

Title and Escrow Claims Guide

2026 Edition

J. Bushnell Nielsen



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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

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This book is dedicated to Timothy Richard Hennessy, a true friend who is sorely missed, and to my wife, Sarah, and sons John, Ted and Peter.

Bush Nielsen

Introduction

This treatise is a codification of the customs and practices of title insurers in resolving claims on title insurance policies, closing protection letters, real estate escrows and closings. The book also addresses related issues involving subrogation rights, extra-contractual claims by insureds, title agents and the customs of closers and escrowees. It is intended for title insurance claim counsel, coverage counsel, underwriting personnel, title officers, insureds and their counsel, escrow officers, title agents and others who deal with title claims, underwriting and escrows.

This book pairs an explanation of industry custom and practice along with a discussion of the court decisions that have set, approved or shaped those customs. The book contains many discussions of industry custom and practice on subjects that have not been addressed by the courts.

This work is not intended as an all-encompassing treatise on the land title industry. It is not written as a guide for the purchase of title insurance policies and endorsements, which is the subject of several other books.

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 claims not based on the policy: escrows, closing protection letters, title searches, tort liability and issues concerning title agents and approved attorneys.

The claims practices described in this treatise are reasonably detailed, but not fully comprehensive. There is a wide variety of claim situations. Even after more than 40 years of study and work, your author regularly encounters new issues, or at least new aspects of issues.

The approaches described in this book are not appropriate or correct in all cases. Some of the practices described are *not* appropriate in some jurisdictions, as the book explains wherever possible. The book also does not attempt to describe every possible action 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 practices, is strictly for brevity's sake rather than as a mandate based on universal practice.

The analysis in this book reflects my belief that most court decisions about title insurance can be reconciled to some extent, and that there is some consistency in the interpretation of the policy language on most of its terms. Where there is a split of authority in the interpretation of a policy work or phrase, the book explains the differing positions.

The views expressed in this book are those of the author. They are not the official views of the American Land Title Association or any of its members. This book may not represent the universal custom and practice in the title insurance industry on any particular subject. The book is not a restatement of any one insurer's claim 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 worked on title insurance issues and title disputes for more than 40 years. I was employed by title insurers for 16 years and received superlative training. As a claims counsel and claim office manager, I resolved thousands of policy claims and managed others who handled thousands more. I also served as an underwriting counsel, title officer, escrow officer and construction disbursing officer. Title insurance and related subjects have been my primary work since I ceased to be an employee of a title insurer. During that time, I have analyzed or have been consulted on thousands of claims. I have conducted considerable research on these subjects. I continue to regularly receive information and insights from title industry members located in all regions of the United States. I have written more than 3,000 articles about title insurance, the title to real estate, escrows, closing protection letters and related subjects. This book is intended to impart the wisdom that others have graciously shared with me, in addition to my own study of industry customs, scholarly works, court decisions, statutes and regulations. I believe that it is this combination of practical knowledge and scholarship that has made this book useful since it was first published in 1996.

Finally, throughout the book, my goal is to present an honest and objective explanation of actual industry custom and practice, rather than to suggest what customs should exist or how they should evolve.

J. Bushnell Nielsen