

Deleting the Area and Boundary Exception



Exception What is the “survey amendment”?

The survey amendment provides for additional coverage to an insured under a title policy for a small additional fee, and subject to the title company’s review of satisfactory survey.

On the TREC contract, Buyer selects the “survey amendment” coverage by selecting the “will be amended” box in paragraph 6(A)(8):

(8) 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; or
- (ii) will be amended to read, “shortages in area” at the expense of Buyer Seller.

The “standard exception” refers to the following language found in the title policy:

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

- 2. Any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements.

The AMENDMENT to the exception adds these cross-outs, effectively “un-exceptioning” the crossed-out items from the exception (i.e., building them back in as covered items):

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

- 2. Any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements

Note: Even with the exception, the title insurance policy will not cover an insured related to the size of the property being insured.

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What are some examples of matters that may be covered by electing the survey amendment?

- Disputes with adjoining landowners regarding boundary lines.
- Forced removal of improvements because of encroachments and protrusions of fences, driveways, etc. onto neighboring property or the insured’s property.
- Encroachment of improvements into easements or building set-back lines, and a utility company, homeowner’s association, or city requires removal of the improvements.

What is the cost of the survey amendment?

If the buyer is a “natural person” (i.e. not an entity, LLC, corporation, etc.) and the property is residential property, the cost is 5% of the total premium. For example, the cost on a \$250,000 home is only \$81.15. Otherwise, the cost is 15% of the total premium.

What if the survey used in the transaction already shows encroachments, protrusions, boundary line issues, etc.?

In cases where the survey indicates these issues are already known, the title company will likely add a specific exception to Schedule B for the matter already shown.

For example, where the survey shows points where the fence is on or off the boundary line, an added exception may read:

“Losses or claims, if any, resulting from the variance between a fence and any property boundary lines, as shown on survey dated [date], prepared by [name of surveyor].”

In that case, the survey amendment would still apply to provide additional coverage to the insured, just not as to any issues the buyer may have related to the fence being off the property line as shown on the survey used in the transaction.

This means that buyers need to read their commitments and surveys and submit a timely objection under paragraph 6(D) of the TREC Contract if they are concerned about conflicts and discrepancies already identified on the survey.

What’s the Bottom Line?

Agents should always encourage the buyer to elect the survey amendment. The premium for the additional coverage is minimal in relation to the benefit provided, and failure to elect this coverage can be very costly.