



Title Endorsements - Part 2

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Read part one of this alert [here](#).

The basic coverage provided by a standard ALTA title insurance policy addresses many of your common title insurance needs. Often, however, certain real estate transactions raise special title concerns. By requesting an endorsement to the title insurance policy, an insured owner or lender may be able to receive additional insurance against the risk of loss or damage by reason of a particular matter that is beyond the coverage described in the standard policy jacket.

This article is intended to serve as an introduction to some of the non-standard title endorsements that address special concerns in today's real estate market. It is important to note that the title company's ability to approve and issue an endorsement may vary from state to state and even by locality. Furthermore, 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's 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?s 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?s 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's 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's 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.

Keep in mind that your coverage is only as good as the precise terms of the endorsements. In these special circumstances, be sure to consider which endorsements may be required, which involve additional deliveries to the underwriter and thus additional lead time, and which endorsements have no underwriting requirements and can provide additional insurance to protect your interests or your client's interests.

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