



Title Endorsement Basics

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Title insurance is issued using standardized forms of policies and endorsements. The most commonly used forms for commercial properties are those promulgated by the American Land Title Association (ALTA), a nationwide title insurance industry group. A title endorsement is an addition to or limitation of title insurance coverage that is attached to a title insurance policy. Endorsements provide coverage that tailors the policy to fit the needs of the insured for a specific transaction. There are approximately 80 ALTA-approved endorsement forms from which the insured may select additional coverage. While endorsement forms are standard, requirements for each vary.

In order to ensure adequate coverage, it is important that you are aware of the underwriter's specific requirements to issue a particular endorsement and that you provide for ample lead time to fulfill these requirements. Your coverage is only as good as your endorsement. Some endorsements require no additional submissions to the underwriter and may be of interest if your timeline and budget permit.

Basic Endorsements:

Below are some of the most commonly issued endorsements, a basic explanation of the coverage they provide, and the requirements necessary for issuance.

ALTA 3 Series

The **ALTA 3 Series** endorsements, the "Zoning" endorsements, to a loan or owner policy provide insurance as to the applicable zoning classification and authorized use of the land.

The **ALTA Endorsement 3-06**, Zoning Unimproved Land, is designed for vacant land. It provides insurance against loss or damage sustained due to the failure of the land to hold a particular zoning classification and against certain specified uses not being permitted under the zoning ordinance(s) in effect. Underwriting requirements may include the following: review of the zoning maps and ordinances, zoning report, zoning compliance letter, attorney's opinion or owner's affidavit with respect to current use and no knowledge of violations.

The **ALTA Endorsement 3.1-06**, Zoning-Completed Structure, is designed for improved property and insures the zoning classification and authorized uses under that classification. This endorsement also 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 area, width or depth of the land as a building site, floor space area of the structure, setback of the structure, height of the structure, or number of parking spaces. The underwriting requirements generally include those required for ALTA 3-06, as well as evidence of issuance of an occupancy permit in the case of recent construction.

The **ALTA Endorsement 3.2-06**, Zoning – Land Under Development, is designed for unimproved land with the contemplation of improvements being constructed according to specific plans and specifications. Underwriting requirements include the submission of site plans and specifications for review.

Environmental Protection Lien

The **ALTA Endorsements 8.1-06** and **8.2-06** are commonly referred to as Environmental Protection Lien and Commercial Environmental Protection Lien, respectively. These endorsements insure against loss or damage sustained due to any recorded environmental liens not otherwise shown as an exception to title in Schedule B of the policy. Endorsement 8.1-06 is available only for loan policies that cover residential property and requires a customary search of the land records. Endorsement 8.2-06, on the other hand, is available for loan or owner policies, applies only to commercial property, and necessitates no additional underwriting requirements.

Restrictions, Encroachments, Minerals

The **ALTA 9** Series offers a variety of coverages related to divestment of mortgage liens, violations of restrictions and encroachments. This endorsement is commonly known as the “Comprehensive Endorsement” because it was designed to consolidate in a single endorsement many of the various coverages often requested or required by institutional lenders.

The **ALTA Endorsements 9-06** and **9.7-06**, Restrictions, Encroachments, Minerals – Loan Policy, are available only for loan policies. These endorsements address violations of covenants, conditions, limitations or restrictions, existing encroachments, damage resulting from the exercise of mineral rights and a final court order requiring the removal of an encroachment because of a violation of setback lines. The ALTA Endorsement 9.7-06 is designed specifically for land under development and adds coverage relative to improvements to be constructed on the land based upon plans and specifications. Further, **ALTA Endorsement 9.10-06**, commonly referred to as Restrictions, Encroachments, Minerals – Current Violations – Loan Policy, provides the same coverage as ALTA 9-06, except that the coverage includes current violations at the Date of the Policy on an “as needed” basis.

The **ALTA Endorsement 9.3-06**, Covenants, Conditions and Restrictions – Loan Policy, is similar to the 9-06 and only applies to loan policies. It does not, however, insure over encroachments or damage resulting from the future exercise of any right to use the surface of the land for the extraction or development of minerals.

The **ALTA Endorsements 9.1-06** and **9.2-06**, Covenants, Conditions and Restrictions – Owner’s Policy, are available only for owner policies. Endorsement 9.1-06 applies only to unimproved property, and Endorsement 9.2-06 applies to improved land. These insure against violations of any covenant, condition or restriction, other than as disclosed in Schedule B of the policy. Endorsement 9.2-06 also adds coverage against enforced removal of an improvement resulting from a violation of a setback line. In addition, ALTA Endorsement 9.8-06 is similar to 9.1-06 and 9.2-06, except that it adds coverage for contemplated improvements on the land as shown on specific plans and specifications. ALTA Endorsement 9.8-06 is commonly referred to as Covenants Conditions and Restrictions – Land Under Development – Owner’s Policy.

The requirements for the issuance of the endorsements above vary from jurisdiction to jurisdiction and may include an acceptable survey and evidence that any covenants that affect the property are not being violated.

The **ALTA Endorsement 9.6-06**, Private Rights – Current Assessments – Loan Policy, is available only

for loan policies. This endorsement provides coverage against private charges or assessments, options to purchase, rights of first refusal or a right of prior approval by a future purchaser/occupant, but is limited to loss or damage arising from a private charge or assessment due and payable at the date of the policy.

The **ALTA Endorsement 9.9-06**, Private Right – Owner’s Policy, is available only for owner policies and provides coverage against loss or damage sustained due to the enforcement of any Private Rights in a Covenant, such as options, rights of first refusal or prior approval, that causes a loss of the Insured Title.

Access and Entry

The **ALTA Endorsement 17-06**, Access and Entry, and the ALTA Endorsement 17.1-06, Indirect Access and Entry, are commonly referred to as the “Access” endorsements. Both of these endorsements are available for owner and loan policies. ALTA Endorsement 17-06 provides coverage against loss or damage suffered as the result of the insured land not having physical access to a public right-of-way via an access easement shown in the policy as an insured interest or suffered as the result of the limitation of the right of access via existing curb cuts or entries to a public right-of-way. ALTA Endorsement 17.1-06, on the other hand, provides coverage against loss or damage suffered as the result of the insured land *not being contiguous to a public right-of-way*, as well as not having physical access to a public right-of-way, and the limitation of the right of access via existing curb cuts or entries to a public right-of-way. These endorsements may be issued upon submission of a current survey of the insured land showing the land abutting a public right-of-way with curb cuts and entries thereon or contiguous to an insured access easement that abuts a public right-of-way. The endorsement may also be satisfied by a title search of the property.

Tax Parcel

The **ALTA Endorsement 18-06**, Single Tax Parcel, and the ALTA Endorsement 18.1-06, Multiple Tax Parcel, are available for owner and loan policies. These endorsements provide coverage in the event that the land described in and insured by the policy does not constitute a distinct tax parcel or parcels for real estate tax purposes, separate and apart from other property. This will not likely be available if you are subdividing property or creating a new parcel in a transaction, as no tax parcel number will have been issued. No additional underwriting requirements, beyond a title search, are necessary to issue this endorsement.

Contiguity

The **ALTA Endorsement 19-06**, Contiguity - Multiple Parcels, and the ALTA Endorsement 19.1-06, Contiguity - Single Parcel, are available for owner and loan policies. These endorsements are most commonly requested when the real estate is described as more than one parcel in the policy. The endorsement provides insurance that there are no intervening parcels, gaps or gores. In order to issue this endorsement, the title company usually must review a reliable survey that confirms the contiguity of the parcels, depending on the complexity. Many locations require that the survey be drawn to ALTA standards and be certified to the title company.

Same as Survey

The **ALTA Endorsement 25-06** is commonly called the Same as Survey. This endorsement is available for loan and owner’s policies and provides coverage in the event that the land identified on the survey described in the endorsement is not the same land as described in the policy. This endorsement is available upon receipt and examination of a current and reliable survey. Depending on the circumstances, some underwriters may issue this endorsement with a prior survey and an affidavit from the owner of the property indicating that no changes to the property affecting the accuracy of the survey

have occurred.

Subdivision

The **ALTA Endorsement 26-06** offers coverage over any loss resulting from failure of the land described in and insured by the policy to be a separate and lawfully created tract of land pursuant to applicable state and local laws. This endorsement is available upon receipt and examination of a current and reliable survey together with state and local subdivision requirements.

Special Endorsements:

The basic coverage provided by a standard ALTA title insurance policy addresses many of your common title insurance needs.

Often, however, particular transactions may present special risks that might require additional clearance or requirements other than those discussed below.

Condominiums

The **ALTA Endorsement 4-06**, Condominium – Loan Policy, is only available for loan policies. It provides coverage to a mortgage lender whose loan is secured by a condominium unit. The endorsement insures that the condominium project was created in accordance with state law, that there are no maintenance liens or forfeiture provisions with priority over the lien of the insured mortgage, and that there can be no exercise of a right of first refusal in connection with current or prior transactions. The underwriter will require satisfactory evidence that there are no unpaid liens for condominium charges or assessments and that any right of first refusal that could have been exercised has been waived.

The **ALTA Endorsement 4.1-06**, Condominium, is available for both owner policies and loan policies. It provides coverage to owners of condominium units and to their mortgage lenders. This endorsement provides the same basic insurance coverages as Endorsement 4-06, except that 4.1-06 does not insure the priority of the lien of the insured mortgage or Deed of Trust over *future* condominium assessments. Rather, it insures against loss or damage by reason of the priority of any lien for condominium charges and assessments that exist at the Date of the Policy. The underwriting requirements generally include those required for Endorsement 4-06.

Planned Unit Development

The **ALTA Endorsement 5-06**, Planned Unit Development – Loan Policy, is only available for loan policies. While the endorsement is intended for use where the land is part of a Planned Unit Development (PUD), such as housing, recreation, commercial centers, and industrial parks, it may also be used in any situation where there is an owner's association or any other type of master agreement. This endorsement provides coverage against loss caused by a present violation of certain restrictions, loss arising from lack of priority of the insured mortgage over a lien for homeowner's association assessments, losses due to the enforced removal of an existing structure because of an encroachment, and losses from the failure of title caused by the exercise of a right of first refusal. Again, the underwriter will require satisfactory evidence that there are no unpaid liens for past due assessments and that any right of first refusal that could have been exercised has been waived or terminated.

The **ALTA Endorsement 5.1-06**, Planned Unit Development, provides the same basic insurance coverage as Endorsement 5-06, except that Endorsement 5.1-06 is available for both owner policies and loan policies, and it does not insure the priority of the lien of the insured mortgage over *future* homeowner's assessments. This endorsement is often used in states where the homeowner's

association assessments take priority over the insured mortgage under state law. The underwriting requirements generally include those required for Endorsement 5-06.

Leasehold

The **ALTA Endorsement 13-06**, Leasehold – Owner’s Policy, and **ALTA Endorsement 13.1-06**, Leasehold – Loan Policy, are applicable when all or a portion of the insured land is leased to the insured tenant. Endorsement 13-06 applies to owner policies and Endorsement 13.1-06 applies to loan policies. These endorsements involve several additional definitions relating to a “leasehold estate” which is defined as the right to possession granted in the lease for the stated lease term. These endorsements also modify the calculation of damages and define valuation of the estate.

Non-Imputation

The **ALTA Endorsement 15-06** (Non-Imputation – Full Equity Transfer), **ALTA Endorsement 15.1-05** (Non-Imputation – Additional Insured), and **ALTA Endorsement 15.2-06** (Non-Imputation – Partial Equity Transfer) are only available for owner’s policies. In the event of a transfer of ownership, the knowledge of one party may be imputed by law to the transferee. For example, an entity that purchases all the membership interests in a limited liability company that owns insured property will want to obtain the Non-Imputation Endorsement as to the new owner of the membership interests so that the knowledge of the prior owner is not imputed to the company. One effect of this imputed knowledge is that, in the event of a claim under a title insurance policy, the title insurer may be able to deny liability on the basis that the given matter was known to the insured and not known to the underwriter and not disclosed by the public records. Endorsement 15.1-05, however, does not protect the named entity as the insured in the policy, rather it protects the named “additional insured.” Furthermore, Endorsement 15.2-06 is used where an incoming partner or member is purchasing an interest in the record entity and the incoming partner or member is named as the insured in the policy. In each case, an underwriter will require satisfactory evidence that there are no such matters known by the parties from whom knowledge may otherwise be imputed, typically in the form of a sworn statement together with an indemnity.

Location

The **ALTA Endorsement 22-06**, Location, and **ALTA Endorsement 22.1-06**, Location and Map, are both available for owner policies and loan policies, however, 22.1-06 is normally requested only for loan policies. These endorsements provide insurance against loss or damage from the failure of the land to be improved as described in the endorsement and from failure to be identified with the street address identified in the endorsement. Endorsement 22.1-06 further includes reference to a map attached to the policy.

Easement

The **ALTA Endorsement 28-06**, Easement – Damage, is available for both owner policies and loan policies. It provides coverage for damage sustained by the insured as a result of the encroachment of any building located on the land onto an easement. For example, if a building on the insured property is located within the bounds of a utility easement that prohibits the building of improvements on the easement area (or allows for the holder of the easement to remove any improvements on the easement area), the Endorsement 28-06 provides coverage to the owner of the insured property if the holder of the utility easement exercises those rights to remove the building from the easement area.

Encroachments

The **ALTA Endorsement 28.1-06**, Encroachments – Boundaries and Easements, and **ALTA Endorsement 28.2-06**, Encroachments – Boundaries and Easements – Described Improvements, are

available for owner's policies and loan policies. These provide coverage for loss sustained by reason of enforced removal of improvements encroaching onto adjoining land or encroaching onto an easement. Endorsement 28.2-06 also allows for the exclusion of any specific encroachment.

Minerals and Other Subsurface Substances

The **ALTA Endorsement 35-06** (Minerals and Other Subsurface Substances – Buildings) **ALTA Endorsement 35.1-06** (Minerals and Other Subsurface Substances – Improvements) and **ALTA Endorsement 35.2-06** (Minerals and Other Subsurface Substances – Described Improvements) are all available for owner's and loan policies. Endorsement 35-06 provides coverage against loss or damage resulting from enforced removal or alteration of *buildings* located on the land, whereas, Endorsement 35.1-06 is distinguished from Endorsement 35-06 by providing coverage against damage resulting from removal of *Improvements (as defined in the endorsement)* located on the land. Further, Endorsement 35.2-06 provides a more limited indemnity against enforced removal or alteration of *specific listed improvements* located on the land. In each case, the coverage only includes alterations on the land at the date of policy because 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. These endorsements are more frequently used in states where mining is common.

The **ALTA Endorsement 35.3-06**, Minerals and Other Subsurface Substances – Land Under Development, provides indemnity against enforced removal or alteration of improvements located on the land at the date of the policy and *future* improvements to be located on the land after the date of policy because 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. Plans and specifications for such future improvements will need to be submitted to your underwriter for review.

Endorsements can provide you or your client with much needed additional coverage depending on your circumstances. It is important to ensure that your endorsements are complete and accurate, as your coverage is only as good as the terms of the endorsements. Further, it is important to consider which endorsements require additional deliveries to the underwriter that involve additional lead time and which endorsements have no underwriting requirements. Be sure to consider these underwriting requirements and associated costs and time involved to issue each of the endorsements discussed above when preparing for your transaction.

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