# I. What is the "Survey Amendment/Deletion/Coverage"?

A. The <u>standard survey exception</u> is included under Item 2 of Schedule B and reads as follows:

#### SCHEDULE B EXCEPTIONS FROM COVERAGE

In addition to the Exclusions and Conditions and Stipulations, your Policy will not cover loss, costs, attorney's fees, and expenses resulting from:

- 1. The following restrictive covenants of record itemized below (We must either insert specific recording data or delete this exception):
- 2. Any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements.
- B. Under Procedural Rule P-2, survey coverage may be provided to an insured (either owner or lender) upon receipt of a satisfactory survey, and as to an Owner's Policy, receipt of the applicable premium (see Rate Rule R-16). If the coverage is provided the exception will be amended to read as follows:

#### SCHEDULE B EXCEPTIONS FROM COVERAGE

In addition to the Exclusions and Conditions and Stipulations, your Policy will not cover loss, costs, attorney's fees, and expenses resulting from:

- 1. The following restrictive covenants of record itemized below (We must either insert specific recording data or delete this exception):
- 2. Any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements.
- C. An additional exception is necessary.
  - 1. In 2008, the Owner's Policy (T-1) and Loan Policy (T-2) were amended to include the following language that could be interpreted as providing affirmative coverage:

#### COVERED RISKS

**SUBJECT TO** THE EXCLUSIONS FROM COVERAGE, **THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B** AND THE CONDITIONS, BLANK TITLE INSURANCE COMPANY, a Blank corporation (the "Company") insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.

2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from:

(a) A defect in the Title caused by:

(i) forgery, fraud, undue influence, duress, incompetency, incapacity or impersonation;

(ii) failure of any person or Entity to have authorized a transfer or conveyance;

(iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized or delivered;

(iv) failure to perform those acts necessary to create a document by electronic means authorized by law;

(v) a document executed under a falsified, expired or otherwise invalid power of attorney;

(vi) a document not properly filed, recorded or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or

(vii) a defective judicial or administrative proceeding.

(b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.

(c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.

(d) Any statutory or constitutional mechanic's, contractor's, or materialman's lien for labor or materials having its inception on or before Date of Policy.

 While the language contained in the first paragraph would appear to provide an "out" by stating "SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B" it would be prudent to include an exception similar to the following:

Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the Land.

- D. So, if these exceptions are included and not amended/deleted then what is the policy covering? 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.
- E. So, if these exceptions are included and not amended/deleted then what is the policy NOT covering? The policy would 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:
  - 1. Any discrepancy in the location of the boundary of the land with reference to highways, streets, or any other type of monument.
  - 2. Any gaps or overlaps affecting the land.

- 3. Any boundary line disputes affecting the land.
- 4. Any encroachments of the improvements (above or below the ground) on the insured land onto any easement on the land or onto adjoining land.
- 5. Any encroachments of the improvements (above or below the ground) located on adjoining land onto the insured land.
- F. With recent revisions to the TREC Contract Forms it is even more important that the Title Agent understand this coverage and have the ability to explain the same to their clients (Sellers/Buyers/Realtors/Attorneys/Lenders).

The TREC Forms now include the following provision:

The standard printed exception as to discrepancies, conflicts, shortages in area or boundary lines, encroachments or protrusions, or overlapping improvements: (i) will not be amended or deleted from the title policy; (ii) will be amended to read, "shortages in area" at the expense of Buyer Seller.

1. The Title Agent should take a proactive approach to educating their clients. National Investors has provided an explanation letter with these materials that can be given to the customer upon receipt of the contract or delivery of the commitment. The Title Agent should also consider distributing the letter (or something similar) to their realtor/attorney clients.

#### G. T-47 Affidavit and Existing Survey

The TREC Forms still include the following provision:

Within \_\_\_\_\_days after the effective date of this contract, Seller shall furnish to Buyer and Title Company Seller's existing survey of the Property and a Residential Real Property Affidavit promulgated by the Texas Department of Insurance (T-47 Affidavit). **If Seller fails to furnish the existing survey** <u>OR</u> affidavit within the time prescribed, **Buyer shall obtain a new survey at Seller's expense no later than 3 days prior to Closing Date.** If the existing survey or affidavit is not acceptable to Title Company or Buyer's lender(s), Buyer shall obtain a new survey at Seller's Buyer's expense no later than 3 days prior to Closing Date.

P-2.a. provides that "a title insurance company may accept an existing real property survey and not require a new survey when providing area and boundary coverage if the title insurance company is willing to accept evidence of an existing real property survey, and an affidavit verifying the existing survey, notwithstanding the age of the survey or the identity of the person for whom the survey was prepared. If the transaction involves Residential Real Property, the affidavit verifying the existing survey shall be the Form T-47 Residential Real Property Affidavit. The policy to be issued shall cover the same land as described in the evidence of the existing real property survey.

# **II.** What are the requirements for a Survey that is acceptable for title insurance purposes?

- A. **The Texas Board of Professional Land Surveying** -. The Board governs the licensing of surveyors. The minimum standards for professional land surveyors ("Minimum Standards of Practice") adopted by the Board are found in Title 22, Texas Administrative Code, Chapter 663, Standards of Responsibility & Rules of Conduct.
- B. In order for survey coverage to be provided in a policy of title insurance, the following items (at a minimum) must be satisfied:

Prepared by a Texas registered professional land surveyor
Surveyor's signature and official seal affixed
Date of survey on the plat
Surveyor's certification (see section C below for certification requirements)
Directional arrow
Monuments found or set
a. "Points" are not monuments. Texas law prefers natural monuments such as rivers, trees
and rocks, but also recognizes artificial monuments such as pins, marks in concrete, or
stakes.
Pictorial drawing of the boundaries of the property, with distances and courses, to scale
b. Definite and unambiguous representation of the location of the surveyed land according
to its record description
Denote recorded instruments that define the location of adjoining boundaries
Description of the property
a. Platted property
i. Subdivision name, lot number, and block number or letter
ii. Recording information of the subdivision plat
b. Unplatted property
i. Preamble with general information about the location of the property, such as the
county, the survey or abstract number
ii. Point of commencement
iii. Point of beginning
iv. Calls – distances and courses for all boundaries
v. Boundaries must close
Must show discrepancies between title lines (a/k/a as deed lines) and occupation lines
Location of all easements, with recording data shown, the dimensions of each easement, and any
encroachments into easements
a. If easements are blanket in nature, or otherwise unplotable, then the surveyor should note
the same on the survey.
Location of all setback lines, the width of the setback lines, and any encroachments into setback
lines
Location and description of all improvements (including driveways, fences and detached
buildings)
Measurements showing extent of encroachments and protrusions
The survey should contain a statement as to access, or lack of access, of the land to a dedicated
or properly established right-of-way (public road). (often found in the certification)

- C. **Surveyor's Certification.** Ideally, we would prefer a Category 1-A Land Title Survey Certification. However, at a minimum the surveyor's certification should include the following items:
  - 1. Date the survey was made;
  - 2. That the survey was prepared from an actual on-the-ground survey of the real property shown on the plat and described in the legal description;
  - 3. That the survey was conducted by the surveyor or under his or her supervision;
  - 4. That the survey is true and correct;
  - 5. That there are no encroachments, conflicts, protrusions, or visible or apparent easements, except as shown on the plat; and
  - 6. A statement concerning access.

<u>Typical Certification language</u> (there may be some variation among the certifications) should basically say:

"The undersigned does hereby certify that this survey was this day made on the ground of the property legally described hereon and is correct and that there are no visible: discrepancies, deed line conflicts, encroachments, overlapping of improvements, visible easements or roadways, except as shown hereon and that said property has frontage on a public roadway, except as shown hereon."

# **Example of an Acceptable Certification:**

I, Barney Dan Arnold, Texas R.P.L.S. No. 6224, do hereby certify that this sketch accurately represents an on the ground survey done under my supervision and conforms in all ways to the Texas Board of Land Surveying Standards, and there are no visible easements, overlaps or encroachments except as shown.

## NOT Acceptable for the survey amendment coverage:

do hereby certify that the foregoing Plat and Field Notes was prepared from an actual survey, made on the ground, on July 10, 2009, from the Deed Records of Brown County, Texas, and surveys of area properties, and that the corners and boundaries with marks natural and artificial are just as were found on the ground. Bearings are based on True North as determined by GPS Survey data.

**NOTE:** A statement in the surveyor's certification that indicates the survey was prepared without the benefit of a title examination/commitment is unacceptable for title insurance purpose.

# III. Specific Coverage Regarding Survey Matters

# A. <u>T-19 Restrictions, Encroachments, Minerals Endorsement</u> (Lender Coverage)

As it relates to survey matters, the T-19 Endorsement provides specific coverage for the following:

- Encroachment of improvements into an easement [§4.c.],
- Encroachment of improvements from the insured property onto adjacent property [§4.b.], and

## Rate Rule: R-29

- 1. When the Restrictions, Encroachments, Minerals Endorsement (T-19) is issued on residential real property in accordance with Rule P-50, the premium shall be 5% of the Basic Rate for a single issue policy provided that the minimum premium shall be not less than \$50.00.
- 2. When the Restrictions, Encroachments, Minerals Endorsement (T-19) is issued on land which is not residential real property, in accordance with Rule P-50, the premium shall be 10% of the Basic Rate for a single issue policy provided that the minimum premium shall be not less than \$50.00.

## Procedural Rule: P-50

- 1. Any insured matter covered in the Restrictions, Encroachments, Minerals Endorsement T-19 or T-19.1 may be insured only by the use of these endorsements, except that coverage regarding minerals may be insured by the use of the T-19.2 or T-19.3 endorsements as provided in P-50.1.
- 2. A Company may issue its Restrictions, Encroachments, Minerals Endorsement (T-19) to a Loan Policy (T-2), if its underwriting requirements are met. The Company shall delete any insuring provision if it does not consider that risk acceptable.

## B. T-19.1 Restrictions, Encroachments, Minerals Endorsement (Owner Coverage)

As it relates to survey matters, the T-19.1 Endorsement provides specific coverage for the following:

- Encroachment of improvements into an easement [§4.c.],
- Encroachment of improvements (other than fences, landscaping or driveways) from the insured property onto adjacent property [§4.b.], and

#### Rate Rule: R-29C or D

- 1. When the Restrictions, Encroachments, Minerals Endorsement Owner's Policy (T-191) is issued on residential real property in accordance with Rule P-50, the premium shall be:
  - a. 10% of the Basic Rate for a single issue policy; or
  - b. 5% of the Basic Rate for a single issue policy if an amendment of the exception to area and boundaries is also purchased in accordance with Rate Rule R-16.

In either event, the minimum premium shall not be less than \$50.00.

- 2. When the Restrictions, Encroachments, Minerals Endorsement Owner's Policy (T-19.1) is issued on land which is not residential property, in accordance with Rule P-50, the premium shall be:
  - a. 15% of the Basic Rate for a single issue policy; or
  - b. 10% of the Basic Rate for a single issue policy if an amendment of the exception to area and boundaries is also purchased in accordance with Rate Rule R-16.

In either event, the minimum premium shall be not less than \$50.00.

### Procedural Rule: P-50 A and C

- 1. Any insured matter covered in the Restrictions, Encroachments, Minerals Endorsement T-19 or T-19.1 may be insured only by the use of these endorsements, except that coverage regarding minerals may be insured by the use of the T-19.2 or T-19.3 endorsements as provided in P-50.1.
- 2. A Company may issue its Restrictions, Encroachments, Minerals Endorsement -Owner's Policy (T-19.1) to an Owner's Policy if its underwriting requirements are met. The Company shall delete any insuring provision if it does not consider that risk acceptable.

#### C. P-39 (a) express insurance

Procedural Rule P-39 (a) can be used to provide express insurance for the encroachment of improvements from the adjacent property onto the insured property.

Prior to the adoption of the T-19 and T-19.1 Endorsements, P-39 (a) was used routinely to provide express insurance for all types of encroachments. With the introduction of the T-19 and T-19.1 Endorsements, any matter that is covered by the endorsements can only be insured by the use of one of the endorsements.

As a result, the use of P-39 (a) is limited to encroachments of improvements from adjacent property.

• In order to issue the P-39 (a) express insurance the lender must request the survey amendment to Schedule B-2. The coverage is then provided by adding the following promulgated language after the exception:

"Company insures the insured against loss, if any, sustained by the insured under the terms of this Policy by reason of a final, non-appealable judgment of a court of competent jurisdiction that orders the removal of this improvement because it encroaches over or into \_\_\_\_\_\_. Company agrees to provide defense to the insured in accordance with the terms of this Policy if suit is brought against the insured to require the removal of this improvement because it encroaches as herein stated."

• There is no charge for providing P-39 express insurance.

NOTE: P-39 (a) express insurance should not be given unless you receive underwriting approval

#### D. P-39 (b) express insurance

Procedural Rule P-39 (b) can be used to provide express insurance for possible defects in title. A fence inset disclosed by a survey would be a possible claim for adverse possession (a possible defect).

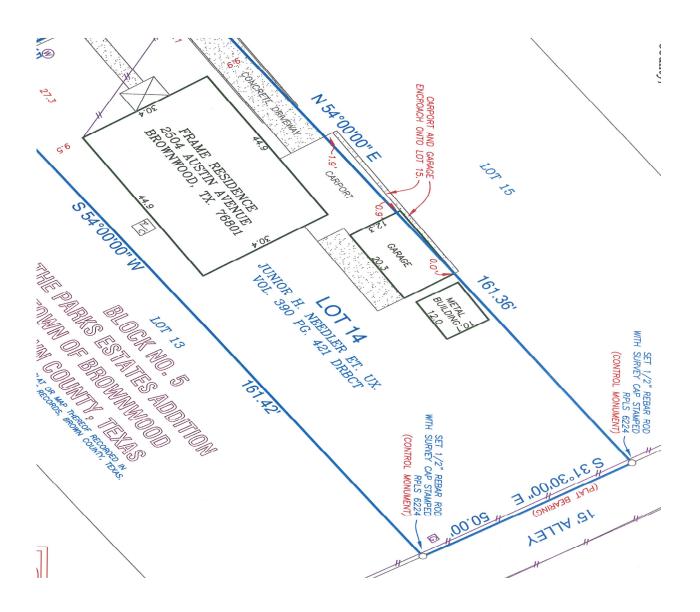
• P-39 (b) express insurance is provided by adding the following promulgated language after the exception:

"Company insures the Insured against loss, if any, sustained by the insured under the terms of this Policy by reason of a final, non-appealable judgment of a court of competent jurisdiction that divests the Insured of its interest as Insured because of this right, claim, or interest. Company agrees to provide defense to the Insured in accordance with the terms of this Policy if suit is brought against the Insured to divest the Insured of its interests as Insured because of the terms of this Policy by reason of the enforcement of said rights as to the land. Company agrees to provide defense to the Insured of this Policy if suit is brought against the terms of this Policy by reason of the Insured in accordance with the terms of the Insured against the Insured of said rights as to the land.

• There is no charge for providing P-39 express insurance.

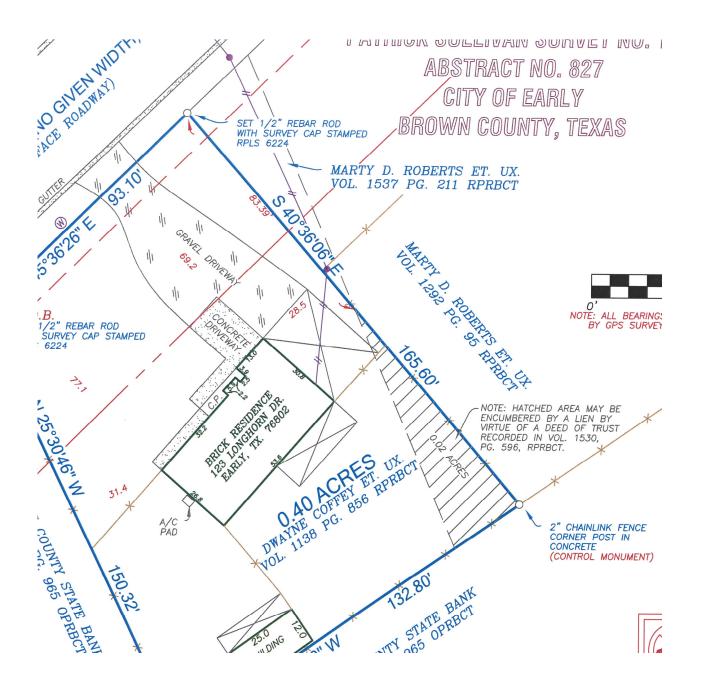
NOTE: P-39 (b) express insurance should not be given unless you receive underwriting approval

**IV.** Survey Examples:

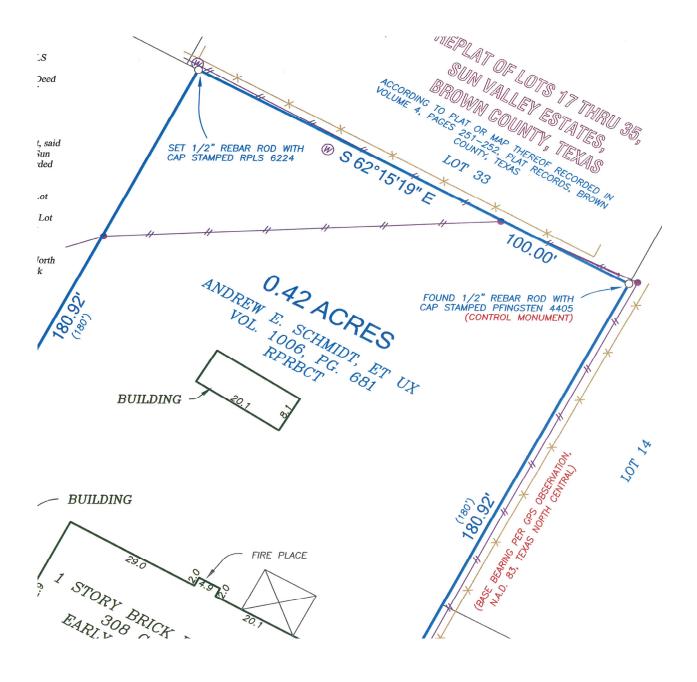


# Exceptions to add:

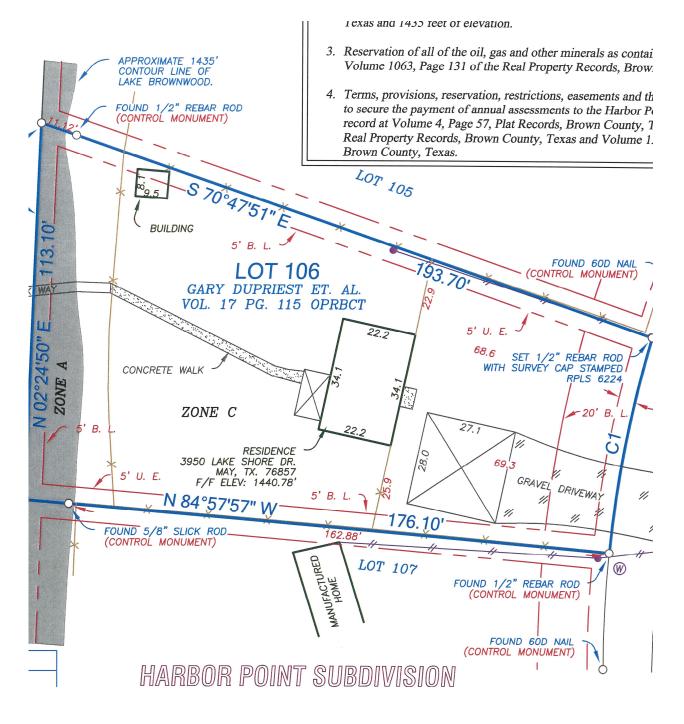
- Gas line, electric line and any easement rights associated therewith arising by unrecorded grant or by use, as disclosed by the survey dated \_\_\_\_\_, prepared by \_\_\_\_\_, RPLS No. \_\_\_\_\_, Job No. \_\_\_\_\_.
- Garage and carport encroach onto Lot 15 along the northeasterly side property line, as shown on survey dated \_\_\_\_\_\_, prepared by \_\_\_\_\_\_\_, RPLS No. \_\_\_\_\_\_, Job No. \_\_\_\_\_\_. (Insuring provision #4.b. of the T-19 Endorsement will be deleted.) (Insuring provision #4.b. of the T-19.1 Endorsement will be deleted.)



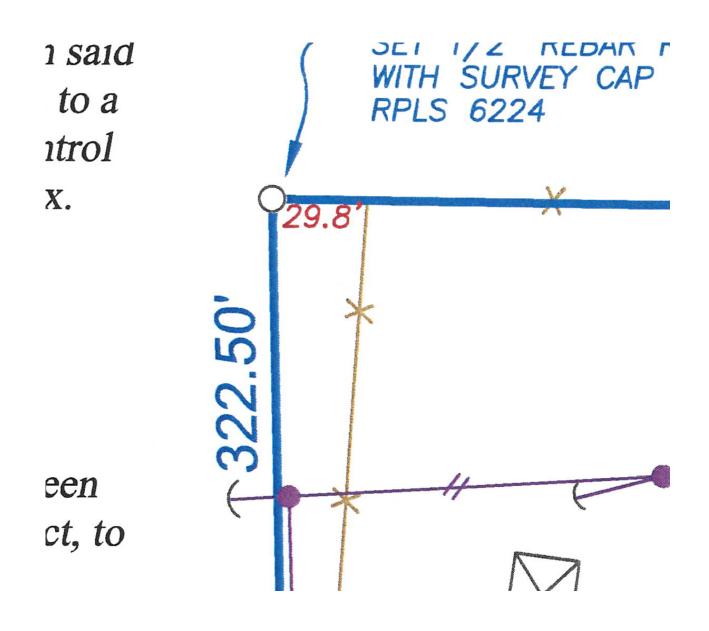
Any claims, loss, action, cause of action or dispute involving the .02 acre hatched areas, as shown on survey dated \_\_\_\_\_\_, prepared by \_\_\_\_\_\_, RPLS No\_\_\_\_\_\_.



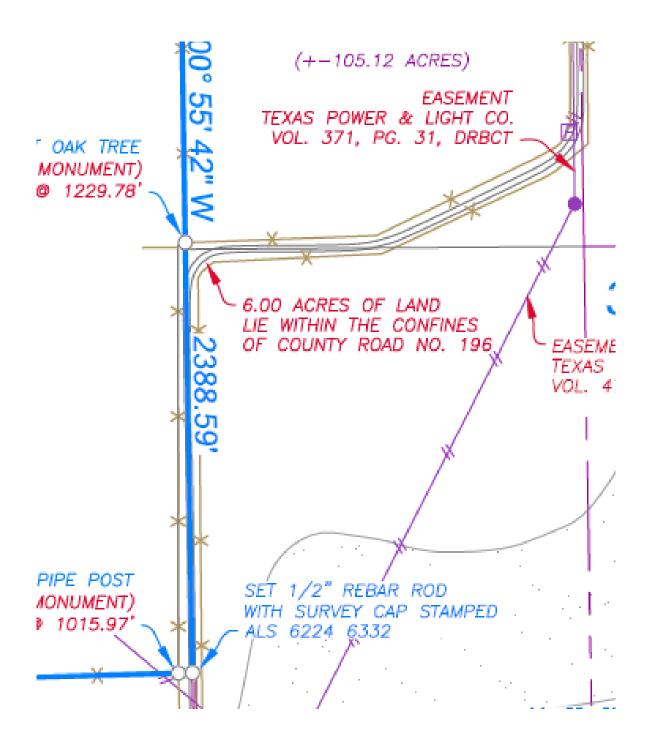
- Any claims, loss, action, cause of action or dispute involving the fence being outside the boundary line of land, and the property lying between the fence and the \_\_\_\_\_\_ boundary line of the land, as shown on survey dated \_\_\_\_\_\_, prepared by \_\_\_\_\_\_\_, RPLS No\_\_\_\_\_\_. (Insuring provision #4.b. of the T-19 Endorsement will be deleted if fence off boundary line by more than one foot.)
- Overhead electric line traversing the subject property and any easement rights associated therewith arising by unrecorded grant or by use, as disclosed by the survey dated \_\_\_\_\_\_, prepared by \_\_\_\_\_\_, RPLS No. \_\_\_\_\_, Job No. \_\_\_\_\_.



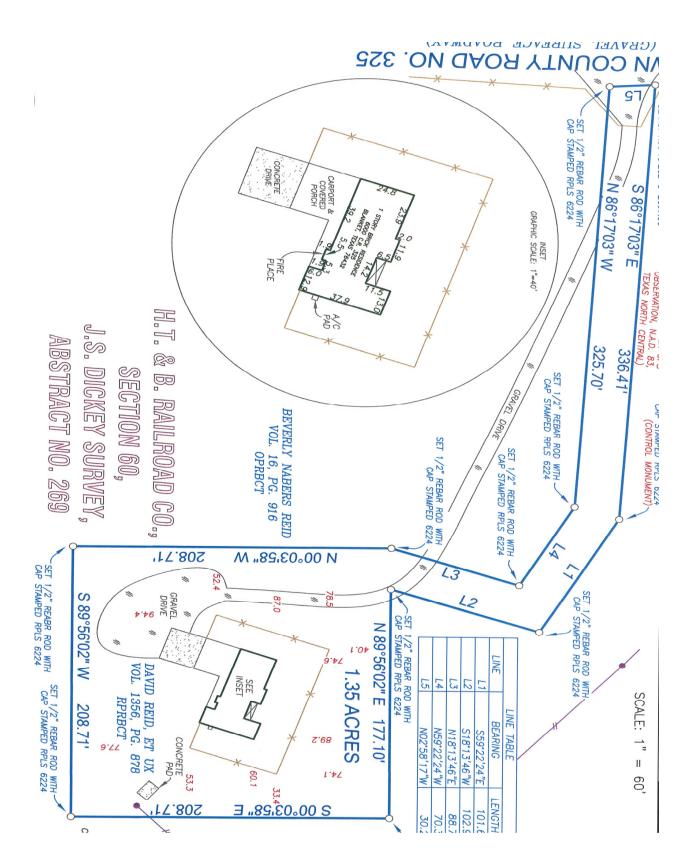
- Detached building encroaches into the 5 foot setback line, along the northerly side property line, as shown on survey dated \_\_\_\_\_, prepared by \_\_\_\_\_, RPLS No. \_\_\_\_, Job No.
- The Company shall have no liability for, nor responsibility to defend, the title to any part of the herein described tract against any right, title, interest or claim (valid or invalid) of any character had or asserted by the State of Texas, or by any other government or governmental authority, or by the public generally, in or to portion of the above described property that may be within the margin of the lake, whether navigable in fact or not.



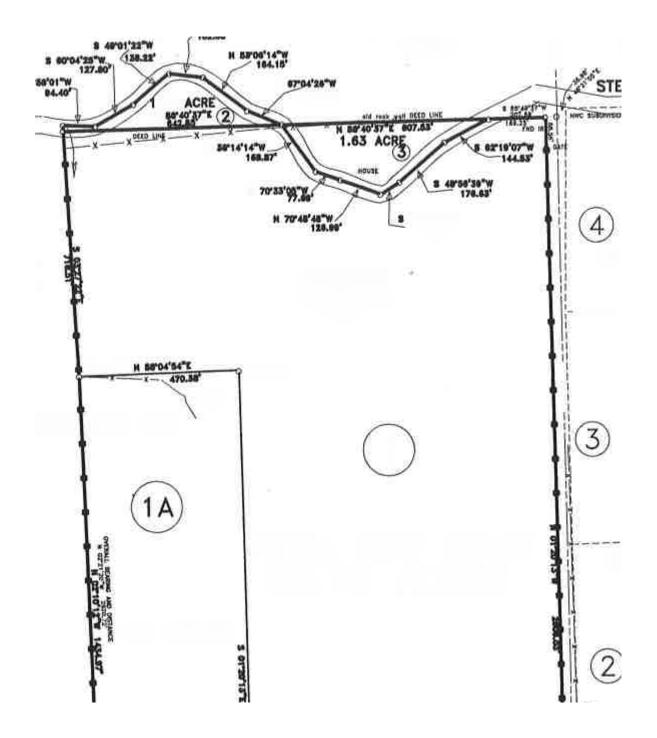
• Any claims, loss, action, cause of action or dispute involving the property lying between the fence and the \_\_\_\_\_ boundary line of the land, as shown on survey dated \_\_\_\_\_, prepared by \_\_\_\_\_, RPLS No \_\_\_\_\_.



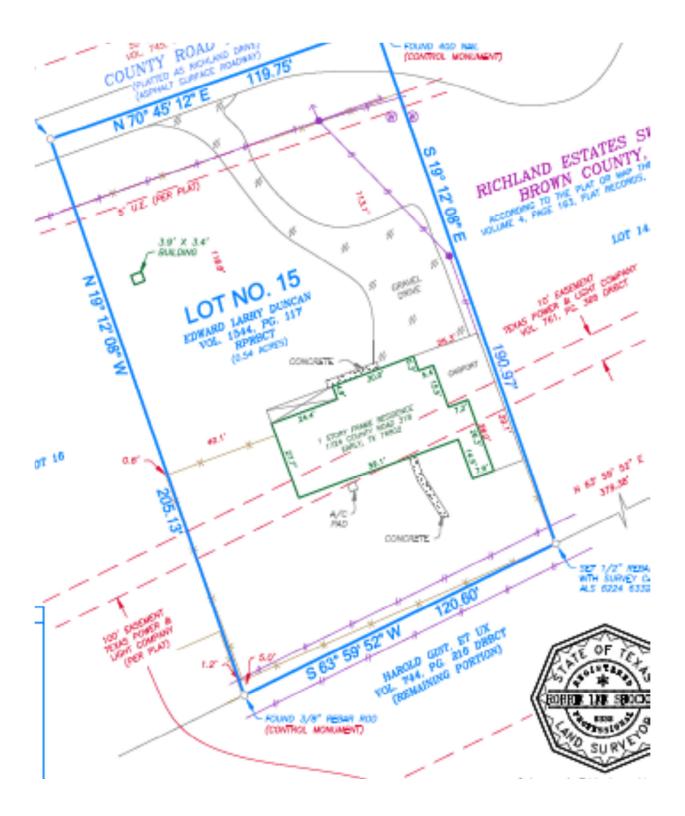
 Company does not insure against any claims, actions, causes of action or disputes involving the portion of the subject property located within the boundaries of County Road No. 196, as shown on survey dated \_\_\_\_\_, prepared by \_\_\_\_\_, RPLS No. \_\_\_\_\_.



Houston, we have a problem.....



House was built on the 1.63 acre portion that they did not own.



House encroaches into the 100' transmission line easement along the rear property line, as shown on survey dated \_\_\_\_\_\_, prepared by \_\_\_\_\_\_\_, RPLS No. \_\_\_\_\_\_, Job No. \_\_\_\_\_\_. (Insuring provision #4.c. of the T-19 Endorsement will be deleted.) (Insuring provision #4.c. of the T-19.1 Endorsement will be deleted.)

# The Surveyor should address the easements you show as exceptions and either locate them on his/her survey or note if they do not apply.

Schedule B Notes: Pipeline easement in favor of W. A. Letson recorded in Volume 170, Page 316, DRBCT (Blanket in nature; may apply) Pipeline easement in favor of W. A. Letson recorded in Volume 175, Page 257, DRBCT (Blanket in nature; may apply) Pipeline easement in favor of Central Texas Pipe Line Company recorded in Volume 189, Page 404, DRBCT (Blanket in nature; may apply) Easement in favor of Texas Power & Light Company recorded in Volume 498, Page 114, DRBCT (Descriptive in nature; too vague to plot; may apply) Easement in favor of Texas Power & Light Company recorded in Volume 498, Page 121, DRBCT (Descriptive in nature; too vague to plot; may apply) Easement to Texas Power and Light Company recorded in Volume 371, Page 31, DRBCT (Shown hereon; centerline description; no given width) Easement to Lone Star Gas Company recorded in Volume 292, Page 228, DRBCT (Blanket in nature; may apply) Easement to Texas Power and Light Company recorded in Volume 387, Page 82, DRBCT (Shown hereon; centerline description; no given width) Right of Way to James Sweeney recorded in Volume 984, Page 324, RPRBCT (Shown hereon; descriptive in nature; 10' wide) Easement to Texas Power and Light Company recorded in Volume 371, Page 31, DRBCT (Shown hereon; centerline description; no given width)