



The WRA would like to make you aware of a national title insurance trend of certain language in title commitments being included at the request of national title insurance underwriters regarding the coronavirus, COVID-19 (COVID-19). While this language is not frequently popping up in Wisconsin title commitments, we wanted to make you aware in case the buyer is presented a title commitment with the following or similar language.

#1 Blanket COVID-19 Exception

"[Company] reserves the right to raise additional exceptions requirements or to decline to issue a title policy based on changes in recording and title searching capabilities due to the COVID-19 Pandemic."

It is our understanding this language has been requested based upon concerns about being unable to search title records at local registers of deeds and the inability to record documents due to COVID-19. Essentially, the inclusion of this or similar language means the buyer's title commitment could be rendered useless because the title company won't issue the title policy.

Even though some Wisconsin registers of deeds have limited hours, Wisconsin title companies have not experienced any issues with record searches or recording documents. Therefore, this language does not need to be included in Wisconsin title commitments.

#2 Execution of COVID-19 Indemnity and Hold Harmless

"Execution of COVID-19 Indemnity and Hold Harmless Agreement by the parties to the transaction."

The WRA is not privy to the specific terms of this agreement. This language appears to condition the title commitment on the buyer and potentially the seller, agreeing to compensate the title company against any loss associated likely resulting from COVID-19 issues (indemnify). Additionally, the parties agree to hold the title company harmless from future litigation regarding the policy issues arising due to COVID-19 concerns (hold harmless).

If a title commitment includes these types of provisions

Because Wisconsin does not have the same search and recording issues as other states, Wisconsin buyers should reach out to their title agent and ask for language similar to these types of provisions in the title commitment to be removed.

Lastly, buyers should always review the commitment and be encouraged to speak with legal counsel when they have questions, especially since agents cannot provide legal advice.