

# TITLE ALERT

**Title Alert 2016-06**

**June 30, 2016  
PA - STANDARD**

## **Insuring Access over Railroad Rights of Way**

**Purpose:** To provide guidance and establish requirements for transactions in which access to the Land<sup>1</sup> requires crossing railroad property.

**Background:** Issues associated with active, inactive, or abandoned railroad lines ("RR Property") have formed the basis of a growing number of avoidable claims losses. This is true not only when the Land contains or is encumbered by RR Property, but also when access<sup>2</sup> to the Land requires crossing RR Property.

Where access to the Land (or a part thereof) requires crossing RR Property, the right to cross it must be thoroughly examined. During the course of your examination, remember the following general principles:

- A public right of access for street crossings may be granted by the railroad.<sup>3</sup>
- Prescriptive rights generally do not accrue against rights in RR Property.
- Private rights of access are commonly restricted to those who have an easement (reserved from the original grant or otherwise) or a revocable license from the railroad (sometimes called a "private way license" or "crossing permit"). Licenses and permits, unlike easements, do not run with the land in favor of successors or assigns, are often not recorded, and may be terminated by the railroad.

**Standard:** When access to the Land requires crossing RR Property, a public or private right of access to cross it must be confirmed or created as set forth below.

### **A. Access rights established by recorded easement or public right**

If access to the Land depends on a recorded easement or public right to cross RR Property that is valid, currently existing, and unencumbered, no additional steps are necessary. However, an exception for the terms and conditions of the easement or public right is required.

### **B. Access rights established by recorded license**

If access to the Land depends on a recorded license, an exception for the terms and conditions of the license is required and the consequences of its future termination must be addressed. If the existing license is recorded in the Public Records in favor of the current owner, or a new license is obtained by the purchaser of the Land in the contemplated transaction, it should be set forth in the Attorney's Preliminary Certificate and Report on Title. The following exception and note will be included in Schedule B – Section II of the commitment and included in the policy to be issued.

<sup>1</sup> The capitalized terms "Land", "Public Records" and "Title" have the same meaning as set forth in the ALTA 2006 policies.

<sup>2</sup> It is important to note that different policy forms contain different insuring provisions with respect to access to and from the Land. For example, the ALTA 2006 Owner's policy "insures against loss or damage...sustained or incurred by the Insured by reason of...no right of access to and from the Land." In contrast, the ALTA Homeowner's Policy of Title Insurance for a One-To-Four Family Residence provides coverage against actual loss if the insured does "not have actual vehicular and pedestrian access to and from the Land, based upon a legal right."

<sup>3</sup> There are approximately 212,000 public crossings in the U.S. The following website is helpful for researching public crossings: <http://safetydata.fra.dot.gov/OfficeofSafety/publicsite/Query/PublicGradeCrossingInventoryByStateCounty.aspx>

The terms, conditions, and provisions of that certain license dated \_\_\_\_\_ by and between the \_\_\_\_\_ Railroad, and \_\_\_\_\_, recorded at \_\_\_\_ book and \_\_\_\_ page on \_\_\_\_\_ in the \_\_\_\_\_ County Records, and the lack of a right of access to and from the Land that would result from the termination of said license.

Note: If the license has been terminated or will be terminated by virtue of the contemplated transaction and no new license is to be obtained, the policy to be issued will contain an exception for the lack of a right of access to and from the Land.

**C. No access of record**

If access to the Land requires crossing RR Property and a public or private right to cross the RR Property is not found in the Public Records, the policy (and any commitment or preliminary report) must contain the following exception.<sup>4</sup>

The lack of a right of access to and from the Land as a result of the absence of an easement, public right, or license to cross the \_\_\_\_\_ Railroad.

In order to remove this exception, you must obtain an easement or license granting access to and from the Land. The following requirement should be raised in the preliminary report and will be shown in Schedule B – Section I of the commitment:

Easement or license from the \_\_\_\_\_ Railroad granting access to and from the Land satisfactory to the Company and suitable for recording.

Note: The policy will contain the following exception: The terms, conditions, and provisions of that certain [easement or license] dated \_\_\_\_\_ by and between the \_\_\_\_\_ Railroad, and \_\_\_\_\_, recorded at \_\_\_\_ book and \_\_\_\_ page on \_\_\_\_\_ in the \_\_\_\_\_ County Records, and the lack of a right of access to and from the Land that would result from the termination of said [easement or license].

If you have any questions, please feel free to contact us.

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\* \* \* \* This Title Alert should become a permanent part of your records to assure compliance with its requirements. \* \* \* \*

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<sup>4</sup> Note that access is an issue in every policy that is issued. This Standard deals solely with access to the Land that crosses RR Property.