

Implementation of 2021 ALTA Owner's and Loan Policies

The 2021 American Land Title Association (ALTA) Owner's and Loan Policy forms were approved by ALTA effective July 1, 2021. Investors Title implemented the forms for new title commitments issued on or after August 1, 2022. The 2006 policy forms will be available upon request until they are decertified by ALTA on December 31, 2022. Largely, the revisions to the policy forms fall into two categories:

1) conforming the policy forms to the changes previously made to the 2016 ALTA Commitment; and
2) updating various terms to comply with changes in laws and regulations passed or revised after the implementation of the current policy forms in 2006. In addition to these language and formatting changes, some important additional coverage provisions have also been added to the 2021 policy forms. The summary below highlights some of the important changes and is broken down by the four sections of the policy forms: policy schedules, covered risks, exclusions, and conditions.

Policy Schedule Revisions (Schedules A and B)

- A. Transaction identification data now appears in Schedule A of both the owner's and loan policies. This change is consistent with changes previously implemented in the 2016 Commitment form.
- B. Both policy forms now include a pre-printed exclusion for illegal covenants and restrictions in Schedule B. As a result, it is no longer necessary to include specific language about illegal covenants in a separate exception for covenants and/or restrictions.
- C. A standard exclusion has been added to Schedule B for the terms and conditions of easements and leases that are included as part of the insured property in the Schedule A legal description. As a result of this change, it is no longer necessary to include an exception to the terms and conditions of these leases or easements in Schedule B.

Covered Risk Revisions

- A. A covered risk has been added related to PACA-PSA trusts (trusts for the benefit of unpaid sellers and suppliers of perishable agricultural commodities and poultry, poultry products, livestock, dairy, and meat products). The additional coverage provided is similar to the coverage provided for zoning related matters in that coverage is conditioned upon there being a notice recorded that identifies the insured property and asserts a right to enforce the PACA-PSA trust against that property.
- B. An acknowledgment has been added to the updated forms to provide that an insurer will not deny liability under the policy because such policy was issued electronically or lacks a signature. This new provision replicates coverage currently provided by the ALTA 39-06 Policy Authentication Endorsement. With this change, it is no longer necessary to issue the ALTA 39-06 with the 2021 ALTA Owner's and Loan Policy forms.

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- C. Covered risk #2 addressing the validity of title documents has been updated to include references to remote online notarization and electronic signatures. This update is a modernization of policy terminology from the 2006 forms.
- D. The covered risks under the Loan Policy have been updated to expressly include loss related to specific components of the indebtedness (the loan secured by the deed of trust or mortgage), including the amount of principal disbursed, interest on the obligation, reasonable expense of foreclosure, advances for insurance by the insured before acquisition of the title, and advances for taxes and assessments by the insured to protect the priority of the insured lien. Insured lenders should find this additional coverage beneficial.

Exclusion Revisions

- A. The previous exclusion for matters related to governmental police powers has been revised to specifically include forfeiture, regulatory, and national security powers. This change is arguably only a clarification of matters that would have previously fallen under the more broadly defined police power exclusion.
- B. Exclusion #4 in the Owner's Policy and #6 in the Loan Policy have been updated to refer to voidable transfers. This change mirrors the terms used under the Uniform Voidable Transfers Act, the implementation of which post-dated the previous policy forms.
- C. A specific exclusion related to PACA-PSA trusts has been added. This exclusion specifically states it does not affect the coverage provided by the new covered risk for PACA-PSA trusts described in the covered risk section above.
- D. A specific exclusion from coverage has been added for the quantity of the land insured (square footage, acreage, etc.) under the policies. This addition provides an express exclusion for what was previously an implied understanding of coverage. In some cases, exception was taken for the quantity of the insured property under Schedule B, but this exception is no longer necessary.

Condition Revisions

- A. The new policies contain a clarification of the definition of Public Records for purposes of the title insurance policy. The definition specifically excludes separate records for environmental protection, planning, permitting, zoning, licensing, building, health, public safety, and national security
- B. The definition of the Insured has been revised to expressly include an Affiliate of the Insured. This change is more a clarification than the expansion of definition of the Insured; however, a significant change under the new forms is that it is no longer necessary for the

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Affiliate of the insured to have taken a deed without payment of actual valuable consideration for that Affiliate to qualify as an insured.

- C. The conditions incorporate a change previously made to the 2016 ALTA Commitment form to include a notice that the title policy is not intended to be an abstract or report of title or a legal opinion on the status of title.
- D. Both policies now provide revised conditions under which the Insured may select the date for determining the amount of the loss if the insurer elects to pay the difference in value between the property as insured and the property subject to the covered defect. Under previous forms, this option was only available if the insurer chose to take action to establish the title as it was insured and was unsuccessful in establishing that title.

This article is intended to highlight some of the important changes implemented in the 2021 ALTA Owner's and Loan Policy forms. It is not comprehensive, and, to learn more, you can find additional information on the ALTA website (<https://www.alta.org/>). If you have any questions, please do not hesitate to contact a title attorney for additional information.