OBJECTION LETTER UPDATE

2015 Texas Land Title Institute

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Richard Melamed is a native Houstonian who has practiced law in Harris and surrounding counties for 35 years. His practice includes representation of clients in real estate and business transactions, defending clients in real estate disputes, and clearing title issues in courts around the state. He has been very active in recent years in cases involving mortgage fraud, title issues and property ownership rights.

Mr. Melamed has been actively involved in the title industry for his entire career. He began as a law clerk in the 1970’s learning to examine title in the abstract plant and underwrite curative measures to make the titles insurable. He worked as a title officer for Stewart Title Company in the early 1980’s, generally making title underwriting requirements and facilitating closings when legal or title issues would arise. He continued in the title business as a commercial closer and title counsel, and as a fee attorney. He is a regular speaker and presenter at seminars sponsored by the Texas Land Title Association, presented to examiners and escrow officers for compliance with their mandatory continuing education requirements and licensure.

Mr. Melamed is a certified, credentialed mediator specializing in real estate and business disputes. He has successfully mediated over 500 cases, with a high percentage rate of settlements. He also acts as a consulting and testifying expert in cases involving real estate and business issues.

- Board Certified in Residential, Commercial, and Farm & Ranch Real Estate by the Texas Board of Legal Specialization
- A-V Rated by Martindale-Hubbell
- Listed in the Bar Registry of Preeminent Lawyers
- Recognized by Super Lawyers magazine for over 10 consecutive years as one of the Top 100 lawyers in the Houston Region
- Named in the Super Lawyer’s 2011 Business Addition as the only solo practitioner in Texas to be listed under the “Top Law Firms in Construction & Real Estate”
- Listed in Who’s Who in American Law;
- Recognized by Inside Houston and H Magazines as one of the Best Real Estate Lawyers in Houston
- Member, State Bar of Texas Real Estate Forms Committee
- Member, State Bar of Texas Real Estate, Probate and Trust Council
- Section Representative- State Bar Board of Directors
- Fellow -Texas Bar Foundation
I. Introduction

Most contracts to purchase property will be contingent upon (i) financing; (ii) a physical inspection and acceptance of the property condition; and (iii) a review and acceptance of the title to the property.

The prospective purchaser is usually given a period to review the title and make written objections to items determined to be title defects or clouds to an acceptable title to the property. The earnest money contract will often specify certain title matters that are automatically deemed “permitted exceptions” and to which no objection can be made. The contract is likely to describe the scope of “objectionable” items. Sometimes the contract will confine the objectionable matters to be limited to those appearing on the title commitment or survey, and sometimes the scope of objectionable matter will include all “matters of record” as opposed to “matters disclosed by the title commitment”.

The timelines prescribed by the contract for title review and objection are “written in stone” and generally, time is of the essence in making title objections. Most contracts are drafted so that they provide that failure to object to title by a certain deadline will be a waiver of the purchaser’s right to object, and deemed acceptance of the title without further requirements.

Here is the typical objection paragraph from the Texas Association of Realtor’s Commercial Contract:

. **Buyer’s Objections to the Commitment, Survey, and UCC Search:**

(1) Within _______ days after Buyer receives the commitment, copies of the documents evidencing the title exceptions, any required survey, and any required UCC search, Buyer may object to matters disclosed in the items if: (a) the matters disclosed are a restriction upon the Property or constitute a defect or encumbrance to title to the real or personal property described in Paragraph 2 other than those permitted by this contract or liens that Seller will satisfy at closing or Buyer will assume at closing; or (b) the items show that any part of the Property lies in a special flood hazard area (an “A” or “V” zone as defined by FEMA). If Paragraph 6B(1) applies, Buyer is deemed to receive the survey on the earlier of: (i) the date Buyer actually receives the survey; or (ii) the deadline specified in Paragraph 6B.

(2) Seller may, but is not obligated to, cure Buyer’s timely objections within 15 days after Seller receives the objections. The closing date will be extended as necessary to provide such time to cure the objections. If Seller fails to cure the objections by the time required, Buyer may terminate this contract by providing written notice to Seller within 5 days after the time by which Seller must cure the objections. If Buyer terminates, the earnest money, less any independent consideration under Paragraph 7B(1), will be refunded to Buyer.

(3) Buyer’s failure to timely object or terminate under this paragraph 6D is a waiver of Buyer’s right to object except that Buyer will not waive the requirements in Schedule C of the commitment.

Here is the objection paragraph from the Texas Real Estate Commission residential contract:

6. **TITLE POLICY AND SURVEY:**

A. **TITLE POLICY:** Seller shall furnish to Buyer at □ Seller’s □ Buyer’s expense an owner policy of title insurance (Title Policy) issued by ______________________ (Title Company) in the amount of the Sales Price, dated at or after closing, insuring Buyer against loss under the provisions of the Title Policy, subject to the promulgated exclusions (including existing building and zoning ordinances) and the following exceptions:
(1) Restrictive covenants common to the platted subdivision in which the Property is located.
(2) The standard printed exception for standby fees, taxes and assessments.
(3) Liens created as part of the financing described in Paragraph 4.
(4) Utility easements created by the dedication deed or plat of the subdivision in which the Property is located.
(5) Reservations or exceptions otherwise permitted by this contract or as may be approved by Buyer in writing.
(6) The standard printed exception as to marital rights.
(7) The standard printed exception as to waters, tidelands, beaches, streams, and related matters.
(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 amended to read, “shortages in area” at the expense of □ Buyer □ Seller.

D. OBJECTIONS: Buyer may object in writing to defects, exceptions, or encumbrances to title: disclosed on the survey other than items 6A(1) through (7) above; disclosed in the Commitment other than items 6A(1) through (8) above; or which prohibit the following use or activity:
___________________________________________________________________________

Buyer must object the earlier of (i) the Closing Date or (ii) ______ days after Buyer receives the Commitment, Exception Documents, and the survey. Buyer’s failure to object within the time allowed will constitute a waiver of Buyer’s right to object; except that the requirements in Schedule C of the Commitment are not waived by Buyer.

I am not sure how to read this provision. Do separate periods run on review of the title beginning when the commitment and exception documents are delivered, and a separate period also runs as to the survey beginning when the survey is received? I do not want to have that argument later. I always amend the provisions by adding the words, “the last of” in the sentence so it reads:

“Buyer must object the earlier of (i) the Closing Date or (ii) ______ days after Buyer receives the last of the Commitment, Exception Documents, and the survey. Buyer’s failure to object within the time allowed will constitute a waiver of Buyer’s right to object; except that the requirements in Schedule C of the Commitment are not waived by Buyer.”

And here is the objection paragraph from a lawyer drafted commercial earnest money contract form:

Title Objections; Cure of Title Objections.
(a) Purchaser or its attorneys shall have until ______, 20 __ (the “Title Objection Deadline”) to notify Seller, in
writing, of such objections as Purchaser may have to the title to the Property, including but not limited to matters set out in the Title Commitment, the title exception documents referred to therein, the public records, or the Survey, other than the Permitted Exceptions described in clauses (a) through (d) of Section ___ of the Contract. Any item contained in the Title Commitment, any matter shown on the Survey or any document that is of record and properly indexed to which Purchaser does not object on or before the Title Objection Deadline shall be deemed a “Permitted Exception”.

Please note that the paragraph above does not limit the scope of the title objections to what is reflected only on the commitment and the shown on the survey, but also includes matters of record not reflected on either the commitment and the survey.

Sending the objection letter causes the period for title contingency to be extended at least until the seller can respond. Buyers counsel should always send an objection letter if possible, to give his client a continuing right to cancel the contract, that usually goes beyond the feasibility cut off. Sometimes the buyer’s continuing right to cancel through title objections continues until closing, when the buyer can then decide to cancel and get his earnest money back, or waive the objections and go forward.

II. The Basics

If any part of the title commitment is missing, incomplete, or not acceptable to your client, you must prepare and deliver objections as provided in your contract. In most instances, your time for objection is limited to a specific period of time so it is important to note the time frames for review of both title and survey as soon as you have a copy of the executed and receipted contract. Some title companies will prepare a time line based upon their interpretation of the contract however you should not rely on the title company’s schedule unless you have independently verified that it is correct.

A title commitment is comprised of five parts, including the “jacket,” and Schedules A through D. The jacket is the pre-printed portion of the title commitment which sets out the basic terms and conditions under which the commitment is being issued as well as certain notice and definition provisions. Schedule A of the title commitment sets out the names of the parties, the policy amounts, the record title holder, the proposed insured, and the legal description of the property. Schedule B sets out those items discovered by the title company which it intends to exclude from insurance coverage. Schedule C sets out the issues for which the title company will require resolution prior to closing. Schedule D is a disclosure of title company ownership and fees charged and paid to others by the title company in connection with the closing and the issuance of the title policies. Following Schedule D are a series of required disclosures and notices usually including, but not necessarily limited to: Notice regarding deletion of Arbitration Provisions, Tax Service, Title Information, Boundary Deletion Disclosure, Privacy Policy Notices by the Title Company and the Title Underwriter. Some title companies to provide the schedules without the jacket when forwarding by email however the schedules without the jacket do not constitute a commitment on the part of the title guaranty underwriter.

Title Issues & Objections

A. Jacket:

1. Issue: Jacket Missing.

Objection: Buyer objects to the failure of the title company to include the Underwriter’s promulgated commitment for title insurance jacket and requires that the title commitment be
issued in accordance with underwriting guidelines.

2. Issue: Jacket not countersigned by issuing agent.
Note: A title commitment is not valid if the issuing title agent does not countersign it.
Objection: Buyer objects to the failure of the issuing title agent to countersign the Commitment for Title Insurance and requires that the title agent issue the title commitment in accordance with underwriting guidelines.

Schedule A:

GENERAL

3. Issue: The Commitment has expired.
Rule: A Commitment expires 90 days after the effective date.
Objection: Buyer objects to the effective date of the Commitment, which has expired, and requires that the title company issue a revised Commitment with a current effective date.

4. Issue: The effective date of the Commitment pre-dates the effective date of the purchase agreement.
Note: Although the Commitment is still effective, it may be approaching the end of its 90 day life, and more importantly, the Commitment needs to reflect the most current information available.
Objection: Buyer objects to the effective date of the Commitment which is prior to the effective date of the Agreement. The effective date of the Commitment should be the same as, or later than, the effective date of the Agreement, being ____________, 20__.

SCHEDULE A 1.

5. Issue: The Commitment fails to state the policy amount and/or the name of the proposed insured (purchaser of the property).
A Commitment is not valid unless the name of the person to whom the Commitment is issued and a policy amount is set out in Schedule A.A1.a or A1.b.

Objection: Buyer objects to the failure of the Commitment to include the (policy amount; name of the proposed insured) and requires that the Commitment be issued to include (a policy amount of $_________; the name of the proposed insured: ____________).

A1.c, A1.d, or A1.e.

6. Issue: The Commitment fails to state the mortgagee policy amount, and/or the name of the proposed insured (lender), and/or name of the proposed borrower (usually the buyer).
Objection: Buyer objects to the failure of the Commitment to include the (mortgagee policy amount; name of the proposed insured; name of the proposed borrower) and requires that the Commitment be issued to include (a mortgagee policy amount of $______; the name of the proposed mortgagee insured: ____________; the name of the proposed borrower: ____________).  

7. Issue: The Commitment is incorrect as to the mortgagee policy amount, and/or the name of the proposed insured (lender), and/or name of the proposed borrower (usually the buyer).
Objection: Buyer objects to the failure of the Commitment to include the (mortgagee policy amount; name of the proposed insured; name of the proposed borrower) and requires that the Commitment be issued to include (a mortgagee policy amount of $______; the name of the proposed mortgagee insured: ____________; the name of the proposed borrower: ____________).  

The proposed borrower’s name is incorrect.
Objection:
Buyer objects to proposed borrower and requires that ____________ be substituted/inserted where applicable.
8. **Issue:** The Buyer does not yet know the name of the mortgagee.

**Objection:** Buyer reserves the right to change the name of the Proposed Insured mortgagee.

**SCHEDULE A 2.**

9. **Issue:** The Commitment either fails to reflect the nature of the seller’s interest in the property or reflects something other than “Fee Simple.”

**Discussion:** If you are OBTAINING COVERAGE FOR AN EASEMENT, leasehold interest, or other interest in land, your objection should reflect the interest to be conveyed.

**Objection:** Buyer objects to the failure of Schedule A 2 of the Commitment to properly reflect the interest to be conveyed and requires that the provision be revised to reflect, “Fee Simple.”

**SCHEDULE A 3.**

10. **Issue:** The Seller on the contract does not match the record title owner.

**Discussion:** Normally, the Title Company will point out this discrepancy in a note or comment in the commitment.

**Objection:** Buyer objects to Title Company’s Note that Record Title to the Property appears to be vested in, as the Seller’s Acquisition Deed as recorded at Volume _____, Page ______, (or Film Code No. _____) County Official Records references the Seller as ______.

Or:

**Objection:** Buyer objects to the failure of the Commitment to reflect the Seller, named in the Contract, as the record title holder and requires that the Seller take all actions necessary to satisfy the requirements of the Title Company in order to allow the Title Company to reflect the Seller as the record title holder.

**SCHEDULE A 4.**

11. **Issue:** The legal description in the Commitment does not match the legal description on the survey.

**Objection:** Buyer objects to the discrepancy between the legal description set out in Schedule A 4, and that contained within the Survey and requires that the Commitment and/or Survey be revised to reflect the correct legal description of the Property.

**Objection:** The fifth paragraph of the legal description contains an incorrect call. The distance reflected on the call of the Survey is 252.08 feet, rather than the call of 258.08 feet reflected on Exhibit “A” of the Commitment. The legal description of the Property must be replaced with the legal description of the Property on a final or re-certified Survey. Buyer reserves the right to object to any changes in the legal description reflected on a final or re-certified Survey.

12. **Issue:** The Commitment refers to an Exhibit which is not attached.

**Objection:** The Commitment refers to an Exhibit “A” which contains a metes and bounds description of the Property, however, no such exhibit is attached. Please add the appropriate Exhibit “A” to the Commitment using the current metes and bounds description as set forth in the Survey.

**Issue:** Transcription Error

**Objection:** Buyer objects to the misspelling of the words, “meters and bounds” in the first line of the legal description and requires that it be corrected as follows, “metes and bounds.”
Schedule B:

13. Issue: Document referenced but not provided (or illegible).

Objection: Buyer objects to the failure of the title company to provide a (legible) copy of the exception document referenced in Schedule B and requires that the Title Company provide a legible copy for the Buyer’s review. The Buyer hereby reserves the right to object to the contents of the referenced document until such time as a legible copy has been provided.

SCHEDULE B1.

Issue: No restrictive covenants listed and yet, the exception was not deleted.

Objection: Buyer objects to the inclusion of Schedule B1., and requires that the Title Company delete the provision.


Objection: Buyer objects to the inclusion of the restriction document referenced as Film Code No. , which does not appear to affect the Property, and requires that it be removed from the exception.

SCHEDULE B2.

15. Issue: “Area & Boundary” Deletion

Discussion: For a nominal fee, the Owner’s Title Policy may be amended to provide for coverages otherwise excluded by the Schedule B2. exception. This provision may be amended and removed except for “Shortages in Area” which the title company is not permitted to insure.

Objection: Buyer objects to the Schedule B2. exception and requires that it be amended to exclude only “Shortages in Area” from coverage under the Owner’s Title Policy, and that affirmative coverage be issued for any boundary encroachments or exceptions reflected on the Survey. Buyer expressly requests that the Title Company notify the undersigned that the Survey is approved by the Title Company for purposes of amending this exception, upon payment of the required applicable premium by Buyer (Seller).

SCHEDULE B3.-B9. (Generally)


Objection: Buyer requests that any of Schedule B 3. through B9., inclusive, which do not apply to the transaction at hand or which may otherwise be removed, be eliminated from the Owner's Policy.

SCHEDULE B5.

17. Issue: Improper year referenced.

Objection: Buyer objects to Item 5 of Schedule B of the Commitment and requests that this exception for taxes be limited to the year of closing and subsequent years, not yet due and payable.

18. Issue: Year end closing (taxes known).

Objection: Buyer objects to Item 5 of Schedule B of the Commitment and requests that taxes for the year of closing be paid at closing and that this exception be limited to the year following closing and subsequent years, not yet due and payable.

19. Issue: Change in use, “Roll back” taxes.

Objection: Buyer objects to the exclusion of additional taxes which may become due for prior years and requires that Item 5 of Schedule B be amended to delete the words, “and subsequent assessment for prior years due to change in land usage or ownership.” (Loan Policy Only)

SCHEDULE B7.

Discussion: Regarding mechanic’s liens. (This only applies to interim construction binders)
SCHEDULE B8.

20. **Issue**: Liens and/or leases improperly appear on the Mortgagee Policy  
**Objection**: All references to subordinate liens and leases should be deleted on the Mortgagee Policy of Title Insurance. Buyer requires appropriate representatives of Seller to execute and deliver to the Title Company an Affidavit of Parties and Possession in a form and substance that is satisfactory to the Title Company in this regard.

SCHEDULE B10., etc.

Discussion: Some title companies continue numbering exceptions from 10 (11, 12, 13, etc.), others create letter sub-numbering under Item 10 (10a, 10b, 10c, etc.). Accordingly, the following Issues are in alphabetical order so that you will be able to find them when needed.

21. **Issue**: Mineral Interests (Surface Rights not fully waived.)  
**Objection**: We find no waiver of surface rights referenced in the title commitment. Although we recognize the mineral severance as a “permitted exception”, we do not recognize the mineral holder’s surface rights as a permitted exception. We must be provided with a copy of a recorded waiver of surface rights, or seller must provide a new one at closing. In the regard, we also ask the title company to advise us as to their willingness to issue a T-19 endorsement.

22. **Issue**: Mineral Interests (Surface Rights partially waived.)  
**Objection**: The Waiver of Surface Rights set out in Item_______ of Schedule B relates only to a portion of the easements and mineral and/or royalty interests on the Property. Buyer requires that the Seller obtain a surface rights waiver with respect to all mineral and/or royalty interests.

23. **Issue**: Expired/terminated exception  
**Objection**: Buyer objects to the inclusion of _________________ as it appears to have expired or has been terminated and/or is no longer in effect and requires that it be removed from the Commitment.

24. **Issue**: Easement objection (general)  
**Objection**: Buyer objects to the ___ foot wide easement along the front property line and ___ foot wide easement along the side lot line of the Property. Buyer requests that Seller provide information as to any current use of such easements. Buyer requests that such easements be abandoned and/or released from the Property.

**Issue**: Easement (Flowage)  
**Objection**: Buyer objects to the extent that the Flowage Easement is not depicted in the Survey, nor is it particularly described in the Notes section of the Survey.

25. **Issue**: Easement (lack of defined area)  
**Objection**: Buyer objects to the extent that the instrument does not specifically identify the location of the easement on the Property and requires that it be located and defined.

26. **Issue**: Easement not reflected on survey  
**Objection**: Item 10 refers to a right of way easement in favor of ____________________ as shown by instrument recorded in Volume ____, Page ____, and amendment recorded in Volume ____, Page ____ of the Deed Records of __________ County, Texas. The easement is not reflected on the survey. Buyer requires that the easement be located and set out on the survey or deleted from the Title Commitment.

27. **Issue**: Easement on survey not set out on Commitment.
**Objection:** Buyer objects to the easement reflected on the survey and requires that the Title Company determine whether such easement properly affects the Property and that the Commitment be revised accordingly.

28. **Issue:** Easement, discrepancy in references between the Survey and the Commitment.

**Objection:** Item 10 refers to a right of way easement in favor of ___________ as shown by instrument recorded in Volume ___, Page ___ of the Deed Records of ___________ County, Texas. Please advise us if the easement has terminated. If the term of the easement has terminated, please delete it from the Title Commitment.

29. **Issue:** Easement not on survey

**Objection:** Item 10 refers to a Right of Way Easement as shown by instrument recorded in Volume ___, Page ___ of the Official Records of ___________ County, Texas. The easement is not reflected on the survey. Please locate the easement on the survey or delete it from the Title Commitment.

30. **Issue:** Easement, not on survey (unrecorded)

**Objection:** Item 10 refers to an unrecorded easement in favor of __________ as disclosed by instruments recorded in Volume ___, Page ___ of the Deed Records of ___________ County, Texas. The easement is not reflected on the survey. Please locate the easement on the survey or delete it from the Title Commitment.

31. **Issue:** Recording discrepancy

**Objection:** Item 10 refers to a _________ Agreement recorded in Volume ___, Page ___ of the Official Records of __________ County, Texas. The survey refers to a document recorded in Volume ___, Page ___ of the Official Records of __________ County, Texas. Please correct this discrepancy.

32. **Issue:** Illegibility

**Objection:** Item 10 refers to a certain easements for __________ set forth in an instrument recorded in Volume ___, Page ___ of the Deed Records of __________ County, Texas. The copy of the document provided by the Title Company is illegible. Please provide to me a legible copy of the document. In addition, the easements are not reflected on the survey. Please locate the easements on the survey or delete them from the Title Commitment. We reserve the right to comment or object to the easements after we receive and review the instrument.

33. **Issue:** Lease, expired

**Objection:** Item 10 refers to a certain Evidence of Lease recorded in Volume ___, Page ___ of the Official Records of ___________ County, Texas. The Evidence of Lease provides that the term for such lease expired on ___, 1999. Please advise us if the renewal option(s) have been exercised. If the lease has terminated, please delete it from the Title Commitment.

34. **Issue:** Memorandum of Lease, (applicability)

**Objection:** Item 10 refers to a Memorandum of Lease recorded in Volume ___, Page ___ of the Official Records of ___________ County, Texas. The Memorandum of Lease provides that the lease is dated ___, and the term of such lease is fifteen (15) years. Please advise us if the lease has terminated, and if so, please delete it from the Title Commitment.

35. **Issue:** Oil, gas and mineral leases (with evidence of non-production)

**Objection:** Buyer objects to all oil, gas and mineral leases (and any assignments and unit designations thereof), including, but not limited to, those set forth in Items 10. Please determine and advise if any oil, gas or other minerals are being produced pursuant to such lease(s). If no oil, gas or other mineral is being produced pursuant to such lease(s), Seller must obtain affidavit(s) of non-production in a form
acceptable to the Title Company with respect to each such lease, and each such lease must be deleted from the Commitment.

36. Issue: Oil, Gas and Mineral Lease - Production
Objection: Item 10 refers to an Oil, Gas and Mineral Lease dated _______, and recorded in Volume ___, Page ___ of the Oil and Gas Records of _____________ County, Texas. Such Lease is for a term of ___ years and for as long thereafter as oil, gas or other mineral is produced from the property. Please advise us if there is production under the Lease. If there is no oil, gas or mineral production thereunder, please obtain appropriate affidavits from the Seller or releases from the referenced Lessee, and delete it from the Title Commitment.

37. Issue: Oil, Gas and Mineral Lease (Termination)
Objection: Oil, Gas, and Mineral Lease dated ____________, subsequently amended and assigned as set forth in those recorded documents listed in the Title Commitment had a primary term of three years, and continued so long as oil, gas or other minerals are produced from the land or land with which the land is pooled. Buyer objects to the extent the Lease is terminated, requests an affidavit of non-production from Seller and deletion of this item.

38. Issue: Buyer not provided copy of plat.
Objection: Buyer objects to this Item. Buyer has not been provided a copy of the referenced plat. Buyer may waive such objection upon receipt and review of the reference plat.

39. Issue: Fence does not follow property line.
Objection: Buyer objects to the described fence encroachment and requires that the Seller obtain a boundary agreement from the neighboring property owner and provide affirmative title insurance coverage insuring the Buyer against any claims resulting from the location or ownership of the encroachment.

40. Issue: Boundary discrepancy
Objection: Buyer objects to the exception and requires that the Seller obtain a boundary agreement from the neighboring property owner and provides affirmative title insurance coverage insuring the Buyer against any claims resulting from the location of the property boundary line. Buyer requires that the Title Company provide affirmative coverage, at Seller’s expense, against any claims resulting from the disputed boundary of the Property.

41. Issue: Rights of parties in possession.
Objection: Buyer objects to the exclusion of coverage for Rights of parties in possession and requires that the Title Company inspect the Property or otherwise satisfies itself that no party is in possession of the property and removes the exclusion for Parties in Possession from the Commitment.

42. Issue: Exception for Recorded and Unrecorded leases.
Objection: Buyer objects to the inclusion of recorded leases as an exception and requires that all leases filed of record, which would be exceptions to title, be specifically set out in the Commitment.

43. Issue: Rent Roll exclusion
Objection: Buyer objects to this item and requires its deletion. Buyer will accept the following in its place: “Subject to the rights of parties in possession, as residential tenants only, as reflected in the Rent Roll certified by the Seller and delivered to Buyer on the date hereof.”

44. Issue: Reservation of Objections
Objection: We reserve any objections pertaining to those items in Schedule B for which we do not yet have copies of the documents, including, without limitation, _____ County Clerk File No. _______, Volume ____, Page ___, and Volume ___, Page ___.

45. Issue: Surface Rights Waiver
Objection: Buyer has not been provided a copy of any document that waives the surface rights of any mineral owner. Additionally, there is no
indication that the surface rights have been waived or a drill site designated. Buyer may waive such objection upon receipt and review of the Item and upon satisfactory evidence that the surface rights have been waived.

46. Issue: Surface Waivers (Mineral Rights)
Objection: Buyer objects to all rights of ingress and egress over and across the surface of the Property appurtenant to any oil, gas and other mineral interest and reservations set forth in Item 10. Seller must obtain surface waivers in a form acceptable to Buyer and the Title Company executed by the holder(s) of the oil, gas and mineral interests for the benefit of the owner of the surface estate of the Property. Title referred to in such oil, gas and mineral interests must be checked from the date of such instruments through and including the date of the Commitment.

Objection: Buyer objects to the mineral interests described therein, to the extent that there are no waivers or limitation of use of the surface.

47. Issue: Exception improperly states that no survey has been provided to the title company
Objection: Buyer objects to this item and requests that it be deleted as a survey has been completed and supplied to the title company.

48. Issue: Commitment references easements, which a survey would reveal, however Title Company is in possession of a survey.
Objection: Buyer objects to the exception of visible and apparent easements and requires that the Title Company limit this exception to visible and apparent easements referenced on the final survey.

49. Issue: Access
Objection: Buyer objects to the lack of a right of access and requires that the Seller obtain and file of record such conveyances or perpetual easements as may be necessary to provide access to the Property at such location(s) along Drive as Buyer may desire, and from _________ Road, in form and substance, and executed by such parties as will allow the Title Company to remove this item from the Title Commitment.

50. Issue: Roadway easement across Property
Objection: Buyer objects to the existence of the roadway easement in the middle of the Property and requires that the Seller obtain a release thereof, in form and substance, and executed by such parties as will allow the Title Company to remove this item from the Title Commitment.

51. Issue: Survey does not reflect items on Commitment (or vise versa)
Objection: Buyer objects to Items _ and will require their deletion upon providing the Title Company an updated Survey.

52. Issue: Survey, modifications
Objection: Buyer will require that such exceptions be modified to include at the end a reference to the updated Survey of the Property in the form as follows: “and as shown or referenced on that certain Survey dated ______________, by ______________. To the extent these items do not affect the Property, Buyer requires that each such item be deleted from the Commitment.

53. Issue: Failure to reference known exceptions
Objection: Buyer objects to the Commitment’s failure to reflect that the Property is located within, and subject to the zoning ordinances of, the City of Piney Point Village, Texas.
Objection: Buyer objects to the Commitment’s failure to reflect that the Property is located within, and subject to, the Memorial Villages Water Authority.

54. Issue: Buyer says its not there.
Objection: Buyer objects to the reflection on the Survey of overhead power lines along the East property line as Buyer’s personal
observations indicate that no such power lines exist at the Property. Further, to the extent that power lines do exist on the Property at any location, the Buyer objects to the failure of the Commitment to reflect any easements which would provide for or permit the placement of such power lines on the Property.

Schedule C:

**55. Objection:** Buyer objects to all items under Schedule C and requires that Seller perform all necessary acts and execute all documents required by the Title Company prior to, or at closing, so that the items under Schedule C shall not be exceptions to the Owner’s Policy of Title Insurance, and so that Buyer shall be assured of receiving indefeasible fee simple title to the Property.

OR

**55. Objection:** All exceptions, conditions and requirements set forth in Schedule C must be released, satisfied or disposed of to the Title Company and Buyer’s satisfaction at or prior to closing so that none of such items will be an exception in Schedule B of the Texas Owner’s Policy of Title Insurance.

Schedule D:

**56. Objection:** Buyer objects to the failure of the Title Company to include Schedule D of the Title Commitment.

Arbitration Notice:

**57. Objection:** Buyer objects to all arbitration provisions contained in the Commitment and requires the same be deleted pursuant to Procedural Rule P-36.

SURVEY:

A Note about the Survey: Prepare your objection letter noting anything you found in your review of the survey. Even though a written objection letter is sufficient to register your required modifications, you may choose to call the surveyor to discuss any significant issues or questions. Remember, you are trying to obtain a clear, complete, and accurate survey of the property, not embarrass the surveyor. You may want to give the surveyor an opportunity to make corrections and send you a modified survey prior to sending your formal objection letter to the world. If you are working on a long term project, a good working relationship with your surveyor is important. In any event, you should request that the surveyor provide you with a single copy of the revised survey prior to printing additional copies for the client, lender, and title company so that you may check to make sure that all of your requirements have been satisfied.

Additionally, the liability of the surveyor for errors and omissions is, to a great extent, controlled by the certification the surveyor gives along with his plat. A suggested certification would include the following:

Purchaser/Borrower
Lender
Title Company

The undersigned Registered Public Surveyor (the "Surveyor") hereby certifies that (a)this plat of survey and the property description set forth hereon are true and correct and prepared from an actual on-the-ground survey of the real property (the "Property") shown hereon; (b)such survey was conducted by the Surveyor, or under his supervision; (c)all monuments, shown hereon actually exist, and the location, size and type of material thereof are correctly shown; (d)except as shown hereon, there are no visible encroachments onto the Property or protrusions therefrom, there are no improvements on the Property, there are no visible easements or rights-of-way on the Property and there are no visible discrepancies, conflicts, shortages in area or boundary line conflicts; (e)the size, location and type of improvements are as shown hereon and all are located within the boundaries of the Property and are set back from the Property lines the distances indicated; (f)the distance
Sample Survey Objections:

58. Issue: Surveyor information missing

Objection: The Survey should be revised to reflect the name, address and telephone number of the surveyor.

59. Issue: Survey Out of date

Objection: Buyer objects to the fact that the date of the survey is not current and requires that the Survey be updated to reflect a more current date; thereafter, the Surveyor should add the date of any revisions, if required.

60. Issue: Survey does not reflect a “Point of Beginning.”

Objection: Buyer objects to the failure of the Survey to include a Point of Beginning for the legal description and requires that the Survey be revised accordingly.

61. Issue: Recording Information

Objection: Buyer objects to the failure of the survey to set out the applicable recording information for all of the easements, setback lines and other items reflected on the Survey and requires that the Survey be revised accordingly.

62. Issue: Easements not fully depicted.

Objection: With regard to all easement shown on the Survey, the Surveyor (i) should show both boundary lines of each easement, rather than just the centerline of the easement (ii) should depict the width of each easement by arrows pointing to each boundary line and (iii) should label each easement by Volume/Page number or as being recorded "per Plat" and with the Plat's recording information.

63. Issue: Total property square footage not calculated.

Objection: Buyer objects to the failure of the Surveyor to indicate the total square footage of the property and requires that the Survey be revised accordingly.

64. Issue: Building square footage not calculated.

Objection: Buyer objects to the failure of the Surveyor to indicate the total square footage of each of the buildings located on the property and requires that the Survey be revised accordingly.

65. Issue: Distances not reflected

Objection: Buyer objects to the failure of the Survey to reflect the distances between the
property lines and the nearest point on each building and requires that the Survey be revised accordingly.

66. Issue: Parking Spaces  
Objection: Buyer objects to the failure of the Survey to reflect the number of parking spaces located on the property and requires that the Surveyor add a note setting forth:
   i. the total number of regular parking spaces;
   ii. the total number of handicapped parking spaces; and
   iii. the total number of parking spaces.

67. Issue: Recorded Plat Description v. Field Note Description  
Objection: In comparing the field notes and plat description, it appears that there is a discrepancy in the following calls:
   Field Notes: _ __º __' ___" _  
   Plat: _ ___ __ __ __ __" _  
Please verify the source of the discrepancy and make corrections as necessary.

68. Issue: Field Note Description on Survey does not match legal description on Commitment.  
Objection: In comparing the Commitment legal description to the field notes description of the Survey, it appears that there are discrepancies as shown on the attached Exhibit B and as described in Section ___ of this Letter. Buyer objects to the discrepancy and requires that the metes and bounds description prepared in connection with the most recent survey of the property be substituted in each case.

69. Issue: Building Setback Line  
Objection: Buyer objects to the failure of the Survey to reflect all building setback lines affecting the Property and requires that the Survey be revised to include all setback lines and the source of such setback lines.

70. Issue: Building Height  
Objection: Buyer objects to the failure of the Survey to reflect the building height and requires that the Survey be revised to reflect the height of the buildings located on the Property.

71. Issue: Elevation  
Objection: Buyer objects to the failure of the Survey to show and describe the highest mean sea level elevation of the Property as contemplated in Ordinance No. ______ and requires that the Survey be revised accordingly.

72. Issue: Fences/Power Poles/Walls  
Objection: Buyer objects to the failure of the Survey to reflect the ownership, the construction type, height and width of the [fences/power poles/walls] described within the Property and requires that the Survey be revised accordingly.

73. Issue: Public Right-of-Way  
Objection: Buyer objects to the failure of the Survey to label whether [Street, Road, Drive, …] is a public right of way and indicate the center line and width of [Street, Road, Drive, …] and requires further that the roadway be marked with a perpendicular arrow showing that the public right of way abuts the Property line.

74. Issue: Flood Zone Designation  
Objection: Buyer objects to the failure of the Survey to indicate the flood zone designation of the property and requires that a note be added to the Survey as follows: "The Property is not located in a 100-Year Flood Plain or in an identified 'flood prone area,' as defined by the U.S. Department of Housing and Urban Development, pursuant to the Flood Disaster Protection Act of 1973, as amended, as reflected by Flood Insurance Rate Map Panel #____, dated ____________, which such map panel covers the area in which the Property is situated. The Property is located within Zone ______."

75. Issue: Missing Item  
Objection: Buyer objects to the failure of the Survey to reflect the easement recorded in Volume _____, Page _____, of the ______ Records of _____ County, _____ (Item _____
on Schedule B of the commitment) and requires that the Survey be revised to reflect the easement.

76. Issue: Questionable item.
Objection: Buyer objects to the inclusion of the ______ contained in Volume _____. Page _____, and requires that the Surveyor confirm whether the exception affects the Property.

77. Issue: Partial lot in platted subdivision.
Objection: We note that the Property is part of a platted lot. Please confirm that the configuration of the Property as part of a lot does not violate any local or state laws and/or ordinances.

78. Issue: Scale
Objection: Please decrease the scale to 1"= ___' and increase the size of the Survey to ___" by ___".

79. Issue: Number of Prints
Objection: The Lender will require five (5) original, certified prints of the revised and finally approved Survey as requested herein.

80. Issue: General objection
Objection: Buyer objects to the following individual items as set out below, and requests that the following Exceptions be deleted from reference on the Survey:

81. Issue: Surveyor compliance
Objection: Buyer requests that Surveyor comply with all requirements of the Title Company and Buyer’s lender in connection with the Survey.

82. Issue: Wood Signs appear on Survey
Objection: The existence of wood signs identified in the Survey. Buyer wishes more information relating to the same and a determination if they are owned by the Seller or by third parties. We find no recorded leases on the Commitment.

83. Issue: Drainage Grates
Objection: The existence of drainage grates along the paved portion along the western boundary of the Property. Buyer wishes more information relating to the same and a determination if they provide drainage for only this Property or reflect some easement or other prescriptive rights of third parties.

84. Issue: Encroachment (fence)
Objection: Buyer objects to the encroachment of the chain link fence onto the Property along the northern boundary line of the Property.

85. Issue: Encroachment (garage)
Objection: There is a reference to a 1-story garage and carport on the northern property that appear to encroach onto the adjacent property. To the extent of any encroachment, Buyer objects.

86. Issue: Encroachment (asphalt parking)
Objection: Buyer objects to the encroachment of the asphalt parking onto the aerial easement and utility easement on the South East portion of the Property and requires Seller obtain and record a consent to encroachment.

87. Issue: Definitions (or symbols)
Objection: The survey makes reference to _____ in numerous places and such reference is not defined in the legend. Please have the Surveyor define.
FORM OF TITLE/SURVEY OBJECTION LETTER

[COUNSEL’S LETTERHEAD]

[Date]

Buyer
Address

[Title Insurance Underwriter]
[Authorized Title Agent]
[Address]

Via Facsimile (123) 555-1212
And Certified Mail -
Return Receipt Requested

Attention: [Escrow Officer Name]

Re: Purchase and Sale Agreement dated effective ______________ (the “Agreement”),
executed by _____________________ (the “Seller”) and _________________________
(the “Buyer”) relating to the sale and purchase of that certain real property containing
approximately _____ acres, located at _____________________, in the City of
_____________, __________ County, Texas (the “Property”)

Dear ____________:

This firm represents the Buyer in connection with the Agreement. We have reviewed the Title
Commitment issued by __________ Title under GF #__________, dated effective ___________, 20__
and issued _________, 20__ ("Commitment"), and a survey of the Property dated _________, 20__,
prepared by ________________ ("Survey"). In accordance with Section ____ of the Agreement, the
following constitute Buyer's objections to the Commitment and Survey:

[Insert items to which objections are being made]

Buyer reserves the right to make any additional objections as it continues its title review of
documents and records including, but not limited to, the public records, the title commitment, the
exception documents referred to in the title commitment, surveys and any other items reviewed by Buyer.
This letter is delivered to give Seller an opportunity to cure or otherwise respond to the items listed in this letter, and is not intended as a termination or notice of termination of the Agreement. We anticipate that the matters set forth in this letter will be resolved prior to closing of the Property, and we look forward to working with you in that regard.

Although Buyer reserves its rights to terminate the Agreement in the event Seller is unable to cure such items to Buyer’s satisfaction, Buyer also reserves the right to waive any of its objections and proceed to closing under the Agreement. In addition, this letter does not waive any of Buyer’s rights to terminate the Agreement as provided in the Agreement, nor waive any right of Buyer to fully inspect the Property.

Thank you for your attention to this letter. I appreciate your courtesies in this matter, and please contact me if I can provide you with any information or assistance.

Sincerely,

Your Name Here
Case Review

1. *Lieber v. Nicholson, et. al.* 206 SW 512 (Comm. Of Appeals, Section A, November 20, 1918). The contract provided that the seller would furnish an abstract of title and the purchaser would then have 30 days to review and point out any defects in the title. Here, the review of the title disclosed a break in the chain of title, such that the seller’s title could not be traced back to the sovereign. However, the examiner did opine that the seller’s vendors had perfected title through adverse possession. To make the story complete, the purchaser failed to object to the break in the chain, although it was clearly part of the title opinion. The examiner then produced a second abstract, which incorporated additional title defects not revealed in the first abstract. The purchaser then summarily cancelled the contract, without giving the seller an opportunity to cure any new title objections. The Court ruled that failing to object waived the purchaser’s arguments, and rendered him unable to prevail in his quest for his refund.

2. *Texas Auto Co., et. al., v. Arbetter, et. al.* 1 SW2d 334 (Tex. Civ. App – San Antonio) November 23, 1927. The abstract of title revealed a conveyance from a corporation to its secretary-treasurer, who was also a director of the corporation. The examiner reported that there was nothing of record showing authority for such a transfer - it would require a majority vote of all other directors and an appropriate corporate resolution. The question for the Court was: “Did this transfer constitute an impediment to the Buyer receiving “marketable title”, as called for in the contract? The Court held that the alleged title defect did not rise to the level of an objectionable matter, and that Texas Auto had wrongfully terminated the contract.

3. *W.W. McMillan et. al. v. R. E. Smith et al.*, 363 SW2d 437 (Tex. 1962). This Supreme Court case involved famous Houston developers in a dispute over a ranch they tried to buy in Brazoria County. The major issue was whether or not the Buyer had properly tendered the purchase money. The Court below ruled that they had not tendered, and entered judgment cancelling the contract. The Court of Appeals reversed the trial court and remanded it. When the seller tendered the abstract, the Buyer’s attorney lodged twenty-five objections to title. The seller cured many of the objections, but refused to cure all of them. The Buyers then carved out the acreage to which the objections pertained, and tendered the purchase price for the balance of the acres being purchased, all in accordance with the terms of the contract. The Court ruled that the Buyers made an incorrect tender. They deducted the prorate amount of the tainted acres, but then included them in the proposed deed, so that they did not pay for the acreage, but received it anyway. The Court ruled they could not do both, and gave them an opportunity to add back in the amount deducted and then use the deed to the entire tract.

4. *West v. Matteson-Southwest Co., Ltd.* 369 SW2d 496 (Tex. Civ. App.-Houston 1963). The parties had a lease/purchase agreement that resulted in a suit for the return of the Buyer’s earnest money after the Buyer cancelled the deal over his title objections. He objected to a Houston Lighting & Power easement on Tract 1 as a defect in title, and because title to Tract 2 failed to show the seller to be in title. Even though it appears that the Buyer cancelled the contract without giving the Seller a chance to cure the objections, a jury found specifically to the contrary. They found that the seller had promised to furnish a title policy to the Buyer and in the end they could not do that because title to Tract 2 failed. The Court sided with the buyer.

5. *Huddleston v. Fergeson* 564 SW2d 448 (Tex. Civ. App-Amarillo 1978). Huddleston agreed to sell 320 acres to Ms. Ferguson and furnish a written abstract of title within 30 days of signing the contract. Ferguson’s attorney sent a letter to the seller stating they were “ready, willing and able” to close the transaction as soon as they were assured of legal access for ingress
and egress to the property. Fergeson never received a response. She filed to recover her earnest money alleging that Huddleston never gave her any assurance of access. At trial, she testified that her attorney did not review the title and never wrote an objection letter. Huddleston testified that he did not own the minerals to the property, although the contract made no exception as to minerals. The trial court rendered judgment decreeing that Ms. Fergeson recover her $4,000 earnest money. Huddleston asked for findings of fact and conclusions of law. The court found that Huddleston was unable to (1) deliver possession of the property; (2) furnish a General Warranty Deed conveying marketable title without an exception for minerals; and therefore was unable to (3) perform the contract. On appeal, the ruling was reversed, finding that Ms. Fergeson waived the title objections by not objecting to them, and that the lower court had allowed her to provide parol evidence with no valid exception to allow it.

6. Lieb v. Roman Development Company et. al 716 SW2d 653 (Tex. App.-Corpus Christi 1986). The purchaser appealed on 20 points of error from a lower court ruling in favor of the seller. The purchaser failed to close after objecting to a lease encumbering part of the 2.31 acres he was buying, and because of a fence erected by the seller that enclosed more land than the buyer was buying. The court reversed finding that the lease was not a defect in title, as there was no theory wherein the tenant would ever accede to title. They also ruled that the fence was an encroachment, but that encroachments were not title defects either.

Bibliography:
Title and Survey Objection Letters – Guidelines and Solutions, by G. Roland Love & Paul McNutt, Jr. 23rd Annual Adv. RE Drafting Course, March 2012 (and again many times since then!)