TITLE & SURVEY REFERENCE

CRE title commitments and ALTA surveys in practice

Better context. Better conviction.

Sample — Executive Summary & Section 1

Forthcoming Q4 2026 · Editorial board: Mark Kuklis

Title & Survey Reference

This reference assumes the reader closes institutional CRE transactions and is familiar with the basic instruments. It focuses on operative mechanics, deal-level decision points, and state-by-state variation that affect underwriting. National doctrine is treated as the default; state-specific deviations are flagged where they materially change practice.

Valore Registry -- Practitioner Reference Series

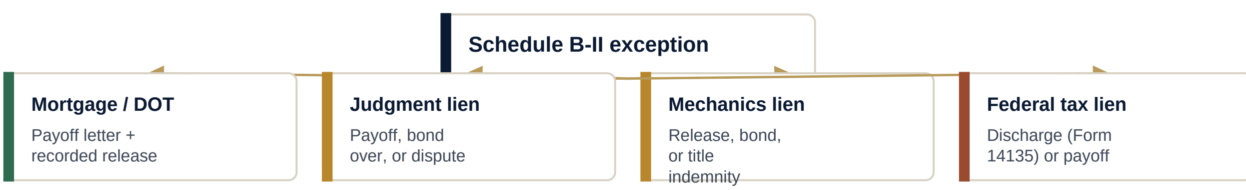
1. The title commitment structure

The current operative form is the **2021 ALTA Commitment for Title Insurance** (v. 01.00), effective July 1, 2021 and published July 30, 2021.[^1] It replaced the 2016 version, which itself superseded the 2006 form. Underwriters and many state insurance departments have continued to permit issuance of legacy 2006/2016 commitments, and the 2006 forms were not formally decertified until December 31, 2022, but the 2021 form is now the default for institutional CRE work. The 2021 revision tightened the discriminatory-covenant exclusion, reorganized the Conditions, and made several technical changes to the gap and arbitration provisions.[^2]

The commitment is a conditional offer to issue one or more policies on terms specified inside it. It is *not* an abstract, an opinion of title, or a representation regarding the status of title -- the Notice at the front of the 2021 form says so explicitly, and limits remedies to contract.[^3] Three documents do the work: Schedule A, Schedule B-I (Requirements), and Schedule B-II (Exceptions).

> **EXECUTIVE SUMMARY**
> The title commitment is a contract for future insurance, not a judgment about title quality. Schedule B-II is the controlling risk-allocation document: every line listed is uninsured; every line deleted or modified shifts risk to the insurer. The cure-paths section (Section 3) is the most operationally valuable part of this brief -- use the decision framework there to triage every B-II exception on a live deal rather than reading the commitment as a narrative.

ENCUMBRANCE CURE PATHS AT CLOSING



Standard path is payoff at closing. Edge cases – disputed amounts, missing releases, lien-priority fights – drive the timeline.

A clean commitment clears the standard exceptions via the owner’s affidavit; the survey clears the survey exception.

Figure 1. Encumbrance cure decision framework: existing mortgages (payoff + release); judgment liens (active -- payoff or bond off; dormant -- document and insure over); mechanics' liens (recorded -- pay or bond; inchoate -- final waivers + no-lien affidavit); federal tax liens (four cure paths in priority order); easements and CC&Rs (accept, modify, terminate, or ALTA 28/9 endorsement). NOC-state mechanics lien priority relates back to NOC recording -- confirm NOC compliance before advancing.

Schedule A

Schedule A fixes the four parameters that price and scope the policy: (i) the **Commitment Date** (the effective date of the title search; nothing recorded after this date has been examined); (ii) the **policy or policies** to be issued (loan, owner's, or both, and the 2021 vs. 2006 form); (iii) the **Proposed Amount of Insurance** and **Proposed Insured**; and (iv) the **estate or interest** insured -- fee simple, leasehold, easement, or some hybrid -- together with the **vesting** (the record owner as of the Commitment Date) and the **legal description**.[^4]

Errors on Schedule A are the most common avoidable failure in deal mechanics. The vesting name must match the seller's signature block and entity status (a deed from "Acme LLC" out of a vesting in "Acme Holdings LLC" is a recordable defect). The legal description must match the survey and the deed. The Proposed Insured must be the borrower/buyer entity that will actually take title -- not the parent SPV, not a "to-be-formed" placeholder.

Schedule B-I (Requirements)

Schedule B-I lists every act that must occur, document that must be produced, or event that must happen before the policy will issue. Standard requirements include: (i) payment of the consideration, premium, and any taxes; (ii) recordable instruments creating or conveying the insured interest (deed, mortgage, releases of prior encumbrances); (iii) entity authority documentation (good standing, operating agreement, board/manager consents, incumbency); (iv) payoff letters from existing lenders; (v) UCC-3 terminations on personal-property collateral; (vi) the owner's (or seller's) affidavit and gap indemnity; and (vii) any state-specific items such as transfer-tax forms, FIRPTA certifications, or municipal lien searches.[^5]

The 2021 form's commitment-termination provision makes clear that if all B-I requirements are not satisfied within the time period stated on the commitment (commonly six months from the Commitment Date for most national underwriters), the commitment terminates and the company's liability ends.[^1] Diary the date.

Schedule B-II (Exceptions)

Schedule B-II lists matters the policy will *not* cover. That is the operative point: anything on B-II is excluded from the title insurance. B-II divides into two parts in practice -- pre-printed "standard" or "general" exceptions (parties in possession, unrecorded easements, mechanics' liens, survey matters; see Section 2 below) and property-specific exceptions identifying recorded encumbrances (each easement, restriction, lease memorandum, declaration, and prior mortgage by book/page or instrument number).

> **B-II IS THE CONTROLLING RISK DOCUMENT**
>
> Every line on Schedule B-II is uninsured risk on the buyer's or lender's side of the table. Every modification or deletion of a B-II exception shifts that risk to the insurer. This is the document that allocates title risk -- not the policy itself, not the title company's oral assurances.

The terminology -- "standard exceptions" in most jurisdictions, "general exceptions" in some -- is regional. The substance is the same. A property-specific exception that merely recites "subject to easements of record" without specifying the recorded instrument is not acceptable on an institutional commitment. Each recorded matter must be listed individually, with a recording reference, so counsel can pull the underlying instrument and assess it. A blanket exception is sometimes a sign that the title examiner has not finished work, and sometimes a sign the file has been mishandled. Either way, push back.

The gap period

The "gap" is the interval between the Commitment Date (when title was searched) and the date the closing documents actually record. New encumbrances can attach during this window -- judgment dockets, mechanics' liens, IRS notices, intervening deeds -- and the buyer/lender takes title subject to them unless they are covered. Three devices fill the gap. First, **gap indemnity** from the seller (often combined with the owner's affidavit) shifts the risk contractually. Second, **gap coverage** built into the policy itself -- the 2021 Commitment, in its standard form, contemplates that the policy as issued will insure as of the policy date, not the commitment date, provided the company has been given the opportunity to update by re-bringdown.[^6] Third, the **Closing Protection Letter (CPL)** issued by the title company protects the lender (and in many states the buyer) against defalcation, fraud, or failure to follow closing instructions by the agent.[^7] CPLs are mandatory in most institutional financings.

Practitioner workflow

Institutional deals open title 30--45 days pre-close. The buyer's counsel issues a **title objection letter** to seller within the contract's title review window (typically 10--20 business days from receipt of the commitment plus survey), itemizing every B-II exception the buyer requires cured, modified, or insured over. The seller responds with what it will cure, refuse, or attempt to insure around. The cure period runs to closing, with extensions if needed. A **cleared (or "marked-up") commitment** -- the document the title company will actually issue the policy from -- is signed at closing reflecting which B-I requirements have been satisfied and which B-II exceptions have been deleted or modified.

That’s the sample.

The full **Title & Survey Reference** brief runs the complete reference end to end — every section, all tables, full citations.

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