

# Title Insurance and Underwriting Basics:

## Considerations Regarding Title Searches, Legal Descriptions, Surveys and Miscellaneous Liens

J. Price Evans IV

Assistant Vice President, Mississippi Valley Title Services Company

Assistant Vice President, Old Republic National Title Insurance Company

Commercial Underwriting Counsel



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# Title Searches

# Underwriting

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## *General Considerations*

- Underwriting is a judgment call.
- Underwriting is based on a risk analysis of the transaction.
- Off record risks must be considered.
- We insure **unknown** risks (fraud, forgery, mis-indexed documents), unlike life or property insurance which insures known risks (hail damage, life expectancy, tornado) which can be calculated actuarially. Known risks must be dealt with, thus the need for “requirements” in a commitment.
- Duty to Defend: Where there is a good chance of litigation, regardless of the merits of the argument or who will win, do not insure. Defense costs, even if the case is successful, **often** exceed actual loss.
- Our underwriting manual discusses many procedural and underwriting issues in great detail. See [www.mvt.com](http://www.mvt.com) for our recently revised and updated underwriting manual.

# Getting Started

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## *How to get title work:*

Who can you use?

- Independent Abstractors
- Do it yourself
- Another MVT Agent
- Attorney Title Opinions

Questions to ask?

- Does your abstractor have Errors and Omissions Insurance?
- What amount of E & O coverage?
- Experience, reputation, references, timeliness, etc.?



# Getting Started

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## *What kind of search do you need?*

- Residential:
  - Generally 30 year search beginning with a valid warranty deed. Do not merely update from the subdivision plat unless you have base work for the subdivision.
- Commercial:
  - Generally 50 year search beginning with a valid warranty deed.
- When your property includes an easement for access:
  - The property that is burdened by the easement must be properly searched.
  - If the grantor had a mortgage, the lender should partially release the easement area from the mortgage. Otherwise, a foreclosure of the person who granted the easement would cut off rights to the easement.
- Ask for copies of all documents in chain of title, tax information with tax map, covenants, exceptions, and all other pertinent documents.

# Getting Started

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## *Where to search:*

- Office of the Judge of Probate:
  - The purpose of the recording statutes is to give notice to third parties acquiring interest in real property from unrecorded instruments that do not provide record notice.
  - Recording must be done in the county where all or any portion of the land is situated.
  - Counties with Judicial Divisions-generally must record in the appropriate division and failure to do so has the same effect as a complete absence of recording.
  - 2004 Ala. Acts. No. 628 amended Ala. Code § 35-4-62 as to allow for recording in any annex or division within the county if recorded documents are electronically stored and indexed so that retrieval can be accomplished from any courthouse or annex within the county.
- Additional Resources that can help in evaluating risk:
  - Probate, District, and Circuit Courts [www.alacourt.com](http://www.alacourt.com)
  - County Tax Assessor/Tax Collector Office.
  - County GIS Website [www.alabamagis.com](http://www.alabamagis.com)

# Getting Started

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## *Where to search:*

- Additional Resources continued:
  - Obituaries – [www.al.com/obituaries](http://www.al.com/obituaries) ; [www.ancestry.com](http://www.ancestry.com)
  - Internet Search - [www.google.com](http://www.google.com)
  - Satellite Imagery – [www.googlemaps.com](http://www.googlemaps.com); [www.bing.com/maps](http://www.bing.com/maps)
  - Alabama Secretary of State Website
    - Business Entities – [www.arc-sos.state.al.us/CGI/CORPNAME.MBR/INPUT](http://www.arc-sos.state.al.us/CGI/CORPNAME.MBR/INPUT)
    - Land Records – [www.sos.alabama.gov/vb/inquiry/inquiry.aspx?area=Lands](http://www.sos.alabama.gov/vb/inquiry/inquiry.aspx?area=Lands)
    - Land Patents – [www.sos.state.al.us/govtrecords/land.aspx](http://www.sos.state.al.us/govtrecords/land.aspx)
  - University of Alabama Cartographic Research Laboratory
    - Home Page – [www.geography.ua.edu/cartlab](http://www.geography.ua.edu/cartlab)
    - Alabama Maps – [www.alabamamaps.ua.edu](http://www.alabamamaps.ua.edu)
    - Historical Map Archive – [www.alabamamaps.ua.edu/historicalmaps/index.html](http://www.alabamamaps.ua.edu/historicalmaps/index.html)
    - Aerial Photography Index - <http://alabamamaps.ua.edu/aerials/index.html>
  - Foreclosure Publications - [www.alabamalegals.com](http://www.alabamalegals.com)
  - Westlaw and LexisNexis

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# Legal Descriptions



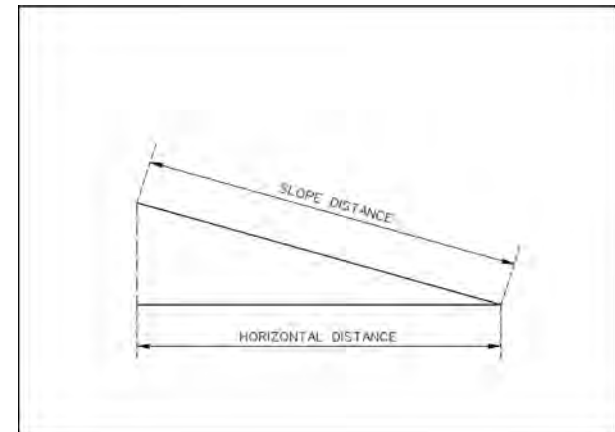
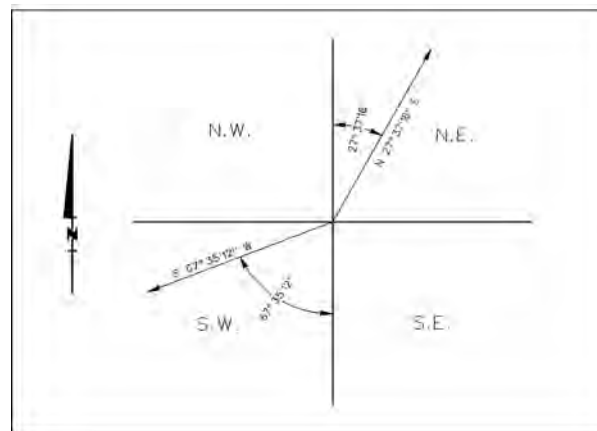
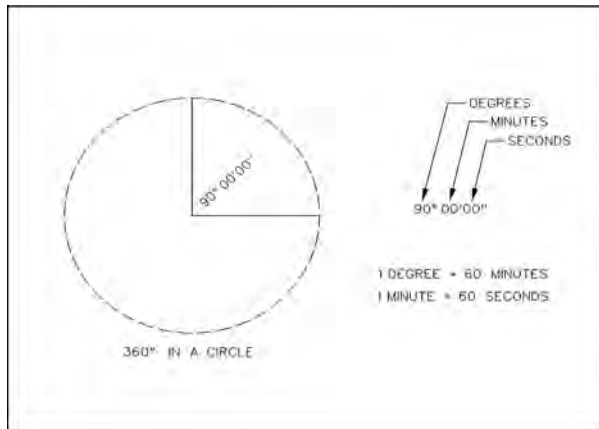
## Three General Methods of Land Description

- Metes and Bounds
- Government Survey System
- Subdivision Plats

# Methods of Describing Real Property

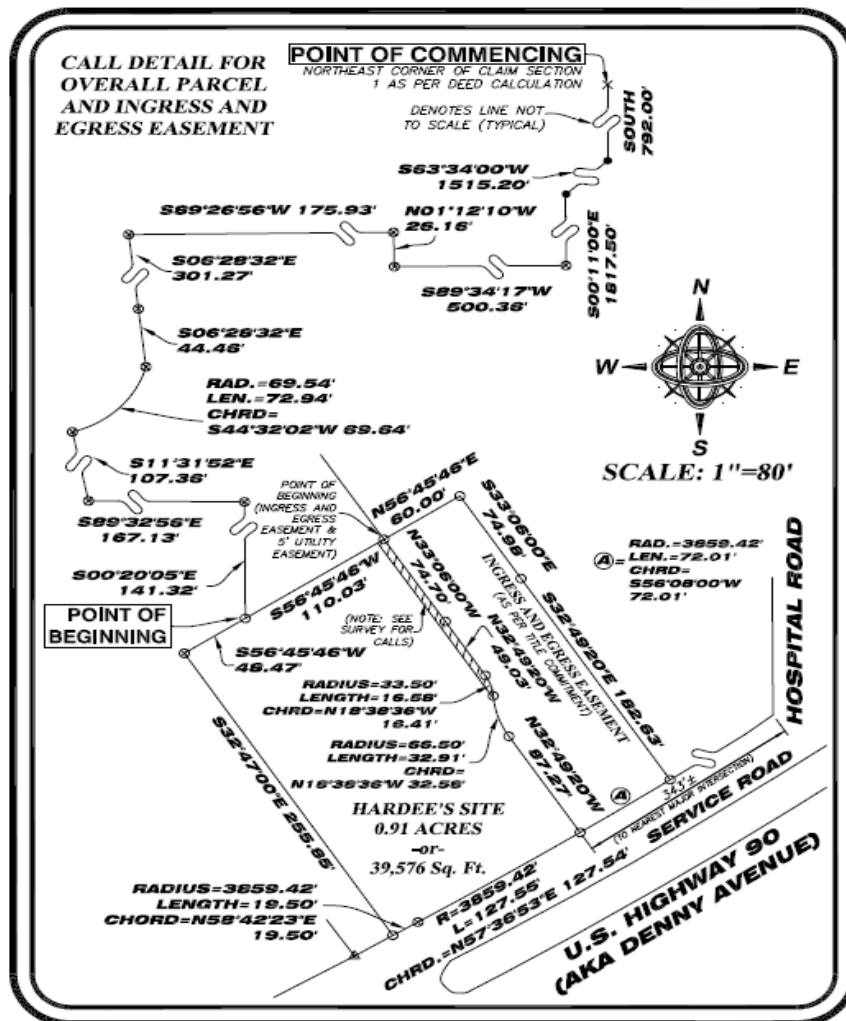
## Metes and Bounds

- Courses and Distances (ex. North  $85^{\circ}12'36''$  East 167.43')
- Point of Commencement-“Commence at ...”
- Point of Beginning-“From the Point of Beginning of the herein described parcel of land...”
- The courses and distances will return to the POB and the description will “close”
- Used to describe parcels of various shapes



# Methods of Describing Real Property

## Metes and Bounds Description



Example: A Portion of Section 25, Township 18 South, Range 3 West, situated in Jefferson County, Alabama and being more particularly described as follows:

Begin at the Northwest corner of the Northeast ¼ of Section 25, Township 18 South, Range 3 West, run East along the North boundary line of said ¼ a distance of 285 feet; thence South a distance of 150 feet to the Point of beginning; thence South 250 feet; thence East 235 feet; thence North 250 feet; thence West 235 feet to the Point of Beginning.

# Methods of Describing Real Property

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## Government Survey System

- Also referred to as the Rectangular Survey System
- Developed by Thomas Jefferson and established under the Land Ordinance of 1785 to survey lands in order to raise money through the sale of the lands west of the original states.
- Divides lands into townships and sections using a system of baselines (east to west) and meridians (north to south).
- Each “Township” is a square of 6 miles square (36 square miles).
- Each township is further divided into 36 “Sections” that are generally one mile square containing 640 acres.

Example: The Northwest Quarter of the Southeast Quarter of Section 1, Township 2 North, Range 3 East , Jefferson County, Alabama.

# Methods of Describing Real Property

## PLAT SHOWING U.S. SYSTEM OF PUBLIC-LAND SURVEYS

Townships and Ranges Within the Huntsville and St. Stephens Meridians in the State of Alabama

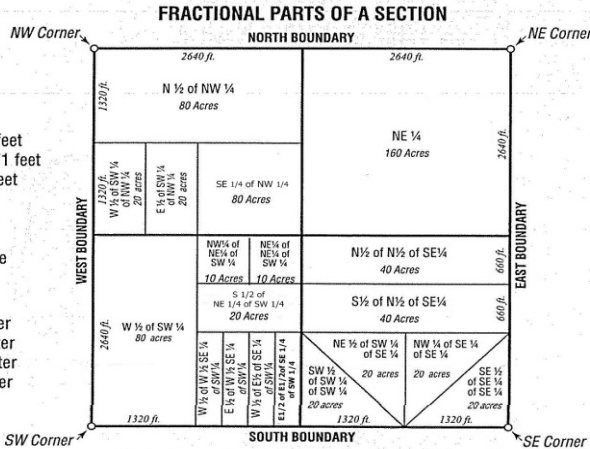
Ranges are East and West of Meridian  
Townships are North and South of Base Line

### MEASURING SYSTEM

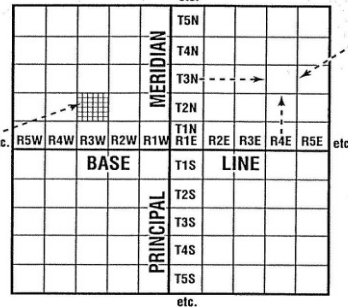
- 1 Link .....7.92 inches
- 1 Chain .....100 links or 66 feet
- 1 Acre .....208.71 by 208.71 feet
- 1 Acre .....43,560 square feet
- 1 Section .....1 mile to side
- 1 Section .....640 acres
- 1 Township .....36 sections
- 1 Township .....6 miles each side

### TERMS

- NE ¼.....Northeast Quarter
- NW ¼.....Northwest Quarter
- SW ¼.....Southwest Quarter
- SE ¼.....Southeast Quarter



### ARRANGEMENT OF TOWNSHIPS AND RANGES WITH REFERENCE TO MERIDIAN AND BASE LINE

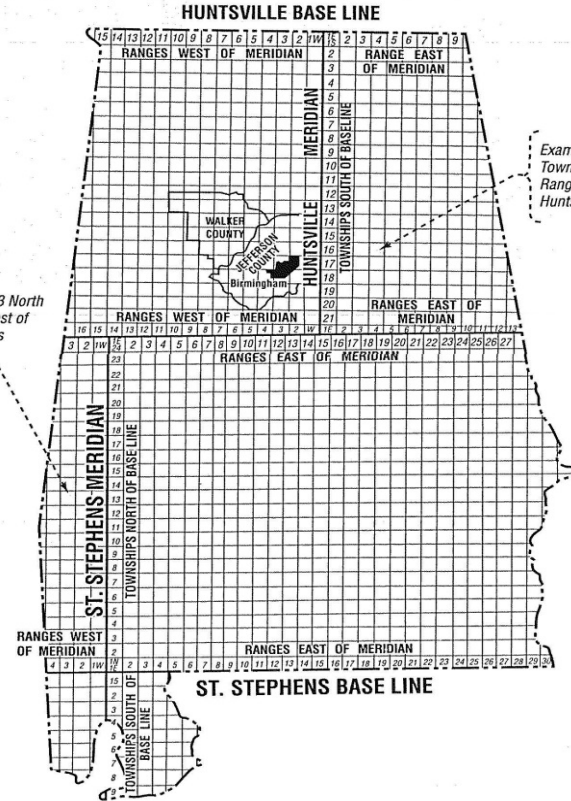


### TOWNSHIP SHOWING ARRANGEMENT OF SECTIONS WITH ADJOINING SECTIONS

36	31	32	33	34	35	36	31
1	6	5	4	3	2	1	6
12	7	8	9	10	11	12	7
13	18	17	16	15	14	13	18
24	19	20	21	22	23	24	19
25	30	29	28	27	26	25	30
36	31	32	33	34	35	36	31
1	6	5	4	3	2	1	6

Example:  
Township 13 North  
Range 3 West of  
St. Stephens  
Meridian

Example:  
Township 16 South  
Range 4 East of  
Huntsville Meridian



# Methods of Describing Real Property

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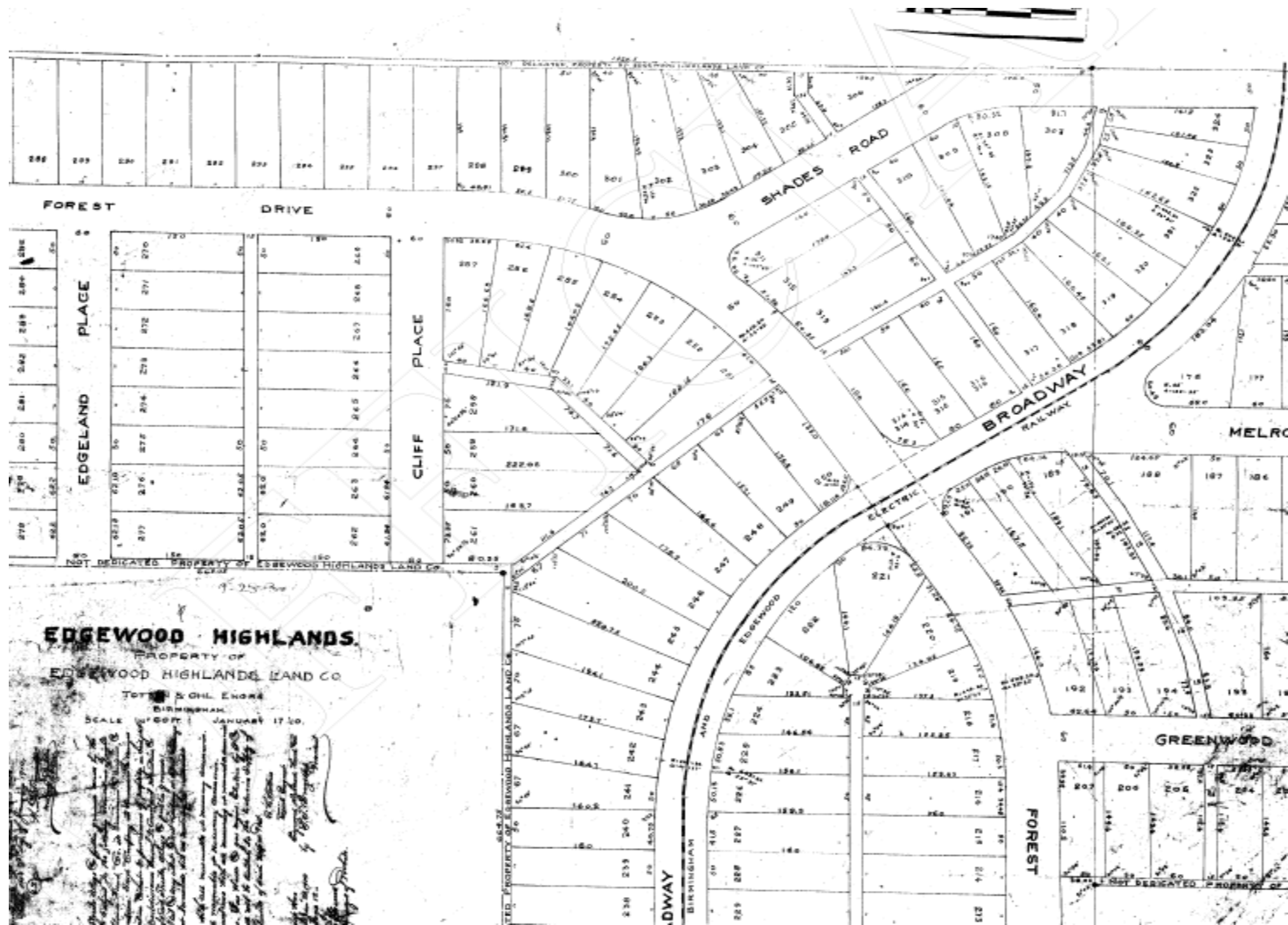
## Subdivision Plats

- Create separate subdivided lots and the “Lot” is made a part of the Legal Description.
- Descriptions are more certain and manageable than other types of descriptions.
- Subdivision plat requires governmental approval and compliance with subdivision regulations of county or municipality.
- Shows dimensions and lot boundaries with street names and location of easements, rights-of-way and alleys in relation to the government survey.

Example: Lot 2, according to the Survey of Edgewood Highlands, as recorded in Map Book 8, Page 12, in the Office of The Judge of Probate, Jefferson County, Alabama.



# Methods of Describing Real Property



# Improper Legal Descriptions

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## Street/Mailing Address

- 1526 Euclid Avenue

## Tax Parcel ID Number or Brief Description

- 29-25-1-001-002.000
- BEG NE COR OF SE  $\frac{1}{4}$  TO E LINE OF RD SE LY ALONG SD RD 135.77 198.51 384.4 TO N R O W OF CO RD 42 NE 89.6

## Ambiguous/Vague Description

- House and property located at the corner of Sunset Drive and Chestnut Road



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# Surveys

# Surveys and Title Insurance

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## *Covered Risk 2(c) of ALTA Owner's and Loan Policy (2006)*

Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed ***by an accurate and complete land survey of the Land.*** The “term encroachment” includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.

# Surveys and Title Insurance

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## *Survey Exception*

Item \_\_\_\_\_. ***Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land.*** Covered Risk 2(c) is hereby deleted.

This policy does not cover any ***dispute over a boundary line*** of the Land, any claim that there is a ***record overlap*** between the Land and another parcel, any claim of ***adverse possession*** or a prescriptive easement as to any part of the Land, and any loss resulting from the ***encroachment*** of an improvement onto the Land or of an improvement attached to the Land onto an adjoining parcel.

This policy does not insure that the Land contains the ***area or acreage*** stated in Schedule A of this policy or in any conveyance or map of the Land.



# Types of Surveys

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1

Boundary or Land Surveys

2

As-Built Surveys

3

ALTA/NSPS Land Title Surveys

4

Topographic Survey

5

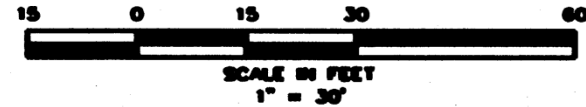
Record Map/Subdivision Plat

6

Site Plans are NOT surveys

# Survey Elements and Symbols

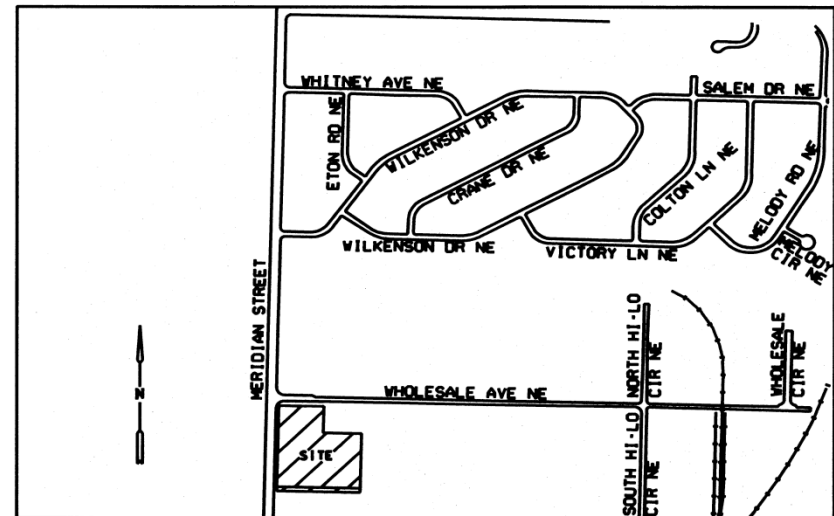
LEGEND	
● IPF	IRON PIN FOUND
● IPS	IRON PIN SET (5/8" REBAR w/CAP)
○	CALCULATED POINT
	UTILITY POLE w/GUY
—OHP—	OVERHEAD POWER LINE
• 582.35	SPOT ELEVATION
—SS—SS—	SANITARY SEWER LINE
—W—W—	UNDERGROUND WATER LINE
—G—G—	UNDERGROUND GAS LINE
—ROW—	RIGHT OF WAY
▲	WATER VALVE
■	WATER METER
⊙	GAS REGULATOR
-X-X-X-	FENCE
	ASPHALT SURFACE
	CONCRETE SURFACE
⊙	SANITARY SEWER MANHOLE
□ TPO	TELEPHONE PEDISTAL
⊙	UNKNOWN MANHOLE
⊙	FIRE HYDRANT
⊙	CATV BOX
⊙	SATELLITE DISH
⊙	CLEAN OUT
⊙	ELECTRIC BOX
⊙	ELECTRIC TRANSFORMER
⊙	FLAG POLE
⊙	WATER BOX



THE NORTH ARROW AND THIS DRAWING ARE BASED ON GRID NORTH AS DEFINED BY THE STATE PLANE COORDINATE SYSTEM, ALABAMA EAST ZONE, NAD '83.

### CERTIFICATE OF ACCURACY

THE RELATIVE POSITIONAL ACCURACY OF THE SURVEYED POINTS UTILIZED AS THE BASIS OF THIS SURVEY HAVE BEEN TESTED BY A MINIMALLY CONSTRAINED, CORRECTLY WEIGHTED LEAST SQUARE ADJUSTMENT AND HAVE BEEN FOUND TO BE LESS THAN OR EQUAL TO 0.07' PLUS 50 PPM AS REQUIRED BY ALTA/ACSM.



VICINITY MAP  
(NOT TO SCALE)

# Avoiding Survey Pitfalls

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## Reading a Survey

- Get the Title Commitment and all Exceptions
- Get all Pages of the Survey maps
- Get the Survey Requirements and Instructions
- Use different highlighters to mark specific items and areas

## Know Your Survey Map Keys and Legend

- Understand the symbols
- Know the directions lines (North Arrow)
- Know the date of the survey
- Know the survey is signed
- Know the Scale

# Avoiding Survey Pitfalls

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## Reading the Survey (continued)

- Legal Description – Locate the legal on the boundary and on the survey; Trace the metes and bounds if need be; COMPARE the legal in the title commitment to the legal on the survey.
- All Descriptions Must Match and be the same as in any Loan Documents
- If Legal Descriptions are not the same – discuss the differences with the surveyor to determine whether discrepancy exist between descriptions.
- Compare location of your property to adjoining property
- Locate all easements as listed in the Title Exceptions; Surveyor needs the Commitment to locate those listed, as well as locate any unlisted surveyor may locate
- Locate all utilities – are there Dedicated Easements or Public Rights of Way
  - Electric, water, sewer, storm drainage, telephone, cable, and gas

# Avoiding Survey Pitfalls

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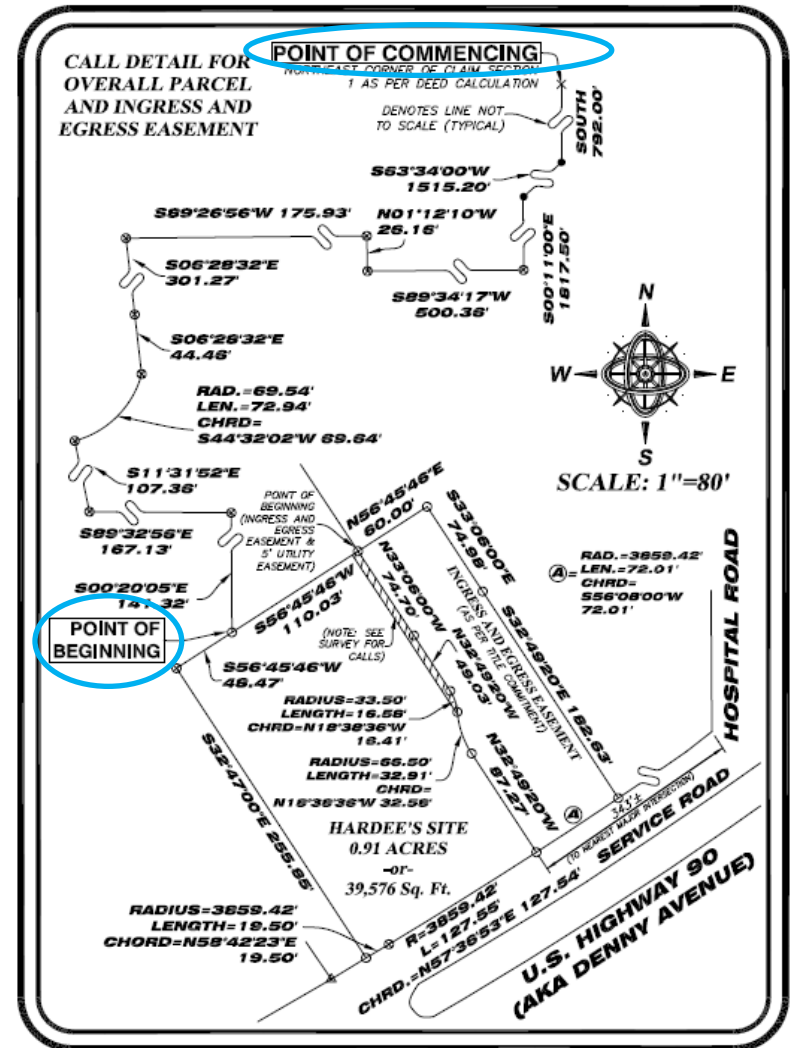
## Reading the Survey (continued)

- Review placement of easements and whether any improvements will encroach (storm and sanitary sewer)
- Locate Access (streets, roads, highways, alleys)
- Is access Public or Private
- Locate all buildings and improvements for encroachment on boundaries, easements and set backs
- Locate set back lines
- Know location, size and placement of buildings and improvements
- Total Land Area
- Parking and whether it meets requirements
- Flood Zone
- Location of easements



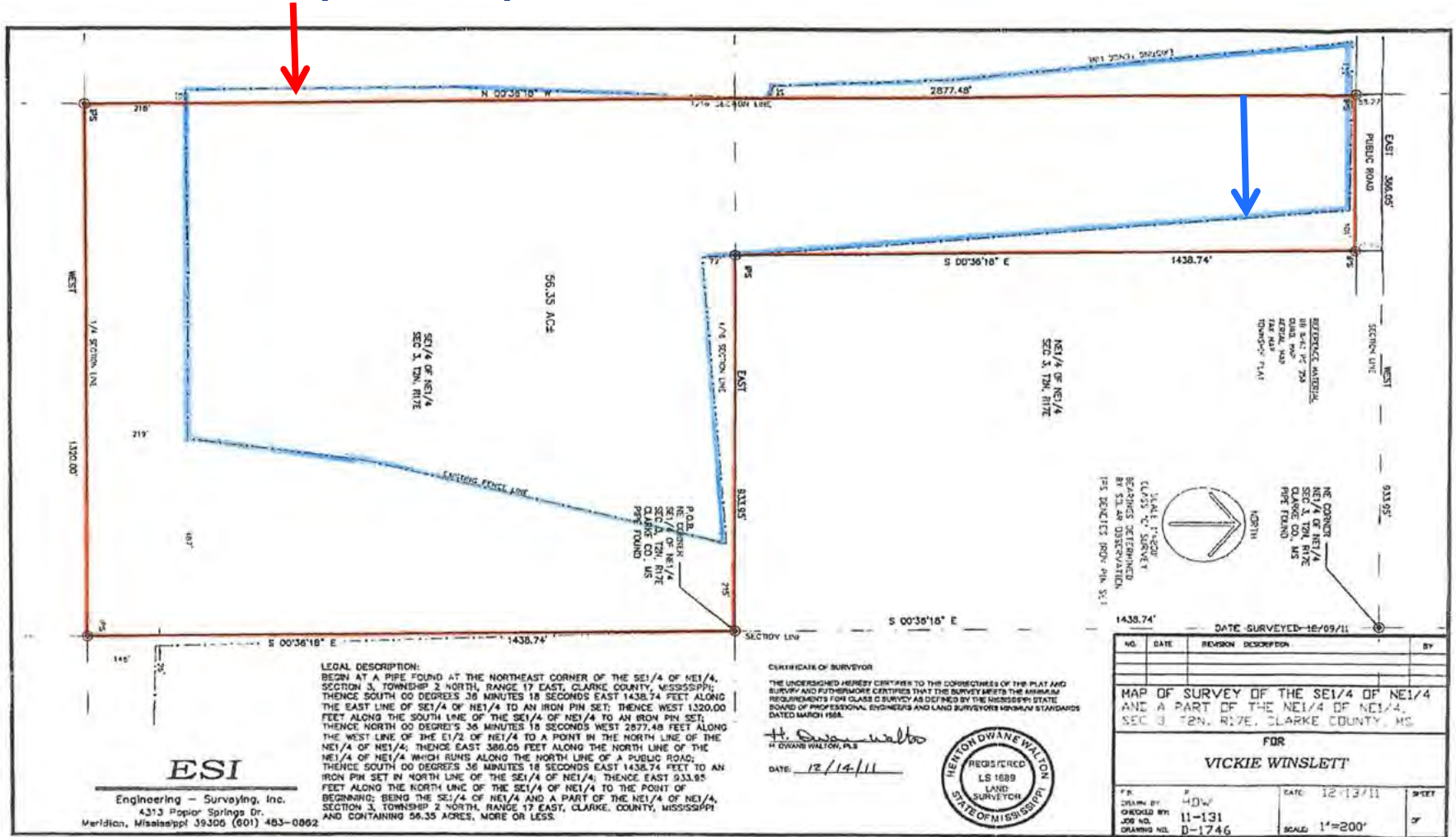
# Survey Review

- The surveyor should survey the **record description** and note any discrepancies.
  - The title insurance policy should make exception for any discrepancies between the record description and the survey description.
- The survey should note the **Point of Commencement**.
- The survey should note the courses and distances to the **Point of Beginning**.
- If the survey indicates the **area or quantity of land**, this statement should be **deleted** from the deed, mortgage and title insurance policy legal description.



# Physical Encumbrances and Encroachments

## The Relationship of Occupied Lines to Record Lines



# Physical Encumbrances and Encroachments

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## *The Location of Physical Improvements*

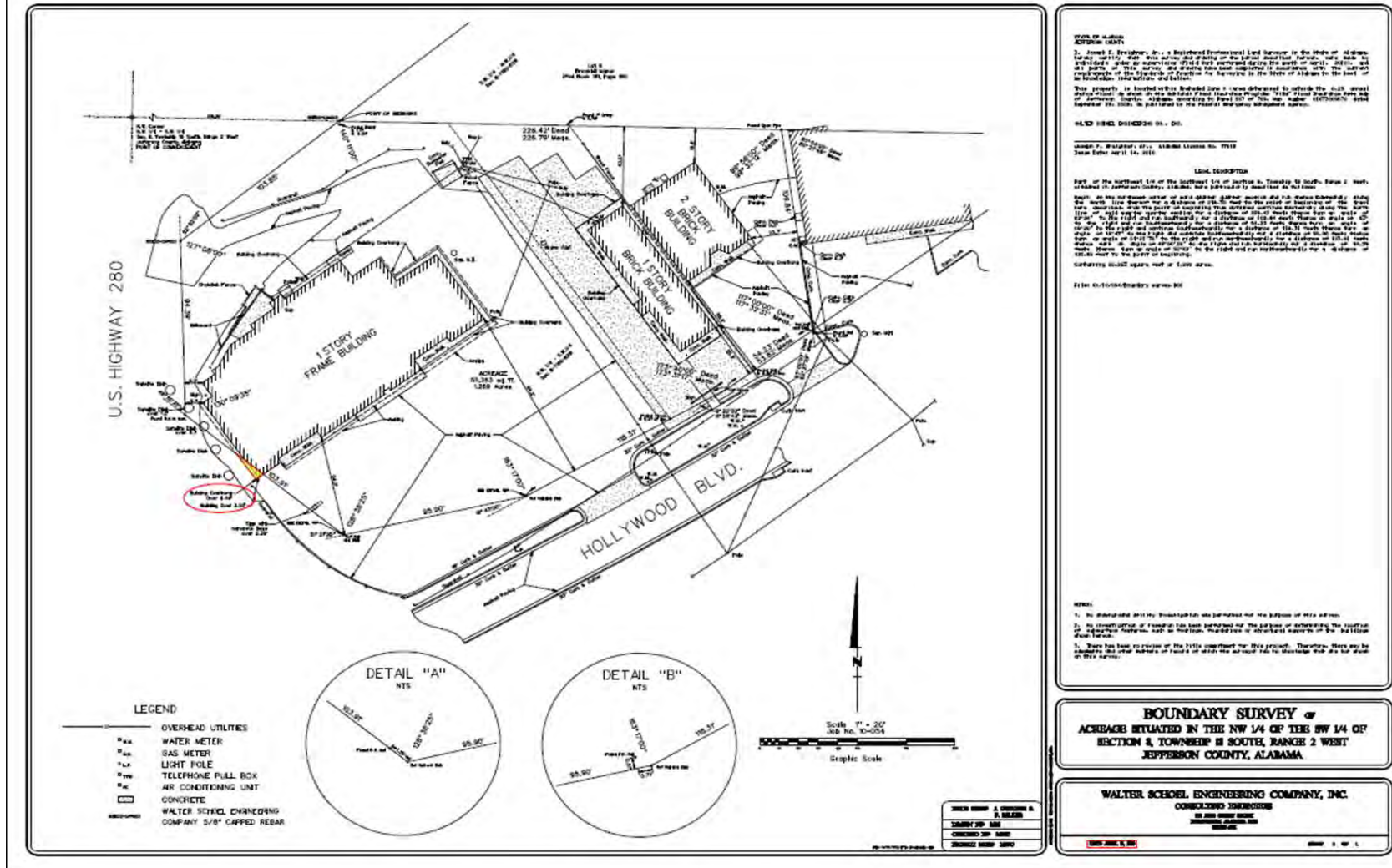
Carefully review the survey to determine if any improvements or fences on the subject property encroach over the boundary line, set-back lines or easements.

- If there are encroachments, make exception for the encroachment on the policy.
- Generally, only on a lender's policy, could affirmative coverage be given for **minor violations** such as encroachments by porches, steps, patios, or overhangs of the main building. If so, the encroachment should be added as an exception followed by:
  - Note: As to the encroachment set forth in Item \_\_\_\_ above, this policy insures the insured against any monetary loss or damages resulting from the entry of an order by a court of competent jurisdiction requiring the forced removal of said encroachment.
- Confirm that improvements on the subject property don't encroach onto the adjoining property.
- Confirm that improvements on the adjoining property don't encroach onto the subject property.



# Physical Encumbrances and Encroachments

## The Location of Physical Improvements





# Physical Encumbrances and Encroachments

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## *Title Policy Exceptions for Encroachments Appearing on Survey*

- **Encroachment of Adjoining Improvements Upon Subject Land**
  - “An encroachment of the (describe improvements) situated upon land adjoining on the \_\_\_\_ upon the land described in Schedule “A” as is shown by a survey of \_\_\_\_ dated \_\_\_\_.”
- **Encroachment of Improvement Upon Adjoining Land**
  - “An encroachment of the (describe improvements) situated upon said land upon the land adjoining on \_\_\_\_\_, as shown by a survey of \_\_\_\_ dated \_\_\_\_.”
- **Encroachment Upon Streets or Alleys**
  - “An encroachment of the (describe improvements) situated upon said land upon \_\_\_\_ street (or alley) as shown by a survey of \_\_\_\_ dated \_\_\_\_.”

# Reviewing the Plat or Survey

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## *Right of Access to a Public Road*

Covered Risk 4 in 2006 ALTA Policy provides “[n]o right of access to and from the Land.”

- Confirm that the plat shows the subject property touching a public road.
- If the Plat does not show that the subject property touches a public road, confirm there is an easement that connects the subject property to a public road.
- If the subject property is accessed by easement, perform a full title search of the burdened estate to check for third party actions that might terminate or extinguish the easement. (Example: tax sales, foreclosure, eminent domain)
- If the subject property does not have direct or indirect access, add an exception for lack of access.

# Reviewing the Plat or Survey

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## *Exception for Lack of a Right of Access to a Public Road*

- **For Commitment:**

- Type under Schedule B:

- “Possible lack of access to and from the premises described in Schedule A above. In order to insure access, we must be provided with satisfactory evidence that there is access to a public street or road.”

- **For Final Policy:**

- Type under Schedule B:

- “Lack of a right of access to and from the premises described in Schedule A above. Covered Risk No. 4 is hereby deleted.”
- Or, “This policy does not insure the right of access to and from the Land.”

# Reviewing the Plat or Survey

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## *Cemeteries, Burial Grounds and Archaeological Sites*

- Ala. Code § 35-1-4 provides that “any owner or lessee or private lands on which a cemetery, grave or burial site is located, has a duty to allow ingress and egress to family members, friends, or decendants of persons buried on the lands.”
- If the survey discloses the existence of grave yards, an exception should be made in Schedule B as to that fact.
  - “Rights of other parties of ingress and egress to grave site(s) and rights of other parties to maintain grave(s) located on the land.”
- There may also be occasions where a tract of land will include pre-historic burial sites of native people often in the form of mounds. Generally, these areas are given extensive protection under the law and no one is permitted to disturb, destroy or build in the affected areas.



# Reviewing the Plat of Survey

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## *Water Boundaries*

- **River, Lake, Canal or Other Waters**

- “This policy does not insure title to any portion of the premises lying below the ordinary high water mark of \_\_\_\_\_ (river, lake, etc.) or any rights in the adjoining water.”
- “This policy does not insure title to land formerly or presently comprising the shores or bottom of navigable water or to artificial accretions or fill.”

- **Ocean or Tidal Waters**

- “This policy does not insure title to any portion of the premises lying below the high water mark of the \_\_\_\_\_ (ocean, bay, etc.).”

- **Creeks or Small Streams Crossing the Property**

- “Riparian and other rights created by the fact that the Land fronts on \_\_\_\_\_ (water name).”



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# Miscellaneous Liens and Other Security Interests

# Miscellaneous Liens and Other Security Interests

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- Judgment Lien
- Federal Tax Lien
- State Tax Lien
- Medicaid Lien
- Hospital Lien
- Commercial Broker Lien
- Sewer Lien
- Fire District Lien
- Municipal Assessment Lien
- Demolition/Weed Lien
- UCC Fixture Filing/Finance Statement
- Mechanic's Liens

# Judgment Lien

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- The filing of a certificate of judgment creates a lien on all property of the debtor located in the county of recordation that is subject to levy and sale under execution. Ala. Code § 6-9-210.
- The lien is created upon recording the certificate of judgment in the office of the judge of probate and extends for a period of 10 years from the date of judgment. Ala. Code § 6-9-211.
- Under Ala. Code § 6-9-211, if an action to enforce the judgment lien is commenced within, but not concluded before the end of the 10 year period, a lis pendens may be recorded and such lien will continue until the action is disposed of.

# Judgment Lien

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- A judgment lien is presumed satisfied after 10 years of the date of the judgment, as opposed to recordation of the judgment. Ala. Code § 6-9-191.
- A judgment lien may be revived for an additional 10 year period so as to have a life of 20 years.
- Revival of a judgment lien is barred after the lapse of 20 years from its entry. Ala. Code § 6-9-190.
- Pursuant to 28 U.S.C. § 3201 judgment liens in favor of the United States or an agency, department, commission, board or other entity, is effective for a period of 20 years and may be renewed for an additional 20 years.

## Sample Requirement Clause:

Proper satisfaction, cancellation or release of the Land from the Judgment against [*Judgment Debtor*], in favor of [*Judgment Creditor*], in the amount of \$[*Judgment Amount*], Case Number [*Court Case No.*], rendered [*Judgment Date*] and recorded in [*Recording Info*].



# Federal Tax Lien

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- See 28 U.S.C. §§ 6321 *et seq.*
- The Alabama Uniform Federal Lien Registration Act codified at Ala. Code §§ 35-11-42 to 48.
- Generally a federal tax lien will expire within 10 years after the Date of Assessment listed on the lien. 28 U.S.C. § 6502(a) or:
- Unless notice of the lien is refiled by the date for Last Day for Refiling, the notice shall operate as a certificate of release on the day following such date.

## Sample Requirement Clause:

Proper satisfaction, cancellation or release of the Land from the Federal Tax Lien against [*Tax Debtor*], in favor of the Internal Revenue Service, in the amount of \$[*Amount*], Assessed on [*Assessment Date*], and recorded in [*Recording Info*].



# State Tax Lien

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- The Alabama Tax Enforcement and Compliance Act, Ala. Code § 40-29-1 et seq., creates a lien for state taxes, except ad valorem taxes, on property of an individual, corporation, partnership or other entity that is liable to pay taxes.
- Tax lien is not valid against third parties until a notice of lien is filed by the Commissioner of Revenue in accordance with Ala. Code § 40-29-22.
- Ala. Code § 40-29-51(a)(1) provides that levy must be made within 10 years after the final assessment of the tax.

## Sample Requirement Clause:

Proper satisfaction, cancellation or release of the Land from the State Tax Lien against [*Tax Debtor*], in favor of the State of Alabama Department of Revenue, in the amount of \$[*Amount*], Assessed on [*Assessment Date*], and recorded in [*Recording Info*].



# Medicaid Lien

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- See Social Security Act § 1917, 42 U.S.C. § 1396p, and 42 C.F.R § 433.36 which authorizes Medicaid to take liens on properties of Medicaid applicants/recipients when eligibility criteria, policies and regulations permit.
- Alabama Medicaid Agency is responsible for filing, executing and releasing of liens.
- Medicaid must be reimbursed the amount expended on behalf of the recipient or the current tax appraised value of the property, whichever is less.
- In short, Medicaid liens are NOT presumed satisfied upon expiration of 10 year period.
- Go to [www.medicaid.alabama.gov](http://www.medicaid.alabama.gov) for additional information.

## Sample Requirement Clause:

Proper satisfaction, cancellation or release of the Land from the Medicaid Lien against [*Medicaid Recipient*], in favor of the Alabama Medicaid Agency, in the amount of \$[*Amount*], Assessed on [*Assessment Date*], and recorded in [*Recording Info*].





# Hospital Lien

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- See Ala. Code § 35-11-370 to 375
- Generally a hospital shall have a lien for all reasonable charges for hospital care of an injured person who entered the hospital within a week of receiving such injuries.
- Lien attaches to any action, claim, settlement or judgment against any person or entity whose acts or omissions caused the injuries requiring hospital care.
- Lien DOES NOT attach to the real property of the injured person

# Commercial Broker Lien

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- See Ala. Code § 35-11-450 to 454
- Under the act, a broker involved in certain commercial real estate transactions may claim a lien for compensation due under a written brokerage agreement.
- Commercial Real Estate DOES NOT include:
  - Real estate having one to four residential units
  - Single family units (condo, townhome, mobile home)
  - Residential lots
  - Any property sold, leased or otherwise conveyed to a governmental entity or to any subsidiary or affiliate thereof

Continued on next slide



# Commercial Broker Lien

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- The lien arises upon the happening of events set out in Ala. Code §§ 35-11-451(a)(1) and (2), whether or not the broker agreement is with the seller or purchaser.
- Attachment of the lien occurs upon the recording of a notice of lien in the Office of the Judge of Probate.
- Notice of Lien must comply with Ala. Code § 35-11-451(f)
- Lien is generally required to be recorded within 90 days of when the broker is entitled to compensation under the agreement and failure to timely file notice vitiates the lien.
- Action must be filed in Circuit Court to enforce lien within 180 days of recording the notice of lien.

Continued on next slide

# Commercial Broker Lien

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## Sample Requirement Clause:

The subject property is commercial property and therefore a sworn statement is required from both the Seller(s) and Purchaser(s) that there is no unpaid or disputed real estate commission, all compensation due or to become due under any listing, agency or other brokerage agreement has been paid or has been waived in writing by the potential lien claimant, and there has been no written notice received concerning any unpaid real estate commission which could give rise to a Broker's Lien pursuant to Ala. Code § 35-11-450 et seq.

# Sewer Lien

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- Municipal Sewer Systems
  - Ex. Jefferson County
  - Problems associated with multi-family properties
  - Verify sewer liens and delinquencies
    - <http://sewer-accts.jccal.org/search.aspx>
    - Or by calling (205) 325-5390 and provide tax parcel ID number or street address.
  - Ala. Const. Amend. No. 818 provides that sewer services received in name of tenant shall be the responsibility of tenant and shall not constitute a lien on the property where service was received.
  - Under Ala. Code § 35-9-14, tenant is responsible for sewer services bill
- Private Sewer Systems
  - Review Sewer Service Agreement and Covenants of record
  - For unimproved lots, determine whether or not vacant lot fee is charged

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# Sewer Lien

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## Sample Requirement Clause:

We will require a statement from The [*Municipal Sewer Board or Authority*] Sewer Billing Office, stating there are no unpaid liens or delinquencies upon subject property.

We will require a statement from [*Sewer Management Company*] Sewer Billing Office, stating there are no unpaid liens or delinquencies upon subject property.

# Fire District Lien

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- Ala. Code § 11-89-1 et seq., and numerous state constitutional amendments authorize the creation of fire districts throughout the state.
- Many are located within unincorporated areas where fire protection was previously unavailable.
  - Examples:
    - Center Point Fire District
    - North Shelby Fire District
    - Forestdale Fire District
    - Palmerdale Fire District
- Alabama law provides for the districts to assess dues to property owners directly.
- Assessments are typically based on appraised tax values.

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# Fire District Lien

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- Ala. Code § 11-48-49 to 52 provides remedies to the fire district to satisfy assessment liens, including the sale of the property.
- The procedure for redemption from a proper sale for unpaid fire dues is set forth in Ala. Code § 11-48-54.
- Important to obtain a written statement from the Fire District stating that there are no unpaid charges or dues against the subject property.

## Sample Requirement Clause:

A written statement is required from The [*Fire District*] stating that there are no unpaid assessments against the subject property.

# Municipal Assessment Lien

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- Ala. Code § 11-48-1 “The Municipal Public Improvement Act”
- Ala. Code § 11-48-4 sets forth the types of improvements which may give rise to a municipal improvement assessment.
- Such improvements include construction of streets, ornamental lighting, sea walls, etc.
- Ala. Code § 11-48-14 provides the city council may assess the cost of construction against the property abutting the street of other public improvement.
- Ala. Code § 11-48-21 requires that the municipality maintain a book listing property owners to be assessed and such book is public record, although it is not recorded but kept by the city clerk.
- Ala. Code § 11-48-49 allows for the municipality to sell the property for unpaid assessments after giving three weeks notice

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# Municipal Assessment Lien

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- Obtain a letter from the city clerk stating that there are no unpaid municipal improvement assessment or other charges.

## Sample Requirement Clause:

A written statement is required from The City Clerk of [*Municipality*] stating that there are no unpaid municipal improvement assessments and special dues against the subject property.

## Sample Requirement Clause:

Satisfactory proof is required that the subject property is not located in a municipality that charges assessments. If so located, satisfactory proof that all assessments are paid in full is required.

# Demolition/Weed Lien

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- Under Ala. Code § 11-40-30 (Class I Municipalities with population of 300k or more) and various local acts conferring similar authority on various other governmental bodies, after giving proper notice, a municipality can remove or demolish buildings and structures, if found to be unsafe to the extent of being a public nuisance.
- Ala. Code § 11-40-35 sets forth the costs of demolition and provides for the creation of a lien on the property.
- The lien is superior to all other liens on the property except for taxes and shall remain in force until paid.
- The unpaid assessment can be added to the ad valorem tax and collected by assessment.

## Sample Requirement Clause:

Payment and satisfaction of the Demolition Assessment or Weed Clearing Lien in favor of [*Municipality*] as recorded in [*Recording Info*].

# UCC Fixture Filing/Finance Statement

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- Ala. Code § 7-9A-101 Alabama Uniform Commercial Code
- Definitions to know:
  - Fixture-goods that have become so related to particular real property that an interest arises under real property law.
  - Fixture Filing-filing of a financing statement covering goods that are to become fixtures.
  - Goods-means all things that are moveable when the security interest attaches. Includes fixtures, standing timber, manufactured homes and crops grown, growing or to be grown.
- Ala. Code § 7-9A-502(b) - Contents of Real Property related Financing Statement
- Ala. Code § 7-9A-515 – Duration and Effectiveness of financing statement
  - Generally effective for 5 years after date of filing

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# UCC Fixture Filing/Finance Statement

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- Ala. Code § 7-9A-515 – Duration and Effectiveness of financing statement (continued)
  - Generally effective for 5 years after date of filing, and upon lapse of time, unless continued, the financing statement ceases to be effective and as a result, any security interest becomes unperfected.
  - Initial financing statement filed in connection with manufactured home transaction is effective for 30 years.
  - A continuation statement may be filed only within 6 months before the expiration of the 5 year or 30 year period.
  - Upon timely continuation, the financing statement is effective for an additional 5 year period.
  - If the debtor is a transmitting utility (electricity, water, sewer), the financing statement is effective until a termination statement is filed.

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# UCC Fixture Filing/Finance Statement

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- Ala. Code § 7-9A-334(d)-Fixtures purchase-money priority. A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:
  1. the security interest is a purchase-money security interest;
  2. the interest of the encumbrancer or owner arises before the goods become fixtures; and
  3. the security interest is perfected by a fixture filing before the goods become fixtures or within 20 days thereafter.

## Sample Requirement Clause:

Recording of proper termination statement with respect to Financing Statement showing [*Debtor Name*] as debtor, and [*Secured Party*], as secured party, recorded [*Record Date*], in UCC Book [*UCC File No.*] in the Office of the Judge of Probate of [*County Name*], Alabama.

# Mechanic's Liens

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## *General Overview*

- In Alabama mechanics' liens are purely statutory and codified at Ala. Code § 35-11-210 to 35-11-234
- The lien arises when the claimant makes the contribution, but remains inchoate until action is taken to enforce the lien
- Two types of liens
  - “Full price” lien-contract between lien claimant and owner
  - “Unpaid balance” lien-no express contract between lien claimant contributing materials and the owner.
- Lien claimant must have contributed work under a contract, whether expressed or implied.
- Lien claimant must strictly comply with statutory mandates for the perfection of any claimed lien, and if there is a failure, he becomes merely a general creditor and loses status as a lien claimant



# Mechanic's Liens

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## *Lienable Contributions - Labor*

- Depends on the nature of the labor contributed
- Must be established that the labor was performed upon or contributed to something that has attached to and become part of the realty upon which the lien is claimed.
- Determined to be contribution of labor for improvement on land:
  - Clearing, grading, and site preparation of raw land
  - Excavation and preparation of well for permanent water supply
- Determined not to be contribution of labor for improvement on land:
  - Mere preparation of building plans by architect
  - Surveying, lot staking and map or plat preparation by a surveyor

# Mechanic's Liens

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## *Lienable Contributions - Materials*

- Materials must actually be contributed to and incorporated into improvements
- Lien does not attach for materials left lying on the premises and not incorporated into the improvements
- Contract modifications or change orders can result in extensions of the date of maturity of the indebtedness, therefore creating a different time within to bring the civil action to perfect and enforce a lien.

# Mechanic's Liens

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## *Lienable Contributions - Other*

- Waste disposal services
- Equipment
- Machinery

# Mechanic's Liens

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## *Verified Statement of Lien - Step 1*

- Every person entitled to a lien must record a verified statement of lien in the office of the judge of probate of the county in which the property is situated in accordance with Ala Code § 35-11-213 .
- The purpose of the lien is to give notice to purchasers and creditors, however there are decisions indicating that that notice that a lien may exist may be imputed from the condition of recent construction on the land
- General Requirements
  - State the amount secured by the lien
  - Adequate description of the property
  - Name of the owner of the land
  - Accompanied by an affidavit of a person having knowledge of the facts

# Mechanic's Liens

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## *Time for Filing Verified Statement*

- See Ala. Code § 35-11-215
  - Original Contractor – 6 Months
  - Day Laborer and Journeymen – 30 days
  - Other Claimants - 4 Months
- Period begins to run after the last item of work or labor has been performed or the last item of any material has been furnished
- Must look to the contractual arrangements or the parties to determine whether or not a lien claimant can be classified as an “original contractor”
- Timing is critical in order to perfect and enforce

# Mechanic's Liens

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## *Enforcement by Civil Action - Step 2*

- Jurisdiction - See Ala. Code § 35-11-220
- Subject matter jurisdiction over a civil action to perfect and enforce a lien lies in the circuit court of the county where the land is located
- In counties with more than one judicial division, each having distinct jurisdiction, the action to enforce lien must be filed in the judicial division where the land is located
- Action MUST be brought within 6 months of the maturity of the indebtedness under the contract
- Statute of Limitations - See Ala. Code § 35-11-221
- Action MUST be brought within 6 months of the maturity of the indebtedness under the contract
- Debt typically matures, absent a contractual provision, when it accrues as to be due and payable which is typically on the last day work is performed or materials contributed
- Sometimes it can be difficult to determine the date of the lien claimant's last work or other contribution. Question of fact.

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# Mechanic's Liens

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- Sometimes it can be difficult to determine the date of the lien claimant's last work or other contribution. Question of fact.
- For example, modification of material supplier's contract to make indebtedness mature upon the sale of property, an action to perfect and enforce a lien was timely though filed approximately one year after last contribution by the claimant
- Additional considerations regarding determination of maturity date include hiatus between contributions as to create possible separate contracts



# Mechanic's Liens

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# Mechanic's Liens

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## *Judgment*

- See Ala. Code § 35-11-224
- In order for a lien to be established securing the contract price of labor and materials, judgment must be rendered on the debt or contract claim
- Check for final adjudication of the matter and see if controversy has been reduced to a money judgment and Certificate of Judgment has recorded



# THANK YOU

**J. Price Evans IV**

Assistant Vice President | Mississippi Valley Title Services Company  
Assistant Vice President | Old Republic National Title Insurance Company  
Commercial Underwriting Counsel

T: 205.682.2770 | F: 205.682.2775 | TF: 800-647-2124

[pevans@mvt.com](mailto:pevans@mvt.com)

Mississippi Valley Title  
1905 Indian Lake Drive | Birmingham, AL 35244

[mvt.com](http://mvt.com) | [oldrepublictitle.com](http://oldrepublictitle.com)



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