

which are not to be properly accounted for at closing. Also on Schedule C are interests of others in the property such as heirship interests that may need to be addressed.

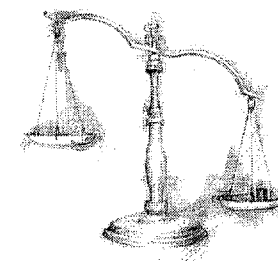
REMEMBER it will be up to **you** to examine the title commitment promptly. It will be up to **you** to begin asking questions as to the nature of exceptions you do not understand or which do not look proper. Ask the title company or your attorney how (and by whom) objectionable items are to be dealt with so as not to appear on your title policy after closing. The title company is usually responsive to questions, however, the title company cannot practice law so do not rely on it to act as your attorney.

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# REVIEWING YOUR TITLE COMMITMENT IS VERY IMPORTANT

**“THE LEGAL CORNER”**

**By Sam A. Moak**



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*The information in this column is not intended as legal advice but to provide a general understanding of the law. Any readers with a legal problem, including those whose questions are addressed here, should consult an attorney for advice on their particular circumstances.*

There is no way to adequately explain in this column the concepts of “title” or “good title.” However, you should be aware of some basic objectives in the title review process and some bottom-line consequences to having, or not having, adequate title to your property. Generally speaking, if you have adequate title to your home you will own your home free and clear of unanticipated or unacceptable rights of others to interfere, now or in the future, with your full use, occupancy and possession of the home. Note that some rights on the part of others will probably be expected and acceptable, as we will discuss.

As a buyer, you need to find out who has rights which could affect you in the occupancy, use or possession of your property, and what those rights are. Then you should make the determination of which of these actual or potential rights held by third parties, which are commonly characterized as encumbrances to title, are acceptable and which are not. This is the process of title review.

Title insurance is a common way in Texas by which you may obtain title assurance. However, it is important to recognize that *simply receiving title insurance is not, in and of itself, necessarily receiving assurance that you have adequate title.* A title insurance

policy will contain exceptions from its coverage as to all outstanding title encumbrances which the title company believes affect your property. Whether those encumbrances should be acceptable or not to you as a buyer is for *you* to determine. The title company’s commitment for title insurance will be the single most informative document you will receive for purposes of title review. It will set out in Schedule B and Schedule C various matters, or exceptions, which the policy will not insure against.

**Schedule B** will contain standard exceptions for various matters, including:

1. Restrictive covenants of record. These include standard subdivision restrictions which should not be objectionable. However, it is a good idea to review the restrictions to know what will be expected of you as an owner of the property and what you can expect of your neighbors. Some matters which the restrictions may cover are restrictions against certain uses of the property; requirements concerning what may be built on the property and where; and maintenance responsibilities.
2. Easements. Utility and drainage easements are shown in this section. This section will list those that are common to the neighborhood and located along property boundary lines. These are usually necessary for the good of all of the homeowners in the neighborhood. On the other hand,

other easements may require investigation. It is sometimes difficult to know if an easement is a problem until it is located on a survey.

3. Mineral Reservations. Mineral reservations are common in Texas, but certain types may require investigation to insure that the holder of the rights involved does not have the right to use the surface of your property without your permission.
4. Taxes. The taxes for the current and subsequent years, and subsequent assessments for prior years based on a change in land usage or ownership should be listed here.

**Schedule C** of the commitment will contain a list of encumbrances or title problems which the title company will require (or the buyer should require) to be removed, or “cured,” prior to issuance of the actual title policy. Common encumbrances found on Schedule C are liens. Some liens, such as those securing your seller’s existing financing, will be obviously acceptable or unacceptable depending upon whether you have agreed to take on the burden of the existing financing through assumption or otherwise. Other liens, called **involuntary liens**, will generally be objectionable. Examples are **judgment liens** or **mechanic’s and materialmen’s liens**. Some liens may require further investigation: for instance, a lien securing maintenance assessments of a homeowners’ association (or **maintenance lien**) may be acceptable if it is determined that no assessments are past due