



Deleting The Area & Boundary Exception

Paragraph 6A (8): Title Policy and Survey- One to Four Family Residential Contract (Resale) TAR 1601/TREC No. 20-12: the “shortages in area” section allows for negotiation about whether the title policy will be shortened to “shortages in area,” and if so, the seller and buyer can negotiate who pays.

As with so much legal language, the “Area & Boundary Exception” item on title insurance policies and the updated versions of several TREC Contracts can be confusing. To start, here’s a basic glossary of terms:

Survey

A representation of the property prepared by a licensed provider depicting measurements of area, boundary lines, structures, fences, easements, and other permanent features of the property, both visible on the ground and as recorded in documents in the public record.

Area & Boundary Exception

The language on Schedule B of the title commitment and title policy that says the title insurer is not liable for discrepancies in boundary lines, other people’s structures built over property lines, and other similar issues that would be shown on a survey of the property.

Amendment to Area & Boundary Exception

With a satisfactory survey reviewed and approved by the title company, the buyer may choose to remove the Area and Boundary Exception, which adds some coverage back into the Owner’s Title Policy. The cost to the responsible party (as determined by the contract) is 5% of the basic title insurance premium.

The Nuts and Bolts

When a buyer chooses to delete the Area & Boundary Exception they get back the coverage that was withheld by that item on the title policy.

TREC Contracts

With the Texas Real Estate Commission’s most recent update to the promulgated One-To-Four Family Contract, effective June 1st, 2014, this has become an active decision to be made by the potential homebuyer making an offer. Here’s the language as amended in the new version of the contract:

(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; (ii) will be [~~Buyer at Buyer’s expense, may have the exception~~] amended to read, “shortages in area” at the expense of Buyer Seller.



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Here is the complete boilerplate language on the Texas Owner's Title Insurance Policy, with the exception to items on the Area & Boundary Exception in place:

TEXAS RESIDENTIAL OWNERS POLICY OF TITLE INSURANCE
ONE-TO-FOUR FAMILY RESIDENCES (T-1R)

SCHEDULE B
EXCEPTIONS

We do not cover loss, costs, attorneys' 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.)
Volume 4700, page 124, Deed and Plat Records, Volume 1049, Page 171, and
Volume 1585, Page 486 Deed Records Lubbock County Texas, but omitting and covenant or
2. Any discrepancy, conflicts, shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements.
3. Homestead or community property or survivorship rights, if any, or any spouse of any insured.
(Applies to the Owner's Policy only.)

And here is the same paragraph with the "Survey Deletion:"

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ONE-TO-FOUR FAMILY RESIDENCES (T-1R)

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(Applies to the Owner's Policy only.)

As you see, there is more coverage in the second example because these are fewer exceptions left in the policy. Some examples of scenarios where the homeowner would be protected include: *

- A utility company requires removal of improvements that are located in an easement.
- Buyers used a pre-existing survey prepared for a previous owner. In many cases, the surveyor is only liable to the homeowners who purchased the survey.
- The Homeowner's Association claims improvements are built over a building line and demand improvements be removed.
- A neighbor claims insured improvements are over the property line into their property.

*These examples are for illustrative purposes only and do not necessarily represent actual coverage on any specific property via any specific title policy.

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