

UNDERWRITING DIRECTIVE No. 20

TO: All Delaware Agents
FROM: Underwriting Department
DATE: August 10, 2016
SUBJECT: Survey Exception and Exclusion, and Related Requirements

In 2014, we circulated Underwriting Directives No. 17 and 18 pertaining to the standard survey exception that is included in every commitment that we issue, and the further necessity of adding a survey exclusion to Schedule B-I of certain loan policies. This Underwriting Directive replaces Underwriting Directives No. 17 and 18.

Owner's Policies:

In order to remove the standard survey exception from an Owner's Policy (i.e., to issue Endorsement DTIRB-45), whether commercial or residential, a satisfactory survey must be provided. To be sufficient to allow for deletion of the survey exception, the survey must (i) be made on the ground, (ii) show the matters that have been raised in the title commitment, and (iii) show sufficient detail to identify matters that affect the property. In addition, if the property is commercial, the survey must be certified to Old Republic National Title Insurance Company, as the underwriter, and you, as the agent.

If the survey exception is not removed from the basic Owner's Policy, the following exclusion must be added in Schedule B of the policy: "Covered Risk 2(c) is deleted from the title insurance policy."

The Homeowner's Policy (expanded coverage) may be issued without a survey; however, in such a case, (i) the standard survey exception must remain in the Owner's Policy, (ii) any existing survey should be obtained, and a "no change" affidavit obtained, and (iii) as is always the case, if circumstances are known to exist that would constitute a violation of any Covered Risk set forth in the policy jacket, including those related to encroachments, Schedule B-2 of the policy must include an exception deleting that specific Covered Risk from the policy.

Please note that Endorsement DTIRB-43 (Land Same As Survey) may only be issued in connection with loan policies. The "Land Same As Survey" endorsement is not currently filed for issuance with owner's policies.

All Loan Policies Other Than Residential Loan Policies:

Because the Covered Risks in Delaware's ALTA 2006 policy form include matters that would be disclosed by a survey, receipt of a survey meeting the requirements set forth above with respect to Owner's Policies is required in order to remove the survey exception from the Loan Policy.

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If the survey exception is not removed from the Loan Policy, the following exclusion must be added to Schedule B-I of the Loan Policy: "Covered Risk 2(c) is deleted from the title insurance policy."

A survey meeting the requirements set forth above with respect to Owner's Policies is required to provide "Land Same as Survey" coverage (DTIRB Endorsement 43).

Residential Loan Policies:

If the proposed Loan Policy is to be issued to insure a mortgage on 1-4 family residential property, the survey exception may be removed from the Loan Policy (whether basic or expanded) without receipt of a survey unless any of the following circumstances exist:

1. There are questions about the legal description (e.g., inconsistencies with the legal descriptions in chain deeds or unplottable legal description).
2. The current owner has performed construction on the property (other than improvements strictly to the interior of an existing building).
3. Construction is contemplated in connection with the current transaction.
4. Other facts or circumstances disclose a risk necessitating receipt of a survey in order to delete the survey exception.

If any of the foregoing circumstances exist, the standard survey exception must remain in the Loan Policy unless a survey is provided or the Underwriting Department approves the risk.

If the survey exception remains in the Loan Policy, the following exclusion must also be added to Schedule B-I of the Loan Policy: "Covered Risk 2(c) is deleted from the title insurance policy."

All Policies:

If a survey is obtained, and the standard survey exception is deleted, if the survey discloses any issues (such as encroachments), an appropriate survey reading identifying such issues must be added to Schedule B of the final Policy.

Should you have any questions or concerns, please contact a member of the Underwriting Department.

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