**Access**

**Overview**

Title insurance policies include a provision which covers the insured for loss resulting from a ‘*lack of a right of access to and from the land’*. Access directly affects the use and marketability of real property. Access to the insured land is always over some land other than the insured land. It may be provided by a dedicated street, a legally created easement or another specifically granted right. If a publicly dedicated street or highway abuts the insured land and the ability to cross between the two parcels is not restricted, then the insured land would have access.

The access provision in the commitment and policy relates to the existence of a *legal* right of access not *physical* access. A title insurance policy does not insure the physical usability, existence or characteristics of a means of access. Also, a policy does not insure a particular means of access unless that particular access is specifically insured as part of the legal description. It merely insures that a valid, legal right of access exists as of the date of the policy.

However, the type of physical access to the property must meet the standard of being reasonable. If the insured land abuts only private land, then access is restricted. Driveways and, in some cases, private roads do not necessarily constitute *legal* access. Such access rights must be evidenced by a written, recorded easement and access should not be insured unless the access is (shown) described in a written and recorded easement. A private easement should be considered a separate tract of property which abuts the subject property. Occasionally, a small gap or gore may separate a lot or parcel from a public roadway. Whenever access of the insured land to a public roadway is restricted, limited or does not exist, an exception to lack of access must be made. The terms and conditions of any easement providing access must be shown as an exception on Schedule B.

**Underwriting Guidelines**

Title policies may be issued insuring access only when legal access is provided by a prior recorded easement or the property abuts a dedicated public roadway. Implied and/or prescriptive easement rights are not considered legal rights of access and should not be insured on an owner’s or loan policy. Please note that the policy does not insure convenient access or any particular right of access, but the access insured must still meet the standard of being reasonable.

If coverage is sought for any particular right of access, see guidelines under **Easements** and **Rights of Way**.

**Acknowledgments and Jurats**

**Acknowledgments**

An acknowledgment is a form of certification made by a notary public or other authorized individual which is attached to deeds, security instruments, leases and other real estate instruments, certifying that the maker or makers of such instruments appeared before the notary, judicial officer or other authorized individual and acknowledged that they signed the instrument freely and voluntarily (without compulsion, fear, or under duress), and for the purposes indicated in the instrument.

Florida has new acknowledgment forms that went into effect in 2020. The statutory forms and the statute references are below:

1. Individual Acknowledgment – See F.S. 692.25(1)

STATE OF

COUNTY OF

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this (date) by (name of person acknowledging) , who is personally known to me or who has produced (type of identification) as identification.

 (Signature of person taking acknowledgment)

 (Name typed, printed or stamped)

 (Title or rank)

 (Serial number, if any)

1. Attorney-in-Fact Acknowledgment - See F.S. 695.25(5)

STATE OF

COUNTY OF

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this (date) by (name of attorney in fact) as attorney in fact, who is personally known to me or who has produced (type of identification) as identification on behalf of (name of principal) .

 (Signature of person taking acknowledgment)

 (Name typed, printed or stamped)

 (Title or rank)

 (Serial number, if any)

1. Corporation Acknowledgement -See F.S. 692.25(2)

STATE OF

COUNTY OF

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this (date) by (name of officer or agent, title of officer or agent) of (name of corporation acknowledging) , a (state or place of incorporation) corporation, on behalf of the corporation. He/she is personally known to me or has produced (type of identification) as identification.

 (Signature of person taking acknowledgment)

 (Name typed, printed or stamped)

 (Title or rank)

 (Serial number, if any)

1. Partnership Acknowledgment – See F.S. 692.25(4)

STATE OF

COUNTY OF

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this (date) by (name of acknowledging partner or agent) , partner (or agent) on behalf of (name of partnership) , a partnership. He/she is personally known to me or has produced (type of identification) as identification.

 (Signature of person taking acknowledgment)

 (Name typed, printed or stamped)

 (Title or rank)

 (Serial number, if any)

See also: **Corporations, Partnerships, Attorneys-in-Fact, Execution of Instruments**

**Military acknowledgments**

In addition to other methods provided under Florida law, any person serving in or with the Armed Forces of the United States, and the civilian spouse of said service member, may acknowledge any instrument before any commissioned officer in active service. See Sec. 695.031, F.S., "Any person serving in or with the Armed Forces" includes a service member in any branch of the military, various auxiliary posts, and any person whose duties require his or her presence with the Armed Forces. "Any instrument" includes deeds and mortgages.

Provided the provisions of the statute are met, acknowledgments under Sec. 695.031, F.S. may be taken worldwide. The failure to state the place of execution or acknowledgment will not render the instrument invalid. In addition, a seal or authentication of the officer's certificate of acknowledgment is not required. However, the certificate of acknowledgment should be in a form substantially similar to the following:

On this \_\_\_\_ day of \_\_\_\_ , \_\_\_\_, before me, the undersigned officer, personally appeared \_\_\_\_\_\_\_\_\_, known to me (or satisfactorily proven) to be serving in or with, or whose duties require her or his presence with the Armed Forces of the United States, and to be the person whose name is subscribed to the within instrument, and acknowledged that she or he executed the same for the purposes therein contained, and the undersigned does further certify that she or he is at the date of this certificate a commissioned officer of the rank stated below and is in the active service of the Armed Forces of the United States.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
 (Signature of commissioned officer.)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
 (Rank of commissioned officer and command or branch of service to which officer is attached.)

Any instrument or document acknowledged in the manner and form herein provided shall be entitled to be recorded and shall be recorded as in the case of other instruments or documents properly acknowledged. CATIC accepts military acknowledgments.

**Acknowledgments in Other States**

Florida law (F.S. 695.03) requires that any document affecting Florida property which is to be recorded must be acknowledged before a notary public who affixes a stamp. It does not matter if the other state permits persons other than notary publics to take acknowledgments. In order to be recorded in Florida, the document must be acknowledged before a notary public who affixes a stamp. For example, attorneys or Justices of the Peace or other officials may be authorized to take acknowledgements in another state, but they are not appropriate parties to acknowledge documents affecting Florida real property. Documents affecting Florida property which are to be recorded must be acknowledged in front of a notary who affixes a stamp.

**Outside of the United States and Foreign Notaries**

Florida law (F.S. 695.03(3)) requires that any document to be recorded, affecting Florida property, must be acknowledged before a notary who affixes a stamp. It does not matter if the other country permits persons other than notary publics to take acknowledgments. In order to be recorded in Florida, the document must be acknowledged before a notary public who affixes a stamp. For example, Commissioners of Oaths, judges, attorneys, Justices of the Peace, or any official other than a notary public, are not appropriate parties to acknowledge documents affecting Florida real property in order for the document to be in recordable form.

**Acknowledgments in a Foreign Languages**

If the acknowledgement is in a foreign language, it must be translated into English with appropriate certification as to that translation in order for the document to be recorded. Anyone who is familiar with the foreign language and English may translate the acknowledgment. The person translating needs to state substantially the following: “I hereby certify that this is a true and accurate translation” and then sign the statement.

**Remote Online Notarization (RON)**

Florida was one of the earliest states to provide for remote online notarization. Remote online notarization procedures have been in effect in Florida since January 1, 2020. See F.S. 117.201-117.305.

Florida notaries can become authorized remote online notaries by following the procedures set forth in F.S. 117.205.

CATIC permits Remote Online Notarizations conducted by remote online notaries authorized by Florida, or any other state which authorizes remote online notaries.

**Underwriting Guidelines for Remote Online Notarizations**

When the person whose signature is being acknowledged by a Remote Online Notary is a **U.S. citizen**, there are no additional requirements.

When the person whose signature is being acknowledged is **NOT a U.S. citizen and is NOT located in the U.S.**, CATIC agents must comply with the requirements of CATIC Underwriting Bulletin FL-2021-01. [Link to Bulletin] In this situation, the CATIC agent must obtain an Affidavit of Identity Confirmation from the realtor, attorney or other party located in the United States. The person executing the Affidavit must be personally acquainted with the party executing the documents in a foreign country. The Affidavit must be in recordable form, and the original maintained in the CATIC agent’s transaction folder.

**Jurats**

A jurat is a special form of notarial certificate completed by the notary public upon the oath or affirmation of the individual confirming the document’s accuracy.  It is most commonly used with Affidavits, but would also be utilized on any other documents sworn to under oath. It is different and distinct from an Acknowledgment.  A jurat is not appropriate for any document other than an oath or affirmation.

The statutory form for a Jurat is found at See F.S. 117.05(13)(a) which provides that for an oath or affirmation to provide substantially the following form:

STATE OF FLORIDA

COUNTY OF

Sworn to (or affirmed) and subscribed before me by means of ☐ physical presence or ☐ online notarization, this   day of   ,   (year)  , by   (name of person making statement)  .

  (Signature of Notary Public - State of Florida)

  (Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known   OR Produced Identification

Type of Identification Produced

**Acreage**

**Overview**

CATIC does **NOT** insure the actual amount of acreage to property and reference to the quantity of land should not be noted in commitments or policies

In some cases, acreage descriptions may include a carved-out portion of land that requires a more detailed, metes-and-bounds description. It is necessary to verify that the property description begins and ends at the same point of beginning for proper closure of the parcel. An estimate of the amount of acreage may be included at the end of the metes and bounds description (e.g., *“containing 3.5 acres M.O.L.”*) although the quantity of such acreage is not generally insurable.

**Underwriting Guidelines**

Always add the language “more or less” after the amount of acreage in any legal description when amounts are shown. And whenever any reference to the amount of acreage is mentioned in the description, the following exception should be taken:

As an alternative, the references to the amount of acreage should be deleted from the insured legal description.

Should a survey contain a reference as to the amount of acreage of the property and we are asked to remove the standard exception for survey matters, the following exception should be made in Schedule B of the policy:

***“Any inaccuracy in any statement made on survey (describe survey) as to the quantity of land contained within the boundaries of the land described in Schedule „A‟.”***

See also: **Affirmative Coverages, Survey Matters**

**Canals**

**Overview**

Canals are man-made, artificial ditches that are generally created pursuant to an easement or in conjunction with a conveyance, reservation or condemnation of land for that purpose. When insuring property that abuts or is crossed by a canal, an exception must be made as to title to any portion of the land located within the boundaries of the canal. If the property is subject only to an easement for canal purposes, an exception should be made for such easement.

Note that it is common in Florida for the relevant Water District to retain an easement for a specific number of feet on each side of the canal for maintenance purposes.­

**Underwriting Guidelines**

When insuring property abutting or crossed by a canal, exception must be made as follows:

***“Any and all rights of others in and to any portion of the land located within the boundaries of the [NAMED] canal and to so much of the land as is necessary for the use and maintenance of said canal.”***

When insuring property which is subject to an easement for canal purposes, the following exception must be made:

*“****Easement for canal purposes over the [describe] as described in [INSTRUMENT] dated \_\_\_\_\_ recorded \_\_\_\_\_\_\_, in Book \_\_\_\_\_\_\_, Page \_\_\_\_\_\_\_, County of \_\_\_\_\_\_\_\_\_\_\_\_, State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_.”***

See also: **Wetlands, Littoral/Riparian Rights**.

**Cannabis**

**Overview**

CATIC **WILL** issue an Owner’s Policy insuring the Title or a Loan Policy insuring a lender’s interest in a property in Florida currently or prospectively being used to cultivate or sell cannabis under the following circumstances:

* + - 1. The use of the property and the activity taking place is expressly permitted under the law of the State of Florida;
			2. The use or activity on the property is or will be for medical purposes, and all necessary permits, licenses and authorizations exist from Florida and local authorities;
			3. The title search does not disclose any express covenants of restrictions prohibiting the use or activity;
			4. The title search does not disclose any notices of violation or enforcement regarding the activity;
			5. The policy must contain the following exceptions in Schedule B:

**a.            Federal or state laws regulating the manufacture, production, importation, possession, delivery, purchase, sale, use or distribution of, as well as payment for produce under Title 7, or controlled substances under Title 21, of the United States Code.**

**b.            Loss or damage resulting from forfeiture of the property as the**

**result of federal law.**

* + - 1. CATIC will not act as an escrow agent or settlement agent and will not agree to

hold funds;

**Underwriting Guidelines**

**Please** contact Florida Underwriting Counsel as early in the transaction as possible to discuss the specifics of the transaction and to determine the appropriate requirements.

**Cemeteries**

 **Overview**

In order for a tract of land used for cemetery purposes to be insurable, it must be properly dedicated for such purposes, with no prior restriction against such usage, and e permissible under applicable law.

Some lands, especially family-owned rural tracts, may contain private burial plots or family cemeteries, without having been officially “dedicated” for those purposes. Such lands may be insured but the portion containing burial plots cannot be insured without approval of CATIC Florida Underwriting Counsel. An acceptable survey must be received showing the location of the burial plots or cemetery areas. Exceptions must be noted on Schedule B for rights or claims of parties in possession or any parties claiming any kinds of rights or ownership in the land by virtue of its use for burial plots or cemetery purposes. An exception must also be included to any rights or claims of easement or ingress and egress to or from burial plots (this exception must apply to the portion of the land being insured).

Individual burial plots are not insurable.

**Underwriting Guidelines**

CATIC agents must submit a Request for Authorization [Link to RFA form] to the Florida Underwriting Department (FLUW@CATIC.com) as early in the process as possible. Authorization must be obtained from the Underwriting Department prior to agreeing to insure the transaction.

If a deed, survey or inspection discloses the existence of burial plots or cemeteries, or their existence is otherwise made known to the CATIC agent, the exact location of the plots or cemeteries must be identified and excluded from coverage in the commitment and final title policy as follows:

***“This policy hereby excludes from coverage that portion of the land situated within the area of the [CEMETERY, BURIAL PLOT, ETC.] as further described in that certain [SURVEY, INSPECTION, DEED, ETC.] dated \_\_\_\_, by \_\_\_\_\_\_; recorded in Book \_\_\_\_\_, Page \_\_\_\_\_.”***

In addition, exceptions for claimed rights of ownership and easement and rights of ingress and egress to the cemetery or burial plot must show in the commitment and final policy and may conform as follows:

***“Rights or claims of easement to or from, including ingress, egress and the right to maintain in and to CEMETERY, BURIAL PLOT, ETC.] located on said land as described in that certain [SURVEY, DEED, ETC.] dated \_\_\_\_\_, by \_\_\_\_\_\_\_\_\_; recorded in Book \_\_\_\_\_\_, Page \_\_\_\_\_\_.”***

and,

*“****Rights or claims of parties in actual or constructive possession or any parties claiming any kind of rights or interests in the land by virtue of its use for burial plots or cemetery purposes.”***