DEEDS - REQUIREMENTS FOR INSURING

All title policies insure the status of title. As a result, the effect of every deed must be considered in order to determine that it complies with certain legal and Company requirements.

When reviewing deeds, particular attention should be paid to the following:

- Deeds by and between family members;
- Deeds which are marked exempt from transfer taxes;
- Deeds which were prepared by a party to the transaction, rather than by an attorney;
- Deeds which were not insured by another title company; and
- Deeds being insured in conjunction with a closing or later date examination.

The general Company rule when encountering a “defective” deed is to pass title to the grantee(s) and then raise an exception which relates to the defect:

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THE ~ FROM ~ TO ~ RECORDED AS DOCUMENT ~ MAY BE DEFECTIVE IN THAT ~ . SAID INSTRUMENT SHOULD BE CORRECTED AND RE-RECORDED, OR A NEW INSTRUMENT IN PROPER FORM SHOULD BE OBTAINED AND PLACED OF RECORD. A LATER DATE OF THIS COMMITMENT WHICH COVERS THE RE-RECORDING THEN SHOULD BE REQUESTED, AND THIS COMMITMENT IS SUBJECT TO SUCH FURTHER EXCEPTIONS, IF ANY, AS THEN MAY BE DEEMED NECESSARY.
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If the defect is significant, the exception should be revised to also call for its re-acknowledgment.

As a practical matter, if a defective deed is encountered which has been insured by another title company or in which the grantor no longer retains an interest in the land, an underwriter of the company may be consulted. Depending upon the nature and age of the defect, several alternative courses of action may be proper, including:

- Waiving the matter because the risk to the Company is perceived as minimal;
• Requesting a hold harmless letter or copies of relevant clearance from the title company which insured the transaction;
• Obtaining a personal undertaking from a financially-sound party;
• Waiving the exception based upon an “additional risk premium;” or
• If the defect is viewed as imposing a significant or unacceptable risk, raising the previously noted exception.

I. PARTIES - GRANTOR AND GRANTEE - Compare the name(s) of the grantor(s) with the record titleholder(s). Are they identical? If not, should an exception be raised? Consider chain of title and possible forgery issues. The grantor and the grantee must be individuals or legally-recognized entities which have been properly formed, have not been dissolved and are capable of holding title to real estate.

A) Individuals
   1. As grantor(s):
      a. Marital status of grantors must be recited. Satisfactory evidence should be furnished to establish evidence of a party’s marital status in the event the grantor’s marital status is not recited (issue of homestead).

      SATISFACTORY EVIDENCE SHOULD BE FURNISHED ESTABLISHING THE MARITAL STATUS OF __________ GRANTOR/MORTGAGOR IN THE INSTRUMENT RECORDED AS DOCUMENT NO. ____________, AND THIS COMMITMENT IS SUBJECT TO SUCH FURTHER EXCEPTIONS, IF ANY, AS THEN MAY BE DEEMED NECESSARY.

      b. Does the grantor have the capacity to convey? If the grantor is a minor or a disabled party, raise the following:

      UPON A CONVEYANCE OR MORTGAGE OF THE LAND, THE DEED OR MORTGAGE SHOULD BE MADE BY A PROPER REPRESENTATIVE OF ~ A ~, PURSUANT TO AN ORDER ENTERED IN A COURT OF COMPETENT JURISDICTION.

      (If a minor (under the age of 18), also raise the following):

      RIGHTS OF ~ A MINOR, TO DISAFFIRM THE DEED TO ~ RECORDED ~ AS DOCUMENT ~ WITHIN THE TIME ALLOWED BY LAW.
2. As grantee(s):
   a. It is a statutory requirement that the grantee’s address be recited on the deed.
   b. Marital status of the grantees is not required unless the grantees are taking title as tenants by the entirety. However, if the grantees have the same last name and their marital status is not recited, it may be prudent to request evidence of their relationship in order to guard against the risk of impersonation in a future transaction.

B) Partnerships - The partnership must be searched. General partners do not need to be searched.
   1. Is it a general partnership or a limited partnership?
   2. The deed should recite the state under which the partnership was formed.
   3. If the partnership is the grantor, does the executing partner(s) have the proper authority?
   4. Consider:
      • Rights of the Partners
      • Terms of the Partnership Agreement
      • Requesting a Copy of the Partnership Agreement
      • Requesting a Copy of the Amendments, if any, to the Partnership Agreement

PARTNERSHIPS EXCEPTIONS

PARTNERSHIP EXCEPTION 1
RIGHTS OF GENERAL PARTNERS COMPOSING THE FIRM OF

__________________________, AND

OF ALL PERSONS CLAIMING THEREUNDER.

PARTNERSHIP EXCEPTION 2
ALL AMENDMENTS, IF ANY, TO THE PARTNERSHIP AGREEMENT ESTABLISHING THE PARTNERSHIP OF

__________________________, WHICH HAVE BEEN ADOPTED SINCE ______________, SHOULD BE FURNISHED, TOGETHER WITH SATISFACTORY EVIDENCE THAT SUCH PARTNERSHIP HAS NOT BEEN DISSOLVED, AND THIS COMMITMENT IS
SUBJECT TO SUCH FURTHER EXCEPTIONS, IF ANY, AS MAY THEN BE DEEMED NECESSARY.

PARTNERSHIP EXCEPTION 3
THE PARTNERSHIP AGREEMENT ESTABLISHING THE PARTNERSHIP OF

______________________________,

TOGETHER WITH ALL AMENDMENTS THERETO, PROPERLY IDENTIFIED IN WRITING BY ALL THE PARTNERS AS BEING THE TERMS AND PROVISIONS OF THE AGREEMENT UNDER WHICH THE PARTNERSHIP ACQUIRED AND HOLDS TITLE, SHOULD BE FURNISHED; AND THE COMMITMENT IS SUBJECT TO SUCH FURTHER EXCEPTIONS, IF ANY, AS MAY THEN BE DEEMED NECESSARY.

NOTE: THIS COMMITMENT IS SUBJECT TO SUCH FURTHER EXCEPTIONS, IF ANY, WHICH MAY BE DISCLOSED AFTER A NAME SEARCH HAS BEEN MADE FOR JUDGMENTS AND OTHER MATTERS AGAINST THE GENERAL PARTNERS.

PARTNERSHIP EXCEPTION 4
TERMS, POWERS, PROVISIONS, AND LIMITATIONS OF THE PARTNERSHIP AGREEMENT UNDER WHICH TITLE IS HELD.

LIMITED PARTNERSHIP EXCEPTION
A CERTIFICATE OF LIMITED PARTNERSHIP SHOULD BE RECORDED PURSUANT TO THE LAWS OF THE STATE OF ILLINOIS AND THIS COMMITMENT REMAINS SUBJECT TO SUCH FURTHER EXCEPTIONS AS ARE THEN DEEMED NECESSARY.

C) Corporations - The deed should recite the state of incorporation.

Consider raising exceptions relating to the following:

1. Corporate resolutions:

WE SHOULD BE FURNISHED A CERTIFIED COPY OF THE DIRECTORS’ RESOLUTION AUTHORIZING THE CONVEYANCE OR MORTGAGE TO BE INSURED. SAID RESOLUTION SHOULD EVIDENCE THE AUTHORITY OF THE PERSONS EXECUTING THE CONVEYANCE OR MORTGAGE. IF THEY DO NOT, A
CERTIFIED COPY OF THE CORPORATE BY-LAWS ALSO SHOULD BE FURNISHED.

IF SAID CONVEYANCE OR MORTGAGE COMPRIZES ALL OR SUBSTANTIALLY ALL THE CORPORATION'S ASSETS, WE ALSO SHOULD BE FURNISHED A CERTIFIED COPY OF THE SHAREHOLDER/MEMBER RESOLUTION WHICH AUTHORIZES SAID CONVEYANCE OR MORTGAGE. THIS COMMITMENT IS SUBJECT TO SUCH FURTHER EXCEPTIONS, IF ANY, AS MAY BE DEEMED NECESSARY AFTER OUR REVIEW OF THESE MATERIALS.

Religious Corporations:


In the event that the deed or mortgage in question has already been placed of record, simply amend the above noted exceptions to include references to the particular recording information.

2. Franchise tax/certificate of good standing – Raise the following:

WE SHOULD BE FURNISHED A CURRENT CERTIFICATE OF GOOD STANDING FROM THE ILLINOIS SECRETARY OF STATE FOR ~, A CORPORATION OF ~ OF ~.

D) Limited Liability Companies - The deed should recite the state under which the company was formed. Also, an exception should be raised asking for: A). Certification from Illinois Secretary of State that it has filed its Articles of Organization; B). A copy of its Articles
of Organization and amendments; C). A copy of its Operating Agreement and amendments; D). A list of its incumbent managers or members and certification than no event of dissolution has occurred. Language similar to the Corporation exception should likewise be included in the event of a sale of all or substantially all of the assets of the L.L.C.

LIMITED LIABILITY COMPANY EXCEPTIONS

WHEN WE HAVE NOTHING ON THE LLC - IN TITLE OR TO COME IN TITLE


________________________________________________________________________

(COMpany NAME)

2. A CURRENT CERTIFICATE OF GOOD STANDING FROM THE STATE OF ORGANIZATION OF THE FOLLOWING LIMITED LIABILITY COMPANY SHOULD BE FURNISHED:

________________________________________________________________________

(COMpany NAME)

FOREIGN LLC - IN ADDITION TO ABOVE

3. A CERTIFIED COPY OF THE APPLICATION OF 

________________________________________________________________________ FOR ADMISSION TO DO BUSINESS IN THE STATE OF ILLINOIS FILED WITH THE SECRETARY OF STATE SHOULD BE PRODUCED, AND IN DEFAULT THEREOF, OUR POLICY WILL CONTAIN THE FOLLOWING EXCEPTION:

"CONSEQUENCES, IF ANY, WHICH MAY RESULT BECAUSE OF THE FAILURE OF THE PARTY IN TITLE TO THE ESTATE OR INTEREST IN THE LAND DESCRIBED IN SCHEDULE A
TO COMPLY WITH THE APPLICABLE “DOING BUSINESS” LAWS OF THE STATE OF ILLINOIS.”

WHEN LLC IN TITLE RAISE FOLLOWING FOR DEED OR MORTGAGE TO COME


/EXAMINER: IF RESOLUTIONS BY MEMBERS ARE UNNECESSARY, DELETE THE PHRASE “MEMBER AND”/

WHEN REQUESTED TO INSURE A CONVEYANCE OR MORTGAGE ALREADY MADE


__________________________________________________________

RECORDED ____________, AS/IN

__________________________________________________________; SHOULD BE FURNISHED.

__________________________________________________________

(NAME OF COMPANY)

(EXAMINER: IF RESOLUTIONS BY MEMBERS ARE UNNECESSARY, DELETE THE PHRASE “MEMBER AND”)

NOTES TO EXAMINERS

A. NO EXCEPTION NECESSARY IF LLC COMING INTO TITLE AND ONLY ISSUING OWNER’S POLICY.

B. REQUIREMENTS WILL VARY UPON NATURE OF MANAGING MEMBER. (i.e. IF MANAGER IS A CORPORATION THEN WE WILL ALSO NEED A CORPORATE RESOLUTION)

C. THERE IS A LOT OF VARIATION PERMITTED IN THE ORGANIZATION AND STRUCTURE OF AN LLC. THE OPERATING AGREEMENT IS THE KEY. CALL UNDERWRITER IF ANY QUESTIONS.
E) **Trustees** - The deed should recite the name of the trustee, the state of its incorporation, the date of the trust agreement, and the number of trust agreement, as appropriate. The following exception is raised on the commitment and the owner’s policy insuring the trust.

**TERMS, POWERS, PROVISIONS AND LIMITATIONS OF THE TRUST UNDER WHICH TITLE IS HELD**

1. If a trustee is the grantee, is the deed a "full power deed in trust?" If not, a certified copy of the trust agreement and amendments thereto should be requested. The exception is:

   A PROPERLY CERTIFIED COPY OF THE ORIGINAL TRUST AGREEMENT UNDER WHICH TITLE TO THE LAND IS HELD, TOGETHER WITH A STATEMENT IN WRITING BY THE TRUSTEE THAT IT WILL PRODUCE THE ORIGINAL AGREEMENT UPON REQUEST, SHOULD BE FURNISHED, AND THIS COMMITMENT IS SUBJECT TO SUCH FURTHER EXCEPTIONS, IF ANY, AS THEN MAY BE DEEMED NECESSARY.

2. If the grantor is a successor trustee, raise the following:


3. Any references to a “pure trust”, or trusts containing unusual statements or provisions should be referred to an underwriter of the company.

F) **Court-Directed Deeds** (e.g., Sheriff's Deeds, Judge's Deeds, Tax Deeds, Administrator's Deeds, Executor's Deeds, Guardian's Deeds, Commissioner’s Deeds) - The deed should recite the grantor’s authority, e.g., case number, etc.
1. Have we examined the proceeding in full in order to ascertain that the court had the requisite jurisdiction to convey title to the property, etc.?

**G) Governmental and Quasi-Governmental Bodies** - The deed should recite the grantor’s authority, e.g., compliance with statutory requirements, ordinance, etc. Raise the following exception(s):

SINCE A GOVERNMENTAL ENTITY HOLDS TITLE TO THE LAND, ANY CONVEYANCE OR MORTGAGE OF THE LAND IS SUBJECT TO THE LIMITATIONS AND CONDITIONS IMPOSED BY LAW. PROOF OF COMPLIANCE WITH THE SAME SHOULD BE FURNISHED.

If the titleholder is a municipality, raise the following:

IN ORDER FOR THE COMPANY TO INSURE TITLE COMING THROUGH THE SALE OR TRANSFER OF LAND FROM THE MUNICIPALITY IN TITLE, WE SHOULD BE FURNISHED A CERTIFIED COPY OF THE ORDINANCE OR RESOLUTION AUTHORIZING THE CONVEYANCE, TOGETHER WITH THE “AYES” AND “NAYS” FOR ITS PASSAGE AND EVIDENCE OF ANY REQUIRED PUBLICATION.

IF SAID MUNICIPALITY IS A “HOME RULE UNIT” PURSUANT TO ARTICLE 7, SECTION 6 OF THE ILLINOIS CONSTITUTION, WE SHOULD BE FURNISHED EVIDENCE OF COMPLIANCE WITH THE MUNICIPALITY’S ORDINANCE(S) WHICH RELATE TO THE SALE OR TRANSFER OF MUNICIPAL PROPERTY.

THIS COMMITMENT IS SUBJECT TO SUCH ADDITIONAL EXCEPTIONS, IF ANY, AS MAY BE DEEMED NECESSARY AFTER OUR REVIEW OF THIS DOCUMENTATION.

[65 ILCS 5/11-76-1 AND 65 ILCS 5/11-76-2 REFER TO THE SALE OF SURPLUS PROPERTY BY ORDINANCE AND PUBLICATION. 65 ILCS 5/11-72-4.2. IF THE TRANSFER IS BETWEEN TWO MUNICIPALITIES, SEE 50 ILCS 605/1 ET SEQ.]

**H) Unknown Entity** - There are times when you will be unable to determine from the instruments of record whether the party in title is a corporation, or some other type of organizational entity. In this case raise the following:

WE SHOULD BE INFORMED OF THE LEGAL STATUS OR NATURE OF THE ENTITY KNOWN AS
II. CONSIDERATION (Purchase Price)

A) "Ten dollars ($10.00) and other good and valuable consideration" is the customary language.

B) It is preferred that the actual consideration be recited on an administrator's, executor's or guardian’s deed.

III. WORDS OF CONVEYANCE/INTEREST CONVEYED

A) The land must be "conveyed."

B) The conveyance of fee simple is presumed, unless the contrary is stated.

C) Has any interest, such as a life estate or minerals been reserved? Is the deed subject to newly-created covenants, restrictions or options, etc., that must be raised in a separate exception?

IV. CO-OWNERSHIP

A) Tenancy in Common - Is presumed unless the deed contains language to the contrary.

B) Joint Tenancy - Does the deed contain the required "not in Tenancy in Common but in Joint Tenancy" language? Is the deed a "joint tenancy form" deed which names only one grantee?

C) Tenancy by the Entirety - Does the deed contain the required “husband and wife, as Tenants by the Entirety” language? Do we have evidence that the land constitutes the couple’s homestead?

V. LEGAL DESCRIPTION - Is the description accurate and unambiguous?
A) **Subdivided Land** - Does the deed contain the correct lot, block, name of subdivision, section, township, range, recording information of the plat, county, state (as appropriate)?

B) **Unsubdivided Land** - Does the deed contain the correct section, township, range, county and state? If metes and bounds, are the point of beginning and all of the calls *exact*? Does the description “close?”

C) **Condominiums** - Does the deed contain the correct unit number, the name of the condominium, a brief description of the underlying legal description, the section, township, range, county, state, recording number of declaration, "together with its undivided percentage interest in the common elements" language?

VI. **DATE OF THE DEED** - In the event that you are reviewing two or more deeds whose execution dates and recording dates are not in proper sequence, consider the chain of title and after-acquired title issues which may result.

VII. **EXECUTION** - Original signatures are required. The names should be typed or printed below the signatures. Compare the signatures with those contained in other instruments. Consult with an underwriter of the company if you suspect a possible forgery. As noted above, particular attention should be paid to deeds which were marked exempt from transfer taxes, deeds which were prepared by one of the parties and deeds which were not insured by a title company.

A) Individuals - If a titleholder is married, their non-title holding spouse must sign the deed for the purpose of waiving homestead rights. Alternatively, if the land does not constitute the grantor’s homestead, the deed should so state.

1. A printed signature is acceptable, if the individual always prints their signature.

2. A signature "by my mark" (e.g., with an "X") for reasons of a physical disability (as distinguished from a mental disability) is
insurable, but only if the execution is witnessed by two disinterested persons.

3. Was the instrument signed by an agent, pursuant to a power of attorney? In such event, verify the signatures closely and note the following:

a. The power of attorney must be recorded.

b. The power of attorney must be reviewed. Does it grant the needed authority? Are there any limitations or prerequisites to the exercise of the power?

c. Is the power a “durable” power of attorney? Should we ask for proof from the principal that the power has not been revoked or modified?

B) Partnerships/Corporations/Trusts/etc. - Review the partnership agreements, corporate resolutions, etc., in order to verify that the executing individual(s) had the proper authority to execute the deed.

VIII. ACKNOWLEDGMENT - Verify that the deed has been properly notarized and that the notary’s commission has not expired. Verify that the acknowledgment re-states the grantor’s complete name, with marital status, state of incorporation, etc., as applicable.

IX. DELIVERY AND ACCEPTANCE - Recordation of the instrument usually is considered constructive delivery. If, however, more than six months has elapsed between the execution and the recordation of the deed and the grantor is an individual, consider calling for proof of delivery. Failure of the grantor to deliver a deed within his or her lifetime will nullify a deed. An appropriate exception is as follows:

SATISFACTORY EVIDENCE SHOULD BE FURNISHED ESTABLISHING THE DATE OF THE DELIVERY OF THE DEED FROM
TO ____________________ DATED ____________________

AND THE FACTS AND CIRCUMSTANCES SURROUNDING SAID DELIVERY. THIS COMMITMENT IS SUBJECT TO SUCH FURTHER EXCEPTIONS, IF ANY, AS MAY THEN BE DEEMED NECESSARY.

X. RECORDATION / RECORDABILITY - The deed must be recorded in order to put third parties on constructive notice of the conveyance.

If you are taking in the deed for recording, verify the following:

A) If the legal description contains unsubdivided property, has a properly executed Plat Act Affidavit been attached to the deed (not needed in all jurisdictions)?

B) Verify that the acknowledgment is dated on the same day or after the date of the deed itself.

C) Verify that the deed contains the following:

- Permanent Index Number(s)
- Street Address (or Intersection, etc.)
- Delivery Instructions
- Preparer's Name and Address
- Name and Address of the Grantee for Tax Billing Purposes

D) Verify that the deed is accompanied by properly completed transfer tax declarations (or, in the alternative, proper statements re exemption.)