

What About Those 2021 ALTA Policy Forms? Part II

Description

(Part Two)

In Part II of this article, 2021 changes to the title commitment, closing protection letters, Homeowner's policy, extended coverage residential loan policies, short form loan policies, and endorsements will be discussed. Read Part I [here](#).

Specialty Loan Policies

This group of policies had few substantive changes. Primarily, these policies were made consistent in language and format with the standard 2021 Loan Policy. In this group can be found: ALTA Expanded Coverage Residential Loan Policy - Assessments Priority, ALTA Expanded Coverage Residential Loan Policy - Current Assessments, ALTA Short Form Expanded Coverage Residential Loan Policy - Assessments Priority, ALTA Short Form Residential Loan Policy - Current Assessments, ALTA Short Form Residential Loan Policy - Assessments Priority, and ALTA Short Form Residential Loan Policy - Current Assessments.

Title Insurance Commitment

The ALTA Commitment for Title Insurance was subjected to almost as much detailed revision as the Loan and Owner's Policies were given. No greater scrutiny was given to any part of the Commitment than the opening NOTICE. In its entirety, the Notice now reads:

NOTICE

IMPORTANT-READ CAREFULLY: THIS COMMITMENT IS AN OFFER TO ISSUE ONE OR MORE TITLE INSURANCE POLICIES. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN CONTRACT.

THIS COMMITMENT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO EXTRACTIONAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.

THE COMPANY'S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A PROPOSED INSURED IDENTIFIED IN SCHEDULE A IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT. THE COMPANY HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON.

This language is all caps for emphasis. It is an express and lengthy message directed specifically at the proposed Insured disabusing any reliance on the commitment as a title report or opinion of title. The intentions are to limit liability of the insurance company to the contract of insurance and to quell extra-contractual tort liability for title search errors. Additionally, the last sentence limits the Commitment's contract with the Company to the Insured named on it. No other party can claim benefit under the Commitment through a third party beneficiary theory.

Definitions in the Commitment are now consistent with the same terms in the Loan and Owner's Policies. While the right to amend the Commitment at any time is reserved by the Company in Condition 4, Condition 5 provides specific compensable "actual expense" incurred by the Insured, who is damaged by the time period between the original commitment and the delivery of the amended commitment that adds a defect, lien or other encumbrance. The loss payable is limited to the proposed Insured's actual expense, not to exceed the proposed Amount of Insurance. Made clear also in Condition 5 is that the Company has no liability for the content of the Transaction Identification Data.

Condition 8 states that the Company may issue a *pro forma* policy upon the request of the proposed Insured. Issuance of one, however, does not expand the Company's liability in anyway. Schedule A, Schedule B, Part I, and Schedule B, Part II contain data and language that will appear in the same place in the policy to be issued.

The ALTA Short Form Commitment for Title Insurance for a Short Form Residential Loan Policy has similar changes as does the Commitment for Title Insurance. This form of commitment should be used if a short form loan policy is to be issued down the road. [Really, the SFTISFRLP is an actual *thing*.]

ALTA Homeowner's Policy of Title Insurance

The Homeowner's policy's revisions are noteworthy more for what did not change than for what did change. First, the *name* of the policy did not change. There was much discussion within the Forms Committee about changing the name because both claims' counsel and local operations spent a great deal of time distinguishing the ALTA Homeowner's policy from the residential consumer's multi-risk *homeowner's policy*. That is, there were multiple anecdotal reports of claims being made by actual homeowners for damage to their roofs during a thunderstorm. In the end, the name was retained as the most apropos for describing the policy's intended use: Expanded coverage for the resident owner by title insurance in untraditional areas (e.g., subdivision, zoning, building permits, etc.).

Coverage in untraditional areas also remained largely unchanged after much debate. Claims' counsel reported a glut of claims that had essentially nuisance value for losses resulting from lack of a building permit (for a deck or alteration to the improvements) or lack of approval for a minor encroachment by a fence or deck into public or HOA lands. Claims' counsel argued for removal of such coverages. The Forms Committee settled on retention of the expanded coverages. Reducing coverages was a non-starter for the majority of the Forms Committee (and, by word from ALTA staff, the ALTA Board as well).

The Homeowner's policy did, however, tighten the Coverage Statement language that limits who may be an Insured:

COVERAGE STATEMENT

SUBJECT TO THE PROVISIONS SET FORTH BELOW, We insure You against loss or damage resulting from one or more of the Covered Risks if the matter creating the risk exists on the Date of Policy or, to the extent expressly stated in any Covered Risk, after the Date of Policy. We will also pay the costs, attorneys' fees, and expenses provided for under this policy.

Your insurance is effective on the Date of Policy.

This policy covers You only if the Land is improved with an existing one-to-four family residence and each party named in Item 1 of Schedule A is a Natural Person or Estate Planning Entity.

The policy is restricted to a Natural Person or an Estate Planning Entity, both of which terms are defined in the Conditions section of the Homeowner's policy. A legal entity can be an Estate Planning Entity if it is established by a Natural Person to plan the disposition of the Natural Person's estate. Note that the policy continues coverage in Condition 2.b. to a distributee from an Estate Planning Trust or a recipient of the Title to the Land effective upon the Insured's death (that is, a beneficiary under a transfer on death deed).

Beyond the above items, the ALTA Homeowner's policy was revised to become consistent in language and style with the standard ALTA policies.

Closing Protection Letters

Closing Protection Letters were not revised during the ALTA 2021 forms' rollout. CPLs, however, are constantly reviewed and amended by the Forms Committee.

Endorsements

Except for the creation of the ALTA 47 Endorsement series discussed above, the 2021 revision cycle did not include new endorsements. All endorsements were reviewed for language and definitions consistent with the standard policy forms.

There was also confirmation of standard boilerplate language limiting the scope of the endorsement. Also, the Forms Committee's Style Subcommittee reviewed all endorsements so that each would be formatted consistent with the adopted style guidelines.

ALTA will probably decertify the 39 endorsement as the 2021 standard policies incorporate the electronic signature language into the 2021 policies. Future endorsements will probably include a FlexMod endorsement to work with the plethora of modifications occurring due to the pandemic and government policy directing loan servicers to find ways to keep homeowners in their homes.

**R. Michael Smith**

Michael serves as National Agency Counsel and MidAtlantic Regional Counsel for AmTrust Title Insurance Company. A member of the Virginia State Bar, he graduated from the University of Virginia with a B.A. in 1970 and a J.D. from its in 1973. He has been an underwriting counsel for Chicago Title, Stewart Title, LandAmerica, and Conestoga Title. Mr. Smith has participated extensively in teaching and writing within the title industry, including articles on access to public roads, liability for title search errors, and affiliated business arrangements, and has served as an expert witness on real estate and title insurance issues. In 2007, he coordinated a special program for the VLTA honoring the 400th Anniversary of the Jamestown Settlement and wrote or edited a series of articles for the VLTA Examiner around the theme of real property and the Sesquicentennial of the Civil War. In 2020, he received the Distinguished Service Award from the VLTA. He serves on the Forms Committee of the American Land Title Association.

Category

1. Featured
2. Settlements
3. Title Examination
4. Uncategorized
5. Underwriting

Tags

1. featured

Date Created

2021/12/22

Author

vltaexaminer

VLTA Examiner