

This brochure is a brief explanation of the Title and Survey paragraph of the Residential Sale Contract dated 06/2003 that was approved by St. Louis Association of Realtors and the Bar Association of Metropolitan St. Louis. It will remain applicable to subsequent versions of the contract until a revision of the contract mandates its change.

THE TITLE AND SURVEY CONTINGENCY PROCESS:

The title contingency process begins with the choices provided on the sale contract and negotiated between Buyer and Seller. The agreement may be for the “Seller to Order, Provide and Purchase Title” or for the “Buyer to Order and Purchase Title.” The Buyer, in either case, may select the title company (in paragraph 5), which is to provide the title insurance and where the closing will take place. The Seller may close at the title company of his choice.

The survey contingency process begins by allowing the Buyer to order, at the Buyer’s expense, either a “stake” or “spot” survey.

It is critical that the title examination and the survey be ordered as soon as possible to allow for the examination process to be completed and problems identified within the time limits provided in the contract.

TITLE EXAMINATION:

This contingency provides the Buyer the opportunity to inspect the condition of the title to the property. The title company selected to examine the condition of the title will provide insurance to the Buyer and the Buyer’s lender, if applicable. The title policy may have exceptions including any title defects discovered in this title examination process which are not corrected prior to closing.

The commitment may also exclude the following items as listed in the sale contract:

- A) Zoning regulations
- B) Leases and occupancy of tenants existing on the date the contract is executed by the Buyer, and disclosed to the Buyer in writing before the execution of the contract
- C) General taxes payable in the current year and thereafter
- D) Any lien or encumbrance created by or assumed by Buyer in writing or any easement accepted by Buyer in writing
- E) Subdivision, use and other restrictions, rights of way and utility easements, all of record, which do not adversely affect the use of the property as it exists for residential purposes at the time of the contract.

SURVEY EXAMINATION:

The survey is an integral part of the title examination. The large majority of title defects involve those that an accurate survey would disclose. These defects might include property improvements built on easements or over building lines, or encroachments of the property improvements on to adjacent property or vice versa. These are all defects, some of which are more serious than others and some of which may not be able to be corrected, particularly in a timely manner.

The contract allows the Buyer to order either a “stake” or “spot” survey, at the Buyer’s expense. A Boundary Improvement Survey (stake survey) physically identifies the property corners, property lines, and the location of the improvements.

A Surveyors Real Property Report (spot survey) is a visual guide and represents only a cursory check of the location of the improvements. It may not disclose such matters as encroachments, overlaps and boundary line or acreage discrepancies.

A Boundary Improvement Survey is always the preferred choice and is recommended to assure that defects are discovered in the examination process.

CORRECTION OF DEFECTS:

Except for the conditions outlined in A) through E) above, if during the examination process and time period, title defects are discovered that are unacceptable to the Buyer, Buyer is to give timely notice to the Seller or listing broker. If Seller is unable or unwilling to agree to correct the defect or defects objected to by Buyer, the Buyer has the option to terminate the contract. Please refer to the contract for details as to the applicable time frames for notices.

NOTE ESPECIALLY FOR SELLERS:

It is recommended that the Seller reduce some of their unforeseen risk by beginning the title examination process at the time the property is listed for sale. The reason is, should a defect be discovered by the Buyer that the Seller finds difficult or time consuming to correct, there is a possibility that the contract could be terminated. Under this scenario, if the Buyer terminates the contract then the Seller must reimburse the Buyer’s cost of title, survey, inspections and appraisal. If the Seller orders the title examined and has a survey that is acceptable to the title company, in most situations the Seller will have virtually eliminated the risk involved with this contingency.

**LIMITATIONS OF PROFESSIONALS
INVOLVED IN THE PROCESS:**

Real estate licensees are specifically prohibited from providing legal advice, which includes the interpretation of surveys or title reports. Similarly, under the decision of In re First Escrow, Inc., title companies may not “give advice or opinions as to the legal rights of their customers, the legal effect of the instrument, or the validity of titles to real estate.” Title company attorneys may not provide legal services to their company’s customers. For these reasons, if Buyers or Sellers have questions about information on the survey, they may ask the surveyor. If they have questions about the title commitment or policy, they may ask the title company employees. Questions about the legal implications of documents, including the sale contract, riders, addenda, survey, or title insurance policy should be directed to their attorney.

As members of the National Association of REALTORS[®], REALTORS[®] are actively engaged in the real estate business; bound by a Code of Ethics to provide good advice and honest treatment; and are committed to continuing education for updating their knowledge and skills.



Title and Survey Contingency Explanation



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