

Title Insurance Coverage for Real Estate Counsel: ALTA Coverage and Endorsements for Owners and Lenders

TUESDAY, DECEMBER 21, 2021

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Today's faculty features:

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Sections of the Basic Policy

The Title Policy consists of several parts:

- (1) The Coverage and Exclusions;
- (2) The Exceptions;
- (3) The Conditions and Stipulations of coverage; and
- (4) Endorsements.

Covered Risks

- Explains what is insured and excluded in every policy.

Schedule A

- Includes general policy information, including the amount of the insurance, the name of the insured and the property covered by the policy.

Schedule B

- Contains “Exceptions” from coverage including standard exceptions and special exceptions that are unique to the insured land such as specific liens and encumbrances the insurer found on the property.

Conditions and Stipulations

- Define policy terms and address various matters including claims procedures, and the insured’s duty to give prompt notice of any claim and duty to cooperate with the title insurer.



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What are Covered Risks?



ALTA 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 17.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, [Blank Title Insurance Company], a [Blank] corporation (the "Company"), insures as of the Date of Policy and, to the extent stated in Covered Risks 9 and 10, after the Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. The Title being vested other than as stated in Schedule A.
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.
3. Unmarketable Title.
4. No right of access to and from the Land.

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What Are the Covered Risks Under an Owner's Policy?

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title, including “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.”
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (a) the occupancy, use, or enjoyment of the Land;
 - (b) the character, dimensions, or location of any improvement erected on the Land;
 - (c) the subdivision of land; or
 - (d) environmental protection.if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.

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What Are the Covered Risks Under an Owner's Policy?

6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
9. Title being vested other than as stated in Schedule A or being defective
 - A. as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
 - B. because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records (i) to be timely, or (ii) to impart notice of its existence to a purchaser for value or a judgment or lien creditor.
10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.



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What Are Additional Covered Risks Under a Lender's Policy?

Covered Risks 1-8 are the same as in an Owner's Policy

9. The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title.
10. The lack of priority of the lien of the Insured Mortgage upon the Title over any other lien or encumbrance.
11. The lack of priority of the lien of the Insured Mortgage upon the Title
 - (a) as security for each and every advance of proceeds of the loan secured by the Insured Mortgage over any statutory lien for services, labor, or material arising from construction of an improvement or work related to the Land when the improvement or work is either (i) contracted for or commenced on or before Date of Policy; or (ii) contracted for, commenced, or continued after Date of Policy if the construction is financed, in whole or in part, by proceeds of the loan secured by the Insured Mortgage that the Insured has advanced or is obligated on Date of Policy to advance; and
 - (b) over the lien of any assessments for street improvements under construction or completed at Date of Policy.
12. The invalidity or unenforceability of any assignment of the Insured Mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the Insured Mortgage in the named Insured assignee free and clear of all liens.
13. The invalidity, unenforceability, lack of priority, or avoidance of the lien of the Insured Mortgage upon the Title
 - (a) resulting from the avoidance in whole or in part, or from a court order providing an alternative remedy, of any transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction creating the lien of the Insured Mortgage because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
 - (b) because the Insured Mortgage constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records (i) to be timely, or (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
14. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 13 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the Insured Mortgage in the Public Records.



New 2021 Covered Risks: Electronic Signatures

- Covered Risk 2(a)(iii) of both policies previously included “a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered.”
- Now says: “a document affecting the Title not properly authorized, created, executed, witnessed, sealed, acknowledged, notarized (including by remote online notarization), or delivered.”
- Additionally, subsection (vii) adds a defect in the Title caused by “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.”
- Condition 9(h) of the Lender’s policy also now includes the “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.”



Marketable Title (Covered Risk No. 3)

- The owner's policy defines "Unmarketable Title" as: "Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title."
- "Title is marketable if it is free from reasonable doubt and is a title which a reasonable, well informed buyer would be willing to accept." Willow Ridge Ltd. P'ship v. Stewart Title Guar. Co., 706 F. Supp. 477, 486 (S.D. Miss. 1988), aff'd sub nom. Willow Ridge v. Stewart Title, 866 F.2d 1419 (5th Cir. 1989).
- See also Native Sun Inv. Grp. v. Ticor Title Ins. Co., 189 Cal. App. 3d 1265, 1275 (Ct. App. 1987) (finding "meritless" challenges to title did not render title unmarketable).



Marketable Title (Covered Risk No. 3)

- Lack of access does not, as a general rule, render title unmarketable. (See next section).
- Zoning issues do not, as a general rule, render title unmarketable.
 - Somerset Sav. Bank v. Chicago Title Ins. Co., 420 Mass. 422 (1995) (denying coverage for undisclosed zoning restriction that required property owner to obtain consent from railroad before constructing condominiums).
 - Northern California Comm. Development Corp. v. First American Title Ins. Co., 2019 WL 1397040 (Cal. Ct. App. Mar. 28, 2019) (holding that insured was not entitled to coverage in lawsuit challenging the validity of the subdivision affecting the insured property and that “appears to confuse marketability of *title*, which is covered by the title insurance policy, with marketability of *land*.”).



Marketable Title (Covered Risk No. 3)

- In Lemon-Pittman v. Commonwealth Land Title Ins. Co., 2014 WL 3498323 (E.D. La. July 15, 2014), the Court found that an undiscovered notice of disqualification for future disaster assistance recorded on the insured property did not render it unmarketable, although it may have devalued the property.
- See also VACC LLC v. Chicago Title Ins. Co., et al., 2021 WL 710793 (Ariz. Ct. App. Feb. 23, 2021) (finding title was not unmarketable when property was encumbered by a plat that rendered the property one large lot rather than individual lots because the insured “has not asserted that anyone else claimed an ownership interest in the Property, or that anything prevented [the insured] from conveying the same interest it acquired when it purchased the Property.”).
- But see Jericho State Capital Corp. of Fla. v. Chicago Title Ins. Co., 848 S.E.2d 572 (S.C. Ct. App. 2020) (county ordinance designating and reserving land for future roads and highway constituted an encumbrance rendering title unmarketable).



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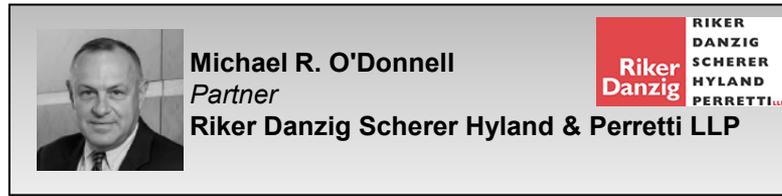
What Is Access (Covered Risk No. 4)?

- One of the “Covered Risks” under both the owner’s and lender’s policies is for “[n]o right of access to and from the Land.”
- In Fidelity Nat’l Title Ins. Co. v. Woody Creek Ventures, LLC, the Tenth Circuit held that a revocable right of access to the insured property was sufficient under the policy and did not constitute “no right of access.” 830 F.3d 1209 (10th Cir. 2016) (affirming that 30-year right-of-way to access property does not render title unmarketable, even if the lack of a permanent right of access “lessens the economic marketability”).
- In BJD Properties, LLC v. Stewart Title Guar. Co., 380 F.Supp.3d 560 (W.D. La. 2019), the court found that the insured was not entitled to a “preferred” right of access, just *some* right of access to the insured property.



What Is Access (Covered Risk No. 4)?

- In Title & Tr. Co. of Fla. v. Barrows, the court found that the insured did not have coverage under the policy when the access road was frequently underwater at high tide because the insured still had physical access to the property. 381 So. 2d 1088, 1090 (Fla. Dist. Ct. App. 1979).
- Community Credit Union v. AmeriTitle & Abstract, Inc., 822 N.W.2d 737 (Wisc. App. 2012) (holding that insured lender's claim regarding lack of access was barred because the property was accessible through a temporary easement at the time policy was issued, regardless of the fact that the easement was set to terminate 18 months later).
- See also Chicago Title Insurance Co. v. Allynore N. Jen, 2021 WL 286073 (Md. Ct. Spec. App. Jan. 28, 2021) (finding that policy only insures access, not necessarily vehicular access).



What Is Access (Covered Risk No. 4)?

- **But see Kimble v. Land Concepts, Inc., 345 Wis. 2d 60, rev'd on other grounds, 353 Wis. 2d 377 (2014) (finding coverage for the insured when access to property via easement had terminated).**
- **See also United Bank v. Chicago Title Ins. Co., 168 F.3d 37, 41 (1st Cir. 1999) (reversing a District Court decision granting the title insurer summary judgment and holding that there was a factual question as to whether the insured had access to the property when the only access was via boat or seaplane. “Possibly there are situations in which a right of access in this manner is all that is required. But there is no case law cited to us showing that this is always so for all property, and common sense recoils from such a suggestion.”).**



Zoning Issues (Covered Risk No. 5)

- **Aldrich v. Hawrylo, 281 N.J. Super. 201 (1995) (holding a 45-foot setback zoning ordinance on the subject property was not a covered loss “[b]ecause zoning ordinances and planning board and board of adjustment resolutions are not title matters, are not part of the public land records and do not impart constructive notice to purchasers, they are not searched by title insurers and they are excluded from coverage in title insurance policies.”).**
- **Somerset Sav. Bank v. Chicago Title Ins. Co., 420 Mass. 422 (1995) (denying coverage for undisclosed zoning restriction that required property owner to obtain consent from railroad before constructing condominiums).**

EXCLUSIONS FROM COVERAGE



EXCLUSIONS FROM COVERAGE

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.
2. Any power of eminent domain. Exclusion 2 does not modify or limit the coverage provided under Covered Risk 7.
3. Any defect, lien, encumbrance, adverse claim, or other matter:
 - a. created, suffered, assumed, or agreed to by the Insured Claimant;
 - b. not Known to the Company, not recorded in the Public Records at the Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - c. resulting in no loss or damage to the Insured Claimant;
 - d. attaching or created subsequent to the Date of Policy (Exclusion 3.d. does not modify or limit the coverage provided under Covered Risk 9 or 10); or
 - e. resulting in loss or damage that would not have been sustained if consideration sufficient to qualify the Insured named in Schedule A as a bona fide purchaser had been given for the Title at the Date of Policy.
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.
5. Any claim of a PACA-PSA Trust. Exclusion 5 does not modify or limit the coverage provided under Covered Risk 8.
6. Any lien on the Title for real estate taxes or assessments imposed or collected by a governmental authority that becomes due and payable after the Date of Policy. Exclusion 6 does not modify or limit the coverage provided under Covered Risk 2.b.
7. Any discrepancy in the quantity of the area, square footage, or acreage of the Land or of any improvement to the Land.

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EXCLUSIONS IN A TITLE POLICY

- ❑ **Exclusions are standardized limitations on the coverage of a title policy that define title risks that a policy generally does not cover.**
- ❑ **Unlike with exceptions, exclusions cannot be removed.**
- ❑ **Certain endorsements, however, can extend and expand coverage for specific covered risks. (See, e.g., Zoning Endorsement (ALTA 3: insuring coverage if land is not zoned in a particular way), Access Endorsement (ALTA 17: insuring that land abuts a “physically open and publicly maintained” street)).**

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Exclusion 3(a)

- **Exclusion 3(a): This exclusion bars recovery for defects “created, suffered, assumed or agreed to” by the insured.**

- **Under the language of the exclusion, defects are created, suffered, assumed or agreed to by the insured where they arise from the insured’s deliberate act or omission. See Bank of Am. v. Chicago Title Ins. Co., 2017 WL2215012 (N.D. Ill. 2017).; see also Feldman v. Urban Commercial, Inc., 87 N.J. Super. 391, 404 (App. Div. 1964).**

- **This exclusion is intended to prevent the title insurer from being liable for matters caused by the insured’s intention, illegal, or inequitable conduct.**
 - **This cannot be simple negligence on the part of the insured.**



Case Examples

- ❑ **Plaza Home Mortg., Inc. v. Fid. Nat. Title Ins. Co., 145 A.D.3d 1048 (N.Y. 2d Dept. 2016).**
 - ❑ **The insured lender loaned money to borrowers and, in exchange received a mortgage on the borrower's property. The title insurance company issued a policy to the lender insuring the first-lien position of the mortgage. During the closing, however, the lender wired the proceeds to the borrowers' counsel with instructions to perform certain closing duties, including paying off the prior mortgage on the property. After discovering that the prior mortgage was not paid off and that its mortgage was not the first lien on the property, the insured filed a claim with the title insurance company, which was denied. The Supreme Court held that, by wiring funds to the borrowers' attorney and asking the attorney to perform certain duties, the insured had designated the attorney as its settlement agent and created the defect.**
 - ❑ **Mazel v. Las Cruces Abstract and Title Co. (In re Lamey), 2020 WL 4045254 (Bkcy. N.M. July 17, 2020) (applying 3(a) when insured failed to discharge prior lien).**
 - ❑ **Hall CA-NV, LLC v. Old Republic Nat'l Title Ins. Co., 2020 WL 869722 (N.D. Tex. Feb. 20, 2020) (applying 3(a) when lender stopped funding construction, resulting in mechanic's liens).**
 - ❑ **But see Fifth Third Mortg. Co. v. Chicago Title Ins. Co., 692 F.3d 507 (6th Cir. 2012) (title insurer cannot deny coverage under 3(a) by claiming that the insured lender created the defect through its careless underwriting and that it should have discovered that the purported borrower did not own the property).**

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Exclusion 3(b)

- ❑ **Exclusion 3(b): This exclusion bars recovery for defects not known to the insurer and not contained in the public records, but known to the insured and not disclosed to the insurer in writing before the issuance of the policy.**
- ❑ **This exclusion “is akin to a notice requirement for an insured. Its effect is to impose on the insured a duty to disclose to the insurer any defects of which the former has knowledge. . .” Barlow Burke, Law of Title Insurance, §4.05 (3d. Ed. 2016 supp.) (citation omitted)**
- ❑ **Courts have interpreted 3(b) to require that the insured have actual knowledge of the defect.**

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Case Examples

- ❑ **Manchester Fund, Ltd. v. First Am. Title Ins. Co., 332 N.J. Super. 336 (Law Div. 1999)**
 - ❑ The insured brought action against the title insurer to recover the costs of defending a civil forfeiture action. The court found that the insurer did not have to provide coverage under 3(b) exclusion where the insured's attorney learned, before issuance of the policy, that a mis-indexed lis pendens existed on the property, but failed to inform the insurer.

- ❑ **Carrington v. Chicago Title Ins. Co., 2015 WL 6758365 (N.J. Super. Ct. App. Div. Nov. 6, 2015)**
 - ❑ The insured sought coverage from the title insurer when her siblings filed a complaint claiming that they had an agreement that the insured would purchase the property in her name only and convey it to the siblings at a later date. The court affirmed that this alleged defect was known to the insured and not the insurer and excluded under 3(b).

- ❑ **1031 Props., Inc. v. First Am. Title Ins. Co., 301 P.3d 500 (Wash. Ct. App. 2013)**
 - ❑ The insured's claim was not barred by 3(b) because it observed power lines across the property, because the observation of the power lines did not mean that the insured had actual knowledge of the recorded easement allowing the power lines.

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Exclusion 3(c)

- ❑ **Exclusion 3(c) bars coverage for: “Defects, liens, encumbrances, adverse claims or other matters . . . resulting in no loss or damage to the insured claimant.”**

- ❑ **The analysis of whether there is a loss differs between owner’s policies and lender’s policies:**
 - ❑ **For Owner’s Policies: “Title defects and liens directly and adversely affect the property owner because the owner is entitled to the full market value of the property and that value is immediately reduced by outstanding title defects and liens.” Bohr v. First Am. Title Ins. Co., 2008 WL 2977353 (M.D. Fl. July 30, 2008)**

 - ❑ **For Lender’s Policies: “A mortgagee’s loss is measured by the extent to which the insured debt is not repaid.” Cale v. Transamerica Title Insurance, 225 Cal. App.3d 422 (Ct. App. 1990)**
 - ❑ **Thus, “superior liens or title defects in claims may exist which reduce the market value of the security property . . . yet result in no loss or damage to the insured mortgagee.” Id.**
 - ❑ **A lender is only indemnified “against loss with respect to the secured indebtedness, not a diminution of profits potentially obtainable from the resale of the property.” Id.**

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Case Examples

- ❑ **Green v. Evesham, 179 N.J. Super. 105 (App. Div. 1981):** The title insurance company issued a policy to the insured lender but overlooked a prior mortgage. At a sheriff’s sale, the insured ended up acquiring the deed to all of the land. The land was appraised at \$19,143,500, which was well in excess of the \$15,111,063.90 due on the loan. The court held that the insured was not entitled to recover where there was no showing “that mortgaged property was thereby reduced in value less than the balance of the underlying debt or that, because of the prior lien, [defendant] failed to recover full amount of the debt.”
- ❑ **Summonte v. First American Title Ins. Co., 180 N.J. Super 605 (Ch. Div. 1981):** The insured purchased property that was subject to a lien. The insurer argued that since the insureds had not had to spend any money as a result of the judgment, they did not suffer a loss. The court held that the insurer was obligated to remove the defect because “[t]he properties, whether valued at the time of purchase or at some other time, are worth less than they would otherwise be by the amount due on the judgment . . . Consequently, the insured suffered a loss immediately upon the acquisition of title and that loss was in every sense ‘actual.’”
- ❑ **Rassi v. Buckeye Title Agency, Inc., 2021 WL 2624660 (Ohio Ct. App. June 25, 2021)** (holding title agent not liable for failing to include a lien on the closing settlement statement because it did not cause the plaintiffs to suffer any damages. In finding so, the court noted that the purchase contract set the purchase price for the home as the “Amount of Payoff.” Therefore, the plaintiffs were contractually obligated to pay off whatever amount was due upon the home, which included the prior lien, and the title agency’s failure to include the lien on the closing settlement statement did not alter the plaintiffs’ contractual payoff obligation).

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Exclusion 3(d)

- ❑ **Exclusion 3(d) excludes coverage for title defects “attaching or created subsequent to Date of Policy”**
- ❑ **BV Jordanelle, LLC v. Old Republic National Title Insurance Company, 830 F.3d 1195 (10th Cir. 2016) (affirming that a title insurance policy did not cover a loss caused by an assessment levied against the insured property after the policy was issued, even if the assessment was based on a Notice of Intention to levy assessments that pre-dated the policy).**
- ❑ **Deutsche Bank Nat’l Tr. Co. as Tr. for Am. Home Mortg. Inv. Tr. 2007-2 v. Fid. Nat’l Title Ins. Co., 2020 WL 1638808 (D. Nev. Apr. 2, 2020); rev’d in part on other grounds, 2021 WL 500215 (9th Cir. Oct. 28, 2021) (HOA lien recorded after policy was post-policy defect).**
- ❑ **Hall CA-NV, LLC v. Old Republic Nat'l Title Ins. Co., 2020 WL 869722 (N.D. Tex. Feb. 20, 2020). (applying 3(d) on claim arising from mechanic’s liens).**
- ❑ **However, for an additional premium, the 2013 Homeowner’s Policy of Title Insurance provides expanded coverage, including for post-policy forgeries or encroachments.**

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Exclusion 3(e)

- ❑ Under earlier policies, Exclusion 3(e) excludes a loss which would not have been sustained if the insured claimant had paid value for title or for the insured mortgage.
- ❑ Under the 2021 policy, it excludes defects “resulting in loss or damage that would not have been sustained if consideration sufficient to qualify the Insured named in Schedule A as a bona fide purchaser had been given for the Title at the Date of Policy.”
- ❑ First American Title Ins. Co. v. Xwarehouse Lending Corp., 177 Cal. App. 4th 106 (Ct. App. 2009) (warehouse lender for fraudulent loans was not an insured under the policy)
- ❑ Northwest Sav. Bank v. Fid. Nat’l Title Ins. Co., 2017 WL 253080 (Pa. Super. Ct. 2017) (holding that insured lender’s claim was excluded after settlement agent who was retained by the lender absconded with closing funds and failed to pay off prior liens and “it was the obligation of [the insured] to pay-off the pre-existing mortgages”).



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What Are the New Exclusions in 2021?

- ❑ **Owner's Policy, Exclusion No. 7 and Lender's Policy, Exclusion No. 9: "Any discrepancy in the quantity of the area, square footage, or acreage of the Land or of any improvement to the Land."**



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What Are Exceptions?

- ❑ Exceptions are title risks that a policy generally covers but does not cover in a particular instance, and have been expressly written out during the underwriting process. There are both standard exceptions and special exceptions.
- ❑ Parties in Possession Exception
 - ❑ “The rationale for the exception, at least in part, is that possession of land should put the insured on notice of an adverse interest.” Zimmerman v. Chicago Title Ins. Co., 28 S.W.3d 584, 586 (Tex. App. 1999) (denying coverage and explaining that “[t]he character of possession sufficient to give an insured notice is that which is open, visible, unequivocal, exclusive and actual rather than constructive.”).
 - ❑ Melamed v. First Am. Title Ins. Co., 190 A.D.3d 724 (2d Dept. 2021) (parties in possession exception barred coverage for neighbor’s adverse possession claim).
 - ❑ Tritapoe v. Old Republic Nat’l Title Ins. Co., 2020 WL 1487813 (W. Va. Mar. 23, 2020) (parties in possession and survey exceptions barred coverage for neighbor’s claim regarding shared driveway)
- ❑ Survey Exception
 - ❑ If the defect can be found in the public records, the survey exception will not be applied. See McDaniel v. Lawyers’ Title Guaranty Fund, 327 So.2d 852 (Fla. Dist. Ct. App. 1976) (holding that a recorded utility easement running through the insured’s property was covered despite survey exception).



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What Are Exceptions?

- ❑ In 1267 Rogers Ave., LLC v. First Am. Title Ins. Co., 67 Misc. 3d 1241(A) (N.Y. Sup. Ct. 2020), an insured submitted a claim after its neighbor brought an action seeking an easement by implication over the insured property. The insurer denied the claim. After the insured brought a lawsuit, the Court dismissed it, holding that the policy included an exception for parties in possession, which includes easements implied by law, as well as that the survey attached to the policy specifically excepted certain encroachments, including those at issue in the insured's dispute with the neighbor.



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What Are Exceptions?

- Schedule B now says:
- **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.**
- **This policy does not insure against loss or damage and the Company will not pay costs, attorneys' fees, or expenses resulting from the terms and conditions of any lease or easement identified in Schedule A, and the following matters:**

CONDITIONS



CONDITIONS
1. DEFINITION OF TERMS

In this policy, the following terms have the meanings given to them below. Any defined term includes both the singular and the plural, as the context requires:

- a. "Affiliate": An Entity:
 - i. that is wholly owned by the Insured;
 - ii. that wholly owns the Insured; or
 - iii. if that Entity and the Insured are both wholly owned by the same person or entity.
- b. "Amount of Insurance": The Amount of Insurance stated in Schedule A, as may be increased by Condition 8.d. or decreased by Condition 10 or 11; or increased or decreased by endorsements to this policy.
- c. "Date of Policy": The Date of Policy stated in Schedule A.
- d. "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.
- 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.
- f. "Entity": A corporation, partnership, trust, limited liability company, or other entity authorized by law to own title to real property in the State where the Land is located.
- 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.
- h. "Insured Claimant": An Insured claiming loss or damage arising under this policy.
- i. "Knowledge" or "Known": Actual knowledge or actual notice, but not constructive notice imparted by the Public Records.
- j. "Land": The land described in Item 4 of Schedule A and improvements located on that land at the Date of Policy that by State law constitute real property. The term "Land" does not include any property beyond that described in Schedule A, nor any right, title, interest, estate, or easement in any abutting street, road, avenue, alley, lane, right-of-way, body of water, or waterway, but does not modify or limit the extent that a right of access to and from the Land is insured by this policy.

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Conditions of the Policy

- ❑ **All policies contain a section on Conditions.**
- ❑ **This section contains critical definitions of terms such as “Insured,” “Knowledge,” “Public Records” and “Unmarketable Title”.**
- ❑ **The Conditions section further define the insurer and insured’s respective duties and how to measure losses under the policy.**

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Conditions of the Policy: Definitions (2021 Policy)

- **“Insured” includes the named insured in the Policy and “successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin” (for an Owner’s Policy) and “[t]he 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” (for a Loan Policy).**
- **“Knowledge” means “Actual knowledge or actual notice, but not constructive notice imparted by the Public Records.”**
- **“Public Records” means “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.”**
- **“Unmarketable Title” means “The Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or a lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.”**



Conditions of the Policy: Definitions (2021 Policy)

- ❑ **Affiliate is defined as an entity: “(i) that is wholly owned by the Insured; (ii) that wholly owns the Insured; or (iii) if that Entity and the Insured are both wholly owned by the same person or entity.”**
- ❑ **Additionally, the definition of “Insured” in an Owner’s Policy now includes “the grantee of an Insured under a deed or other instrument transferring the Title, if the grantee is an Affiliate . . .”**
- ❑ **Tithonus Partners II, LP v. Chicago Title Ins. Co., 2021 WL 4711284 (W.D.Pa Oct. 8, 2021) (finding entity that is 99.9 % owned is not “wholly owned” under the policy).**



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Claim Limits and Valuation

- ❑ **A Loan Policy's limits are defined by Section 8 of the Conditions of the Policy as the lesser of:**
 - ❑ the policy amount;
 - ❑ the indebtedness owed, or
 - ❑ the difference in the value of insured interest with and without the defect.

- ❑ **An Owner's Policy's limits are defined by Section 8 of the Conditions of the Policy as the lesser of:**
 - ❑ the policy amount; or
 - ❑ the difference in the value of insured interest with and without the defect.



Loss Under the Lender's Policy

- **Under a Lender's Policy:**
 - **A loss does not occur unless title is defective, the borrower is in default, and the lender suffers a diminution in security for its lien as to the property.**
 - **The loss under a loan policy is measured as the lesser of: (i) the Policy amount; (ii) the indebtedness owed, or (iii) the value of insured interest (i.e., the value of the property at issue).**
- **Cale v. Transamerica Title Insurance, 275 Cal. Rptr. 107 (Cal. Ct. App. 1990) (an insured lender who acquires title to the property subject to undisclosed, senior liens has not yet suffered a loss).**



Date of Loss Under the Lender's Policy (Pre-2021 Policies)

- Courts used to disagree over the proper date of loss.
- Old Republic Nat'l Title Ins. Co. v. RM Kids, LLC, 788 S.E.2d 542 (Ga. Ct. App. 2016).
 - Adopted the majority view and held that the insured did not actually suffer a loss until the date of the foreclosure and that the loss should not be measured until then.
- First Am. Title Ins. Co. v. Johnson Bank, 372 P.3d 292 (Ariz. 2016).
 - Adopted the minority view and held that, if the title defect caused the borrower to default, the date of loss should be the date of the insured loan. Otherwise, it should be the foreclosure date.



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Date of Loss Under the Lender's Policy (2021 Policy)

- **The Date of Loss will be:**
 - the date the insured discovers the defect;
 - the policy date (if “the Title to all of the Land is void by reason of a matter insured against by this policy”); or
 - if the insurer chooses to defend/prosecute under Condition 5, the insured may choose to use the date the action is concluded or the date the insurer received the notice of claim.



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Other 2021 Changes

- **ALTA has added language to Condition 8 stating:**
 - **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.**



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Other 2021 Changes

- **ALTA has added a new Condition 18, stating:**
 - **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.**

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Making a Claim

- ❑ The insured “shall notify the Company promptly” of any claim. See Conditions at ¶3.
- ❑ Many insureds want payment under the policy shortly after making the claim.
- ❑ However, pursuant to the Conditions of the Policy, a title insurer may opt to “pursue [] litigation to a final determination by a court of competent jurisdiction and . . . in its sole discretion, to appeal any adverse judgment or order.” See Conditions at ¶5(c).
- ❑ This means that, where an insurer has opted to defend the underlying suit and attempts to clear title or assert all valid defenses on behalf of its insured, the insured is not entitled to have its loss paid prior to a final resolution of the underlying matter.
- ❑ The insured’s duty to cooperate is set out in (1) Conditions: Duty of Insured Claimant to Cooperate (Section 6 of the Policy); and (2) Conditions: Proof of Loss or Damage (Section 4 of the Policy).
- ❑ The insurer also has the right to pay the insurance amount. See Conditions at ¶7.

Thank You

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Title Insurance Coverage for Real Estate Counsel: ALTA Coverage and Endorsements for Owners and Lenders

Common Title Endorsements

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Always Innovating

Owner's Policies – Non-Imputation (ALTA 15 series)

Applicable where the purchaser acquires an ownership interest in the record property owner and is concerned with knowledge that may be imputed to the record property owner as a result of its existing partners, members, shareholders, officers or directors.

Available endorsements: ALTA 15-06, 15.1-06 and 15.2-06

Owner's Policies – Non-Imputation (ALTA 15 series)

- Limits the applicability of:
 - Exclusion 3(a) – “created, suffered, assumed or agreed to by the insured claimant”
 - Exclusion 3(b) - "not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy“
 - Exclusion 3(e) - "resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy“
- The foregoing exclusions will not apply with respect to a matter by reason of action, inaction, or knowledge, at Date of Policy, of other or former stockholders, officers, directors, managers, partners or members (of an LLC) of the insured, **provided that the "incoming" partner, member or stockholder acquired its interest as a purchaser for value without knowledge of the matter otherwise insured against.**

Owner's Policies – Non-Imputation (ALTA 15 series)

- ALTA 15-06 – Applies when the purchaser acquires 100% of the ownership interest in the property owner or when purchaser acquires less than 100% of the ownership interest, but a new title policy will be issued in the name of the record property owner.
- ALTA 15.1-06 – Applies when the purchaser acquires a portion of the ownership interest in the property owner and a new title policy will not be purchased. Typically issued in conjunction with a date down endorsement. Amount of coverage is pro rata based on the investors ownership interest.
- ALTA 15.2-06 – Applies when the purchaser acquires a portion of the ownership interest in the property owner and purchases its own title policy (i.e. in the name of the investor, not the property owner).

Owner's Policies – Non-Imputation (ALTA 15 series)

- Requirements:
 - ALTA Non-Imputation Affidavit to be signed by those persons whose knowledge, action or inaction is covered by the endorsement.
 - Explanation of the transaction and request for the endorsement.
 - Specific list of the individuals whose knowledge will not be imputed.
 - May require an indemnity.

Owner's Policies – Non-Imputation (ALTA 15 series)

Scope of Affidavit

- No unrecorded deed, land contract, lease, option to purchase, mortgage, deed of trust, judgment lien, tax lien, agreement or other instrument or encumbrance affecting title to any of the property.
- That neither the members or partners have done anything to create any deed, land contract, lease, option to purchase, mortgage, deed of trust, judgment lien, tax lien, agreement or other instrument or encumbrance affecting title to the property.
- That there is no litigation nor threatened litigation against the entity or partnership which purports to affect the property.
- That the principals undertook an independent examination of their business records of the entity or partnership that reveal that the records are complete and in good order and would not disclose or suggest the existence of any unrecorded legal or equitable interests in the property.
- That the entity should have sufficient assets to satisfy any and all unrecorded debts and the debt shall not render the entity insolvent.

Lender's Policies – Mezzanine Financing (ALTA 16 Series)

- Mezzanine loans are secured by a pledge of ownership interest rather than a lien on the real property.
- Endorsement to the owner's title policy that makes the mezzanine lender an assignee of payments under the owner's title policy up to the amount of the debt owed to the mezzanine lender.
- The endorsement also provides non-imputation coverage and “fairway” coverage.
- The mezzanine lender is not an additional insured under the title policy.
- Mezzanine lenders may require a separate UCC Title Insurance Policy, which is available from most national title companies.
- May be issued simultaneously with the owner's title policy or at a later date. Requires consent of the insured under the owner's policy.

Lender's Policies – Same as Survey (ALTA 25 Series)

- Insures that the description of the land reflected in Schedule A to the title policy is the same as the land shown on the insured survey.
- Available for lender's and owner's policies.
- ALTA 25-06 – Survey must match the legal description being insured.
- ALTA 25.1-06 – Insures that the land described in Schedule A is the same land shown as a defined parcel shown on the survey.

Lender's Policies – Same as Survey (ALTA 25 Series)

- Requirements:
 - Survey of the land prepared by a licensed surveyor or registered engineer (typically an ALTA/NSPS survey).
 - Title company may accept an existing survey together with an affidavit of no change.
- Title company will review the survey and take exception for any adverse survey matters in the policy.

Lender's Policies – Access (ALTA 17 Series)

- Insures that (1) the land abuts a named street (or the insured easement provides access to the street), (2) the street is physically open and publicly maintained, (3) the land has actual pedestrian and vehicular access (or that the easement provides actual pedestrian and vehicular access), and (4) the insured has a right to use existing curb cuts along the abutting street.
- Insures “legal” access, not necessarily “physical” access.
- Available for lender's and owner's policies.
- ALTA 17-06 – Issued when the property directly abuts the street.
- ALTA 17.1-06 – Issued when the property has indirect access to the street via a recorded easement.

Lender's Policies – Access (ALTA 17 Series)

- Requirements:
 - Title company will typically require a survey showing the access point, but may be able to verify by other means (other maps, physical inspection).
 - The property needs to have curb cuts allowing actual access to the street.
 - If issuing the ALTA 17.1-06, the easement providing access must be searched.
 - Not typically available for unimproved land.

Lender's Policies – Contiguity (ALTA 19 Series)

- Insures that two or more insured parcels are contiguous along defined lines or boundaries and that there are no gaps separating the insured contiguous boundary lines.
- Available for lender's and owner's policies.
- ALTA 19-06 – Insures contiguity of adjacent insured parcels.
- ALTA 19.1-0 – Insures the contiguity of an insured parcel to another uninsured parcel. (Typically both parcels are owned by the same owner.)
- May cover multiple parcels.

Lender's Policies – Zoning (ALTA 3 Series)

- Confirms the applicable zoning classification and authorized use of the property. For improved property, insures against a final court order prohibiting the present structure, and requiring removal or alteration of the present structure, because of violation of the zoning ordinance as to (1) area, width or depth of the land as a building site, (2) floor space area of the structure, (3) setback of the structure, (4) height of the structure, or (5) number of parking spaces.
- Available for lender's and owner's policies.
- Can be quite expensive in some states.
- ALTA 3-06 – Issued for unimproved land.
- ALTA 3.1-06 – Issued for improved land where the improvements have been completed.
- ALTA 3.2-06 – Issued for improved land where the improvements are not yet completed.

Lender's Policies – Zoning (ALTA 3 Series)

- Requirements:
 - Written certification from the applicable governmental entity as to the zoning classification and authorized use. For improved land, the certification also must confirm compliance of the existing improvements and compliance with the applicable parking requirements.
 - For improved land, requirements should be reflected on the survey and the survey should demonstrate compliance with those requirements.
 - May not be available if the authorized use is based on a variance or other exception.

Lender's Policies – Construction (ALTA 32 Series)

- Provides coverage against loss or damage by reason of: (a) the invalidity or unenforceability of the lien of the insured mortgage as security for each construction loan advance made on or before the date of coverage; (b) the lack of priority of the lien of the insured mortgage as security for each construction loan advance made on or before the date of coverage, over any lien or encumbrance on the title recorded in the public records and not shown in Schedule B; and (c) the lack of priority of the lien of the insured mortgage, as security for each construction loan advance made on or before the date of coverage over certain mechanic's liens, if notice of the mechanic's lien is not filed or recorded in the public records.

Lender's Policies – Construction (ALTA 32 Series)

- Coverage is extended for post-closing draws via an ALTA 33-06 endorsement.
- ALTA 32-06 - Insures only to the extent that the charges for the services, labor, materials or equipment for which the mechanic's lien is claimed were designated for payment in the documents supporting a construction loan advance disbursed by or on behalf of the insured on or before date of coverage. *Title company is not involved in disbursements.*
- ALTA 32.1-06 - Insures only to the extent that direct payment to the mechanic's lien claimant for the charges for the services, labor, materials or equipment for which the mechanic's lien is claimed has been made by the company or by the insured with the company's written approval. *Title company is involved in disbursements, either by making payments directly or by approving payments.*
- ALTA 32.2-06 – Insures only to the extent that direct payment to the mechanic's lien claimant for the charges for the services, labor, materials or equipment for which the mechanic's lien is claimed has been made by the insured or on the insured's behalf on or before date of coverage. *Title company is not involved in disbursements.*

Lender's Policies – Construction (ALTA 32 Series)

- Requirements:
 - Can vary significantly based upon the jurisdiction's mechanic's lien laws and whether construction on the project has commenced prior to recording the mortgage.
 - If work has commenced, detailed information on status of work and payments made to date will likely be required.
 - May require an indemnity from borrower or another creditworthy entity.

Lender's Policies – Mortgage Tax (ALTA 38 Series)

- Insures against loss or damage sustained by reason of: (a) the invalidity or unenforceability of the lien of the insured mortgage as security for the indebtedness resulting from the failure to pay, at the time of recording, any portion of the mortgage tax; or (b) the lack of priority of the lien of the insured mortgage as security for the indebtedness resulting from the failure to pay, at the time of recording, any portion of the mortgage tax.
- Only applicable in jurisdictions that charge mortgage tax.

Lender's Policies – First Loss (ALTA 20 Series)

- Removes the requirement in a lender's title policy that the insured foreclose on all collateral before the title company is required to pay a claim arising from a covered matter, but only to the extent that the value of the collateral has fallen below the amount of the indebtedness as a result of the covered matter.
- Only applicable where the collateral for the loan consists of more than one independent parcel.
- Issuance of this endorsement requires significant underwriting and may decrease the title company's willingness to issue other standing coverage/endorsements.

Lender's Policies – Aggregation (ALTA 12 Series)

- Also known as the cluster or tie-in endorsement.
- In a transaction or transactions where multiple lender's title policies as issued that all relate to the same loan, this endorsement aggregates the amounts of insurance of each loan policy listed in the endorsement into one aggregate amount of insurance for all loan policies listed, and creates the same result as a single loan policy covering multiple sites.
- Requirements:
 - All policies need to be issued by the same underwriter.
 - The insured mortgages must each secure the full indebtedness.

Lender's Policies – ALTA 9 and Related Endorsements

- The ALTA 9-06 provides a number of different coverages that are typically requested by owners and lenders, including:
 - Violations of covenants, conditions or restrictions, including covenants relating to environmental protections;
 - Existing encroachments of improvements into easements or over property lines or building setbacks;
 - Damage to existing improvements resulting from mineral development;
 - A final court order requiring the removal of an encroachment because of a violation of a setback or other restriction.
- The owner's version of the endorsement (ALTA 9.1-06 or 9.2-06) does not include mineral coverage and has more limited encroachment coverage.
- Scope and requirements for coverage vary by jurisdiction. An ALTA/NSPS survey is typically required.

Lender's Policies – ALTA 9 and Related Endorsements

- The ALTA 9.6-06 provides coverage against loss or damage resulting from purchase options, rights of first refusal, other approval rights held by third parties and private charges and assessments.

Lender's Policies – ALTA 9 and Related Endorsements

- The ALTA 28-06 endorsement insures against loss where there is damage to an existing building on the land or enforced removal or alteration of an improvement as a result of the use or maintenance of an easement referred to in Schedule B (must specify the exception(s)).
- Unlike the ALTA 9, this endorsement provide prospective coverage.
- Likely only to be issued for very minor encroachments, such as landscaping or paving.
- A survey is required for issuance.

Lender's Policies – ALTA 9 and Related Endorsements

- The ALTA 35 series of endorsements provides coverage for loss or damage resulting from enforced removal or alteration of buildings located on the land at the date of policy as a result of the exercise of an existing right to use the surface of the land for extraction or development of minerals or any other subsurface substances.
- Like the ALTA 28, this is prospective coverage.

Lender's Policies – Policy Authentication (ALTA 39-06)

- May be issued in states where original signatures on title policies are not required. Simply recites that the title company will not deny liability solely on the grounds that the policy and/or endorsements are issued electronically and do not contain original signatures.
- Also available for owner's policies.