

How the ALTA Policy Form Changes Will Impact Commercial Deals



Sponsor



Speakers

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American Land
Title Association
Protect your property rights

Here Comes The Forms...
and It's Alright

2021 POLICY FORMS-IMPORTANT DATES



- Published Date-July 30, 2021
- Effective Date of 2021 ALTA Forms-July 1, 2021
- Implementation and Rollout (filing in states where applicable and downloading forms into issuing office systems) to take up to 1-2 years
- Decertification of 2006 policies - December 31,2022
- Forms and Comparison Charts for the 2006 v. 2021 Loan and Owner's Policy can be downloaded at www.alta.or/policy-forms.

THE LONG AND WINDING ROAD...TO NEW FORMS



- ☐ Ongoing process w/adoption of new forms approx. every 15 years
- ☐ Review and Recommendations by ALTA Forms Committee
- ☐ Adoption by ALTA Board of Governors
- ☐ Posted for Public Comment
- ☐ Review of comments by Forms Committee
- ☐ Final Posting with Effective Date
- ☐ Industry Rollout and Form Filing

Who Comes Together to Discuss Changes to ALTA Forms

- ALTA Forms Committee composed of Title Insurers
- ALTA Underwriter Section
- ALTA Board
- Industry Partners-ACMA, ACREL, FHFA, Fannie Mae, Freddie Mac, MBA



Reasons for Changes

- **Change in Law-Legislation, Court Decisions, Regulation**
- **Title Industry and ALTA Forms Committee Recommendations**
- **Partner Industry Recommendations and Concerns**



INTRODUCTION

POLICY AUTHENTICATION

ALTA [**LOAN**][**OWNER'S**] POLICY OF TITLE INSURANCE
issued by
BLANK TITLE INSURANCE COMPANY

This policy, when issued by the Company with a Policy Number and the Date of Policy, is valid even if this policy or any endorsement to this policy is issued electronically or lacks any signature.

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at the address shown in Condition [16**][**17**].**

A photograph of four men of various ethnicities holding a large rainbow flag. The flag is in the foreground, partially obscuring the lower half of the men. The background is a textured, light-colored wall.

Got To Get You Into The Policy...Changes to Covered Risks

COVERED RISKS

OP & LP COVERED RISK 2

***NEW: RON, repudiation of an electronic signature
and boundary line overlap**

2. Any defect in or lien or encumbrance on the Title. Covered Risk 2 includes, but is not limited to, insurance against loss from:
 - a. a defect in the Title caused by:
 - i. forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - ii. the failure of a person or Entity to have authorized a transfer or conveyance;
 - iii. a document affecting the Title not properly authorized, created, executed, witnessed, sealed, acknowledged, notarized (including by remote online notarization), or delivered;
 - iv. a failure to perform those acts necessary to create a document by electronic means authorized by law;
 - v. a document executed under a falsified, expired, or otherwise invalid power of attorney;
 - vi. a document not properly filed, recorded, or indexed in the Public Records, including the failure to have performed those acts by electronic means authorized by law;
 - vii. a defective judicial or administrative proceeding; or
 - viii. the repudiation of an electronic signature by a person that executed a document because the electronic signature on the document was not valid under applicable electronic transactions law.
 - b. the lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
 - c. the effect on the Title of an encumbrance, violation, variation, adverse circumstance, boundary line overlap, or encroachment (including an encroachment of an improvement across the boundary lines of the Land), but only if the encumbrance, violation, variation, adverse circumstance, boundary line overlap, or encroachment would have been disclosed by an accurate and complete land title survey of the Land.

COVERED RISKS

Covered Risks 5, 6, and 7 – Enforcement Notice

5. A violation or enforcement of a law, ordinance, permit, or governmental regulation (including those relating to building and zoning), but only to the extent of the violation or enforcement described by the enforcing governmental authority in an **Enforcement Notice** that identifies a restriction, regulation, or prohibition relating to:
 - a. the occupancy, use, or enjoyment of the Land;
 - b. the character, dimensions, or location of an improvement on the Land;
 - c. the subdivision of the Land; or
 - d. environmental remediation or protection on the Land.
6. An enforcement of a governmental forfeiture, police, regulatory, or national security power, but only to the extent of the enforcement described by the enforcing governmental authority in an **Enforcement Notice**.
7. An exercise of the power of eminent domain, but only to the extent:
 - a. of the exercise described in an **Enforcement Notice**; or
 - b. the taking occurred and is binding on a purchaser for value without Knowledge.

Owner's Policy Condition 1.e.; Loan Policy Condition 1.f.

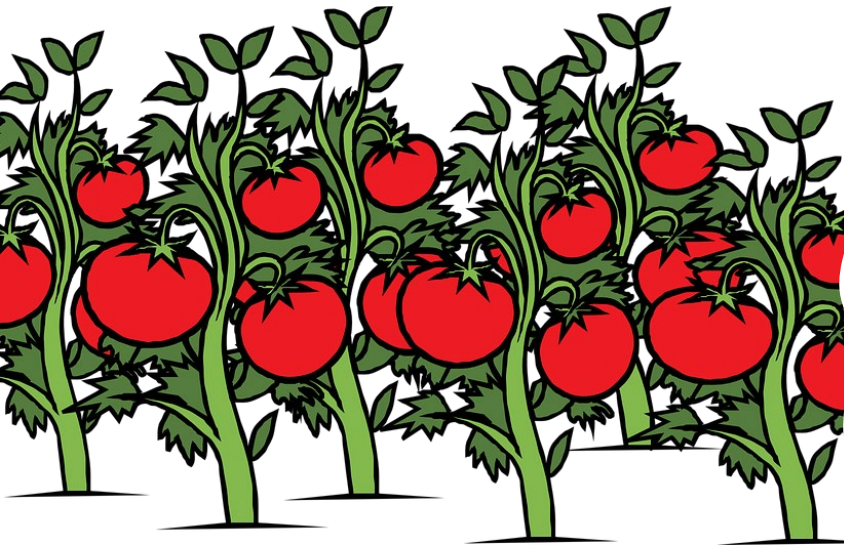
"Enforcement Notice": A document recorded in the Public Records that describes any part of the Land and:

- i. is issued by a governmental agency that identifies a violation or enforcement of a law, ordinance, permit, or governmental regulation;
- ii. is issued by a holder of the power of eminent domain or a governmental agency that identifies the exercise of a governmental power; or
- iii. asserts a right to enforce a PACA PSA Trust.



COVERED RISK 8-OP and LP- PACA/PSA

- **(NEW) 8.** An enforcement of a PACA-PSA Trust but only to the extent of the enforcement described in an Enforcement Notice.
- **(NEW)** Definition of Terms 1.q. (OP) and 1.l.(LP): “PACA-PSA Trust”: A trust under the federal Perishable Agricultural Commodities Act or the federal Packers and Stockyards Act or a similar State or federal law



COVERED RISKS

COVERED RISK 9 (LP)

***NEW: RON and repudiation of an electronic signature**

9. The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title. Covered Risk 9 includes, but is not limited to, insurance against loss caused by:
- a. forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - b. the failure of a person or Entity to have authorized a transfer or conveyance;
 - c. the Insured Mortgage not being properly authorized, created, executed, witnessed, sealed, acknowledged, notarized (including by remote online notarization), or delivered;
 - d. a failure to perform those acts necessary to create an Insured Mortgage by electronic means authorized by law;
 - e. a document having been executed under a falsified, expired, or otherwise invalid power of attorney;
 - f. the Insured Mortgage not having been properly filed, recorded, or indexed in the Public Records, including the failure to have performed those acts by electronic means authorized by law;
 - g. a defective judicial or administrative proceeding; or
 - h. invalidity or unenforceability of the lien of the Insured Mortgage as a result of the repudiation of an electronic signature by a person that executed the Insured Mortgage because the electronic signature on the Insured Mortgage was not valid under applicable electronic transactions law.

COVERED RISKS

Covered Risk 10 (LP)

10. The lack of priority of the lien of the Insured Mortgage upon the Title over any other lien or encumbrance on the Title as security for the following components of the Indebtedness:
- a. the amount of the principal disbursed as of the Date of Policy;
 - b. the interest on the obligation secured by the Insured Mortgage;
 - c. the reasonable expense of foreclosure;
 - d. amounts advanced for insurance premiums by the Insured before the acquisition of the estate or interest in the Title; and
 - e. the following amounts advanced by the Insured before the acquisition of the estate or interest in the Title to protect the priority of the lien of the Insured Mortgage:
 - i. real estate taxes and assessments imposed by a governmental taxing authority; and
 - ii. regular, periodic assessments by a property owners' association.

NOTE: An ALTA 14 Future Advancement-Priority Endorsement will need to be issued to cover future advances as defined under that endorsement.

COVERED RISKS

COVERED RISK 13 (LP) AND COVERED RISK 9 (OP)-BACK CHAIN CREDITORS RIGHTS COVERAGE

13. The invalidity, unenforceability, lack of priority, or avoidance of the lien of the Insured Mortgage upon the Title, or the effect of a court order providing an alternative remedy:

- a. Resulting from the avoidance, in whole or part, of any transfer of all or any part of the Title to the Land or any interest in the Land occurring prior to the transaction creating the lien of the Insured Mortgage because that prior transfer constituted a:
 - i. fraudulent conveyance, fraudulent transfer, or preferential transfer under federal bankruptcy, state insolvency or similar state or federal creditors' rights law; or
 - ii. voidable transfer under the Uniform Voidable Transactions Act; or
- b. Because the Insured Mortgage constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar state or federal creditors' rights law by reason of the failure:
 - i. to timely record the Insured Mortgage in the Public Records after execution and delivery of the Insured Mortgage to the Insured; or
 - ii. of the recording of the Insured Mortgage in the Public Records to impart notice of its existence to a purchaser for value or to a judgment or lien creditor

9. The Title being vested other than stated in Schedule A, the Title being defective, or the effect of a court order providing an alternative remedy:

- a. resulting from the avoidance, in whole or in part, of any transfer of all or any part of the Title to the Land or any interest in the Land occurring prior to the transaction vesting the Title because that prior transfer constituted a:
 - i. fraudulent conveyance, fraudulent transfer, or preferential transfer under federal bankruptcy, state insolvency or similar state or federal creditors rights law;
 - ii. voidable transfer under the Uniform Voidable Transactions Act; or
- b. because the instrument vesting the Title constitutes a preferential transfer under federal bankruptcy, state insolvency or similar sate or federal creditors' rights by reason of the failure:
 - i. to timely record the instrument vesting the Title in the Public Records after execution and delivery of the instrument to the Insured; or
 - ii. of the recording of the instrument vesting the Title in the Public Records to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.



You Say Hello and We Say
Goodbye...Changes to Policy Exclusions

EXCLUSIONS FROM COVERAGE

OP & LP EXCLUSION 1:

The following matters are excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1.
 - a. any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) that restricts, regulates, prohibits, or relates to:
 - i. the occupancy, use, or enjoyment of the Land;
 - ii. the character, dimensions, or location of any improvement on the Land;
 - iii. the subdivision of land; or
 - iv. environmental remediation or protection.
 - b. any governmental forfeiture, police, regulatory, or national security power.
 - c. the effect of a violation or enforcement of any matter excluded under Exclusion 1.a. or 1.b.

Exclusion 1 does not modify or limit the coverage provided under Covered Risk 5 or 6.

EXCLUSIONS FROM COVERAGE

EXCLUSION 6 (LP) & EXCLUSION 4 (OP) – Updated Creditor's Rights Exclusion

6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights law, that the transaction creating the lien of the Insured Mortgage is a:
- a. fraudulent conveyance or fraudulent transfer;
 - b. voidable transfer under the Uniform Voidable Transactions Act; or
 - c. preferential transfer:
 - i. to the extent the Insured Mortgage is not a transfer made as a contemporaneous exchange for new value; or
 - ii. for any other reason not stated in Covered Risk 13.b.

4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights law, that the transaction vesting the Title as shown in Schedule A is a:
- a. fraudulent conveyance or fraudulent transfer;
 - b. voidable transfer under the Uniform Voidable Transactions Act; or
 - c. preferential transfer:
 - i. to the extent the instrument of transfer vesting the Title as shown in Schedule A is not a transfer made as a contemporaneous exchange for new value; or
 - ii. for any other reason not stated in Covered Risk 9.b.

EXCLUSIONS

EXCLUSION 7 (LP)

EXCLUSION 5 (OP)

***NEW**

***PACA/PASA**

LP-Any claim of a PACA-PSA Trust. Exclusion 7 does not modify or limit the coverage provided under Covered Risk 8.

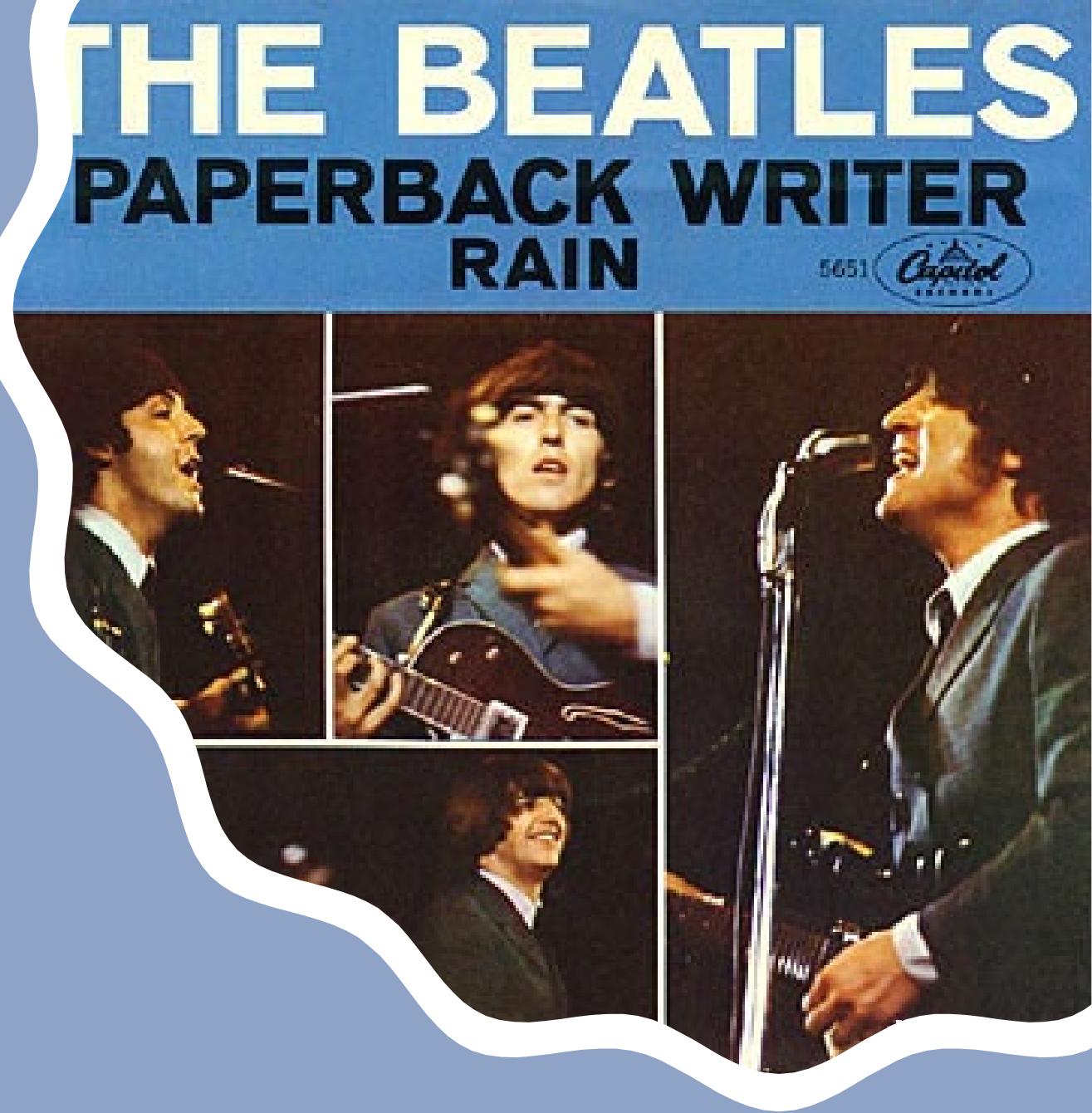
OP-Any claim of PACA-PSA Trust. Exclusion 5 does not modify or limit the coverage provided under Covered Risk 5.

EXCLUSIONS FROM COVERAGE

EXCLUSION 9 (LP) & 7 (OP)

[9][7]. Any discrepancy in the quantity of the area, square footage, or acreage of the Land or of any improvement to the Land.

ALTA FORM WRITER
Changes to
Schedule A and
Schedule B



SCHEDULE A

SCHEDULE A - TRANSACTION IDENTIFICATION DATA (LP) (OP)

[Transaction Identification Data, for which the Company assumes no liability as set forth in Condition 9.e.:

Issuing Agent:

Issuing Office:

Issuing Office's ALTA® Registry ID:

Loan ID Number:

Issuing Office File Number:

Property Address:]

[Transaction Identification Data, for which the Company assumes no liability as set forth in Condition 9.d.:

Issuing Agent:

Issuing Office:

Issuing Office's ALTA® Registry ID:

Issuing Office File Number:

Property Address:]

SCHEDULE B EXCEPTIONS

OP & LP INTRODUCTORY PARAGRAPH 1-DISCRIMINATORY COVENANTS

(NEW) Some historical land records contain Discriminatory Covenants that are illegal and unenforceable by law. This policy treats any Discriminatory Covenant in a document referenced in Schedule B as if each Discriminatory Covenant is redacted repudiated, removed and not republished or recirculated. Only the remaining provisions of the document are excepted from coverage.

(NEW) Definition of Terms 1.d. (OP) and 1.e. (LP) – “**Discriminatory Covenant**”: Any covenant, condition, restriction, or limitation that is unenforceable under applicable law because it illegally discriminates against a class of individuals based on personal characteristics such as race, color, religion, sex, sexual orientation, gender identity, familial status, disability, national origin or other legally protected class.

SCHEDULE B EXCEPTIONS

INTRODUCTORY PARAGRAPH 2-LEASES AND EASEMENTS (OP)

[This policy does not insure against loss or damage and the Company will not pay cost, attorney's fees, or expenses resulting from the terms and conditions of any lease or easement identified in Schedule A and the following matters:

(Insert Schedule B exceptions here)]

SCHEDULE B-EXCEPTIONS

INTRODUCTORY PARAGRAPH 3-CR 10 & SUBORDINATE MATTERS (LP)

PART I

[This policy does not insure against loss or damage and the Company will not pay cost, attorney's fees, or expenses resulting from the terms and conditions of any lease or easement identified in Schedule A and the following matters:

(Insert Schedule B exceptions here)

PART II

Covered Risk 10 insures against loss or damage sustained by the insured by reason of the lack of priority of the lien of the insured Mortgage over the matters listed in Part II, subject to the terms and conditions of any subordination provision in a matter listed in Part II.]

THE BEATLES

WE CAN WORK IT OUT

DAY TRIPPER



WE CAN WORK IT
OUT...Changes to
Policy Conditions

CONDITIONS

CONDITION 1.f. (LP) and CONDITION 1.e. (OP) – New Defined Term

- [f.] [e.] “Enforcement Notice”: A document recorded in the Public Records that describes any part of the Land and:
- i. is issued by a governmental agency that identifies a violation or enforcement of a law, ordinance, permit, or governmental regulation;
 - ii. is issued by a holder of the power of eminent domain or a governmental agency that identifies the exercise of a governmental power; or
 - iii. asserts a right to enforce a PACA-PSA Trust.

CONDITIONS

CONDITION 1.j. (LP) – Definition of “Insured”

- j. “Insured”:
 - i. (a) The Insured named in Item 1 of Schedule A or future owner of the Indebtedness other than an Obligor, if the named Insured or future owner of the Indebtedness owns the Indebtedness, the Title, or an estate or interest in the Land as provided in Condition 2, but only to the extent the named Insured or the future owner either:
 - (1) owns the Indebtedness for its own account or as a trustee or other fiduciary, or
 - (2) owns the Title after acquiring the Indebtedness;
 - (b) the person or Entity who has “control” of the “transferable record,” if the Indebtedness is evidenced by a “transferable record,” as defined by applicable electronic transactions law;
 - (c) the successor to the Title of an Insured resulting from dissolution, merger, consolidation, distribution, or reorganization;
 - (d) the successor to the Title of an Insured resulting from its conversion to another kind of Entity;
 - (e) the grantee of an Insured under a deed or other instrument transferring the Title, if the grantee is an Affiliate;
 - (f) an Affiliate that acquires the Title through foreclosure or deed-in-lieu of foreclosure of the Insured Mortgage; or
 - (g) any Government Mortgage Agency or Instrumentality.
 - ii. With regard to Conditions 1.j.i.(a). and 1.j.i.(b)., the Company reserves all rights and defenses as to any successor that the Company would have had against any predecessor Insured, unless the successor acquired the Indebtedness as a purchaser for value without Knowledge of the asserted defect, lien, encumbrance, adverse claim, or other matter insured against by this policy.
 - iii. With regard to Conditions 1.j.i.(c)., 1.j.i.(d)., 1.j.i.(e)., and 1.j.i.(f)., the Company reserves all rights and defenses as to any successor or grantee that the Company would have had against any predecessor Insured.

CONDITIONS

CONDITION 1.g. (OP) – Definition of “Insured”

- g. “Insured”:
 - i.
 - (a) The Insured named in Item 1 of Schedule A;
 - (b) the successor to the Title of an Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;
 - (c) the successor to the Title of an Insured resulting from dissolution, merger, consolidation, distribution, or reorganization;
 - (d) the successor to the Title of an Insured resulting from its conversion to another kind of Entity; or
 - (e) the grantee of an Insured under a deed or other instrument transferring the Title, if the grantee is:
 - (1) an Affiliate;
 - (2) a trustee or beneficiary of a trust created by a written instrument established for estate planning purposes by an Insured;
 - (3) a spouse who receives the Title because of a dissolution of marriage;
 - (4) a transferee by a transfer effective on the death of an Insured as authorized by law; or
 - (5) another Insured named in Item 1 of Schedule A.
 - ii. The Company reserves all rights and defenses as to any successor or grantee that the Company would have had against any predecessor Insured.

CONDITIONS

CONDITION 1.r. (LP) & CONDITION 1.m. (OP)

***NEW: DEFINITION OF TERMS – “Public Records”**

[r.][m.] “Public Records”: The recording or filing system established under State statutes in effect at the Date of Policy under which a document must be recorded or filed to impart constructive notice of matters relating to the Title to a purchaser for value without Knowledge. The term “Public Records” does not include any other recording or filing system, including any pertaining to environmental remediation or protection, planning, permitting, zoning, licensing, building, health, public safety, or national security matters.

CONDITIONS

CONDITION 1.s. (LP) & CONDITION 1.n. (OP)

***NEW: DEFINITION OF THE TERMS – “State”**

[s.][n.] “State”: The state or commonwealth of the United States within whose exterior boundaries the Land is located. The term “State” also includes the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and Guam.

CONDITIONS

OP and LP: CONDITION 8 –CONTRACT OF INDEMNITY; DETERMINATION OF EXTENT OF LIABILITY

This policy is a contract of indemnity against monetary loss or damage sustained or incurred by an Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy. This policy is not an abstract of the Title, report of the condition of the Title, legal opinion, opinion of the Title, or other representation of the status of the Title. All claims asserted under this policy are based in contract and are restricted to the terms and provisions of this policy. The Company is not liable for any claim alleging negligence or negligent misrepresentation arising from or in connection with this policy or the determination of the insurability of the Title.

CONDITIONS

LP-CONDITION 8.a. Extent of Company Liability

The extent of liability of the Company for loss or damage under this policy does not exceed the least of:

- i. the Amount of Insurance
- ii. the Indebtedness;
- iii. The difference between the fair market value of the Title, as insured, and the fair market value of the Title subject to the matter insured against by this policy; or
- iv. If a Government Mortgage Agency or Instrumentality is the Insured Claimant, the amount it paid in the acquisition of the Title or the Insured Mortgage or in satisfaction of its insurance contract or guaranty relating to the Title or the Insured Mortgage.

CONDITIONS

OP-CONDITION 8.a. Extent of Company Liability

The extent of liability of the Company for loss or damage under this policy does not exceed the least of:

- i. the Amount of Insurance; or
- ii. The difference between the fair market value of the Title, as insured, and the fair market value of the Title subject to the matter insured against by this policy.

CONDITIONS

LP-CONDITION 8.b. Fair Market Value

(NEW) Fair market value of the Title in Condition 8 a. iii. Is calculated using either:

- i. the date the Insured acquires the Title as a result of a foreclosure or deed in lieu of foreclosure of the Insured Mortgage; or
- ii. The date the lien of the Insured Mortgage or any assignment set forth in Item 4 of Schedule A is extinguished or rendered unenforceable by reason of a matter insured against by this policy.

CONDITIONS

OP-CONDITION 8 b. Fair Market Value

(NEW) Except as provided in Condition 8.c. or 8.d., the fair market value of the Title in Condition 8.a.ii. is calculated using the date the Insured discovered the defect, lien, encumbrance, adverse claim or other matter insured against by this policy.

CONDITIONS

OP-CONDITION 8 c. Date of Calculating Loss

(NEW) c. If, at the Date of Policy the Title to all the Land is void by reason of a matter insured against by this policy, then the Insured Claimant may, by written notice given to the Company, elect to use the Date of Policy, as the date for calculating the fair market value of the Title in Condition 8.a.ii.

CONDITIONS

LP-CONDITION 8.c. Curative Penalty Increase & Third Alternative Date for determining loss

- c. If the Company pursues its rights under Condition 5b. and is unsuccessful in establishing the Title or the lien of the Insured Mortgage, as insured:
- i. the Amount of Insurance will be increased by 15%; and
 - ii. The Insured Claimant may, by written notice given to the Company, elect, as an alternative to the dates set forth in Condition 8b. to use either the date the settlement, action, proceeding or other act described in Condition 5b. Is concluded or the date the notice of claim required by Condition 3 is received by the Company as the date for calculating the fair market value of the title in Condition 8.a.iii.

CONDITIONS

OP-CONDITION 8.d. Curative Penalty Increase & Third Alternative Date for determining loss

- d. If the Company pursues its rights under Condition 5.b. and is unsuccessful in establishing the Title or the lien of the Insured Mortgage, as insured:
- i. the Amount of Insurance will be increased by 15%; and
 - ii. The Insured Claimant may, by written notice given to the Company, elect, as an alternative to the dates set forth in Condition 8.b. or it if applies, 8.c., to use either the date the settlement, action, proceeding or other act described in Condition 5.b. Is concluded or the date the notice of claim required by Condition 3 is received by the Company as the date for calculating the fair market value of the title in Condition 8.a.iii.

CONDITIONS

CONDITION 10 (LP)-REDUCTION OR TERMINATION OF INSURANCE

10. Reduction or Termination of Insurance

- a. All payments under this policy, except payments made for cost, attorneys' fees, and expenses, reduce the Amount of Insurance by the amount of payment. However, any payment made by the Company prior to the acquisition of the Title as provided in Condition 2 does not reduce the Amount of Insurance afforded under this policy, except to the extent that the payment reduces the indebtedness.
- b. When the Title is acquired by the Insured as a result of foreclosure or deed in lieu of foreclosure, the amount credited against the indebtedness does not reduce the Amount of Insurance.
- c. The voluntary satisfaction or release of the Insured Mortgage terminates all liability of the Company, except as provided in Condition 2.

CONDITIONS

CONDITION 15 (LP)

CHOICE OF LAW & CHOICE OF FORUM

CHOICE OF LAW AND CHOICE OF FORUM

a. *Choice of Law*

The Company has underwritten the risks covered by this policy and determined the premium charged in reliance upon the State law affecting interests in real property and the State law applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the State where the Land is located.

The State law of the State where the land is located or to the extent it controls, federal law, will determine the validity of claims against the Title or the lien of the Insured Mortgage and the interpretation and enforcement of the terms of this policy, without regard to conflicts of law principles to determine the applicable law.

b. *Choice of Forum*

Any litigation or other proceeding brought by the Insured against the Company must be filed only in a State or federal court having jurisdiction.

“State”: The state or commonwealth of the United States within whose exterior boundaries the Land is located. The term “State” also includes the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and Guam.

CONDITIONS

CONDITION 16 (OP)

CHOICE OF LAW & CHOICE OF FORUM

CHOICE OF LAW AND CHOICE OF FORUM

a. *Choice of Law*

The Company has underwritten the risks covered by this policy and determined the premium charged in reliance upon the **State law** affecting interests in real property and the **State law** applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the **State** where the Land is located.

The **State law** of the **State** where the land is located or **to the extent it controls, federal law**, will determine the validity of claims against the Title and the interpretation and enforcement of the terms of this policy, **without regard to** conflicts of law principles to determine the applicable law.

b. *Choice of Forum*

Any litigation or other proceeding brought by the Insured against the Company must be filed only in a **State or federal** court having jurisdiction.

“State”: The state or commonwealth of the United States within whose exterior boundaries the Land is Located. The term “State” also includes the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands and Guam.

CONDITIONS

CONDITION 17 (LP) & CONDITION 18 (OP) – Class Action

- 17.** CLASS ACTION
ALL CLAIMS AND DISPUTES ARISING OUT OF OR RELATING TO THIS POLICY, INCLUDING ANY SERVICE OR OTHER MATTER IN CONNECTION WITH ISSUING THIS POLICY, ANY BREACH OF A POLICY PROVISION, OR ANY OTHER CLAIM OR DISPUTE ARISING OUT OF OR RELATING TO THE TRANSACTION GIVING RISE TO THIS POLICY, MUST BE BROUGHT IN AN INDIVIDUAL CAPACITY. NO PARTY MAY SERVE AS PLAINTIFF, CLASS MEMBER, OR PARTICIPANT IN ANY CLASS OR REPRESENTATIVE PROCEEDING.
- 18.** CLASS ACTION
ALL CLAIMS AND DISPUTES ARISING OUT OF OR RELATING TO THIS POLICY, INCLUDING ANY SERVICE OR OTHER MATTER IN CONNECTION WITH ISSUING THIS POLICY, ANY BREACH OF A POLICY PROVISION, OR ANY OTHER CLAIM OR DISPUTE ARISING OUT OF OR RELATING TO THE TRANSACTION GIVING RISE TO THIS POLICY, MUST BE BROUGHT IN AN INDIVIDUAL CAPACITY. NO PARTY MAY SERVE AS PLAINTIFF, CLASS MEMBER, OR PARTICIPANT IN ANY CLASS, REPRESENTATIVE, OR PRIVATE ATTORNEY GENERAL PROCEEDING.

CONDITIONS

CONDITION 18 (LP) – Arbitration

[18. ARBITRATION

- a. All claims and disputes arising out of or relating to this policy, including any service or other matter in connection with issuing this policy, any breach of a policy provision, or any other claim or dispute arising out of or relating to the transaction giving rise to this policy, may be resolved by arbitration. If the Amount of Insurance is \$2,000,000 or less, any claim or dispute may be submitted to binding arbitration at the election of either the Company or the Insured. If the Amount of Insurance is greater than \$2,000,000, any claim or dispute may be submitted to binding arbitration only when agreed to by both the Company and the Insured. Arbitration must be conducted pursuant to the Title Insurance Arbitration Rules of the American Land Title Association (“ALTA Rules”). The ALTA Rules are available online at www.alta.org/arbitration. The ALTA Rules incorporate, as appropriate to a particular dispute, the Consumer Arbitration Rules and Commercial Arbitration Rules of the American Arbitration Association (“AAA Rules”). The AAA Rules are available online at www.adr.org.
- b. ALL CLAIMS AND DISPUTES MUST BE BROUGHT IN AN INDIVIDUAL CAPACITY. NO PARTY MAY SERVE AS PLAINTIFF, CLASS MEMBER, OR PARTICIPANT IN ANY CLASS OR REPRESENTATIVE PROCEEDING IN ANY ARBITRATION GOVERNED BY CONDITION 18. The arbitrator does not have authority to conduct any class action arbitration or arbitration involving joint or consolidated claims under any circumstance.
- c. *If there is a final judicial determination that a request for particular relief cannot be arbitrated in accordance with this Condition 18, then only that request for particular relief may be brought in court. All other requests for relief remain subject to this Condition 18.*
- d. [The Company will pay all AAA filing, administration, and arbitrator fees of the consumer when the arbitration seeks relief of \$100,000 or less. Other fees][Fees] will be allocated in accordance with the applicable AAA Rules. The results of arbitration will be binding upon the parties. The arbitrator may consider, but is not bound by, rulings in prior arbitrations involving different parties. The arbitrator is bound by rulings in prior arbitrations involving the same parties to the extent required by law. The arbitrator must issue a written decision sufficient to explain the findings and conclusions on which the award is based. Judgment upon the award rendered by the arbitrator may be entered in any State or federal court having jurisdiction.]

CONDITIONS

CONDITION 19 (OP) – Arbitration

[19. ARBITRATION

- a. All claims and disputes arising out of or relating to this policy, including any service or other matter in connection with issuing this policy, any breach of a policy provision, or any other claim or dispute arising out of or relating to the transaction giving rise to this policy, may be resolved by arbitration. If the Amount of Insurance is \$2,000,000 or less, any claim or dispute may be submitted to binding arbitration at the election of either the Company or the Insured. If the Amount of Insurance is greater than \$2,000,000, any claim or dispute may be submitted to binding arbitration only when agreed to by both the Company and the Insured. Arbitration must be conducted pursuant to the Title Insurance Arbitration Rules of the American Land Title Association (“ALTA Rules”). The ALTA Rules are available online at www.alta.org/arbitration. The ALTA Rules incorporate, as appropriate to a particular dispute, the Consumer Arbitration Rules and Commercial Arbitration Rules of the American Arbitration Association (“AAA Rules”). The AAA Rules are available online at www.adr.org.
- b. ALL CLAIMS AND DISPUTES MUST BE BROUGHT IN AN INDIVIDUAL CAPACITY. NO PARTY MAY SERVE AS PLAINTIFF, CLASS MEMBER, OR PARTICIPANT IN ANY CLASS, REPRESENTATIVE, OR PRIVATE ATTORNEY GENERAL PROCEEDING IN ANY ARBITRATION GOVERNED BY CONDITION 19. The arbitrator does not have authority to conduct any class action arbitration, private attorney general arbitration, or arbitration involving joint or consolidated claims under any circumstance.
- c. *If there is a final judicial determination that a request for particular relief cannot be arbitrated in accordance with this Condition 19, then only that request for particular relief may be brought in court. All other requests for relief remain subject to this Condition 19.*
- d. [The Company will pay all AAA filing, administration, and arbitrator fees of the consumer when the arbitration seeks relief of \$100,000 or less. Other fees][Fees] will be allocated in accordance with the applicable AAA Rules. The results of arbitration will be binding upon the parties. The arbitrator may consider, but is not bound by, rulings in prior arbitrations involving different parties. The arbitrator is bound by rulings in prior arbitrations involving the same parties to the extent required by law. The arbitrator must issue a written decision sufficient to explain the findings and conclusions on which the award is based. Judgment upon the award rendered by the arbitrator may be entered in any State or federal court having jurisdiction.]

Wrapping up the Magical Mystery Tour of 2021 Forms:

- Policies
- Endorsements
- Effective Date



POLICIES

NEW ALTA Policy Forms For 2021

- ALTA Loan Policy
- ALTA Owner's Policy
- ALTA Homeowner's Policy
- ALTA Expanded Coverage Residential Loan Policy-Assessments Priority
- ALTA Expanded Coverage Residential Loan Policy-Current Assessments
- ALTA Short Form Expanded Coverage Residential Loan Policy-Assessments Priority
- ALTA Short Form Expanded Coverage Residential Loan Policy-Current Assessments
- ALTA Short Form Residential Loan Policy-Assessments Priority
- ALTA Short Form Residential Loan Policy-Current Assessments
- ALTA Commitment for Title Insurance
- ALTA Short Form Commitment for Title Insurance

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ENDORSEMENTS

CHANGES TO ENDORSEMENTS AFFECTING COMMERCIAL TRANSACTIONS

- ALTA 3 Zoning
- ALTA 3.1 Completed Structures
- ALTA 3.2 Zoning Land Under Development
- ALTA 3.3 Zoning Completed Improvement – Non-Conforming Use
- ALTA 3.4 Zoning-No Zoning Classification
- ALTA 4 Condominium – Assessments Priority
- ALTA 4.1 Condominium – Current Assessments
- ALTA 6 Variable Rate Mortgage
- ALTA 6.2 Variable Rate Mortgage – Negative Amortization

ENDORSEMENTS

CHANGES TO ENDORSEMENTS

- ALTA 8.1 Environmental Protection Lien
- ALTA 10 Assignment
- ALTA 10.1 Assignment and Date Down
- ALTA 11 Mortgage Modification
- ALTA 11.1 Mortgage Modification with Subordination
- ALTA 11.2 Mortgage Modification with Additional Amount of Insurance
- ALTA 12 Aggregation – Loan Policy
- ALTA 12.1 Aggregation – State Limits – Loan Policy
- ALTA 14 Future Advance - Priority
- ALTA 14.1 Future Advance - Knowledge
- ALTA 14.2 Future Advance – Letter of Credit
- ALTA 14.3 Future Advance –Reverse Mortgage

ENDORSEMENTS

CHANGES TO ENDORSEMENTS

- ALTA 26 Subdivision
- ALTA 27 Usury
- ALTA 28.1 Encroachments – Boundaries and Easements
- ALTA 30.1 Commercial Participation Interest
- ALTA 32 Construction Loan
- ALTA 32.1 Construction Loan – Direct Payment
- ALTA 32.2 Construction Loan – Insured's Direct Payment

ENDORSEMENTS

NEW FORMS FOR 2021

- ALTA 34.1 Identified Exception & Identified Risk Coverage
- ALTA 47 Operative Law – Owner's Policy
- ALTA 47.1 Operative Law – Loan Policy

ENDORSEMENTS

ALTA ZONING 3 SERIES CHANGE

NEW DEFINITION 1. For purposes of this endorsement, “Zoning Ordinance” means a zoning ordinance or zoning regulation of a political subdivision of the State that is in effect and applicable to the Land at Date of Policy (Applies to Zoning 3.0, 3.1, 3.2 and 3.3)

- Includes the newly defined “State” where applicable
- Final decree of “State and federal court” instead of “court of competent jurisdiction”
- Zoning 3.4-No Zoning –Definition of Zoning Ordinance limited to “county or municipality”

ENDORSEMENTS

ALTA 28.1 CHANGE

- **REVISED:** 4. Sections 3.c. and 3.d. of this endorsement do not insure against loss or damage and the Company will not pay costs, attorneys' fees, or expenses resulting from the following Exceptions, if any, listed in Schedule B: _____

(The Company may list any Exceptions appearing in Schedule B for which it will not provide insurance pursuant to Section 3.c. or Section 3.d. The Company may insert "None" if it does not intend to limit the coverage.)

- Revised to be consistent with the ALTA 28.2 and 28.3.

Thank you!



QUESTIONS

forms@alta.org



UPCOMING EVENTS

- **ALTA Commercial Network Webinars**
 - Native American Lands: The Dirt on McGirt
 - 1:00-2:00 p.m. ET, Sept. 8
- **2021 ALTA ONE | Oct. 12-15 | New Orleans**
 - [MEETINGS.ALTA.ORG/ONE](https://meetings.alta.org/one)
- **2022 ALTA Commercial Network | TBD**