

Common Types of Encroachments

How the Homeowner's Policy (HOP) Handles "Encroachments"

When buying your home, it is important to understand the protections that your title insurance policy provides with respect to encroachments. An encroachment is the projection of a building, improvement or object onto adjoining land belonging to another. Problems can arise when adjoining landowners begin to treat a portion of your property as if it was their own.

Common encroachments today include:

- Trees and/or vegetation (vines, bushes, etc.)
- Fences or boundary walls
- Landscaping
- Driveways
- Awnings and trellises
- Decks
- Garage or house overhangs

The above possible encroachments can affect the use and enjoyment of your property and can have serious consequences if not addressed. If any encroachment exists and has been noted of record (i.e., a document has been recorded in the official records of the county where the real property exists) then the insurance policy should note the encroachment in Schedule B. If you become aware of an encroachment issue, you should immediately seek legal counsel and/or contact your title insurance company. Any area burdened by an easement or within a building setback (i.e., a specific distance from property boundary lines that is not a buildable area) should be referred to by the recorded document that creates the easement area. Your policy will have these listed in priority order in Schedule B. Many building setbacks are shown on the filed map that subdivisions use when the lots are created, but not always. If you're building on your property, always check with the city and/or county building or planning departments for municipal setback requirements.

The Homeowner's Policy has 32 covered risks, and the following three covered risks deal with encroachments:

Covered Risk 21 is for encroachment of an insured's structures. You have coverage if you are forced to remove your existing structures because they encroach onto your neighbor's land. If the encroaching structures are boundary walls or fences, the amount of your insurance for this covered risk is subject to the deductible amount and the maximum dollar limit of liability shown in Schedule A of the policy. The deductible differs, so please ask your title insurance sales representative what your deductible would be.

Covered Risk 22 is for encroachment of a neighbor's structures that results in a sale falling through; so you have coverage if someone else has a legal right to, and does, refuse to perform a contract to purchase your land, lease it or make a mortgage loan on it because your neighbor's existing structures encroach on your land.

Covered Risk 23 is for encroachment onto an easement or setback; so you have coverage if you are forced to remove your existing structures, which encroach onto an easement or over a building setback line, even if the easement is accepted in Schedule B of the policy.

When encroachments are not dealt with, they can lead to legal headaches and significant title issues, such as adverse possession and prescriptive easement rights, which in turn, could result in the loss of a portion of your usable real estate.

When parties disagree on encroachments, they often end up in court litigating a quiet title action to resolve their issues. This is a costly, time-consuming ordeal that can be avoided if the homeowner knows how to identify an encroachment and deal with it.

Contact your title insurance sales representative with any questions regarding encroachments, and the related protections provided by the Homeowner's Policy (HOP). **Be safe. Ask for a HOP policy from your trusted title sales representative at Progressive Title Company. It's better to be safe than sorry!**

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See how the ALTA/CLTA Homeowner's Policy compares...

1.	Someone else owns an interest in Your Title.	CLTA Standard
2.	Someone else has rights affecting Your Title because of leases, contracts, or options.	
3.	Someone else claims to have rights affecting Your Title because of forgery or impersonation.	
4.	Someone else has an Easement on the Land.	
5.	Someone else has a right to limit Your use of the Land.	
6.	Your Title is defective as defined in the policy.	
7.	Any of Covered Risks 1 through 6 occurring after the Policy Date.	
8.	Someone else has a lien on Your Title as defined in the policy.	
9.	Someone else has an encumbrance on Your Title.	
10.	Someone else claims to have rights affecting Your Title because of fraud, duress, incompetency or incapacity.	
11.	You do not have actual vehicular and pedestrian access to and from the Land, based upon a legal right.	
12.	You are forced to correct or remove an existing violation of any covenant, condition or restriction affecting the Land as defined in the policy.	
13.	Your Title is lost or taken because of a violation of any covenant, condition or restriction, which occurred before You acquired Your Title, as defined in the policy.	
14.	The violation or enforcement of those portions of any law or government regulation concerning: building, zoning, land use, improvements on the Land, land division or environmental protection as defined in the policy.	
15.	An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 14 if there is a notice recorded in the Public Records, describing any part of the Land, as defined in the policy.	
16.	An existing violation of a subdivision law or regulation affecting the Land, as defined in the policy.	
17.	You lose Your Title to any part of the Land because of the right to take the Land by condemning it, as defined in the policy.	
18.	You are forced to remove or remedy Your existing structures, or any part of them - other than boundary walls or fences - because any portion was built without obtaining a building permit from the proper government office, as defined in the policy.	
19.	You are forced to remove or remedy Your existing structures, or any part of them, because they violate an existing zoning law or zoning regulation, as defined in the policy.	
20.	You cannot use the Land because use as a single-family residence violates an existing zoning law or zoning regulation.	
21.	You are forced to remove Your existing structures because they encroach onto Your neighbor's land, as defined in the policy.	
22.	Someone else has a legal right to, and does, refuse to perform a contract to purchase the Land, lease it or make a Mortgage loan on it because Your neighbor's existing structures encroach onto the Land.	
23.	You are forced to remove Your existing structures which encroach onto an Easement or over a building set-back line, even if the Easement or building set-back line is excepted in Schedule B.	
24.	Your existing structures are damaged because of the exercise of a right to maintain or use any Easement affecting the Land, even if the Easement is excepted in Schedule B.	
25.	Your existing improvements (or a replacement or modification made to them after the Policy Date), including lawns, shrubbery or trees, are damaged because of the future exercise of a right to use the surface of the Land for the extraction or development of minerals, water or any other substance, even if those rights are excepted or reserved from the description of the Land or excepted in Schedule B.	
26.	Someone else tries to enforce a discriminatory covenant, condition or restriction that they claim affects Your Title which is based upon race, color, religion, sex, handicap, familial status, or national origin.	
27.	A taxing authority assesses supplemental real estate taxes not previously assessed against the Land for any period before the Policy Date because of construction or a change of ownership or use that occurred before the Policy Date.	
28.	Your neighbor builds any structures after the Policy Date -- other than boundary walls or fences -- which encroach onto the Land.	
29.	Your Title is unmarketable, which allows someone else to refuse to perform a contract to purchase the Land, lease it or make a Mortgage loan on it.	
30.	Someone else owns an interest in Your Title because a court order invalidates a prior transfer of the title under federal bankruptcy, state insolvency, or similar creditors' rights laws.	
31.	The residence with the address shown in Schedule A is not located on the Land at the Policy Date.	
32.	The map, if any, attached to this Policy does not show the correct location of the Land according to the Public Records.	

ALTA/CLTA Homeowner's Policy

NOTE: The ALTA/CLTA Homeowner's Policy is intended for one-to-four family residences. The foregoing table is only intended to highlight some of the important aspects of coverage under the ALTA/CLTA Homeowner's Policy and shall not be construed as a complete list of coverage or an expansion of coverage otherwise afforded by the policy. All coverage is subject to any applicable exclusions, requirements, conditions or exceptions set forth in the policy and/or preliminary title report. Copies of these policies are available upon request. Some of the covered risks are subject to a deductible and a maximum limit of liability that is less than the full extent of liability under the policy. Intended for distribution to only one per individual for marketing purposes only on behalf of our company. Not for reproduction.