



# Title Insurance Procedures

## RIM Handbook

### GENERAL MATTERS

#### Final Policy Form

The final policy issued shall be an ALTA OWNERS POLICY 1987 (6-17-06), in a form and with such endorsements as approved by the State. The date of the final Title Insurance Policy shall be the same date as the recording date of the State's easement.

#### Contact person(s)

Soil and Water Conservation District (SWCD) personnel will act on behalf of BWSR to obtain title insurance from local agents. For purposes of title insurance, all easements acquired under the RIM umbrella are considered substantively similar and will be collectively referred to herein as "Conservation Easements." It is strongly suggested that each local title agent have one or two individuals at their company's corporate level who have authority to:

- Direct the company's agents to delete exceptions;
- Issue marked up commitments;
- Provide necessary coverage and issue policies acceptable to the State of Minnesota without the necessity of obtaining prior approval from others within the company.

SWCD and/or BWSR staff will deal primarily with the local agent for specific policy concerns on any given easement. The BWSR staff in St. Paul will deal primarily with the contact person(s) in those instances when it is necessary.

The Attorney General will deal primarily with legal counsel for the company and the contact person(s).

#### State Costs

- Premium as agreed upon by Company and State.
- Reasonable service charges by the title agent.
- The State will not pay for the creation or updating of landowner's abstract. The State will, however, pay for the cost of continuing title evidence from date of commitment to policy date only.
- Costs, if any, advanced for filing fees, recording service charges, mailing, etc. (misc. charges).
- Examination charges, if any.
- Costs of providing maps and copies (non-certified) of schedule B exceptions.

## Landowner/Grantor Costs

- Abstract updating.
- Creation of title evidence if there is none or initial continuation of existing title evidence.
- All costs associated with title clearance, if any, as well as charges to update an expired commitment where the expiration date was caused by landowner delays in clearing exceptions.

Neither the company nor its agents will incur any other expenses on behalf of State without its prior approval.

## Billing

The easement grantor and the State (SWCD) are to be billed for their charges separately. The State billing will be sent to SWCD. The SWCD is responsible for review and payment of the State's bill, and will be reimbursed by the State for that payment. The State assumes no responsibility for payment of charges billed to easement grantor. The title agent agrees that issuance and delivery of the commitment or policy will not be conditioned on payment of easement grantor's bill. The State will reimburse the SWCD when a [Reimbursement Request](#), recorded easement and final title policy are delivered to and accepted by State.

The Landowner/Grantor will provide or pay for creation of initial title evidence and any continuance due to title or encumbrance problems.

## Abstract

In most cases, the grantor will be required to provide an updated abstract to the title agent. It is important for the SWCD to first check with the title agent for the need for an updated abstract before instructing the grantor to begin this work. Many agents have the ability to complete an electronic tract search. This *may* eliminate the need for a landowner to provide an updated abstract to the agent, **but only if it does not result in additional expense to the state.**

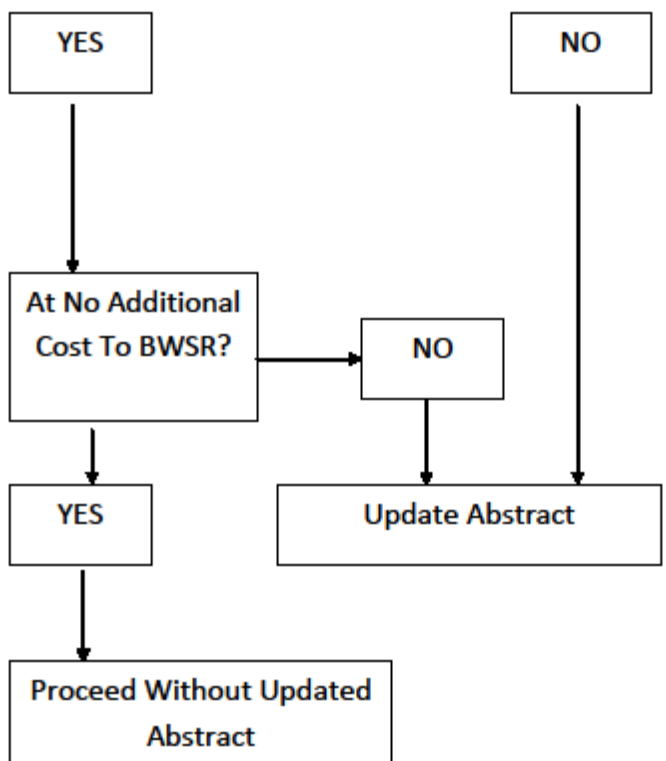
Updating of the abstract is a landowner expense. If it is determined that a landowner does need to get an abstract updated, but cannot find or does not have an abstract for their property, the landowner may work either with their own attorney or the agent hired by the SWCD to have an abstract completed. If the landowner chooses the title agent hired by the SWCD, the agent is to **bill the landowner separately** for the costs related to the updating.

Upon conclusion of transaction all title evidence is to be returned to easement grantor, provided grantor's bills are paid.

The following flow chart depicts how to determine if an abstract update is required.

*Title Insurance*  
*Abstract Updating*

**Question to Title Agent:** Can you provide a title insurance commitment and final insurance policy that meets BWSR's requirements (per Title Insurance Procedures and Specimen Policy provided) **without an updated abstract??**



## TITLE COMMITMENT

It is important to note that the SWCD, NOT the landowner, hires the title agent to complete title work on behalf of the State. This is because the State is the purchaser of the title insurance, NOT the landowner. Therefore, landowners may not request to use their own attorney or agent to complete this work.

### Searches

Agents are required to examine back to land patent. Forty-year searches are not acceptable for State of MN conservation easements per the Attorney General's Office. (Land Patent refers to an official document by which title to a portion of public land is conveyed from the government.) A full search will be performed, including complete name searches, tax searches, levied and special assessment searches, and, where appropriate, bankruptcy searches.

### Inspection and Plat Drawing

No inspection or plat drawing necessary by agent.

### Schedule A

Insured to be listed as State of Minnesota, Board of Water and Soil Resources.

The SWCD will provide the amount of insurance when ordering the policy. The amount of insurance is the total of the easement payment.

Interests to be listed as follows:

- Fee title including contract for deed information, if appropriate.
- Easement interest vested in the State of Minnesota, Board of Water and Soil Resources.

Please refer to the [Specimen Policy](#) for an example of an acceptable document.

### Schedule B (Exceptions)

All general exceptions will be deleted from the final policy based on a standard form Seller's Affidavit from the owner in possession, except for exceptions for taxes or special assessments not shown as existing liens by public records.

Policy is to affirmatively insure that there are no delinquent taxes through policy date.

No "general" exceptions such as zoning ordinances, "easements for roads, if any", or specific zoning ordinances (even if of record) will appear in Schedule B, except that the general exceptions appearing in the policy jacket shall apply.

The conservation easement being acquired is not to appear in Schedule BII.

On the policy, all subordinated mortgages and other liens and encumbrances should use the language as shown in the *Specimen Policy* to insure that they are subordinated to the conservation easement. This means that enforcing the mortgage or other liens will not extinguish the insured conservation easement, and that any title acquired by

enforcing the mortgage or other liens will be subject to the conservation easement. (See [Specimen Policy document](#)).

The State will permit only the approved exception shown in the [Specimen Policy](#) for loss or damage due to the general nature of the legal description contained in the easement description.

If the agent specifies that a requirement in the commitment be met before issuing the policy, the agent shall list in Schedule BI all requirements to issue policy (e.g., record subordination consent and conservation easement, etc.).

Schedule BII exceptions must be as limited as possible (i.e., if another easement or encumbrance does not affect the conservation easement parcel, then the easement or encumbrance should not appear in Schedule B).

Access is to be insured either in the policy's general insuring provisions or affirmatively in the Final Title Insurance Policy itself.

The agent shall individually list in the commitment any environmental problems of record or of which the agent or insurance company is aware. These matters can be listed as an exception on Schedule B or as a note on the commitment for informational purposes only. The main point is to make the State aware of potential environmental problems so that it can investigate the problem further.

## Delivery of Commitment

The agent will send the following items to the SWCD:

- A first generation copy of the commitment. The State recognizes the use of electronic signatures and so a paper original commitment is no longer necessary. The State will not, however, accept illegible or size reduced copies of commitments.
- Complete copies (non-certified) of all relevant schedule B exceptions, e.g. mineral reservations, oil, gas and mineral and other leases, easement for drainage, pipelines and right of first refusal agreements. If BWSR requires copies of any of the above, it is the agent's duty to provide those documents. Copies of mortgages are required only upon specific request by State.

The Company/Agent must agree to deliver to the SWCD:

- A title commitment **within 14 days** after receipt of the request and evidence of title. If the title agent is not an abstractor, the Company will deliver the commitment to SWCD **within 14 days** after the non-abstractor agent receives the request and evidence of title.

Failure to meet these criteria may result in the State opting to use a different agent.

## Title Clearance

The Attorney General will determine the following:

- Which Schedule B exceptions must not appear on the policy.
- What other requirements must be completed before recording of the easement can occur.
- If the Commitment and Policy are acceptable and approve them as such.

The SWCD and/or State will:

- Inform the easement grantor of the title company's requirements to delete each objectionable exception (Schedule B).
- In consultation with agent or contact person for the Company, discover what Company requires to delete these exceptions.
- Provide the agent with all items provided by easement grantor to clear title or remove objectionable exceptions.

The easement grantor shall:

- Be responsible for title clearance and satisfaction of all other requirements as communicated per the above which are a prerequisite to completing the easement acquisition.
- deliver all documents necessary to clear title, delete exceptions, subordinate liens and mortgages etc. to the SWCD (not directly to the agent) for the Attorney General's review and approval.

Documents submitted to the SWCD will be forwarded to the State for approval. Once approved by the State, the SWCD will deliver said documents to the agent.

### **Recording & Delivery of Easement & Final Policy**

The SWCD is responsible for providing adequate instruction to the agent for recording of the easement and associated documents. At a minimum, the instructions provided to the agent shall include:

- A requirement to search for new encumbrances or matters (if any) arising in the "gap" period between the commitment date and the final policy date (the date of the final Title Insurance Policy shall be the same date as the recording date of the State's easement);
- Order of filing instructions;
- Returning of recorded instruments (the State shall receive the original recorded RIM easement and original recorded subordination consent documents);
- Other instructions, as appropriate.

**NOTE:** The instructions referred to above will be provided to the SWCD in a cover letter attached to the RIM Easement for signature. This letter will come from BWSR and be sent directly to the SWCD office.

Documents to be recorded include:

- Conservation easement documents
- Subordination consent document(s)
- All other clearance documents

If the current fee owner is not the grantor of the conservation easement, or if other problems have occurred or new encumbrances have been recorded, **the Agent shall notify the State immediately through the SWCD and shall not record the Conservation Easement or complete the final policy** until all issues are resolved to the satisfaction of the State.

If no changes have occurred since the title commitment, the Agent shall record the easement, issue the final title policy and send it together with a final billing to the SWCD. **The State will NOT accept a final policy with any new exceptions, i.e., exceptions that did not appear on the commitment unless previously agreed to by the State.**

- The Company/Agent agrees to deliver to the SWCD the final policy **within four business days** after the recorded conservation easement, subordination consents, etc. are received.
- Failure to meet these criteria may result in the State opting to use a different agent.