

Title and Escrow Claims Guide

2023 Edition

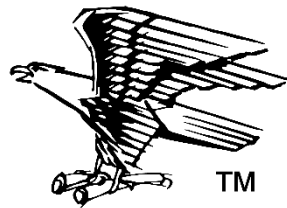
J. Bushnell Nielsen



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Please direct order inquiries to:

American Land Title Association
1800 M Street, N.W., Suite 300 South
Washington, DC 20036-5828
Telephone: 202-296-3671
800-787-ALTA®
Fax: 202-223-5843
888-FAX-ALTA®
E-mail: service@alta.org

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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

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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