



2006 ALTA Policy and Endorsement Forms

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I. INTRODUCTION

The American Land Title Association (“ALTA”) Forms Committee has completed its work on a project that began in late 2003 – to revise the standard, or “base,” ALTA Owner’s and Loan Policy forms and a number of related forms. As of this writing it is expected that these new forms will be formally adopted by the ALTA Board of Governors at its meeting on June 17, 2006. If that expectation is met, the new policy forms will bear the adoption date of “6/17/06” and become known as the “2006 ALTA Owner’s Policy,” the “2006 ALTA Loan Policy” and the “2006 ALTA Short Form Residential Loan Policy.”

The following additional forms, consisting of 2 revised Commitment forms and 44 endorsement forms, will also bear a “6/17/06” adoption date:

- ALTA Commitment Form
- ALTA Plain Language Commitment Form
- ALTA Endorsement 1-06 (Street Assessments)
- ALTA Endorsement 2-06 (Truth-in-Lending)
- ALTA Endorsement 3-06 (Zoning – Unimproved Land)
- ALTA Endorsement 3.1-06 (Zoning – Improved Land)
- ALTA Endorsement 4-06 (Condominium)
- ALTA Endorsement 4.1-06 (Condominium)
- ALTA Endorsement 5-06 (Planned Unit Development)
- ALTA Endorsement 5.1-06 (Planned Unit Development)
- ALTA Endorsement 6-06 (Variable Rate)
- ALTA Endorsement 6.2-06 (Variable Rate-Negative Amortization)
- ALTA Endorsement 7-06 (Manufactured Housing Unit)
- ALTA Endorsement 7.1-06 (Manufactured Housing Unit-Conversion; Loan)
- ALTA Endorsement 7.2-06 (Manufactured Housing Unit-Conversion; Owner’s)

- ALTA Endorsement 8.1-06 (Environmental Protection Lien)
- ALTA Endorsement 9-06 (Restrictions, Encroachments, Minerals)
- ALTA Endorsement 9.1-06 (Restrictions, Encroachments, Minerals-Owner's Policy-Unimproved Land)
- ALTA Endorsement 9.2-06 (Restrictions, Encroachments, Minerals-Owner's Policy-Improved Land)
- ALTA Endorsement 9.3-06 (Restrictions, Encroachments, Minerals-Loan Policy-Future Improvements Re Minerals Extraction)
- ALTA Endorsement 9.4-06 (Restrictions, Encroachments, Minerals-Owner's Policy-Unimproved Land-Future Improvement Re Minerals Extraction)
- ALTA Endorsement 9.5-06 (Restrictions, Encroachments, Minerals-Owner's Policy-Improved Land-Future Improvements Re Minerals Extraction)
- ALTA Endorsement 10-06 (Assignment)
- ALTA Endorsement 10.1-06 (Assignment and Date Down)
- ALTA Endorsement 11-06 (Mortgage Modification)
- ALTA Endorsement 12-06 (Aggregation)
- ALTA Endorsement 13-06 (Leasehold-Owner's)
- ALTA Endorsement 13.1-06 (Leasehold-Loan)
- ALTA Endorsement 14-06 (Future Advance-Priority)
- ALTA Endorsement 14.1-06 (Future Advance-Knowledge)
- ALTA Endorsement 14.2-06 (Future Advance-Letter of Credit)
- ALTA Endorsement 14.3-06 (Future Advance-Reverse Mortgage)
- ALTA Endorsement 15-06 (Nonimputation-Full Equity Transfer)
- ALTA Endorsement 15.1-06 (Nonimputation-Additional Insured)
- ALTA Endorsement 15.2-06 (Nonimputation-Partial Equity Transfer)
- ALTA Endorsement 16-06 (Mezzanine Financing)
- ALTA Endorsement 17-06 (Access and Entry)
- ALTA Endorsement 17.1-06 (Indirect Access and Entry)
- ALTA Endorsement 18-06 (Single Tax Parcel)
- ALTA Endorsement 18.1-06 (Multiple Tax Parcel)
- ALTA Endorsement 19-06 (Contiguity-Multiple Parcels)
- ALTA Endorsement 19.1-06 (Contiguity-Single Parcel)
- ALTA Endorsement 20-06 (First Loss-Multiple Parcel Transaction)
- ALTA Endorsement 21-06 (Creditors' Rights)
- ALTA Endorsement 22-06 (Location)
- ALTA Endorsement 22.1-06 (Location and Map)

Each of the endorsements underlined in the list above are new and will be discussed in Section V below. All of the other endorsements are revisions of existing ALTA Endorsements that have been tailored so they will work with the 2006 ALTA Owner's or Loan Policies, as applicable. Every endorsement in this list will also have a counterpart without the "-06" in its number to signal that it is the form that should be issued with the 1992 ALTA Owner's or Loan Policies, as applicable.

As the new policy forms are adopted by ALTA it is expected that the forms we know today as the 1992 ALTA Owner's and Loan Policies will be withdrawn. However, to afford sufficient time to complete the process of filing these forms with and, where required, obtaining approval of the forms by the various state Departments of Insurance, and to afford the industry's customer groups sufficient time to learn about and determine the acceptability of the forms, there is likely to be a delayed withdrawal date of at least six months from adoption, or approximately January 1, 2007.

II. WHY NEW POLICY FORMS?

The last time the title insurance industry substantially rewrote its standard policy forms was 1986-87, the forms that became known as the "1987 ALTA Owner's and Loan Policies," after a technical correction was made in October 1987 to the forms that were initially adopted in 1986. These are the same forms we know today as the "1992 ALTA Owner's and Loan Policies" after an amendment in 1992 that added the 1992 version of the so-called "creditors' rights exclusion" (Exclusion 4 of the Owner's Policy and Exclusion 7 of the Loan Policy). While those forms have worked well over the past twenty years, the combined experience of the members of the ALTA Forms Committee ("Forms Committee") led us to believe that a number of improvements could and should be made in order to bring the forms current for the twenty-first century, by addressing developments such as electronic conveyance and mortgage transactions, and deliver to the industry's customer groups in a standard or "base" set of policy forms, a commercially sound package of title insurance coverage.

III. THE FORMS DRAFTING PROCESS

A. The ALTA Forms Committee

The Forms Committee consists of a group of title insurance industry veterans with aggregate years of experience in excess of 384 years (averaging in excess of 27 years) representing each of the major title insurance underwriters (Chicago Title Insurance Company, Commonwealth Land Title Insurance Company, Fidelity National Title Insurance Company, First American Title Insurance Company, Lawyers Title Insurance Corporation, Old Republic National Title Insurance Company, Stewart Title Guaranty Company, and Transnation Title Insurance Company) as well as the largest Bar-Related® Title Insurers (Attorneys' Title Insurance Fund, Inc. – Florida; Attorneys' Title Guarantee Fund, Inc. – Illinois; and CATIC® - Connecticut Attorneys Title Insurance Company). Every title insurance form this Committee drafts is a true collaborative effort and a testament to the adage, "multiple minds are better than one." The Forms Committee also receives valued input from members of some of the state land title associations, including the California Land Title Association Forms & Practices Committee, and from other title industry members who track the progress of each draft as it is posted to the ALTA website at www.alta.org.

B. Customer Group Input

It has long been the practice of ALTA to expose every proposed product to its customer groups and to afford those groups opportunity to comment. The Forms Committee benefits by carefully considering and often adopting the comments it receives from the customer group representatives. Among the most active of these customer group representatives is the Title Insurance Committee of the American College of Real Estate Lawyers (“ACREL”). Several members of the Forms Committee are also members of the ACREL Title Insurance Committee and serve as the liaisons between the two groups carrying their respective messages so that each receives the benefit of the input the other provides. In addition, the American College of Mortgage Attorneys (“ACMA”), through its Title Insurance Committee, as well as Fannie Mae and Freddie Mac provided valuable input.

C. The Drafts

The drafting process began with the Loan Policy as it typically contains all of the coverage of an Owner’s Policy that pertains to the underlying title and then adds coverage that pertains to the lien of the insured lender’s security instrument that encumbers the title. Over the course of this nearly three year project, the Forms Committee prepared 8 drafts of the Loan Policy that it distributed publicly and 2 to 3 additional drafts that were not released publicly because they bridged Forms Committee meetings at which the non-public drafts were proofed and made “final” for public review and comment. Once satisfied with the condition of the draft Loan Policy, the Forms Committee turned its attention to the Owner’s Policy and the remaining forms and completed 2 to 3 “public” drafts of each of those forms.

D. Expected Use of New Policy Forms

The 2006 ALTA Owner’s and Loan Policies have been drafted with the expectation they will be used for both residential and commercial real estate transactions. Within the past 8 years, the Forms Committee has drafted and the ALTA has adopted both owner’s and loan policy forms designed specifically for residential transactions. These forms are the (1) ALTA Homeowner’s Policy of Title Insurance, originally adopted in 1998 (bearing the adoption date “10/17/98”) and modified in one minor respect in 2003 (bearing a modification date of “10/22/03”), (2) ALTA Expanded Coverage Residential Loan Policy, adopted in 2001 (bearing the adoption date “10/13/01”), and (3) ALTA Short Form Expanded Coverage Residential Loan Policy adopted in 2003 (bearing the adoption date “10/22/03”). Each of these policy forms build in substantially broader coverage than the 1992 Owner’s and Loan Policies and are designed for improved one-to-four family residential or condominium property. Because there are many types of residential transactions that do not qualify for these “residential-specific” forms (for example, vacant land transactions), the Forms Committee recognized that the standard or “base” 2006 ALTA Policy forms need to work equally well in the context of both residential and commercial transactions.

IV. HIGHLIGHTS OF CHANGES

Attached as Exhibits “A” and “B” to this paper are bullet-point summaries of the changes made to each of the Owner’s and Loan Policy, respectively. Also attached as Exhibits “C” and “D” to this paper are more detailed side-by-side comparisons with “Comments,” as prepared by the Forms Committee, of each of the proposed (as of this writing) 2006 ALTA Owner’s and Loan Policies, respectively, to the 1992 ALTA Owner’s and Loan Policies. This section will highlight by topic the more significant changes to these forms.

A. The “Exclusion to an Exclusion” Issue

One of the major goals of the Forms Committee was to address an issue that was first created in the 1984 Amendment to the 1970 form policies and carried into the 1987 Policies (today known as the “1992 Policies”). The issue is whether coverage is created by exclusions to exclusions or “double negatives” (in math we learned that a double negative equals a positive; is that also the case when interpreting insurance contracts?). Some courts have held that, when interpreting insurance contracts, the analysis of coverage begins and ends with the insuring clauses – if you do not find coverage in the insuring clauses for the subject matter at hand then the analysis stops and the matter simply is not covered. A recent example of such a holding is Elysian Investment Group, LLC v. Stewart Title Guaranty Company, 105 Cal. App. 4th 315, 2002 Cal. App. LEXIS 5291 (2002).

So the Forms Committee reviewed each of the Exclusions in the 1992 Policies and, whenever it noted language that appeared to grant coverage following a phrase such as “except to the extent that,” a new Covered Risk was created to be certain that the insured would be covered for the matter.

1. Covered Risk 5

This Covered Risk in both the Owner’s and Loan Policies addresses recorded notices of violation or enforcement of various “governmental laws or regulations.” Any loss resulting from the mere existence of these laws or regulations and the effect of their violation is otherwise excluded from coverage by Exclusion 1(a).

2. Covered Risk 6

This Covered Risk in both the Owner’s and Loan Policies addresses recorded notices of any enforcement action based on the exercise of any other “governmental police power” not addressed by Covered Risk 5. Any loss resulting from the mere existence of governmental policy power is excluded from coverage by Exclusion 1(b).

3. Covered Risks 7 and 8

These Covered Risks in both the Owner's and Loan Policies address recorded evidence of the exercise of "rights of eminent domain" (Covered Risk 7) and the completion of eminent domain proceedings that would be binding on the rights of a bona fide purchaser or encumbrancer (Covered Risk 8). Any loss resulting from the mere existence of the right of eminent domain is excluded from coverage by Exclusion 2.

4. Covered Risk 9(b) [Owner's] and 13(b) [Loan]

This Covered Risk addresses "preferences" resulting solely from the failure to timely record the transfer instrument (Owner's) or the security instrument (Loan) or of the recording of the instrument to impart constructive notice to and bind third parties. Any other cause of a preferential transfer challenge arising out of the insured transfer is excluded from coverage by Exclusion 4(b) (Owner's) and Exclusion 6(b) (Loan) (those exclusions being 4(b) and 7(b), respectively, of the 1992 Owner's Policy and the 1992 Loan Policy).

B. Addition of Insuring Clauses to Better Explain the Depth and Breadth of Coverage and Confirm Application to Electronic Conveyance and Mortgage Transactions

The Forms Committee has come to realize that, while expressing coverage broadly is in the best interest of the insured because it affords more room to find coverage for more types of defects that can create loss to owners of real property and their lenders, many of the industry's customers do not fully appreciate the number of potential defects that are included in the broadly worded insuring clauses. In addition, the Forms Committee desired to confirm that these policies provide coverage when transfer and mortgage instruments are created or recorded electronically pursuant to applicable electronic transactions and recording laws. So Covered Risks 2(a)(i) – (vii) in both the Owner's and Loan Policies and Covered Risk 9(a) – (g) in the Loan Policy make clear there is coverage for:

1. Forgery, fraud, undue influence, duress, incompetency, incapacity or impersonation
2. Lack of authority of any person executing on behalf of the true owner – particularly entity owners
3. Failure of proper creation, execution, witnessing, acknowledgement, notarization, or delivery of any document affecting title or of the insured mortgage
4. Failure to properly create a document by electronic means authorized by law

5. Execution under a power of attorney that is invalid because it has expired or was falsified
6. Failure of any document to be properly filed, recorded or indexed in the Public Records including failure to perform those acts by electronic means authorized by law
7. Any defect in any judicial or administrative proceeding through which title or the lien of the insured mortgage is derived

Additionally, Covered Risk 9(a) in the Owner's Policy and Covered Risk 13(a) in the Loan Policy make clear there is coverage for:

8. Creditors' rights issues in the "past chain of title" (i.e. any fraudulent or preferential transfer prior to the transaction vesting title (Owner's) or creating the lien of the insured mortgage (Loan))

C. Survey Coverage

Covered Risk 2(c) of both the Owner's and Loan Policies adds express survey coverage to address loss resulting from the following: "Any encroachment, encumbrance, violation, variation or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land." Because the definition of "Land" has always been tied to the exterior boundaries of the legally described parcel, an issue arose under the 1992 and prior policy forms as to whether, in the absence of a so-called "survey exception" in Schedule B, the base policy (i.e. without an endorsement like the ALTA 9.2 for an Owner's Policy or ALTA 9 for a Loan Policy) included coverage when an improvement mostly located on the insured "Land" encroached onto adjoining property (i.e. outside the "Land" as defined in the policy). Covered Risk 2(c) resolves this issue. However, it is expected that there will still be transactions in which the coverage expressed by Covered Risk 2(c) is obviated by a Schedule B "survey exception" – this is particularly likely for Owner's Policies – when the insured is unable or unwilling to satisfy the title insurer's underwriting requirements for deleting the "survey exception" (most commonly, again in the context of Owner's Policies, an ALTA/ACSM Survey certified to and otherwise acceptable to the title insurer).

D. "Gap" Coverage

Covered Risk 10 of the Owner's Policy and Covered Risk 14 of the Loan Policy add express "gap" coverage for those markets or transactions in which the "settlement" or "funding" occurs prior to recording of the transfer or security instruments. This Covered Risk works in concert with the defined term "Date of Policy" (see Condition 1 (b) of each of the Owner's and Loan Policies for this definition). The date specified as the "Date of

Policy” will typically be the “settlement” or “funding” date and if the recording function occurs prior to or concurrent with that date, there will be no post-closing “gap” with which to be concerned (because the “Date of Policy” will be the same date as the recording date). However, in “table funding” jurisdictions or transactions (also sometimes referred to as “New York-style closings”) the date set forth as the “Date of Policy” will be the funding/settlement/closing (those terms being intended in this context to be different terms for the same event) date and this “gap” Covered Risk will provide the insured with the protection desired for the so-called “gap risk” (again, assuming no Schedule B exception to obviate the coverage due, most likely, to the inability or unwillingness of one of the parties to satisfy the title insurer’s underwriting requirements for providing this coverage – e.g. a “Gap Affidavit/Indemnity” from a financially viable party).

A new exclusion has been added, Exclusion 5 of the Owner’s Policy and Exclusion 7 of the Loan Policy, solely because of the added coverage of Covered Risk 10/14 to make clear that the title insurer is not liable for real estate tax and assessment liens that are created or attach in the “gap,” if any, between the “Date of Policy” and the date when the transfer or security instruments are recorded (if there is no post-closing “gap” then there is no risk to which this Exclusion relates anyway). Even in those jurisdictions or transactions in which this “gap” exists, it is not expected that this Exclusion 5/7 will pose any added difficulty to the parties because real estate taxes and assessments are typically pro-rated for the year of the closing up to the funding/settlement/closing date and (1) the buyer (the insured in an Owner’s Policy) would be responsible for any of those taxes and assessments after that date so this is the buyer’s risk in any case, and (2) the lender is either collecting reserves for these taxes and assessments or is relying on the buyer’s creditworthiness to pay the taxes and assessments for which the buyer is responsible.

E. Mechanics’ Lien Coverage

Covered Risk 11(a) of the Loan Policy addresses the coverage afforded an insured lender as to the priority of the lien of its mortgage in relationship to any mechanics’ and materialmen’s liens that may arise under applicable state law as a result of construction work on or related to the insured land. The language of Covered Risk 11(a) better expresses this coverage than that of Insuring Clause 7 of the 1992 ALTA Loan Policy because it makes clear the priority coverage extends to “each and every advance of proceeds of the loan secured by the insured mortgage” when the construction work is either “contracted for or commenced on or before Date of Policy” or “contracted for, commenced or continued after Date of Policy” if the subject loan is financing the construction and the lender has either advanced funds or is obligated to advance funds on the Date of Policy.

There is no counterpart exclusion in the 2006 Loan Policy to Exclusion 6 of the 1992 ALTA Loan Policy. The decision to eliminate this exclusion is based on the Forms Committee’s view that it is unnecessary because (1) the Covered Risk speaks for itself as to the coverage intended, and (2) the post-policy exclusion included at Exclusion 3(d) of

the 2006 Loan Policy serves to make clear that no coverage is provided by the base policy for construction both contracted for and commenced post-policy and not financed by the loan secured by the insured mortgage (i.e. where the loan is some form of “permanent financing” and the construction takes place at some point in the future).

Consistent with present practice in certain jurisdictions or transactions, Covered Risk 11(a) may be partially or completely obviated by a Schedule B “mechanics’ lien” exception either or both because of (1) the inability or unwillingness of the parties to satisfy the title insurer’s underwriting requirements for deleting the Schedule B exception, or (2) applicable state law governing mechanics’ liens renders the risk of deleting the Schedule B exception unacceptable to the insurer. Often in these situations it is possible to obtain mechanics’ lien coverage by endorsement on a disbursement by disbursement basis with the lender conditioning each disbursement on the title insurer’s issuance of the endorsement and the title insurer conditioning each endorsement on its “date down” search and exam confirming no recorded mechanics’ liens subsequent to the Date of Policy or the date of the last endorsement and its receipt of and satisfaction with lien releases from all contractors, subcontractors and material suppliers through the most recent previous disbursement.

F. New or Expanded Definitions

1. Amount of Insurance

Condition 1(a) of each of the Owner’s and Loan Policies defines this term with reference to Schedule A. In the 1992 and earlier policy forms, there was no definition of this term in the “Definition of Terms” section but, rather, it was generally thought that whenever the term “Amount of Insurance” appeared in the policies (with each of the “A” in “Amount” and “I” in “Insurance” capitalized) it was referring to the dollar amount set forth next to that term in Schedule A. In a number of places in the 1992 and earlier policy forms, the term “amount of insurance” (small “a” and “i”) was used because, due to various provisions of the policy, the dollar amount set forth in Schedule A may have been reduced with the result that the insured had a lesser amount then remaining to pay future claims. This was confusing and even led some readers of ALTA policies to question whether the term “amount of insurance” was a typographical error. Now the fact that the dollar amount outstanding and available to pay claims may be higher or lower than the amount stated in Schedule A is handled “definitionally” and the same defined term “Amount of Insurance” is used consistently throughout the policies. As will be observed by reading this definition, there is one section in the Conditions that can lead to an increase and one section (Loan Policy) or two sections (Owner’s Policy) in the Conditions that can lead to a decrease in the dollar amount stated in Schedule A.

2. Date of Policy

Condition 1(b) of each of the Owner's and Loan Policies defines this term with reference to Schedule A and was briefly discussed above in the context of discussing the "gap" coverage added by Covered Risk 10 (Owner's)/14 (Loan).

3. Entity

Condition 1(c) of each of the Owner's and Loan Policies defines this term consistent with its most common use. The term "Entity" is used in the policies in very few places, mostly in the definition of "Insured" in Condition 1(d) (Owner's)/1(e) (Loan).

4. Indebtedness

Condition 1(d) of the Loan Policy defines this term. It is quite expansive and results in a very significant improvement over the 1992 Loan Policy, as well as the 1970 form Loan Policy (and the version of that form as it was amended in 1984), by including post-policy principal advances (something expressly written out of both the 1992 Loan Policy by Condition & Stipulation 8(d)(i) and the 1970 form Loan Policy by Condition & Stipulation 8(b)) and "prepayment premiums, exit fees and other similar fees or penalties allowed by law" (and, as indicated in the lead-in sentence to this definition, secured by the Insured Mortgage). The term "Indebtedness" is used in the measure of loss provision (now Condition 8 of the Loan Policy) among other places. It should be noted regarding post-policy principal advances, except where the insured mortgage secures a construction loan and the post-policy advances are construction loan advances made pursuant to a construction loan agreement, that the 2006 Loan Policy does not insure against invalidity, unenforceability or lack of priority of the lien of the insured mortgage as security for the post-policy principal advances. To achieve that desired result would require the issuance of an endorsement such as one of the ALTA 14-series (Future Advance) Endorsements. However, with the exception of challenges to the validity, enforceability or priority of the insured mortgage lien as security for the advances, the insured lender's measure of loss now includes these post-policy principal advances.

5. Insured

Condition 1(d) of the Owner's Policy and Condition 1(e) of the Loan Policy define this term much more expansively than the counterpart provisions in the 1992 Owner's and Loan Policies to expressly include the following:

- (a) The party who has "control" of a "transferable record" where the Indebtedness is evidenced by a "transferable record" (as the quoted terms are defined by applicable electronic transactions law) [Loan Policy].

- (b) Successors to the named insured by dissolution, merger, consolidation, distribution or reorganization [Owner's and Loan].
- (c) Successors to the named insured by conversion to any different form of entity [Owner's and Loan].
- (d) Certain voluntary conveyances by the named insured "without actual valuable consideration" including:
 - (i) Where the equity interests of the grantee are wholly owned by the named insured ("subsidiary transfer") [Owner's and Loan];
 - (ii) Where the grantee wholly owns the named insured ("parent transfer") [Owner's and Loan];
 - (iii) Where the grantee is wholly owned by an "affiliate" of the named insured and that affiliate and the named insured share a common "parent" ("affiliate transfer") [Owner's and Loan]; and
 - (iv) Where the grantee is the trustee or beneficiary of a trust established by the named insured for estate planning purposes [Owner's].

6. Title

Condition 1(j) of the Owner's Policy and Condition 1(l) of the Loan Policy define this term with reference to Schedule A to mean "the estate or interest described in Schedule A." In turn, the estate or interest is "described" in paragraph 2 of Schedule A in each of the Owner's and Loan Policies. Although this does not result in any substantive change from the 1992 Policies it eliminates multiple uses throughout the policies of phrases like "estate or interest," "insured estate or interest, and "estate or interest in the land."

7. Unmarketable Title

Condition 1(k) of the Owner's Policy and Condition 1(m) of the Loan Policy defines this term. It is more expansive than its counterpart in the 1992 Policies because it expressly includes lessee and lender interests. Also the phrase "not excluded or excepted from coverage" that appears in the definition of "unmarketability of title" in the 1992 Policies is deleted in the 2006 Policies.

G. Proof of Loss

Condition 4 of both the Owner's and Loan Policies eliminates the requirement for a "sworn" proof of loss within 90 days after the Insured determines the facts giving rise to loss that is found in Section 5 of the Conditions & Stipulations of each of the 1992 Policies. The Forms Committee believes that the title insurer is most often able to effectively quantify the insured's loss in a claim situation without the insured providing a

“proof of loss” so elected to substitute for the automatic requirement a right in the insurer to request that the insured furnish a signed (but not “sworn to”) proof of loss and to condition any claim payment on the insured’s positive response.

H. Elimination of Coinsurance Provision

Condition & Stipulation 7(b) of the 1992 Owner’s Policy has been eliminated in the 2006 Owner’s Policy. This provision had the effect of making the insured owner a coinsurer of the risk of partial loss under either one of two circumstances: (1) When the owner purchased insurance in an amount less than 80% of the then value of or full consideration paid for the land; and (2) When the insured constructed improvements post-policy that increased the value of the land by 20% or more over the amount of insurance purchased. The first of these circumstances rarely arose because insurers generally resist selling an owner’s policy for less than the full purchase price of the subject real estate and, from a regulatory perspective, the insurance regulations in most states contain minimum “Amount of Insurance” standards requiring each policy to be issued for the then full value of the estate or interest being insured or, if less, the full purchase price being paid or the full loan amount being made. It was the second of these circumstances that proved more problematic to insured owners. Elimination of this coinsurance provision enhances the value of the 2006 Owner’s Policy.

I. Elimination of Apportionment Provision

Condition & Stipulation 8 of the 1992 Owner’s Policy has been eliminated in the 2006 Owner’s Policy. A similar provision is also contained in the 1970 form Owner’s Policy (and in the version of that form as it was amended in 1984) at Condition & Stipulation 10. This provision applied when (1) an owner’s policy included two or more parcels of real estate that were not used as a single site, (2) the insurer and the insured had not agreed on any per parcel value and included that agreement in the policy, and (3) a covered loss occurred that affected one or more but not all of the parcels. In this circumstance, the “Apportionment” provision had the effect of limiting the insured’s maximum recovery for the loss incurred on the parcel or parcels affected by the adverse matter by prorating the Amount of Insurance based on the value of each parcel as of the Date of Policy. Elimination of this apportionment provision enhances the value of the 2006 Owner’s Policy in the context of multi-site transactions included within a single policy. The result will now be the same as if the insured obtained a separate Owner’s Policy on each separate site together with a “tie-in” or “aggregation” endorsement. The insured will be able to apply the full Amount of Insurance to any separate parcel on which a covered loss occurs and recover actual loss up to the lesser of the Amount of Insurance or the then full value of the particular parcel affected by the covered defect.

J. Special Provisions Re Exercise of Insurer's Right to Cure Defects

Two new provisions have been added to the 2006 Policies that will benefit the insured when the insurer elects to pursue its rights, now expressed in Condition 5 entitled "Defense and Prosecution of Actions" of each of the 2006 Owner's and Loan Policies, to take action to eliminate a defect insured against by the policy but is unsuccessful in that effort. Each of these provisions will serve to make more compensation available to the insured for the loss caused by an insured defect when the insurer is unable to defeat the adverse claim than would have been available under the 1992 or the 1970 form policies.

1. Automatic Increase in Amount of Insurance

Condition 8(b)(i) of each of the 2006 Owner's and Loan Policies provides under this circumstance an automatic increase in the Amount of Insurance by 10%.

2. Right of Insured to Choose Timing of Loss Determination

Condition 8(b)(ii) of each of the 2006 Owner's and Loan Policies grants to the insured the right to elect when in point of time to have the loss determined between either (a) the date when the insured made the claim on the insurer, or (b) the date when the claim is settled and paid. In a real estate market in which property values are depreciating, the insured will presumably elect the first of these dates for determining the amount of loss. In a real estate market in which property values are appreciating, it will most likely be in the insured's interest to elect the second of these dates for determining the amount of loss.

K. Elimination of "Subsequent Principal Indebtedness" Provision from Loan Policy

Condition & Stipulation 8(d) of the 1992 Loan Policy confirms that the insurer has no liability under the base policy for "any indebtedness created subsequent to Date of Policy" with the exception of certain (1) protective advances and (2) construction loan advances. A similar provision is also contained in the 1970 form Loan Policy (and in the version of that form as it was amended in 1984) at Condition & Stipulation 8(b). Elimination of this provision enhances the value of the 2006 Loan Policy, particularly when understood in context with the new definition of "Indebtedness" discussed at section IV.F.4. above.

L. Elimination of "Last Dollar" Issue from Loan Policy

Condition & Stipulation 9(b) of the 1992 Loan Policy reads, in pertinent part, as follows: "Payment in part by any person of the principal of the indebtedness, or any other obligation secured by the insured mortgage, or any voluntary partial satisfaction or release of the insured mortgage, to the extent of the payment, satisfaction or release, shall reduce the amount of insurance pro tanto." This provision has proven problematic to insured lenders in the context of mixed-collateral, multi-site and partially-secured (or

“undersecured”) loan transactions. In each of these types of loan transactions, the loan amount is likely to be greater than the Amount of Insurance because there is collateral for the loan other than the particular real property described in the subject Loan Policy (the other collateral could be either or both personal property or other parcels of real property) or the loan is simply undersecured (presumably because of the credit strength of the borrower). As a result of this provision, a lender could find itself without any remaining title insurance once the loan principal is reduced by an amount equal to the Amount of Insurance stated in the subject Loan Policy. To guard against this result, a form of endorsement was created that became known as the “Last Dollar Endorsement.” By eliminating the problematic language from Condition 10 of the 2006 Loan Policy, insured lenders requiring this form of policy will no longer need a “Last Dollar Endorsement” in any title insured loan transaction. Under the 2006 Loan Policy only claim payments (other than those for defense costs) serve to reduce the Amount of Insurance and then, if the lender has not acquired title to the insured land by foreclosure or deed-in-lieu-of foreclosure, only to the extent that the claim payment reduces the amount owed on the subject loan.

M. Elimination of “Liability Noncumulative” Provision from Loan Policy

Condition & Stipulation 10 of the 1992 Loan Policy entitled “Liability Noncumulative” has proven problematic in certain loan transactions involving a “senior” and one or more “junior” mortgages that are each insured under loan policies issued by the same insurer. A similar provision is also contained in the 1970 form Loan Policy (and in the version of that form as it was amended in 1984) at Condition & Stipulation 9. In these transactions it is most common that the loan secured by the “senior” mortgage is greater than the loan secured by the “junior” mortgage. As a result of this provision, the lender making the loan secured by the “junior” mortgage could find itself without any remaining title insurance if the insurer paid a claim under the loan policy it issued to insure the lien of the “senior” mortgage and the amount of the payment was at least equal to the Amount of Insurance under the “junior” lender’s loan policy. Elimination of this provision enhances the value of the 2006 Loan Policy.

N. Elimination of Requirement to Produce Policy as Condition to Payment of Loss

Condition & Stipulation 12(a) of the 1992 Owner’s Policy and Condition & Stipulation 11(a) of the 1992 Loan Policy obligated the insured as a condition to the insurer’s payment obligation to produce for the insurer either the policy itself or proof satisfactory to the insurer that the policy could not be produced because it had been lost or destroyed. A similar provision is also contained in the 1970 form Owner’s and Loan Policies (and in the versions of those forms as they were amended in 1984) at Condition & Stipulation 8 and 8(b), respectively. This provision has been eliminated in each of the 2006 Owner’s and Loan Policies because it was thought by the Forms Committee to be an unnecessary imposition on insureds.

O. Arbitration

Each of the 2006 Owner's and Loan Policies include a provision for arbitration of disputes between the insurer and the insured. This provision is contained in Condition 14 of the 2006 Owner's Policy and Condition 13 of the 2006 Loan Policy (the 1992 Owner's and Loan Policies also included an arbitration provision in the same section number of the Conditions & Stipulations section of those forms). This provision in the 2006 Policies has been revised to (1) increase from \$1 million to \$2 million the Amount of Insurance threshold up to which arbitration can be invoked unilaterally by either the insured or the insurer, (2) provide that the applicable arbitration rules are those of the ALTA (posted to the ALTA website, www.alta.org), and (3) confirm that the arbitration is limited to the parties to the insurance contract. Because arbitration can only be invoked unilaterally when the Amount of Insurance is \$2 million or less, the provision should not be a concern in the context of most commercial transactions. The Forms Committee expects that some insureds will continue to request deletion of the arbitration provision by endorsement as has been their practice with the 1992 Policies and, where regulatorily permissible, most insurers are likely to agree to the request in an effort to tailor the insurance policy to the needs of the customer.

P. Incorporation Provision Relating to Endorsements

Condition 15(d) of the 2006 Owner's Policy and Condition 14(d) of the 2006 Loan Policy is a new policy provision that mirrors the language included as the final paragraph of endorsements and is called variously the "boilerplate provision" or the "incorporation provision." It makes clear that every endorsement to the policy, regardless of when issued, is a part of the policy and is subject to the policy's terms and provisions "[e]xcept as the endorsement expressly states." So, to the extent of the coverage expressed in an endorsement, the endorsement will control over any inconsistent provision in the policy but, otherwise, all of the terms and provisions of the policy apply to the coverage added (or, although not as common, subtracted) by the endorsement.

Q. Choice of Law; Forum

Condition 17 of the 2006 Owner's Policy and Condition 16 of the 2006 Loan Policy are new. The Forms Committee determined that each of a "Choice of Law" and a "Choice of Forum" provision would be beneficial at this time because of the increasing number of "cross-border" transactions in which citizens of another country are buying or making loans secured by land in one or more states of the United States. The "Choice of Law" provision confirms that the law that applies is the law of the jurisdiction where the land is located both in the context of (1) claims against the title to the land or the lien of the insured mortgage, and (2) disputes between the insured and the insurer in which it becomes necessary to interpret and enforce the terms of the insurance contract. The "Choice of Forum" provision confirms that any litigation or other proceeding brought by the insured against the insurer must be brought in a state or federal court within the United States or its territories having appropriate jurisdiction.

R. Cross-Reference to “Notices” Provision

A provision has been added to the top of the first page of each of the 2006 Owner’s and Loan Policies to guide the insured to the provision of the policy that stipulates where notices of claim or other notices are to be given to the insurer. The “Notices” provision is Condition 18 of the 2006 Owner’s Policy and Condition 17 of the 2006 Loan Policy.

S. Schedule A

Several new provisions have been added to Schedule A in each of the 2006 Owner’s and Loan Policies. In each policy form both (1) the name and address of the title insurance company that is the insurer under the policy and (2) the insured property address reference have been included. In the case of the former, the Forms Committee determined that adding the name and address of the insurer to Schedule A would be beneficial to both the insured and the insurer in instances when the Schedules have been separated from the “jacket” portion of the policy so if a claim arises each party would have the ability to know the identity of the insurer and the place where the notice of claim would need to be sent. In the case of the latter, there may be instances when the “land” covered by the policy does not have a property address, most likely in the context of vacant land transactions, in which event this detail would likely not appear in Schedule A or, alternatively, the word “none” or “not applicable” might be inserted.

The 2006 Loan Policy also adds to Schedule A as optional paragraph 6 a “check the box” list of the most common and frequently requested ALTA Endorsement forms. For those insurers electing to adopt this optional provision as part of their filed and approved 2006 Loan Policy form, the following endorsements will be incorporated by reference into the policy by simply checking the appropriate box:

- ALTA Endorsement 4-06 (Condominium)
- ALTA Endorsement 4.1-04
- ALTA Endorsement 5-06 (Planned Unit Development)
- ALTA Endorsement 5.1-06
- ALTA Endorsement 6-06 (Variable Rate)
- ALTA Endorsement 6.2-06 (Variable Rate-Negative Amortization)
- ALTA Endorsement 8.1-06 (Environmental Protection Lien) – Applies only to improved residential and includes insertion for applicable state “superlien” statute, if any
- ALTA Endorsement 9-06 (Restriction, Encroachments, Minerals)
- ALTA Endorsement 13.1-06 (Leasehold Loan)
- ALTA Endorsement 14-06 (Future Advance – Priority)
- ALTA Endorsement 14.1-06 (Future Advance – Knowledge)
- ALTA Endorsement 14.3-06 (Future Advance – Reverse Mortgage)
- ALTA Endorsement 22-06 (Location) – Specifies the type of improvement and confirms its street address is as shown in Schedule A above.

T. 2006 ALTA Short Form Residential Loan Policy (One-to-Four Family)

The Forms Committee has continued its practice of providing, for the residential mortgage origination market, a “short form” version of each of the “long form” ALTA Loan Policy forms. Because the 2006 ALTA Short Form Residential Loan Policy (“2006 Short Form”) incorporates by reference “THE TERMS, EXCLUSIONS AND CONDITIONS SET FORTH IN THE AMERICAN LAND TITLE ASSOCIATION LOAN POLICY (6-17-06)” (the quoted phrase being capitalized because that is the way it appears in the 2006 Short Form), this form is the 2006 ALTA Loan Policy. Therefore, a lender that is insured using the 2006 Short Form receives all of the same coverage as if the “long form” had been issued but without all the extra paper.

1. Endorsement Incorporation

Like its predecessor short form loan policies, the 2006 Short Form incorporates a number of the most commonly issued (for residential loan transactions) ALTA Endorsement forms. Some endorsements are automatically incorporated while others are incorporated by a “check-the-box” format. All of the endorsement forms being incorporated are the “-06” versions that have been drafted to work in conjunction with the 2006 Loan Policy. Several of those endorsements incorporated by the “check-the-box” format are new ALTA forms that are discussed in more detail in Section V below.

(a) Automatically Incorporated Endorsements

- (i) ALTA Endorsement 4.1-06 (Condominium);
- (ii) ALTA Endorsement 5.1-06 (Planned Unit Development);
- (iii) ALTA Endorsement 6-06 (Variable Rate);
- (iv) ALTA Endorsement 6.2-06 (Variable Rate-Negative Amortization);
- (v) ALTA Endorsement 7-06 (Manufactured Housing);
- (vi) ALTA Endorsement 8.1-06 (Environmental Protection Lien), specifying the state statute referred to in subparagraph (b) of this Endorsement, if any.
- (vii) ALTA Endorsement 9-06 (Restrictions, Encroachments, Minerals).

(b) “Check-the-box” Incorporated Endorsements

- (i) ALTA Endorsement 4-06 (Condominium);
- (ii) ALTA Endorsement 5-06 (Planned Unit Development);
- (iii) ALTA Endorsement 7.1-06 (Manufactured Housing-Conversion; Loan)

- (iv) ALTA Endorsement 14-06 (Future Advance - Priority);
- (v) ALTA Endorsement 14.1-06 (Future Advance – Knowledge);
- (vi) ALTA Endorsement 14.3-06 (Future Advance – Reverse Mortgage);
- (vii)** ALTA Endorsement 22-06 (Location), specifying that the type of improvement is a one-to-four family residential structure and confirming that the street address is as set forth above in Schedule A.

2. Changes to Schedule B

Several changes have been made to Schedule B of the 2006 Short Form, entitled “Exceptions from Coverage and Affirmative Insurances,” but each of these changes are the result of changes made to the “long form” 2006 Loan Policy when compared to the 1992 Loan Policy.

- (a) Deletion of Paragraph 1 – Post-Policy Taxes and Special Assessments

This paragraph in the existing ALTA Short Form Residential Loan Policy (Revised 10/21/00) (“Existing Short Form”) reads: “Those taxes and special assessments which become due and payable subsequent to Date of Policy.” For the 2006 Short Form, the Forms Committee determined that this exception was unnecessary. Further, because the “long form” 2006 Loan Policy expressly includes in Covered Risk 11(b) coverage for the lack of priority of the insured mortgage lien “over the lien of any assessments for street improvements under construction or completed at Date of Policy” (this is the ALTA Endorsement Form 1 coverage built into the loan policy), it was thought that deletion of this exception would avoid having to add language in the exception confirming that the exception was not intended to limit the coverage provided in Covered Risk 11(b).

- (b) Deletion of Paragraph 5 – Survey Coverage

This paragraph in the Existing Short Form reads: “This policy insures against loss or damage by reason of any violation, variation, encroachment or adverse circumstance affecting title that would have been disclosed by an accurate survey. The term “encroachment” includes encroachments of existing improvements located on the land onto adjoining land, and encroachments onto the land of existing improvements located on adjoining land.” For the 2006 Short Form, the Forms Committee determined that this language was unnecessary because the “long form” 2006 Loan Policy itself expressly includes this coverage in Covered Risk 2(c) so, by virtue of the incorporation of the “long form” into the 2006 Short Form, this coverage is automatically included in the 2006 Short Form.

V. NEW ENDORSEMENT FORMS

In addition to its work revising the existing ALTA Endorsement forms so they will work with the 2006 Owner's and Loan Policies, as applicable, the Forms Committee has drafted a number of new endorsements that are expected (at this writing) to also be adopted on June 17, 2006. This section will briefly discuss each of these new endorsement forms. The language of the substantive coverage provisions of each endorsement will be set forth in full (excluding the "boilerplate" or "incorporation" provision that appears in every endorsement as the last paragraph and serves to tie the endorsement to the policy to which it relates).

A. Manufactured Housing

There are two new endorsements, one each for the 2006 Loan and Owner's Policies, designed for transactions involving a manufactured housing unit that the insurer is satisfied under applicable law constitutes "real property" and otherwise satisfies the insurer's underwriting requirements for providing this coverage.

1. ALTA 7.1-06 (Manufactured Housing Unit-Conversion; Loan)

The version of this endorsement designed for the 2006 Loan Policy reads in pertinent part:

1. The term "Land" as defined in this policy includes the manufactured housing unit located on the Land at Date of Policy.
2. Unless excepted in Schedule B, the Company insures against loss or damage, sustained by the Insured if, at Date of Policy:
 - (a) A manufactured housing unit is not located on the Land.
 - (b) The manufactured housing unit located on the Land is not real property under the law of the state where the Land is located.
 - (c) The owner of the Land is not the owner of the manufactured housing unit.
 - (d) Any lien is attached to the manufactured housing unit as personal property, including
 - (i) a federal, state or other governmental tax lien,
 - (ii) UCC security interest,
 - (iii) a motor vehicular lien,
 - (iv) other personal property lien.
 - (e) The lien of the Insured Mortgage is not enforceable against the Land in a single foreclosure procedure."

2. ALTA 7.2-06 (Manufactured Housing Unit-Conversion; Owner's)

The version of this endorsement designed for the 2006 Owner's Policy reads in pertinent part:

- "1. The term "Land" as defined in this policy includes the manufactured housing unit located on the Land at Date of Policy.
2. Unless excepted in Schedule B, the Company insures against loss or damage, sustained by the Insured if, at Date of Policy:
 - (a) A manufactured housing unit is not located on the Land.

- (b) The manufactured housing unit located on the Land is not real property under the law of the state where the Land is located.
- (c) The Insured is not the owner of the manufactured housing unit.
- (d) Any lien is attached to the manufactured housing unit as personal property, including
 - (i) a federal, state or other governmental tax lien,
 - (ii) UCC security interest,
 - (iii) a motor vehicular lien, or
 - (iv) other personal property lien.”

B. Restrictions, Encroachments, Minerals

There are three new ALTA Endorsement 9-series endorsements, one for the 2006 Loan Policy and two for the 2006 Owner’s Policy (one of those for “unimproved land” and the second for “improved land”), that each include an additional insuring provision to afford coverage in appropriate circumstances for damage to “future improvements” resulting from the future exercise of any right of surface entry to extract or develop minerals that have been severed from the underlying title and are, accordingly, excepted from the legal description or from the policy’s coverage by an exception in Schedule B. Because each of these endorsements reads in all other respects like the ALTA Endorsement 9 (Loan Policy), 9.1 (Owner’s Policy-Unimproved Land) and 9.2 (Owner’s Policy-Improved Land), only the added insuring provision will be set forth below.

1. ALTA Endorsement 9.3-06 (Restrictions, Encroachments, Minerals-Loan Policy-Future Improvements Re Minerals Extraction)

- “4. Damage to improvements, including lawns, shrubbery or trees, located on the Land on or after Date of Policy resulting from the future exercise of any right to use the surface of the Land for the extraction or development of minerals excepted from the description of the Land or excepted in Schedule B.”

2. ALTA Endorsement 9.4-06 (Restrictions, Encroachments, Minerals-Owner’s Policy-Unimproved Land-Future Improvements Re Minerals Extraction)

- “2. Damage to improvements (excluding lawn, shrubbery or trees) constructed on the Land after Date of Policy resulting from the future exercise of any right existing at Date of Policy to use the surface of the Land for the extraction or development of minerals excepted from the description of the Land or excepted in Schedule B.”

3. ALTA Endorsement 9.5-06 (Restrictions, Encroachments, Minerals-Owner's Policy-Improved Land-Future Improvements Re Minerals Extraction)

"3. Damage to improvements (excluding lawns, shrubbery or trees), located on the Land on or after Date of Policy resulting from the future exercise of any right existing at Date of Policy to use the surface of the Land for the extraction or development of minerals excepted from the description of the Land or excepted in Schedule B."

C. Location

There are two new endorsements, each of which can be used with both the 2006 Owner's and Loan Policies, designed to address the type of improvement that is located on the land and the applicable street address by which that improvement is known. The second of these endorsements adds coverage related to a map that is attached to the policy for those areas of the country or transactions in which it is feasible and customary for the title insurer to attach a "location map" to the policy.

1. ALTA Endorsement 22-06 (Location)

"The Company insures against loss or damage sustained by the insured by reason of the failure of a (*description of improvement*) known as (*street address*), to be located on the Land at Date of Policy."

2. ALTA Endorsement 22.1-06 (Location and Map)

"The Company insures against loss or damage sustained by the insured by reason of the failure of (i) a (*description of improvement*) known as (*street address*), to be located on the Land at Date of Policy, or (ii) the map, if any, attached to this policy to correctly show the location and dimensions of the Land according to the Public Records."

VI. WHAT'S NEXT?

With the adoption of the new forms discussed in this paper, anticipated (at this writing) to occur on June 17, 2006, the work of the title insurance industry's underwriters to file and, where necessary, obtain the approval of the forms by each state's regulatory authority (typically, the Department of Insurance) will begin. This process will likely take the remainder of 2006 to complete and there may be a few states in which the process continues into 2007. Where "filing," "filing and approval," or "promulgation" is required by applicable state law, each underwriter must complete that step before these forms will be available for issuance in that state. It is conceivable that one or more states will require state-specific modifications to the ALTA-adopted forms so that the forms ultimately available in those states may be slightly different than the ALTA-adopted versions. Experience suggests that any state-specific modifications will be minor so one can expect that the substance of each of the proposed 2006 ALTA Owner's and Loan

Policies, as well as the other proposed 2006 ALTA forms discussed above, will survive regulatory review and ultimately be available to the industry's customer groups throughout the country, from each of the industry's licensed title insurance underwriters, by sometime in 2007.

The Forms Committee's work will not end with the adoption of the proposed 2006 ALTA Owner's and Loan Policies and related forms. It is anticipated that the Forms Committee will next tackle a comprehensive review of each of the residential-specific policy forms that were created and adopted in the past 8 years, including the ALTA Homeowner's Policy of Title Insurance (10/17/98; 10/22/03), the ALTA Expanded Coverage Residential Loan Policy (10/13/01), and the ALTA Short Form Expanded Coverage Residential Loan Policy (10/22/03), to bring these forms current with the applicable insured-oriented changes that have resulted in the 2006 ALTA Owner's and Loan Policies. In addition, the Forms Committee is presently working on another new series of ALTA Endorsement forms (including two alternative forms for "coinsurance" transactions) as part of its ongoing effort to modernize and standardize the additional coverage available to the industry's customers by endorsement, the primary vehicle to facilitate transaction-specific tailoring of standard or "base" title insurance policies.

VII. CONCLUSION

The 1992 ALTA Owner's and Loan Policies, as the 1970 form policies before them, have served the title insurance industry and its customer groups reasonably well for decades. But the Forms Committee's combined experience and the input received from the industry's customer groups since the last major policy rewrite in 1986 led to the creation and expected (as of this writing) adoption of a set of standard or "base" title insurance policy forms that represent a significant step forward – the 2006 ALTA Owner's and Loan Policies.

It is truly an honor serving the title insurance industry as a member of the ALTA Forms Committee and to work collaboratively with my fellow Forms Committee members to deliver products that improve this industry's ability to serve its customers' title insurance needs. This work has been and will continue to be a highlight of my career and I thank each of my fellow Forms Committee members for their tireless and dedicated efforts throughout this process.

Exhibit “A”

Summary of Changes to ALTA Owner’s Policy as of Final Draft of 2006 ALTA Owner’s Policy – Proposed Adoption Date: June 17, 2006

1. **Addressed** the “exclusion to an exclusion” issue created in the 1986/1987 Owner’s Policy (today known as the “1992” ALTA Owner’s Policy):
 - “Governmental regulation” – Exclusion 1(a) [**New Covered Risk 5**];
 - “Governmental police power” – Exclusion 1(b) [**New Covered Risk 6**];
 - “Rights of Eminent Domain” – Exclusion 2 [**New Covered Risks 7 + 8**];
 - “Preferences” – Exclusion 4(b) [**New Covered Risk 9(b)**].

2. **Added** Insuring Clauses (now known as “Covered Risks”) to expressly address:
 - Forgery, fraud, undue influence, duress, incompetency, incapacity or impersonation [**New Covered Risks 2(a)(i)**].
 - Lack of authority of any person executing on behalf of the true owner – particularly entity owners [**New Covered Risks 2(a)(ii)**].
 - Failure of proper creation, execution, witnessing, acknowledgement, notarization, or delivery of any document affecting title or of the insured mortgage [**New Covered Risks 2(a)(iii)**].
 - Failure to properly create a document by electronic means authorized by law [**New Covered Risks 2(a)(iv)**].
 - Execution under a power of attorney that is invalid because it has expired or was falsified [**New Covered Risks 2(a)(v)**].
 - Failure of documents to be properly filed, recorded or indexed in the Public Records including failure to perform those acts by electronic means authorized by law [**New Covered Risks 2(a)(vi)**].
 - Any defect in any judicial or administrative proceeding through which title or the lien of the insured mortgage is derived [**New Covered Risks 2(a)(vii)**].
 - Survey coverage – Any encroachment, encumbrance, violation, variation or adverse circumstance affecting title that would have been disclosed by a complete and accurate land survey [**New Covered Risk 2(c)**]. “Encroachment” includes existing improvements that encroach from the insured land onto adjoining land and those located on adjoining land that encroach onto the insured land.

- Creditors' Rights in the "past chain of title" (i.e. any fraudulent or preferential transfer prior to the transaction vesting Title in the insured) [New Covered Risk 9(a)].
 - "Gap" Coverage – [New Covered Risk 10].
3. **Defined** "Amount of Insurance" [New Condition 1(a)].
 4. **Defined** "Date of Policy" to be the specified date in Schedule A – Relates to new Covered Risk 10 providing "Gap" Coverage [New Condition 1(b)].
 5. **Defined** "Entity" [New Condition 1(c)].
 6. **Expanded** definition of "Insured" to include [New Condition 1(d)]:
 - Successors by dissolution, merger, consolidation, distribution or reorganization [New Condition 1(d)(i)(B)];
 - Successors by conversion to any different form of entity [New Condition 1(d)(i)(C)];
 - Certain voluntary conveyances "without actual valuable consideration" [New Condition 1(d)(i)(D)]:
 - Where the equity interests of the grantee are wholly owned by the Insured ("subsidiary transfer");
 - Where the grantee wholly owns the Insured ("parent transfer");
 - Where the grantee is wholly owned by an "affiliate" of the Insured and that affiliate and the Insured share a common "parent" ("affiliate transfer");
 - Where the grantee is the trustee or beneficiary of a trust established by the named Insured for estate planning purposes.
 7. **Expanded** definition of "Unmarketable Title" to (a) delete phrase "not excluded or excepted from coverage" and (b) expressly include lessee and lender interests [New Condition 1(k)].
 8. **Eliminated** *requirement* for "sworn" proof of loss within 90 days after Insured determines facts giving rise to loss – former Section 5 of Conditions & Stipulations [New Condition 4].
 9. **Eliminated** "Coinsurance" Provision – Section 7(b) of the Conditions & Stipulations of 1992 ALTA Owner's Policy.

10. **Eliminated** “Apportionment” Provision – Section 8 of the Conditions & Stipulations of 1992 ALTA Owner’s Policy.
11. **Added** automatic increase in Amount of Insurance by 10% if the insurer pursues its rights under Section 5 of the Conditions to litigate or otherwise seek to eliminate the defect but is unsuccessful [**New Condition 8(b)(i)**].
12. **Added** right of Insured to choose when to have the loss determined as between (a) the date the claim is made, or (b) the date the claim is settled and paid [**New Condition 8(b)(ii)**].
13. **Eliminated** requirement for production of policy as condition to payment of loss [**Deletion of Section 12(a) of the Conditions & Stipulations of 1992 ALTA Owner’s Policy**].
14. **Revised** “Arbitration” Clause [**Revised Condition 14**]:
 - Increased threshold from \$1 million to \$2 million in which arbitration can be unilaterally invoked by either the Insured or the Company;
 - Arbitration limited to the parties to the Policy only (i.e. no “class action” arbitrations – “no joinder or consolidation with claims or controversies of other persons”);
 - Reference to the Title Insurance Arbitration Rules of the American Land Title Association – Posted to the ALTA website (www.alta.org);
 - National Arbitration Forum (“NAF”), an independent provider of dispute resolution services, to implement a dispute resolution system for the title insurance industry and administer title insurance arbitrations pursuant to the Title Insurance Arbitration Rules as a supplement to NAF’s Code of Procedure.
15. **Added** “Choice of Law; Forum” Provision [**New Condition 17**].
16. **Added** “endorsement incorporation” language [**New Condition 15(d)**].
17. **Added** cross-reference at top of Page 1 to “Notices” – Section 18 of Conditions.
18. **Added** the following new “Schedule A” provisions: (a) Name and Address of Title Insurer; and (b) Property Address Reference.

Exhibit “B”

Summary of Changes to ALTA Loan Policy as of Final Draft of 2006 ALTA Loan Policy – Proposed Adoption Date: June 17, 2006

1. **Addressed** the “exclusion to an exclusion” issue created in the 1986/1987 Loan Policy (today known as the “1992” ALTA Loan Policy):
 - “Governmental regulation” – Exclusion 1(a) [**New Covered Risk 5**];
 - “Governmental police power” – Exclusion 1(b) [**New Covered Risk 6**];
 - “Rights of Eminent Domain” – Exclusion 2 [**New Covered Risks 7 + 8**];
 - “Preferences” – Exclusion 7(b) [**New Covered Risk 13(b)**].

2. **Added** Insuring Clauses (now known as “Covered Risks”) to expressly address:
 - Forgery, fraud, undue influence, duress, incompetency, incapacity or impersonation [**New Covered Risks 2(a)(i) and 9(a)**].
 - Lack of authority of any person executing on behalf of the true owner – particularly entity owners [**New Covered Risks (2)(a)(ii) and 9(b)**].
 - Failure of proper creation, execution, witnessing, acknowledgement, notarization, or delivery of any document affecting title or of the insured mortgage [**New Covered Risks 2(a)(iii) and 9(c)**].
 - Failure to properly create a document by electronic means authorized by law [**New Covered Risks 2(a)(iv) and 9(d)**].
 - Execution under a power of attorney that is invalid because it has expired or was falsified [**New Covered Risks 2(a)(v) and 9(e)**].
 - Failure of documents to be properly filed, recorded or indexed in the Public Records including failure to perform those acts by electronic means authorized by law [**New Covered Risks 2(a)(vi) and 9(f)**].
 - Any defect in any judicial or administrative proceeding through which title or the lien of the insured mortgage is derived [**New Covered Risks 2(a)(vii) and 9(g)**].
 - Survey coverage – Any encroachment, encumbrance, violation, variation or adverse circumstance affecting title that would have been disclosed by a complete and accurate land survey [**New Covered Risk 2(c)**]. “Encroachment” includes existing improvements that encroach from the insured land onto adjoining land and those located on adjoining land that encroach onto the insured land.

- Creditors' Rights in the "past chain of title" (i.e. any fraudulent or preferential transfer prior to the transaction creating the lien of the insured mortgage) [**New Covered Risk 13(a)**].
 - "Gap" Coverage – [**New Covered Risk 14**].
3. **Eliminated** former Exclusion 6 of 1992 ALTA Loan Policy addressing mechanics' liens arising from post-policy work not financed by the loan secured by the insured mortgage.
 4. **Added** new Exclusion 7 addressing post-Date of Policy real estate tax and assessment liens – Driven by new Covered Risk 14 providing "Gap" Coverage [**New Exclusion 7**].
 5. **Defined** "Amount of Insurance" [**New Condition 1(a)**].
 6. **Defined** "Date of Policy" to be the specified date in Schedule A – Relates to new Covered Risk 14 providing "Gap" coverage [**New Condition 1(b)**].
 7. **Defined** "Entity" [**New Condition 1(c)**].
 8. **Defined** "Indebtedness" to include [**New Condition 1(d)**]:
 - Post-policy advances of principal (but need ALTA Endorsement 14-series to insure validity, enforceability and priority of Insured Mortgage for those advances);
 - Obligatory post-policy construction loan advances;
 - Prepayment premiums, exit fees and other similar fees or penalties.

The term "Indebtedness" becomes important in the measure of loss and "Extent of Liability" of the Company [**New Condition 8(a)(ii)**].
 9. **Expanded** definition of "Insured" to include [**New Condition 1(e)**]:
 - The party who has "control" of a "transferable record" where the Indebtedness is evidenced by a "transferable record" (as the quoted terms are defined by applicable electronic transactions law) [**New Condition 1(e)(i)(B)**].
 - Successors by dissolution, merger, consolidation, distribution or reorganization [**New Condition 1(e)(i)(C)**].
 - Successors by conversion to any different form of entity [**New Condition 1(e)(i)(D)**].

- Certain voluntary conveyances “without actual valuable consideration”
[**New Condition 1(e)(i)(E)**]:
 - Where the equity interests of the grantee are wholly owned by the Insured (“subsidiary transfer”);
 - Where the grantee wholly owns the Insured (“parent transfer”);
 - Where the grantee is wholly owned by an “affiliate” of the Insured and that affiliate and the Insured share a common “parent” (“affiliate transfer”).
10. **Expanded** definition of “Unmarketable Title” to (a) delete phrase “not excluded or excepted from coverage” and (b) expressly include lessee and lender interests [**New Condition 1(m)**].
 11. **Eliminated** *requirement* for “sworn” proof of loss within 90 days after Insured determines facts giving rise to loss – former Section 5 of Conditions & Stipulations [**New Condition 4**].
 12. **Added** automatic increase in Amount of Insurance by 10% if the insurer pursues its rights under Section 5 of the Conditions to litigate or otherwise seek to eliminate the defect but is unsuccessful [**New Condition 8(b)(i)**].
 13. **Added** right of Insured to choose when to have the loss determined as between (a) the date the claim is made, or (b) the date the claim is settled and paid [**New Condition 8(b)(ii)**].
 14. **Eliminated** “subsequent principal indebtedness” provision contained in Section 8(d) of the Conditions & Stipulations of 1992 ALTA Loan Policy [**New Condition 9**].
 15. **Eliminated** “last dollar” problem of Section 9 of the Conditions & Stipulations of 1992 ALTA Loan Policy (**will obviate need for “Last Dollar” Endorsement**).
 16. **Eliminated** “Liability Noncumulative” Provision – Section 10 of the Conditions & Stipulations of the 1992 ALTA Loan Policy.
 17. **Eliminated** requirement for production of policy as condition to payment of loss [**Deletion of Section 11(a) of the Conditions & Stipulations of 1992 ALTA Loan Policy**].
 18. **Revised** “Arbitration” Clause [**Revised Condition 13**]:
 - Increased threshold from \$1 million to \$2 million in which arbitration can be unilaterally invoked by either the Insured or the Company;

- Arbitration limited to the parties to the Policy only (i.e. no “class action” arbitrations – “no joinder or consolidation with claims or controversies of other persons”);
 - Reference to the Title Insurance Arbitration Rules of the American Land Title Association – Posted to the ALTA website (www.alta.org).
 - National Arbitration Forum (“NAF”), an independent provider of dispute resolution services, to implement a dispute resolution system for the title insurance industry and administer title insurance arbitrations pursuant to the Title Insurance Arbitration Rules as a supplement to NAF’s Code of Procedure.
19. **Added** “Choice of Law; Forum” Provision [**New Condition 16**].
20. **Added** “endorsement incorporation” language [**New Condition 14(d)**].
21. **Added** cross-reference at top of Page 1 to “Notices” – Section 17 of Conditions.
22. **Added** the following new “Schedule A” provisions:
- Name and Address of Title Insurer
 - Property Address Reference
 - “Check-the-box” incorporation of certain common endorsements [**New Optional Paragraph 6**] – Includes ALTA Endorsement Forms:
 - 4-06 and 4.1-06 (Condominium)
 - 5-06 and 5.1-06 (Planned Unit Development)
 - 6-06 (Variable Rate)
 - 6.2-06 (Variable Rate-Negative Amortization)
 - 8.1-06 (Environmental Lien) – Applies only to improved residential and includes insertion for applicable state “superlien” statute, if any
 - 9-06 (Restriction, Encroachments, Minerals)
 - 13.1-06 (Leasehold Loan)
 - 14-06 (Future Advance – Priority)
 - 14.1-06 (Future Advance – Knowledge)
 - 14.3-06 (Future Advance – Reverse Mortgage)
 - 22-06 (Location) – Referring to the type of improvement and confirming that the street address is as set forth in Schedule A above.