

**Friday, November 5, 2021
12:00 PM – 1:15 PM**

Seminar 21

ALTA Policy Forms Revisions—Again!

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I. New ALTA 2021 Forms

A. ALTA 2021 Owners Policy

1. Jacket Introduction
 - a) ALTA 39 Policy Authentication
2. Covered Risks
 - a) Clarifies coverage for documents not properly "authorized" in the scope of notarization [CR 2.a.iii, CR 2.a.iv, CR.2.a.vi]
 - b) Expands coverage to repudiation of an electronic signature because not valid under applicable law [CR 2.a.viii]
 - c) Provides coverage against enforcement of a PACA-PSA Trust, but only to the extent of the enforcement described in an Enforcement Notice [CR 8. See also new defined terms: "PACA-PSA Trust", "Enforcement Notice" and new Exclusion 5]
 - d) Expands creditors rights coverage to include loss or damage arising from a court order providing an alternative remedy & to insure with respect to the Uniform Voidable Transactions Act. [CR 9]
3. Exclusions
 - a) Excludes matters based upon the failure of the Insured to pay sufficient consideration in order to be a BFP under the recording laws, as opposed, e.g., to the effect of the failure to pay reasonably equivalent or FMV [Exclusion 3(e)]
 - b) Clarifies that the voidable preference is excluded if not given as contemporaneous exchange for new value and adds reference to a voidable transaction under the Uniform Voidable Transactions Act [Exclusion 4]
 - c) Excludes any claim of a PACA-PSA Trust. [Exclusion 5] [Note: Does not modify or limited the coverage provided by new CR 8. See also new definition of "PACA-PSA Trust" under Conditions]
 - d) Excludes coverage for lien for real estate taxes or assessments, imposed or collected by a governmental authority, that become due and payable after Date of Policy [Exclusion 6]
 - e) Excludes coverage for discrepancies in the acreage or quantity of the land or any improvement to the land [Exclusion 7]
4. Conditions
 - a) Definitions:
 - (1) New defined term: "Affiliate" [Condition 1.a]
 - (2) New defined term: "Discriminatory Covenant" [Condition 1.d]
 - (3) New defined term: "Enforcement Notice" [Condition 1.e]
 - (4) Revised defined term: "Insured" [Condition 1.g]
 - (5) Revised defined term: "Knowledge" [Condition 1.m]

- (6) New defined term: "PACA-PSA Trust" [Condition 1.i] [see also new CR 8 and Exclusion 5]
 - (7) Revised defined term: "Public Record" [Condition 1.m]
 - b) Inability to determine the amount of loss or damage not a condition of Company to require signed proof of loss [Condition 4]
 - c) Clarifies that the Policy is a contract of indemnity [Condition 8]
 - d) Provides a procedure for the Insured to select a date for determining the amount of loss [Conditions 8.b and 8.d.ii]
 - e) Increases Amount of Insurance from 10% to 15% from 2006 to 2021 Policy if the Company is unsuccessful in establish the Title as Insured [Condition 8.d.i]
- B. ALTA 2021 Loan Policy
- 1. Jacket Introduction
 - a) ALTA 39 Policy Authentication
 - 2. Covered Risks
 - a) Clarifies coverage for documents not properly authorized in the scope of notarization [CR 2.a.iii, CR 2.a.iv, CR.2.a.vi, CR 9.c, 9.d and 9.f]
 - b) Expands coverage to repudiation of an electronic signature because not valid under applicable law [CR 2.a.vii and 9.h]
 - c) Provides coverage for loss or damage arising out of enforcement of a PACA-PSA Trust, but only to the extent of the enforcement described in an Enforcement Notice [CR 8] [See also new defined term: "PACA-PSA Trust" and new Exclusion 7]
 - d) Expands coverage to explicitly insure priority of the lien of the Mortgage for specific enumerated components of the Indebtedness [CR 10]
 - e) Expands creditors rights coverage to include loss or damage arising from a court order providing an alternative remedy & to insure with respect to the Uniform Voidable Transactions Act. [CR 13]
 - 3. Exclusions
 - a) Excludes matters based upon the failure of the Insured to pay sufficient consideration in order to be a BFP or encumbrancer under the recording laws [Exclusion 3(e)]
 - b) Excludes any claim of a PACA-PSA Trust. [Exclusion 7] [Note: Does not modify or limited the coverage provided by new CR 8. See also new definition of "PACA-PSA Trust" under Conditions]
 - c) Excludes coverage for discrepancies in the acreage or quantity of the land or any improvement to the land [Exclusion 9]
 - 4. Conditions
 - a) Definitions:
 - (1) New defined term: "Affiliate" [Condition 1.a]
 - (2) New defined term: "Discriminatory Covenant" [Condition 1.e]
 - (3) New defined term: "Enforcement Notice" [Condition 1.f]
 - (4) Revised defined term: "Indebtedness" [Condition 1.i]
 - (5) Revised defined term: "Insured" [Condition 1.j]
 - (6) Revised defined term: "Knowledge" [Condition 1.m]
 - (7) New defined term: "Obligor" [Condition 1.p]
 - (8) New defined term: "PACA-PSA Trust" [Condition 1.q] [see also new CR 8 and Exclusion 7]
 - (9) Revised defined term: "Public Records" [Condition 1.r]
 - b) Inability to determine the amount of loss or damage not a condition of the Company to require a signed proof of loss [Condition 4]
 - c) Clarifies that the Policy is a contract of indemnity [Condition 8]
 - d) Provides a procedure for the Insured to select a date for determining the amount of loss [Conditions 8.b and 8.c.ii]
 - e) Increases Amount of Insurance from 10% to 15% from 2006 to 2021 Policy if the Company is unsuccessful in establish the Title as Insured [Condition 8.c.i]
 - f) The amount credited against the Indebtedness as a result of a foreclosure or a DIL does not reduce the Amount of Insurance [Condition 10.b]

C. Updated Endorsements

1. ALTA 3 Series – Zoning
 - a) Adopts a new defined term “Zoning Ordinance” in ALTA 3.0, 3.1, and 3.2 to clarify coverage
 - b) Clarifies that the court of competent jurisdiction is the state and federal courts
2. ALTA 6 Variable Rate
 - a) Uses the new defined term “Consumer Protection Law” introduced in the loan policy to clarify coverage
3. ALTA 12 Aggregation
 - a) Revised to include Condition 7(a), 8, and 10 in its entirety.
4. ALTA 14 Series – Future Advance
 - a) Uses the new defined term “Consumer Protection Law” introduced in the loan policy to clarify coverage.
 - b) Uses the new defined term “Knowledge” introduced in the loan policy to clarify coverage.
5. ALTA 26 Subdivision
 - a) Uses the new defined term “State” introduced in the loan policy to clarify coverage.
6. ALTA 27 Usury
 - a) Uses the new defined term “State” introduced in the loan policy to clarify coverage.
7. ALTA 28.1 Encroachments – Boundaries and Easements
 - a) Clarifies the coverage afforded under Section 4.
8. ALTA 32 Series Construction Loan
 - a) Use of new defined term “State” introduced in the loan policy to clarify coverage.

D. New Endorsements

1. ALTA 34.1 Identified Exception & Identified Risk Coverage
2. ALTA 47 Operative Law Series – Only applicable to ALTA 2006 policy only

E. Updated CPL

1. Clarifies that Condition and Exclusion 3(n) do not modify or limit coverage under the title policy.

F. Updated Commitment

1. Consistency with new Policy Forms
 - a) Defined Terms
 - (1) Knowledge
 - (2) Land
 - (3) Public Records
 - b) New Conditions
 - (1) Claims Procedures
 - (2) Class Action