



Title and Escrow Claims Guide

2024 Edition

J. Bushnell Nielsen

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Table of Contents

Acknowledgments

Introduction

1 Decision Trees and Forms

1.1 Decision Trees

1.1.1 Tender Of Defense--General

1.1.2 Tender Of Defense--Deciding Whether To Accept Or Reject

1.1.3 Tender Of Defense--Options On Acceptance

1.1.4 Claim Of Loss Decision Tree 1--General

1.1.5 Claim Of Loss Decision Tree 2--Basis For Coverage

1.1.6 Claim Of Loss Decision Tree 3--Resolving Covered Claims

1.1.7 Paying Partial Loss

1.2 Using Included Sample Claim Forms

2 Claim Administration

2.1 Unfair Claims Settlement Practices Act

2.1.1 California Regulations Promulgated Under The UCSPA

2.1.2 Torts Based On Deceptive Trade Or Claims Practice Act

2.1.3 Complaint To Insurance Department Based On Claim Denial

2.2 Claim File Retention And Documentation

2.3 Notice Of Claim

2.3.1 Notice To Agent

2.3.2 Notice Of Claim Affecting More Than One Insured

2.3.3 Prejudice Caused By Late Notice

2.3.4 Proof Of Policy Issuance

2.4 Claims In Which Insureds Are Adverse To Or Aligned With Each Other

2.5 Claim Acknowledgment and Processing Deadlines

2.6 Investigation Of Claim

2.7 Proof of Loss

2.8 Insured's Investigation Cooperation And Examinations Under Oath

2.9 Payment Of Loss

2.10 Arbitration

2.10.1 Policy Terms

2.10.2 Effect Of Federal And State Law

2.10.3 Advance Notice Of Arbitration Provision

2.10.4 Timely Demand For Arbitration

2.10.5 Scope Of Arbitrable Matters

2.11 Releases In Claim Settlements

2.12 Surrender Of Policy Or Endorsement Thereto

2.13 Coverage Determination; Claim Acceptance And Denial

- 2.14 Voluntary Settlement By Insured
 - 2.14.1 Consent By Implication, Waiver Or Estoppel
 - 2.14.2 Payment Of Undisputed Superior Lien
 - 2.14.3 "Emergency" Settlements
 - 2.14.4 Settlement After Wrongful Denial Or Rejection Of Defense
- 2.15 Statute Of Limitations For Suit On Policy

- 3 Resolving Covered Claims
 - 3.0 Insurer's Options In Resolving A Covered Claim
 - 3.1 Watchful Waiting
 - 3.2 Payment Of Loss To Insured
 - 3.2.1 Leasehold Policy Loss
 - 3.2.2 Owner's And Loan Policies Noncumulative
 - 3.2.3 Determining Amount Of Loss On An Owner's Policy
 - 3.2.3.1 Partial Loss Under An Owner's Policy
 - 3.2.3.1.1 Lesser Estate Than As Insured
 - 3.2.3.1.2 Loss Of Title To Portion Of Land
 - 3.2.3.1.3 Encumbrances
 - 3.2.3.1.4 Liens
 - 3.2.3.1.5 Lack Of A Right Of Access
 - 3.2.3.1.6 Unmarketability Of Title
 - 3.2.3.1.7 Forced Removal Of Structure
 - 3.2.3.1.8 Zoning Coverage
 - 3.2.3.1.9 Violation Of Building Or Subdivision Code
 - 3.2.3.1.10 Notice Of Exercise, Violation Or Enforcement
 - 3.2.3.2 Owner's Complete Failure Of Title
 - 3.2.3.3 Coinsurance Provision
 - 3.2.3.4 Owner's Policy Date of Loss
 - 3.2.3.5 Valuing The Property
 - 3.2.3.6 Calculating Per-Square-Foot Value
 - 3.2.3.7 Valuation By Appraisal
 - 3.2.3.8 Appraisal Methodology
 - 3.2.3.9 Consequential Damages
 - 3.2.4 Determining Amount Of Loss On A Loan Policy
 - 3.2.4.1 When Loan Policy Loss Equals Amount By Which Insured's Security In Property Is Diminished
 - 3.2.4.2 Loan Policy Date Of Loss
 - 3.2.4.3 Valuing The Property
 - 3.2.4.4 Amount Of Omitted Prior Liens And Insured's Indebtedness
 - 3.3 Defense Of Insured
 - 3.4 Clearing Title
 - 3.4.1 Reasonable Diligence In The Clearing Of Title
 - 3.4.1.1 Choice Of Counsel To Clear Title
 - 3.4.1.2 Insured's Duty To Cooperate In Clearing Of Title

- 3.4.2 Proof That Title Has Been Cleared
- 3.4.3 Clearing Of Title Negates Abstractor Liability Claim
- 3.4.4 Insuring Title And Other Measures While Title Is Being Cleared
- 3.4.5 No Loss Payable Until Final Determination; No Loss If Title Cleared
- 3.4.6 Clearing Title For A Lender
 - 3.4.6.1 Tendering Title To Lender To Satisfy Policy Duties
 - 3.4.6.2 Establishment of Equitable Lien As Clearing Of Title
- 3.4.7 Establishing Priority Over Competing Liens
 - 3.4.7.1 Federal Tax Liens
 - 3.4.7.1.1 Perfection Of Tax Lien
 - 3.4.7.1.2 Wrongful Levy Claim
 - 3.4.7.1.3 Interest Existing Before Attachment Of Lien
 - 3.4.7.1.4 Lien Limited To Net Proceeds Of Sale
 - 3.4.7.1.5 Subrogation Rights Against Taxpayer
 - 3.4.7.1.6 Release Or Subordination Of Federal Tax Lien
 - 3.4.7.2 Purchase Money Mortgages
 - 3.4.7.3 Equitable Subrogation
 - 3.4.7.4 Defenses Based On Race-Notice Recording Laws
 - 3.4.7.5 Conveyances Outside of Chain of Title
 - 3.4.7.6 Liens That Fail to Impart Constructive Notice
 - 3.4.7.6.1 Name Indices And Constructive Notice
 - 3.4.7.6.2 Parcel Indices And Constructive Notice
 - 3.4.7.7 Estate Tax Liens
- 3.4.8 Right To Appeal Adverse Ruling
- 3.4.9 Expenses Incurred While Insurer Is Clearing Title
 - 3.4.9.1 Lost Rent
 - 3.4.9.2 Carrying Expenses
 - 3.4.9.3 Construction Expenses
 - 3.4.9.4 Lost Profit Or Sale
 - 3.4.9.5 Decline In Land Value And Other Claimed Expenses
- 3.5 Payment Of Policy Limits
- 3.6 Paying Party Adverse To Insured
- 3.7 Obtaining Title For Insured
- 3.8 Purchasing The Insured Indebtedness

- 4 Duty to Defend
 - 4.1 Policy Provisions Regarding The Duty To Defend
 - 4.2 Defense Obligation Runs To Insureds Only
 - 4.3 Tender Of Defense
 - 4.4 Scope Of Duty To Defend
 - 4.4.1 Insured's Defense Bringing Suit Within Coverage
 - 4.4.2 Ambiguous Pleadings
 - 4.4.3 Extrinsic Evidence
 - 4.4.4 Frivolous Claims

- 4.5 Defense Of Certain Typical Classes Of Title-Related Lawsuits
 - 4.5.1 Fraud And Related Torts
 - 4.5.2 No Title Defect
 - 4.5.3 Survey And Possession Matters
 - 4.5.4 Suit By Insured Against Insurer
 - 4.5.5 Affirmative Assurance Creating Duty To Defend
 - 4.6 Parties For Whom Defense Is Owed
 - 4.7 Defense Of Covered Claims Only
 - 4.8 Insurer's Right To Select Counsel
 - 4.9 Reservations of Rights
 - 4.10 Cooperation Of Insured
 - 4.11 Withdrawal Of Defense; Pay-And-Walk Provision
 - 4.12 Right Or Duty To Appeal
 - 4.13 Insurer's Settlement Of Lawsuit
 - 4.14 Refusal Of Defense, Declaratory Judgment Action, Forum And Choice Of Law
 - 4.15 Damages For Breach Of Duty To Defend
- 5 Recoupment
- 5.1 Subrogation
 - 5.2 Principles Of Subrogation Generally
 - 5.3 Making The Insured Whole
 - 5.4 Suit In Insured's Name Or As Assignee; Insured's Duty To Cooperate
 - 5.5 Subrogation Rights Under Title Insurance Policies
 - 5.6 Contractual Versus Equitable Subrogation
 - 5.7 Classes Of Parties Against Whom Insurer May Claim
 - 5.8 Defenses Raised As To Insurer's Right Of Subrogation
 - 5.8.1 Insurer Title Search Error
 - 5.8.2 Excessive Settlement Amount Paid By Insurer
 - 5.8.3 Insurer As Volunteer
 - 5.8.4 Defenses Applicable To Insured
 - 5.9 Subrogation Rights Against Sellers
 - 5.9.1 Theories Of Recovery Against Sellers
 - 5.9.1.1 Seller Created Or Knew Of Defect
 - 5.9.1.2 Seller Would Reap Windfall
 - 5.9.2 Sellers' Defenses To Recovery
 - 5.9.2.1 Insurer Error In Reporting Status Of Title
 - 5.9.2.2 Reliance On Commitment In Warranting Title
 - 5.9.2.3 Insurer's Drafting Of Deed
 - 5.9.2.4 Abstractor Negligence of Insurer
 - 5.9.2.5 Insurer's Escrow Negligence Or Defalcation
 - 5.9.2.6 California Deed Of Trust Defenses
 - 5.10 Indemnities--Recoupment On
 - 5.10.1 Asserting Rights Under Indemnities
 - 5.10.2 Enforcement Of Indemnities And Affidavits

- 5.10.3 Indemnity Collateral Disputes
- 5.11 Recoupment Against Bankruptcy Debtors
- 5.12 Taking Property Rights As Salvage
- 5.13 Reinsurance, Coinsurance, Excess Insurance And Letters Of Indemnity

- 6 Title Insurance Commitment
 - 6.1 Commitment As Offer of Insurance
 - 6.2 Integration And Merger With Policy Terms
 - 6.3 Proposed Insured And Third Party Beneficiaries
 - 6.4 Commitment Conditions and Requirements
 - 6.4.1 Payment Of Premium
 - 6.4.2 Payment Of Consideration For Purchase Of Insured Interest
 - 6.4.3 Delivery and Recording Of An Insured Instrument
 - 6.5 Expiration Of Commitment
 - 6.6 Knowledge Of Proposed Insured—Duty To Disclose
 - 6.7 Gap Exception; Amendment Or Rescission of Commitment
 - 6.8 Reliance On Commitment
 - 6.9 Measure Of Loss Under Commitment
 - 6.10 Commitment Exceptions
 - 6.11 Commitment Terms As Exclusive Remedy
 - 6.12 Collecting Premiums And Cancellation Charges; Pirating Of Commitment Information

- 7 Insureds and Claimants
 - 7.1 Named Insured
 - 7.2 Successor Insureds Under Owner's Policy
 - 7.3 Owner's Policy Termination; Warranty Liability
 - 7.4 Successor Insureds Under Loan Policy
 - 7.5 Rights Of Parties Who Hold Interests In Named Insured Entities
 - 7.6 Texas Limitations On Definition Of Insured
 - 7.7 Third Party Beneficiary Claims
 - 7.8 Assignment Of Policy Or Claim
 - 7.9 Loan Policy Continuation And Termination
 - 7.10 Coverage Defenses Against Successor Insureds

- 8 Estate and Land Insured
 - 8.1 The Insured Estate
 - 8.2 The Insured Land
 - 8.3 Variance Between Land Insured And Land Possessed Or Claimed
 - 8.4 Land Erroneously Included In Policy
 - 8.5 Deficiencies In Legal Descriptions
 - 8.6 Distance Or Area Shortage In Legal Description
 - 8.7 Improvements And Personal Property
 - 8.8 Appurtenant Easements And Rights
 - 8.9 Adjacent Streets And Waterways

- 9 Covered Risks
 - 9.0 Title Insurance Policy Types
 - 9.1 Nature And Scope Of Title Insurances Policies; Rules Of Construction
 - 9.1.1 Nature Of Policy Coverages
 - 9.1.2 Policy Of Indemnity, Not Guaranty
 - 9.1.3 Rules Of Policy Construction
 - 9.1.3.1 Insurance Contract Interpretation Principles
 - 9.1.3.2 Adhesion Contract Rule
 - 9.1.3.3 Reasonable Expectations Doctrine
 - 9.1.3.4 Insurer As Drafter Rule As Applied To Title Insurance
 - 9.1.3.5 Policy Construed As A Whole; Integration Of Endorsements
 - 9.1.3.6 Title Defect Declaration Binding Only On Insurer
 - 9.2 Vesting Of Title And Defects In Title
 - 9.2.1 Forgery and Fraud
 - 9.2.2 Impersonation
 - 9.2.3 Undue Influence, Duress and Incapacity
 - 9.2.4 Other Defects in Title Under Covered Risk 2
 - 9.3 Trespass And Interests Evidenced By Possession
 - 9.4 Real Estate Taxes, Assessments And Charges
 - 9.5 Liens Other Than Taxes
 - 9.6 Easements, Restrictions And Other Encumbrances
 - 9.7 Right Of Access
 - 9.7.1 Access That Qualifies As A "Right Of Access"
 - 9.7.2 Effect Of Private And Public Restrictions On Right of Access
 - 9.7.3 Legal Status Of Adjacent Street
 - 9.7.4 Physical Status of Adjacent Street
 - 9.8 Marketability Of Title
 - 9.8.1 Marketable Title Versus Insurable Title
 - 9.8.2 Effect On Marketability Of Insuring Over Defect
 - 9.8.3 Marketable Title Versus Physical Conditions And Market Value
 - 9.8.4 Effect Of Recorded Instruments On Marketability
 - 9.8.5 Marketability Claims Affecting Condominiums And Other Development Regimes
 - 9.8.6 Making Title Marketable By Removing Defect or Encumbrance
 - 9.9 Covered Risks Added In 2006 And 2021 ALTA Policies
 - 9.9.1 Survey Matters Coverage
 - 9.9.2 Notice Of Enforcement Coverages
 - 9.9.3 Creditors' Rights Coverage
 - 9.9.4 Recording Gap Coverage
 - 9.9.5 PACA-PSA Trust Coverage
 - 9.10 Loan Policy Coverages
 - 9.11 Coverages Granted By Endorsement
 - 9.11.1 Rules Of Interpretation For Endorsements
 - 9.11.2 Endorsements Concerning Land, Improvements and Access

- 9.11.3 Endorsements Concerning Liens And Encumbrances
- 9.11.4 Comprehensive, Zoning, Inflation And Other Endorsements
- 9.12 Scope Of Policy Definition Of "Public Records" And Recorded Instruments That Do Not Affect Title
- 9.13 Forfeiture Of Property For Illegal Drug Activity
- 9.14 Covered Risks Of Specialty Policies
 - 9.14.1 ALTA Residential Policy
 - 9.14.2 ALTA Homeowner's Policy
 - 9.14.3 ALTA Short Form Residential Loan Policy
 - 9.14.4 ALTA Residential Limited Coverage Junior Loan Policy
 - 9.14.5 ALTA United States of America Policy
 - 9.14.6 ALTA Limited Pre-Foreclosure Policy
 - 9.14.7 ALTA Expanded Coverage Residential Loan Policy
- 10 Construction Liens
 - 10.1 Construction Lien Policy Coverage
 - 10.1.1 Liens Filed After Policy Date For Work Done Before Policy Date
 - 10.1.2 Lien Coverage On Owner's Policies
 - 10.1.3 Liens For Work Done After Policy Date
 - 10.1.4 Pending Disbursement Endorsement And Disbursing Agreement Limitations
 - 10.1.5 Unrestricted Lien Coverage
 - 10.1.5.1 Failure To Keep Project In Balance
 - 10.1.5.2 Unjust Enrichment Or Windfall To Lender
 - 10.1.6 Measure Of Loss—Loan Policy
 - 10.1.7 Premature Or Voluntary Payment Of Liens By Insured Lender
 - 10.2 Construction Loan Escrows
 - 10.2.1 Nature Of Agreement Generally
 - 10.2.2 Paying Subcontractors And Collecting Lien Waivers
 - 10.2.3 Keeping Project In Balance
 - 10.2.4 Inspection Of Property
 - 10.2.5 Claims By Insurer Against Escrowee
 - 10.2.6 Escrowee's Duties To Lien Claimants
 - 10.2.7 Recovery By Escrowee Against Other Parties
 - 10.2.8 Punchlist And Completion Escrows
- 11 Exclusions
 - 11.1 Land Use Laws, Police Power And Eminent Domain
 - 11.1.1 Building Code Ordinances
 - 11.1.2 Zoning And Other Use Regulation
 - 11.1.3 Subdivision Laws
 - 11.1.4 Environmental Liens
 - 11.1.5 Police Power And Eminent Domain
 - 11.2 Created, Suffered, Assumed Or Agreed To
 - 11.2.1 Liens Agreed To Or Assumed In Purchase Agreement

- 11.2.2 Other Title Issues Assumed Or Agreed To In Purchase Agreement
 - 11.2.3 Reformation Of Policy To Remove Parcel Or Alter Terms
 - 11.2.4 Matters Discoverable By Inspection Of Property And Inquiry Notice
 - 11.2.5 Prior Liens Created By Lender Or Of Which It Had Knowledge
 - 11.2.6 Bankruptcy Preference Or Recharacterization Of Interest
 - 11.2.7 Fraud Or Other Tort In Obtaining Title
 - 11.2.8 Construction Loan Disbursement
 - 11.2.9 Other Matters Involving Owner Insureds
 - 11.2.10 Other Matters Involving Lender Insureds
 - 11.2.11 Effect Of D'Oench, Duhme Doctrine
 - 11.3 Known To Insured
 - 11.3.1 Misrepresentation By Proposed Insured
 - 11.3.2 Types Of Knowledge And Notice
 - 11.3.3 Policy Obtained By Fraud Or Concealment
 - 11.3.4 Matters Which Applicant Must Disclose
 - 11.3.5 Loan Fraud And Forgery
 - 11.3.6 Recorded Matters
 - 11.3.7 Effect Of Alleged Knowledge On Duty To Defend
 - 11.4 No Loss Suffered
 - 11.4.1 Liens And Encumbrances
 - 11.4.2 Land Insured By Mistake
 - 11.4.3 Negligible Title Defect Causing No Loss Or Damage
 - 11.4.4 Matters Assumed Or Agreed To By Insured
 - 11.5 Post-Policy Matters
 - 11.6 Lack Of Adequate Consideration
 - 11.7 Usury, Consumer Credit, Truth In Lending
 - 11.8 Creditors' Rights
 - 11.9 Violation Of Doing Business Laws
 - 11.10 Homeowner's Policy Exclusions
- 12 Exceptions
- 12.1 Standard Exceptions—Nature And Purpose
 - 12.2 Parties In Possession
 - 12.2.1 Rights Under Leases And Unrecorded Instruments
 - 12.2.2 Trespassers
 - 12.2.3 Possession Exception And Claims Based On Recorded Instruments
 - 12.2.4 Adverse Possession And Prescriptive Easements
 - 12.2.5 Matters That Invoke Several Exceptions For Possession, Survey And Unrecorded Easements
 - 12.3 Accurate Survey And Inspection Exception
 - 12.3.1 Purpose And Scope Of Survey Exception
 - 12.3.2 Survey Exception Enforceable, Not Ambiguous
 - 12.3.3 Words And Phrases Used In Survey Exception
 - 12.3.4 No Duty To Obtain Survey, Or Highlight Or Remove Exception

- 12.3.5 How Survey Accuracy Is Measured
 - 12.3.5.1 Survey Standards And Surveyor's Role
 - 12.3.5.2 ALTA/NSPS And Statutory Survey Standards
 - 12.3.5.3 Proof Of Survey Accuracy
- 12.3.6 Gaps And Gores Between Parcels
- 12.3.7 Shortage In Acreage
- 12.3.8 Shortage In Distance
- 12.3.9 Overlaps
 - 12.3.9.1 Harmonizing Claimed Overlaps
 - 12.3.9.2 Determining Whether Overlap Would Show On Survey
 - 12.3.9.3 Affirmative Coverage For Overlap Area
- 12.3.10 Encroachments
 - 12.3.10.1 Types Of Encroachments Excepted
 - 12.3.10.2 Encroachment Onto Adjoining Land Of Structure On Insured Land
 - 12.3.10.3 Encroachments Not Visible
- 12.3.11 Boundary Line Disputes
- 12.3.12 Water Boundaries
- 12.3.13 Survey Obtained But Not Submitted For Survey Coverage
- 12.3.14 Owner Claim Based On Loan Policy Survey Coverage
- 12.3.15 Survey Attached Or "Insured"
- 12.3.16 Effect Of Removal Or Modification Of Survey Exception
- 12.3.17 Inspection Of Premises
 - 12.3.17.1 Visible Possession Including Adverse Possession
 - 12.3.17.2 Recorded Easements; Equivocal Evidence Of Possession
 - 12.3.17.3 Evidence Of Physical Access
- 12.4 Easements Not Shown By Public Records
- 12.5 Construction Liens
- 12.6 Taxes
- 12.7 Special Exceptions
 - 12.7.1 Adequacy Of Notice Given By Exception
 - 12.7.2 Inaccuracies in Terms Recited In Exceptions
 - 12.7.3 Ambiguous Language In Exception
 - 12.7.4 Adequacy of Blanket Exceptions As To Recorded Matters
 - 12.7.5 Coverage As To Matters Not Excepted
 - 12.7.6 No Duty To Remove Exceptions Or Give Advice
- 13 Escrow and Settlement
 - 13.1 Types Of Escrows And Their Purposes
 - 13.2 Escrow Instructions
 - 13.3 Legal Relationship Between Escrowee And Others
 - 13.4 Duty Of Care And Parties To Whom Owed
 - 13.5 Duties Regarding Money
 - 13.5.1 Loan Payoff Disputes
 - 13.6 Duties Regarding Documents And Recordings

- 13.7 Duties Regarding Drafting Of Instruments
 - 13.8 Duty To Close According To Purchase Agreement Terms
 - 13.9 Statements And Representations By Escrowee
 - 13.9.1 Information About The State Of Title
 - 13.9.2 Advice About The Legal Effect Of A Closing Document
 - 13.9.3 Facts Which Might Suggest Fraud Or Bad Bargain
 - 13.10 Creditor Claims Against Money Held In Escrow
 - 13.11 Damages For Breach of Escrow Instructions; Defenses To Liability
 - 13.12 Claims Against Insurer For Title Agent Escrow Acts
 - 13.13 Laws Regulating Closing Funds
 - 13.14 Recovery Against Third Parties For Escrow Losses
 - 13.15 Tax-Deferred Exchange Intermediary And Accommodation Party Role
- 14 Closing Protection Letters
 - 14.1 Nature Of The Letter's Assurances
 - 14.2 Indemnification And Requirements
 - 14.3 Parties Protected By Letter
 - 14.4 Conditions And Exclusions
 - 14.4.1 Conditions
 - 14.4.2 Exclusions
 - 14.5 Arbitration Of Letter Disputes
 - 14.6 Defenses To Liability And Losses Payable Under Letter
- 15 "Duty to Search" and Title Searches
 - 15.1 "Duty To Search" Theory Liability
 - 15.2 Search Duty Rationale
 - 15.3 Abstractor Liability As A Supplement To Policy Loss
 - 15.4 Basis For Search Duty Cause Of Action
 - 15.5 Abstractor Liability
 - 15.6 Policy as Exclusive Remedy; No Implied Contract To Search Title
 - 15.7 Misrepresentation Of Title
 - 15.8 Texas Deceptive Trade Practices Act
 - 15.9 Other Consumer Protection Statutes
 - 15.10 Reasonable Search Statutes
 - 15.11 Damages Under Search Duty Theory
 - 15.12 State-By-State Review Of Abstractor Liability Law
 - 15.13 Abstracts And Title Searches
 - 15.13.1 Parties To Whom Abstractor May Be Liable
 - 15.13.2 Standard Of Care And Limitations On Liability
 - 15.13.3 Searcher And Title Plant Liability To Title Policy Issuer
- 16 Bad Faith and Tort Liability
 - 16.1 Tort Of Bad Faith
 - 16.1.1 Third Party Bad Faith Concepts Distinguished

- 16.1.2 First Party Bad Faith
- 16.1.3 Insurance Claim Penalty Statutes
- 16.1.4 Damages For Bad Faith Acts
 - 16.1.4.1 Emotional Distress
 - 16.1.4.2 Punitive Damages
- 16.1.5 Title Cases On Bad Faith Failure To Indemnify Or Clear Title
- 16.1.6 Title Cases On Bad Faith Failure To Defend
- 16.1.7 Breach Of Covenant Of Good Faith By Insured
- 16.1.8 Bad Faith And Closing Protection Letters
- 16.1.9 Discovery In And Conduct Of Bad Faith Lawsuits
- 16.2 Fraudulent Or Reckless Misrepresentation Of Title Or In Conduct of Escrow

- 17 Agents and Approved Attorneys
 - 17.1 Actual, Implied And Apparent Authority, And Estoppel
 - 17.2 Escrow And Other Functions Outside Scope Of Agency
 - 17.3 Issues Unique To Bar Fund Attorney-Agents And Approved Attorneys
 - 17.4 Issues Unique To Affiliated Business Agents
 - 17.5 Scope Of Agency For Title Insurance Coverage
 - 17.6 Agent Conduct In Relation To Claims
 - 17.7 Agent Liability To Insured Under Policy
 - 17.8 Agent Liability To Insurer
 - 17.8.1 Agency Contracts
 - 17.8.2 Title Losses Payable By Agent
 - 17.8.3 Losses Caused By Theft Of Money From Escrow Account Or Defalcation
 - 17.9 Termination Of Agency Contract
 - 17.10 Errors And Omissions Coverage
 - 17.10.1 Covered Risks
 - 17.10.2 Exclusions And Coverage Defenses
 - 17.10.3 Other Coverage Provisions

- Appendix A--Letters and Forms
 - 1 Acknowledgment of receipt of claim
 - 2 Acceptance of defense--no reservation of rights—addressed to attorney retained
 - 3 Acceptance of defense with reservation of rights—to insured
 - 4 Acceptance of defense with reservation of rights—retainer of attorney who tendered defense
 - 5 Acceptance of defense with reservation of rights—retaining insured's choice of counsel—California
 - 6 Acceptance of partial defense—retention of separate counsel—addressed to insured's personal counsel
 - 7 Acceptance of partial defense—apportionment of fees by insured's choice of counsel
 - 8 Reservation of rights—retender of defense to insured
 - 9 Preliminary analysis of no duty to defend
 - 10 Preliminary analysis of no duty to defend and filing of declaratory judgment action

- 11 Payment of loss without release of insurer
- 12 Notice of insurer's intent to clear title—2006 ALTA policy
- 13 Notice of insurer's intent to clear title—Residential policy
- 14 Appraiser retainer letter—addressed to appraiser
- 15 Appraisal method—insured obtaining appraisal
- 16 Mathematical formula for partial loss of land or easement
- 17 Template--preliminary analysis of no coverage
- 18 Follow-up after denial of claim of loss
- 19 Easement or other property right not insured
- 20 Disputed improvement not located on Land
- 21 Land erroneously included in policy and deed
- 22 Physical barrier to access
- 23 "Reasonable" access not insured
- 24 Street not insured as being public, open, unobstructed or at grade
- 25 Marketability of title not "salability" of property—Residential policy
- 26 Commitment cancelled—Lapse of effective period
- 27 Commitment cancelled—Failure to pay premium
- 28 Commitment cancelled—Failure to disclose material fact
- 29 Commitment cancelled—Failure to pay adequate consideration
- 30 Commitment cancelled—Failure to meet requirement
- 31 Commitment—No loss suffered because no reliance
- 32 Loan policy does not insure repayment of debt or value of land
- 33 Police power matter
- 34 Environmental exclusion—Pollution on property
- 35 Zoning dispute
- 36 Building code violation
- 37 Subdivision law violation
- 38 Tortious conduct in obtaining title
- 39 Misrepresentation or concealment by insured
- 40 No loss—Exclusion 3(c)
- 41 Post-policy matter—Residential policy
- 42 Post-policy matter—2006 ALTA policy
- 43 Construction liens after policy date—2006 ALTA Owner's policy
- 44 Lack of adequate consideration—Exclusion 3(e)
- 45 Delay damages—Residential policy
- 46 Parties in possession exception generally
- 47 Adverse possession or prescriptive easement
- 48 Tenant in possession
- 49 Trespasser
- 50 Shortage in acreage
- 51 Shortage in distance
- 52 Overlap
- 53 Matters visible on inspection
- 54 Unrecorded easement

55	Exception not required for matters not affecting title
56	Exception gives adequate notice of defect
57	Special terms contained in exception
58	Notice of claim form
59	Release of insurer
60	Release of insurer—Subrogation rights expressly granted
61	Release checklist
62	Request for proof of loss
63	No present challenge to title—"watchful waiting"
64	Measure of loss payable if title clearance unsuccessful
65	Tender of policy limits
66	Apportionment of fees—Covered and non-covered causes
67	Recoupment against seller who created defect
68	Demand on indemnitor
69	Voluntary conveyance terminating coverage
70	Road, waterbody not "Land"
71	Access—Alternate right available
72	Police power—Denial of permit
73	Construction escrow negligence
74	Easement abandonment—Post-policy matter
75	Off record risks excepted by standard exceptions
76	No survey "coverage" unless exceptions removed
77	Boundary line dispute
78	Voluntary settlement
79	Encroachment
80	Exception conspicuous, plain and clear
81	Escrow—Escrowee owes no duty to third parties
82	Escrow—No duty to give legal advice
83	Escrow—Lender bound by payoff letter
84	Assumed or agreed to in purchase contract
85	Reservation of right to recoup attorney's fees
86	Access onto public street not insured
87	Loan policy—Mortgage invalid for lack of debt
88	Loan policy does not protect against impersonation
89	Tortious conduct—Trespass, interference with property rights
90	Regulatory restriction on access
91	Prejudice by tardy notice of claim
92	No duty to bring lawsuit to clear title

Appendix B--Policy Forms

2021	ALTA Commitment for Title Insurance
2016	ALTA Commitment for Title Insurance
2006	ALTA Commitment to Insure

2006 ALTA Plain Language Commitment Form
2021 ALTA Owner's Policy
2006 ALTA Owner's Policy
1992 ALTA Owner's Policy
1987 ALTA Residential Owner's Policy
2021 ALTA Homeowner's Policy
2013 ALTA Homeowner's Policy
2021 ALTA Loan Policy
1992 ALTA Loan Policy
2006 ALTA Loan Policy
ALTA Short Form Residential Loan Policy
ALTA Residential Limited Coverage Junior Loan Policy
ALTA United States of America Policy
ALTA 13-06 Leasehold Owner's Endorsement
ALTA 13.1-06 Leasehold Loan Endorsement
1990 California Land Title Ass'n Standard Coverage Owner's Policy
Texas Form T-7 Commitment for Title Insurance
Texas Form T-1 Owner's Policy 2009 Version
Texas Form T-1 Owner's Policy 2014 Version
Texas Form T-1R Owner's Policy--Residential
Texas Form T-2 Mortgagee Policy
Texas Form T-13 Mortgagee Policy Binder on Interim Construction Loan
1987 ALTA Closing Protection Letter
2008 ALTA Closing Protection Letter
2008 ALTA Closing Protection Letter—Limitations
2008 ALTA Closing Protection Letter—Single Transaction Limited Liability
2011 ALTA Closing Protection Letter—Single Transaction
2011 ALTA Closing Protection Letter—Multiple Transactions
2021 ALTA Closing Protection Letter—Single Transaction
2021 ALTA Closing Protection Letter—Multiple Transactions

Case Table

Index

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Bush Nielsen

Introduction

This treatise is intended as a guide for the resolution of disputes about title insurance policies, real estate escrows and closings, and related issues involving title insurers, title agents, approved attorneys and escrowees. It is intended for claim administrators, retained counsel, insurance underwriters and others who deal with title claims and coverage disputes. The commentary is intended to be practical rather than academic. The goal is to give guidance on commonly-encountered issues, whether or not they have been addressed by the courts. This work is limited in scope. It is not intended as an all-encompassing treatise on the land title industry.

The book is organized to follow the decision-making process used by claims counsel or claim administrators. The first chapter provides decision trees and addresses essential issues about claim handling. Chapter 2 addressed more claim administration issues. Chapters 3 and 4 cover the resolution of covered claims and defense of the insured, which are the two primary means by which claims are resolved. Chapter 5 is on recoupment and subrogation rights. Chapter 6 concerns the title insurance commitment. Chapters 7 through 12 discuss the terms of the title insurance policy. Chapters 13 through 17 discuss non-policy liability (escrows, closing protection letters, title searches and tort liability on insurance policies) and issues concerning title agents and approved attorneys.

The claims practices suggested by this treatise indicate general rules or practices only. Every claim situation is different, and state laws regarding claim settlement practices vary significantly. The approaches suggested in this volume are not appropriate or correct in all cases. In fact, some of the rules and practices described are *not* appropriate in some jurisdictions, as the book explains wherever possible. The book also does not attempt to describe every possible decision or position that might be appropriate in a particular case. Therefore, any use of words such as "should," "must," "shall," "will" or the like, in describing an insurer's duties or options, is strictly for brevity's sake rather than to state a mandate imposed by policy terms, statutes, regulations or the courts.

The views expressed in this book are those of the author, and are not the official views of the American Land Title Association or any of its members. This book also does not represent the uniform custom and practice in the title insurance industry in the administration of claims, or any insurer's internal claim standards or practices. This work is not sanctioned, sponsored or approved by any title insurer.

However, the practices and views expressed herein are not mere opinions developed in a vacuum. I have resolved thousands of claims and title disputes in the past 40 years. I was employed by title insurers for 16 years and received superlative training from my supervisors and peers. The

handling of title disputes remains my nearly-exclusive employment as a practicing lawyer, and I continue to receive information and insights from title industry members from all regions of the United States. This book is intended to impart the wisdom that I have received, in addition to my own analysis of cases, statutes and regulations. I believe it is the combination of practical knowledge with scholarship that has made this book useful since it was first published in 1996.

Finally, the analysis in this book reflects my belief that most cases on this subject can be reconciled to indicate a level of consistency in the interpretation of the policy language. Where there is a split of authority that the courts themselves recognize or which is obvious, the book explains the differing positions. Throughout the book, my goal is to present an honest and objective explanation of the subject and the decisions, and not to suggest what the law should now be or how it should evolve.

J. Bushnell Nielsen