeping with the agreement on the Building Affidavit(s)?

Encroachments and Structure Position Discrepancies

An encroachment is an unauthorized “trespass” or infringement of a fixture of one property upon the property of another. Common examples include a roof’s eave extending over a building setback line or extending into the neighboring property; fences and walls or walkways that meander over the property line or which wholly extend over the property line. Bushes and trees which overhang the property line are usually considered to be a nuisance, rather than an encroachment.

ACT 131 sets forth acceptable tolerances for discrepancies in structures or improvements relative to private property boundaries for various classes of real property. These are: 0.25 feet – commercial and multi-unit residential property, 0.25 feet – industrial property, 0.5 feet- all other residential property, 0.75 feet – agricultural and rural property, 1.5 feet conservation property.

- ? Is the encroachment major or minor?
- ? Is an encroachment agreement needed?
- ? Is a County or State variance needed?
- ? Can the encroachment be removed?
- ? Is an indemnity letter required for title insurance coverage?

Lack of Access to Public Highway

Real property having no access to a public road or way are considered to be landlocked. The Hawaii Supreme Court has ruled that easements may not be created by “necessity” in the State of Hawaii. If no prior use of the easement area existed that was apparent and obvious, a parcel may be landlocked. Hawaii courts will not grant a dominate estate an easement by necessity.

Encumbrances that Do Not Run-With-the-Land

Any encumbrances that would affect all current parties with an interest in the property, and may affect any future owners of the property may need to be released by a recorded instrument. These may include: mortgages, assignment of mortgages, etc., agreements of sale, assignments of agreements of sale, sub-agreements, etc., leases, assignments of leases, amendments of leases, and liens. These types of encumbrances are generally released upon transfer of the property, but their release may need to be confirmed.

Tax Liens – Federal, State, and County

These liens are imposed for failure to pay taxes. The lien is enforced by execution and sale of the debtor’s property, at which time the lien is paid from proceeds prior to the debtor receiving proceeds from the sale.

Judgment Liens - Circuit, District, Federal, and Family Courts

A lien filed in any one of the courts listed may become a lien on the property of the debtor’s property. The lien is enforced by execution and sale of the debtor’s property, at which time the lien is paid from proceeds prior to the debtor receiving proceeds from the sale, but after any tax liens have been paid.

Mechanic's Liens

A mechanic's lien is a statutory lien created in favor of materialmen and mechanics to secure payment for supplies, materials, and labor for the improvement, repair, or maintenance of real property. It has priority over any lien recorded after the effective date.

Problems relating to mechanic's liens arising from construction should be solved **before** recordation. Any mortgage to be recorded is in jeopardy of losing its priority if construction has begun. Even though no mechanic's lien has been filed, the effective date of a possible *future* mechanic's lien begins with the first day of construction.

- ? Is there a notice of Building Permit or recorded Building Affidavit document?
- ? Is the subject land vacant?
- ? Is there a filed notice of completion?
- ? Is there a recorded construction loan?
- ? Is the new mortgage over 25% above the sales price?
- ? Is there a recorded mortgage with a construction rider?
- ? Is the property a commercial property or property worth over \$1 million?

Schedule C

Legal Description – Fee Simple Estate

A legal description of the estate and subject property, including all appurtenant easements is set forth in Schedule C.

Regular System: File Plan – Lot #, Area, File Plan #; or **Metes and Bounds** – Title Sources, Lot # and Subdivision, Trig. Station Reference, Metes and Bounds description, Area.

Land Court: Lot #, Map #, Application # or Consolidation #, Area.

Derivation

The conveying document(s) or evidence of ownership transferring ownership to the titleholder(s).

Leasehold Legal Descriptions

Lease/amendments/last assignment followed by a legal description of the real property described in the lease document.

Appurtenant Easements

A search of the records may reflect an appurtenant easement in favor of the subject property. The easement should be locatable – as designated on a Land Court Map, a File Plan Map, or as described by an adequate metes and bounds description.

Several facts should be established:

- ? Does the grantor of an appurtenant easement have the right to grant, assign, etc., the easement right?
- ? A search of the records must be made to verify the chain of ownership between the grantor of the easement and the servient estate.
- ? That County subdivision rules and obligations have been followed should be verified.

General Notes

General notes include items that do not encumber the property, however, they are items to which attention should be paid. In some instances, a noted lien could, upon the change of a titleholder's tenancy, immediately encumber the property. These may include: "No Discrimination" clause, Board of Health changes for the titleholder (i.e. marriage, death, and/or divorce), Change of name, or Non-encumbering liens.

Buyer's Liens

If the transaction involves a sale or transfer of interest, the public records are searched and any liens, judgments, or pending bankruptcy proceedings are disclosed that may affect the proposed buyer.

This handout is a basic explanation of some items contained in standard preliminary title reports. The information provided should only be used to familiarize individuals with the nature and basic content of these documents, and should not replace the advice or counsel of an attorney or escrow professional.