

The Beacon Article

The Alta 34 Series Endorsement

If you've ever asked for "affirmative coverage" over a known defect in title, you are probably at least somewhat familiar with the ALTA 34 endorsement and its more commonly used update, the ALTA 34.1 endorsement. Both are used to cover a broad range of defects, from older paid but uncanceled deeds of trust to violations of covenants such as setbacks that are past the statute of limitations and other similar issues that frequently come up where coverage can be provided even where the policy takes exception.

One question I've gotten from attorneys quite a bit is what exactly the parameters are of the ALTA 34 and 34.1 coverage. Mechanically, the ALTA 34 and 34.1 both provide coverage by referencing an exception in Sch. B of the policy (the "Identified Risk") that would otherwise not be covered at all. However, the coverage differs between the two endorsements in some significant ways.

First, Item 1 of the standard ALTA 34 identifies the risk primarily by reference to its exception number in Schedule B of the policy. This allows for less leeway to describe the specific risk being insured as narrowly as possible. The ALTA 34.1 handles this differently. Insured as narrowly as possible. The ALTA 34.1 handles this differently. It also identifies the exception in Schedule B but allows greater ability for the title insurance company to specifically identify the risk and consequences that would be insured. The entire purpose of this was to make that definition and coverage as narrow as possible so the title company does not become liable for loss related to matters, they may not have intended to provide coverage for.

Second, the built-in threshold for coverage is slightly different. Item 2a of the standard ALTA 34 requires "A final order or decree enforcing the Identified Risk in favor of an adverse party", whereas the same item in the ALTA 34.1 provides for the "exercise or enforcement of an Identified Risk by an adverse party". This is significant because while the 34.1 may not necessarily require a final order for coverage to kick in and can occur just at the attempted enforcement, that could be (and frequently is) drafted around in the broader Item 1b which could identify the risk to include a final order. This is significant because of the coverages the endorsements are required to provide, as I will discuss below.

Item 3 of the standard ALTA 34 obligates the title company to "...pay costs, attorneys' fees, and expenses incurred in defense of the Title by reason of the Identified Risk..." The ALTA 34.1 does not have this language and therefore does not necessarily require the company to pay the costs to defend the attempted enforcement of the risk.

So, let's say that you have coverage for a violation of a setback line by your property via an ALTA 34. Your neighborhood HOA sues you to enforce that violation, and ultimately

the court decides that you lose and will have to make major (expensive) changes to your home in order to comply. Under ALTA 34, the insured should have the ability to recover the costs of bringing the home into compliance, as well as the court fees and attorney fees they were required to pay as a result of the litigation. If you have the ALTA 34.1, this may not necessarily be the case as the company is not automatically obligated to pay the costs, attorneys' fees, or expenses incurred in defense of title.

Overall, the ALTA 34 is generally broader in coverage, while the 34.1 allows the title company to more narrowly tailor the Identified Risk and the covered losses resulting from that Risk. Likely, you are going to start seeing the ALTA 34.1 offered more frequently as it is now the preferred form of the 34 series for most underwriters. Be sure to carefully read the description of the risk in the 34.1 and advise your client accordingly. I always suggest asking for a Pro Forma 34.1 ahead of time so that you can see exactly what language the title company intends to use.