

STATE OF MINNESOTA
CONSERVATION EASEMENT PROGRAM
TITLE INSURANCE PROCEDURES

Feb '09

GENERAL MATTERS

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, any easement acquired under the RIM umbrella are considered substantially 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).

Price and Billing

The State shall be given re-issue rates where appropriate.

State costs to consist of:

- ❖ premium as agreed upon by Company and State.
- ❖ reasonable service charges by the title agent.
- ❖ cost of continuing title evidence from date of commitment to policy date only. Cost not to include continuing abstract in final typewritten form but will include a non-abstractor title agent's costs for written certifications of title between the date of the commitment and the time the insured easement is recorded.
- ❖ costs, if any, advanced for filing fees, recording service charges, mailing, etc. (misc. charges).
- ❖ examination charges, if any.
- ❖ costs of providing half section maps and copies (non-certified) of schedule B exceptions.

Easement grantor to pay for:

- ❖ abstract updating.
- ❖ creation of title evidence if there is none or initial continuation of existing title evidence.
- ❖ all costs associated with title clearance, including interim continuation, if any.

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

The easement grantor and the State (SWCD) are to be billed for their charges separately. The State billing will be sent to SWCD. The State assumes no responsibility for payment of charges billed to easement grantor. The issuance and delivery of the commitment or policy will not be conditioned on payment of easement grantor's bill. State (SWCD) will pay agent/company's bill only when final typewritten policy delivered to and accepted by State.

Delivery Dates For Commitment and Policy Delivery

The company/agent must agree to:

- ❖ Deliver to 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.
- ❖ Deliver the final typewritten policy within four business days after the recorded conservation easement, subordination consents, etc. are received.

Evidence of Title

Easement grantor to provide or pay for creation of initial title evidence and any continuance due to title or encumbrance problems.

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

TITLE COMMITMENT AND FINAL POLICY

Final Policy

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.

Searches

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 (Interests)

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

Amount of Coverage - The SWCD will provide this figure when ordering the policy. **The amount of insurance is the total of the easement payment.** Title agents should not change amount unless requested by the SWCD.

Interests to be listed as follows:

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

Please refer to the attached [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 attached.)

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 policy's general insuring provisions or affirmatively in Schedule BI.

The agent shall individually list in the commitment and policy 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, TITLE CLEARANCE AND CLOSING

Delivery of commitment

The agent will send the following items to the SWCD:

- ❖ The original of commitment.
- ❖ 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 in the agent's judgment, copies of other documents constituting Schedule B exceptions are necessary for the Attorney General to understand the Schedule B exception, the agent shall provide complete copies of those documents. Copies of mortgages easements, etc. required only upon request by State.

Title clearance

The Attorney General will determine the following:

- ❖ Which Schedule B exceptions must be deleted from 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, 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:

- ❖ have full responsibility 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 the agent, for the Attorney General's review and approval.

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

Recording of easement

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;
- ❖ order of filing instructions;
- ❖ returning of recorded instruments;
- ❖ other instructions, as appropriate.

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 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 complete 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.