



# SUMMARY COVERAGE COMPARISON

ALTA 2021 LOAN POLICY vs ATTORNEY TITLE OPINION & LIABILITY WRAP



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## **COVERAGE OF UNDISCLOSED LIENS & ENCUMBRANCES**

<b>LIENS &amp; ENCUMBRANCES</b>	<b>ALTA 2021 LOAN POLICY OF TITLE INSURANCE</b>	<b>ATTORNEY'S OPINION WITH LIABILITY WRAP</b>
Undisclosed federal, state and municipal tax, sewer, and nuisance abatement liens	Covered	Not covered
Undisclosed mechanics liens	Covered	Not covered
Undisclosed child and spousal support liens	Covered	Not covered
Undisclosed homeowners' assessment and real property tax liens, lease options, and credit agreements involving personal property secured by the insured mortgage	Covered	Not covered
Encumbrances caused by forgeries or mistakes in form of ownership ( <i>e.g.</i> , transfer of title to a family trust and the effect of bankruptcy filings)	Covered	Not covered

## **OTHER COVERAGES**

<b>COVERAGE</b>	<b>ALTA 2021 LOAN POLICY OF TITLE INSURANCE</b>	<b>ATTORNEY'S OPINION WITH LIABILITY WRAP</b>
Any defect in or lien or encumbrance	Covered Unless subject to Exclusion from Coverage or Schedule B exception (Covered Risks 2, 9.a.)	Duty only to search "most current public record available" (§ 2.1(1)) so any unrecorded interests, mechanics' liens, etc. not within scope of coverage; <i>see above</i>
Fraud, forgery, duress, incapacity, impersonation, and other similar coverages	Covered (Covered Risks 2.a., 9.a.)	<b>Not</b> covered
Improper execution of documents (including remote online notary)	Covered (Covered Risks 2.a.)	<b>Not</b> covered
Improper recording	Covered (Covered Risks 2.a.)	Covered to the extent that there is a duty to "correctly" record (§ 2.1(2)) <ul style="list-style-type: none"> <li>• But no coverage that mortgage will be properly indexed or provide constructive notice (valid, enforceable)</li> <li>• Intentional failure to record is excluded (IV.A.)</li> <li>• Also, no coverage if the mortgage document is not submitted for recording within 15 days (§ 13.F.)</li> </ul>
Defective judicial proceedings	Covered (Covered Risks 2.a.)	<b>Not</b> covered
Boundary line disputes that would have been disclosed by accurate survey	Covered (Covered Risks 2.c.)	<b>Not</b> covered; however, Opinion Letter may not except survey matters (Opinion, Exceptions § 3)

COVERAGE	ALTA 2021 LOAN POLICY OF TITLE INSURANCE	ATTORNEY'S OPINION WITH LIABILITY WRAP
Marketability coverage	Covered (Covered Risk 3)	<b>Not</b> explicitly covered but includes a statement of marketability (Opinion, Title Vesting and Marketability § 2)
Access coverage	Covered (Covered Risk 4)	<b>Not</b> explicitly covered but includes a statement of access (Opinion, Title Vesting and Marketability § 3); may be included as to survey matters above
Enforceability of PACA/PSA Trust	Covered (Covered Risks 8)	<b>Not</b> covered
Priority over mechanics liens	Covered (Covered Risks 2, 10, 11)	<b>Not</b> explicitly covered but the Attorney's Opinion with Liability Wrap includes a statement that mortgage "has priority" (Opinion, Lien Priority § 1)
Validity, enforceability, and priority of lien of the insured mortgage coverage	Covered (Covered Risks 9, 10, 11)	<b>Not</b> covered - Validity or Enforceability of the lien of insured mortgage  <b>Not</b> explicitly covered - Priority of the lien of the insured mortgage; but the Attorney's Opinion with Liability Wrap includes a statement that mortgage "has priority" (Opinion, Lien Priority § 1)
Back-chain creditors' rights	Covered (Covered Risk 13.a.)	<b>Not</b> covered
Preferential transfer coverage for non-timely recording or non-constructive notice	Covered (Covered Risk 13.b.)	<b>Not</b> covered
Gap coverage	Covered (Covered Risk 14)	<b>Not</b> explicitly covered but purports to cover gap between closing and recording

COVERAGE	ALTA 2021 LOAN POLICY OF TITLE INSURANCE	ATTORNEY'S OPINION WITH LIABILITY WRAP
Failure to comply with closing instructions relating to validity, enforceability, or priority	Covered (ALTA CPL-Single Transaction, Requirement 4(a))	Only duty to follow closing instructions (§ 2.1(3)). See "Improper recording" notes above.
Failure of mortgage loan provider or settlement agent to use the funds of the warehouse lender to fund new mortgage intended to be used as collateral for warehouse funding.	Covered by the CPL and ALTA Loan Policy	Not covered
HOA CC&R Lien Coverage	<p>Covered if ALTA Endorsement 5.1 incorporated which insures against loss or damage arising by reason of:</p> <ul style="list-style-type: none"> <li>• Present violations of restrictive covenants in Schedule B that restrict use of the land. The covenants do not contain provisions that will cause a forfeiture or reversion of the title.</li> <li>• Any charges or assessment in favor of the HOA provided for in any document referred to in Schedule B that may be due and unpaid at Date of Policy.</li> <li>• The enforced removal of any existing structure on the land (other than boundary wall or fence) due to encroachment onto adjoining land or easements.</li> <li>• Failure of title by reason of a right of first refusal that was exercised or could have been exercised at Date of Policy.</li> </ul>	<p>Not covered.</p> <p>Fannie Mae requires issuer of to make representations for any PUD equivalent to ALTA 5.1 coverage, but these representations are not part of "obligation" covered by attorney's insurance policy (§ 2.1).</p>

<b>COVERAGE</b>	<b>ALTA 2021 LOAN POLICY OF TITLE INSURANCE</b>	<b>ATTORNEY'S OPINION WITH LIABILITY WRAP</b>

## **DUTY TO DEFEND / INDEMNIFY**

<b>COVERAGE</b>	<b>ALTA 2021 LOAN POLICY OF TITLE INSURANCE</b>	<b>ATTORNEY'S OPINION WITH LIABILITY WRAP</b>
Defense of Actions	Included Lender provided with a defense [including all attorneys' fees, costs, and expenses] of any matter insured against by policy; payments for same do not reduce the amount of insurance (Conditions 5.a. and 10.a)	<b>Not</b> included Lender potentially able to recoup only "reasonable" attorneys' fees incurred during a foreclosure if loss under policy suffered (§ 4.0)
Indemnity against loss or damage	Included Policy is contract of indemnity under which insurer pays loss or damage incurred by lender who suffers loss or damage by reasons insured by policy (Preamble to Covered Risks, Conditions 8 and 11)	<b>Not</b> included Only provides reimbursement of direct financial loss incurred by lender as a result of provider's failure – subject to various conditions, including: <ul style="list-style-type: none"> <li>• Lender must have foreclosed upon and sold property; OR</li> <li>• Exhaust various efforts to collect mortgage balance.</li> <li>• Comply with stringent claims process.</li> </ul> (§§ 2, 3, and 4)

## TRIGGER/DURATION OF COVERAGE

COVERAGE	ALTA 2021 LOAN POLICY OF TITLE INSURANCE	ATTORNEY'S OPINION WITH LIABILITY WRAP
Covers claims made during policy period regardless of when triggering event creating the loss occurred	Yes	<b>No</b> Policy is occurrence policy; coverage only applies to "report" made within policy period (I.C.1.)
One-time premium	Yes	<b>No</b> Requires regular renewals ( <i>e.g.</i> 6 months) to maintain coverage; lender may lose coverage if insured attorney fails to remit premium within 45 days (I.C.2.)
Potential cancellation of policy once issued	No Policy cannot be cancelled once issued	<b>Yes</b> Insurer has right to cancel for any reason (V.C.)
Continued coverage after policy period	Yes Coverage continues "so long as the Insured retains an estate or interest in the Land" and potentially longer (Condition 2)	Not necessarily as policy is cancellable and if cancelled, policy only provides coverage for reports that meet requirements of Section I.C. (V.C.)

## TENDERING / HANDLING A CLAIM

ITEM	ALTA 2021 LOAN POLICY OF TITLE INSURANCE	ATTORNEY'S OPINION WITH LIABILITY WRAP
Conditions prior to submitting claim	None	<p>Before submitting a claim for loss under the "service agreement," the lender must meet numerous conditions, including:</p> <ul style="list-style-type: none"> <li>• Foreclose upon and sell property (§ 3.4.A.) or exhaust an extensive list of collection efforts; AND repurchase the loan (§ 3.4.A., § 3.4.B.)</li> </ul>
Notice of Claim	Lender must directly notify insurer of claim "promptly" (Condition 3)	<p>Lender (after meeting conditions) must submit claim for loss <i>to provider</i> within 60 days of foreclosure sale or sale; or within 365 days from last loan payment if lender has proven the property is uneconomic to foreclose upon (§ 5.1.)</p> <p>Then, insured (provider attorney) must give written notice of claim for loss being made under service agreement within 30 calendar days of receiving claim from its lender (V.A.1.)</p>
Consequence of Delay in Asserting Claim	Coverage can be reduced only to "extent of prejudice" if not promptly notified (Condition 3)	<p>Lender's failure to "fully comply" with any of the claim process procedures/conditions renders the claim as "void" (§ 5.0)</p> <p>Insurer not liable for coverage if notice from insured attorney given outside the 30-day notice window (V.A.1.); lender has no direct control over this notice.</p>

Proof of Loss	Insurer "may" require lender to furnish a proof of loss with facts about loss and calculations for claimed loss (Condition 4)	Within 90 calendar days of the submission of claim for loss, lender must submit proof of loss <i>to provider</i> with extensive documentary support (§ 5.2.; § 5.3.)
Duties of Insured	Lender (at insurer's expense) must give insurer reasonable aid in defending proceeding or any act necessary to establish title or lien of the insured mortgage. Lender may be required to submit for examination under oath and/or produce requested information. (Condition 6)	Lender must "make every effort to mitigate its 'loss' to the greatest extent possible"; including "taking actions to enforce its lien and/or correct any inaccuracies" in the report (§ 5.4.)
Payment of Loss	When liability and the extent of loss or damage are determined in accordance with the Conditions, the insurer will pay the loss or damage within 30 days (Condition 11)	Insurer's payment due within 30 days after: (i) lender's claim for loss fully submitted; (ii) claim has been "validated by provider"; and (iii) lender has executed release documents to conclude claim (§ 6.0)

## CLOSING ATTORNEY DEFALCATION

COVERAGE	ALTA 2021 LOAN POLICY OF TITLE INSURANCE	ATTORNEY'S OPINION WITH LIABILITY WRAP
Protection against issuing agent's or approving attorney's fraud, theft, dishonesty, or misappropriation in connection with the closing	Yes ALTA Standard Closing Protection Letter covers such loss to the extent it adversely affects Title or the validity, enforceability, or priority of the lien of the Insured Mortgage (ALTA CPL-Single Transaction, Requirement 4)	<b>No</b> Excludes loss arising out of "any dishonest, intentional, fraudulent, criminal or malicious act" by the insured attorney (IV.A.)  But, lender does have <b>limited recourse</b> , against attorney for failing to follow closing instructions (§ 2.1(3))
Protection for warehouse lender	Yes Coverage under ALTA Standard Closing Protection Letter extends to warehouse lenders (ALTA CPL-Single Transaction, Conditions and Exclusions 2.d.iii.b.)	<b>No</b> Risks faced by warehouse lenders are not covered (II.A. defines lender as the client "who originates mortgage loans")