

National Investors

INNOVATIVE BY INSTINCT

What do you get with the “Survey Amendment” to your Title Policy?

Title insurance provides protection against title defects that were unknown to the insured at the time they purchased the policy. The insured will be defended in a lawsuit attacking their title and the title insurance company will either correct the title problem or pay the insured for actual losses up to the face amount of the policy. An owner policy remains in effect as long as the insured or their heirs own the property or are liable for any title warranties made when they sell the property (as to defects occurring prior to the insured’s ownership that later causes an actual loss).

The primary matters insured by the policy are as follows: 1) that on the date the deed was filed for record placing title in the name of the insured, the stated owner is in fact the only owner of the land described and their title is good against every other claim except as stated in the policy, and 2) that on the effective date of the policy, the title to the land insured is clear of all encumbrances to the title (such as mortgages, liens, easements, restrictions, outstanding mineral interests, leases, etc.) except as stated in the policy.

The policy contains a standard survey exception that **does not insure against** loss or damage (and the Company will not pay costs, attorney’s fees or expenses) that arises as a result of the following:

- a) Any discrepancy in the location of the boundary of the land with reference to highways, streets, or any other type of monument.
- b) Any gaps or overlaps affecting the land.
- c) Any boundary line disputes affecting the land.
- d) Any encroachments of the improvements (above or below the ground) on the insured land onto any easement on the land or onto adjoining land.
- e) Any encroachments of the improvements (above or below the ground) located on adjoining land onto the insured land.

While the matters listed above are not insured against in the standard Owner Title Policy, the exception can be amended so as to provide coverage against those matters upon payment of the promulgated premium and the delivery of a survey to the Title Company that meets its underwriting requirements. (currently 5% of the Residential Owner’s Policy premium)(e.g., the coverage would cost \$57.60 for a policy with a face amount of \$150,000.00)

The survey amendment is an optional protection that essentially insures against errors committed by the surveyor. It is important to note that in transactions where the buyer is using an existing survey, the new owner will not have privity (of contract) to sue a surveyor who made errors in a survey performed for a previous owner. However, the insured may make a claim on their title insurance policy regardless of whether the surveyor is still in existence or if the survey was performed for a previous owner.

Even with a current survey, the coverage provides the purchaser insurance for matters in the survey that, if in error, result in a claim. The title policy provides a remedy both for the error in the survey and for possible defense costs associated with any assertion by a neighbor of an error in the survey, and a claim by a third party as to any of the matters covered by the amendment. It is also very important to note that the title policy is backed by the financial stability of the title insurance underwriter, which can be critical if the surveyor goes out of business or fails to carry any form of E & O insurance.