



ALTA Endorsements

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ALTA Endorsements

1. Array of ALTA Endorsements

If the several ALTA policy forms were designed to satisfy a broad spectrum of prospective purchasers and lenders, the many more ALTA endorsement forms further advance the challenge of identifying and providing coverage against disparate title risks that confront purchasers, lenders and investors. Each endorsement offers an expression of a risk and the applicable statement of coverage against loss.

ALTA 1	Street Assessment	ALTA 9.10	Restrictions, Encroachments, Minerals – Current Violations – Loan
ALTA 3	Zoning – Unimproved Land	ALTA 10	Assignment
ALTA 3.1	Zoning – Completed Structure	ALTA 10.1	Assignment and Date Down
ALTA 3.2	Zoning – Land Under Development	ALTA 11	Mortgage Modification
ALTA 4	Condominium	ALTA 11.1	Mortgage Modification With Subordination
ALTA 4.1	Condominium	ALTA 11.2	Mortgage Modification with Additional Amount of Insurance
ALTA 5	Planned Unit Development	ALTA 12	Aggregation – Loan
ALTA 5.1	Planned Unit Development	ALTA 12.1	Aggregation – State Limits – Loan
ALTA 6	Variable Rate Mortgage	ALTA 13	Leasehold - Owner's
ALTA 6.2	Variable Rate Mortgage/Negative Amortization	ALTA 13.1	Leasehold – Loan
ALTA 7	Manufactured Housing Unit	ALTA 14	Future Advance – Priority
ALTA 7.1	Manufactured Housing Unit – Conversion – Loan	ALTA 14.1	Future Advance – Knowledge
ALTA 7.2	Manufactured Housing Unit – Conversion - Owner's	ALTA 14.2	Future Advance - Letter of Credit
ALTA 8.1	Environmental Protection Lien	ALTA 14.3	Future Advance – Reverse Mortgage
ALTA 8.2	Commercial Environmental Protection Lien	ALTA 15	Non-imputation - Full Equity Transfer
ALTA 9	Restrictions, Encroachments, Minerals – Loan	ALTA 15.1	Non-imputation - Additional Insured
ALTA 9.1	Covenants, Conditions and Restrictions – Unimproved Land – Owner's	ALTA 15.2	Non-imputation - Partial Equity Transfer
ALTA 9.2	Comprehensive – Improved Land – Owner's	ALTA 16	Mezzanine Financing
ALTA 9.3	Covenants, Conditions and Restrictions – Loan	ALTA 17	Access and Entry
ALTA 9.6	Private Rights – Loan	ALTA 17.1	Indirect Access and Entry
ALTA 9.6.1	Private Rights - Current Assessments - Loan	ALTA 17.2	Utility Access
ALTA 9.7	Restrictions, Encroachments, Minerals – Land Under Development – Loan	ALTA 18	Single Tax Parcel
ALTA 9.8	Covenants, Conditions and Restrictions – Land Under Development Owner's	ALTA 18.1	Multiple Tax Parcel – Easements
ALTA 9.9	Private Rights – Owner's	ALTA 18.2	Multiple Tax Parcel
		ALTA 19	Contiguity - Multiple Parcels
		ALTA 19.1	Contiguity - Single Parcel
		ALTA 19.2	Contiguity - Specified Parcels
		ALTA 20	First Loss – Multiple Parcel Transactions
		ALTA 22	Location
		ALTA 22.1	Location and Map
		ALTA 23	Coinurance – Single Policy
		ALTA 23.1	Coinurance – Multiple Policies
		ALTA 24	Doing Business

ALTA 25	Same as Survey	ALTA 35.2	Minerals and Other Subsurface Substances – Described Improvements
ALTA 25.1	Same as Portion of Survey	ALTA 35.3	Minerals and Other Subsurface Substances – Land Under Development
ALTA 26	Subdivision	ALTA 36	Energy Project – Leasehold/Easement – Owner’s
ALTA 27	Usury	ALTA 36.1	Energy Project – Leasehold/Easement – Loan
ALTA 28	Easement- Damage or Enforced Removal	ALTA 36.2	Energy Project – Leasehold Owner’s
ALTA 28.1	Encroachments – Boundaries and Easements	ALTA 36.3	Energy Project – Leasehold – Loan
ALTA 28.2	Encroachments – Boundaries and Easements – Described Improvements	ALTA 36.4	Energy Project – Covenants, Conditions and Restrictions – Land Under Development – Owner’s
ALTA 28.3	Encroachments - Boundaries and Easements - Described Improvements and Land Under Development	ALTA 36.5	Energy Project – Covenants, Conditions and Restrictions – Land Under Development – Loan
ALTA 29	Interest Rate Swap Endorsement - Direct Obligation	ALTA 36.6	Energy Project – Encroachments
ALTA 29.1	Interest Rate Swap Endorsement - Additional Interest	ALTA 36.7	Energy Project – Fee Estate – Owner’s Policy
ALTA 29.2	Interest Rate Swap Endorsement – Direct Obligation	ALTA 36.8	Energy Project – Fee Estate – Loan Policy
ALTA 29.3	Interest Rate Swap Endorsement – Additional Interest – Defined Amount	ALTA 37	Assignment of Rents or Leases
ALTA 30	Shared Appreciation Mortgage	ALTA 38	Mortgage Tax
ALTA 30.1	Commercial Participation Interest	ALTA 39	Policy Authentication
ALTA 31	Severable improvements	ALTA 40	Tax Credit - Owner's Policy
ALTA 32	Construction Loan Pending Disbursement	ALTA 40.1	Tax Credit - Defined Amount - Owner’s Policy
ALTA 32.1	Construction Loan – Loss of Priority – Direct Payment	ALTA 41	Water – Buildings
ALTA 32.2	Construction Loan –Loss of Priority – Insured’s Direct Payment	ALTA 41.1	Water – Improvements
ALTA 33	Disbursement Endorsement	ALTA 41.2	Water – Described Improvements
ALTA 34	Identified Risk Coverage	ALTA 41.3	Water – Land Under Development
ALTA 35	Minerals and Other Subsurface Substances – Buildings	ALTA 42	Commercial Lender Group
ALTA 35.1	Minerals and Other Subsurface Substances –Improvements	ALTA 43	Anti-Taint
		ALTA 44	Insured Mortgage Recording
		ALTA 45	Pari Passu Mortgage – Loan Policy
		ALTA 46	Option

In June 2006 the ALTA updated endorsements so that the endorsements conform to the 2006 policies to which they refer. As a result, there are now two parallel series of ALTA endorsements, distinguishable by “-06” denoting use with the 2006 policy form. The ALTA endorsements designed for use with the 2006 policy forms display “06” at the end of the endorsement; those endorsements designed for use with the 1992 policy forms do not. Thus, ALTA Endorsement 3.1 is to be used with the 1992 policy, but ALTA Endorsement 3.1-06 is to be used with the 2006 policy. In the discussion of endorsements that follows, the ending “-06” will be omitted unless otherwise noted.

2. National Forms and State Issues

a. Title industry endorsements: A comprehensive list

The ALTA continues to promulgate title insurance policy forms that are designed to satisfy a broad spectrum of prospective purchasers and lenders, and although the forms are widely accepted, the policy forms do not necessarily offer coverage to fit every situation and issue. Thus, *endorsements* have been designed to supplement policy coverage. The existence of an endorsement by topic or subject matter indicates that the title industry has addressed the matter with sufficient frequency that a standard form has been developed for convenience. The ALTA and CLTA have promulgated a multitude of policy endorsement forms, available with both owner's policies and/or loan policies. Finally, individual insurers have more recently developed and promoted their own non-ALTA or proprietary policy and endorsement forms. Generally, only the home office of title insurers creates and designs policy forms. However, the state administrative offices of national title insurers often have a degree of autonomy to modify or design endorsements to achieve underwriting objectives perceived as desirable in the jurisdiction, and as a result, the endorsements that are available may vary as between states.

b. State underwriting climate

It may be tempting to conclude from the sponsorship of endorsements by the title industry's national association, the ALTA, that endorsements are uniformly available in every state for all transactions, and that the payment of the applicable premium or charge will assure that the endorsement is forthcoming. However, nothing could be further from the truth. The regulators of some states have prohibited the issuance of several ALTA endorsements. In other instances, the title insurers refuse to issue endorsements because the endorsements expose the title insurer to severe risks in light of substantive real property laws of the jurisdiction where the land is located.

Typically, underwriting decisions of title insurers are made at the state level, and the endorsements, if they are issued at all, will be issued in the discretion of the state office of the title insurer. In regard to any number of issues, state laws governing title and financing may vary dramatically.

c. Example of the promulgation-availability disconnect: Condominiums

ALTA Endorsement Form 4 (Condominium) provides several specific assurances that relate to condominiums, including insurance against loss occasioned by "the failure of the documents required by the condominium statutes to comply with the requirements of the statutes to the extent that such failure affects the title to the unit and its common elements." Although ALTA Endorsement Form 4 (Condominium) was promulgated for national use to insure condominiums in the late 1970's, in terms of the component provisions of the title insurance policy, the endorsement will not be available for every conceivable condominium development. For example, prospective purchasers of condominiums that encompass or purport to encompass the waters of and airspace over, navigable waterways intended for use as boat slips, occasionally termed "dockominiums" would not necessarily find title insurance available in the form of ALTA Endorsement Forms 4 or 4.1 (Condominium). See, e.g. ABKA Ltd. v. Dept. of Natural Resources, 2002 WI 106, 255 Wis. 2d 486, 648 N.W.2d 854 (2002). Similarly, the title insurer may not necessarily agree to issue an endorsement under circumstances where the law concerning a coverage provision is unsettled. Though the number of votes of unit owners required by law to consent to an amendment of the

declaration divesting certain improvements designated as limited common elements was not fixed by statute, in one case, the prospective purchaser of the unit to which the limited common elements were subsequently attached by an amendment by a simple majority, was nevertheless issued an ALTA Form 4 Endorsement. The amendment was challenged, and after litigation spanning more than eleven years, the amendment was determined to be valid. Newport Condominium Ass'n, Inc. v. Concord-Wisconsin, Inc., 205 Wis. 2d 577, 556 N.W.2d 775 (Ct. App. 1996). Title insurers tend to respond to requests for the issuance of coverage by deleting, modifying or adding policy provisions pragmatically based on an analysis of the laws of the jurisdiction, rather than schematically or from a casualty insurance perspective.

3. Referring back to the underlying policy

The policy endorsements are designed to delete or modify any number of policy provisions, including exclusions, conditions and stipulations, or standard exceptions. Conversely, when the title insurer has determined that it cannot safely include all of the insuring provisions of the policy at the time of the policy's issuance, the title insurer may delete certain of the policy's insuring provisions, and thus reduce rather than expand coverage. (The provision insuring against lack of access is occasionally deleted from the policy, as when policies insure remote rural property.)

4. Lender endorsements

Certain of the ALTA Endorsements contain coverage designed for the mortgagee and are therefore available with loan policies only.

ALTA 1	Street Assessment	ALTA 10.1	Assignment and Date Down
ALTA 2	Truth in Lending	ALTA 11	Mortgage Modification
ALTA 4	Condominium	ALTA 11.1	Mortgage Modification With Subordination
ALTA 5	Planned Unit Development	ALTA 12	Aggregation – Loan
ALTA 6	Variable Rate Mortgage	ALTA 12.1	Aggregation – State Limits – Loan
ALTA 6.1	Variable Rate Mortgage	ALTA 13.1	Leasehold – Loan
ALTA 6.2	Variable Rate Mortgage/Negative Amortization	ALTA 14	Future Advance – Priority
ALTA 7.1	Manufactured Housing Unit – Conversion – Loan	ALTA 14.1	Future Advance – Knowledge
ALTA 8.1	Environmental Protection Lien	ALTA 14.2	Future Advance - Letter of Credit
ALTA 9	Restrictions, Encroachments, Minerals – Loan	ALTA 14.3	Future Advance – Reverse Mortgage
ALTA 9.3	Covenants, Conditions and Restrictions – Loan	ALTA 20	First Loss – Multiple Parcel Transactions
ALTA 9.6	Private Rights – Loan	ALTA 24	Doing Business
ALTA 9.6.1	Private Rights – Current Assessments – Loan	ALTA 27	Usury
ALTA 9.7	Restrictions, Encroachments, Minerals – Land Under Development – Loan	ALTA 29	Interest Rate Swap Endorsement - Direct Obligation
ALTA 9.10	Restrictions, Encroachments, Minerals – Current Violations – Loan	ALTA 29.1	Interest Rate Swap Endorsement - Additional Interest
ALTA 10	Assignment	ALTA 29.2	Interest Rate Swap Endorsement – Direct Obligation
		ALTA 29.3	Interest Rate Swap Endorsement – Additional Interest – Defined Amount
		ALTA 30	Shared Appreciation Mortgage

ALTA 30.1	Commercial Participation Interest	ALTA 36.3	Energy Project – Leasehold – Loan
ALTA 32	Construction Loan Pending Disbursement	ALTA 36.5	Energy Project – Covenants, Conditions and Restrictions – Land Under Development – Loan
ALTA 32.1	Construction Loan – Loss of Priority – Direct Payment	ALTA 37	Assignment of Rents or Leases
ALTA 32.2	Construction Loan – Loss of Priority – Insured’s Direct Payment	ALTA 38	Mortgage Tax
ALTA 33	Disbursement Endorsement	ALTA 42	Commercial Lender Group
ALTA 36.1	Energy Project – Leasehold/Easement – Loan	ALTA 43	Anti-Taint
		ALTA 44	Insured Mortgage Recording
		ALTA 45	Pari Passu Mortgage

5. Owner endorsements

Certain of the ALTA Endorsements contain coverage designed for the owner and are therefore available with owner’s policies only.

ALTA 7.2	Manufactured Housing Unit – Conversion - Owner’s	ALTA 15.2	Non-imputation - Partial Equity Transfer
ALTA 9.1	Comprehensive – Unimproved Land – Owner’s	ALTA 16	Mezzanine Financing
ALTA 9.2	Comprehensive – Improved Land – Owner’s	ALTA 36	Energy Project – Leasehold/Easement – Owner’s
ALTA 9.8	Covenants, Conditions and Restrictions – Land Under Development – Owner’s	ALTA 36.2	Energy Project – Leasehold – Owner’s
ALTA 9.9	Private Rights – Owner’s	ALTA 36.4	Energy Project – Covenants, Conditions and Restrictions – Land Under Development – Owner’s
ALTA 13	Leasehold - Owner’s	ALTA 40	Tax Credit
ALTA 15	Non-imputation - Full Equity Transfer	ALTA 40.1	Tax Credit – Defined Amount
ALTA 15.1	Non-imputation - Additional Insured	ALTA 46	Option

6. Endorsements available to both owners and lenders

Finally, certain of the ALTA Endorsements contain coverage suitable for both the mortgagee and the owner and are therefore available with both owner’s policies and loan policies.

ALTA 3	Zoning – Unimproved Land	ALTA 17.2	Utility Access
ALTA 3.1	Zoning – Completed Structure	ALTA 18	Single Tax Parcel
ALTA 3.2	Zoning – Land Under Development	ALTA 18.1	Multiple Tax Parcel
ALTA 4.1	Condominium	ALTA 19	Contiguity - Multiple Parcels
ALTA 5.1	Planned Unit Development	ALTA 19.1	Contiguity - Single Parcel
ALTA 7	Manufactured Housing Unit	ALTA 22	Location
ALTA 8.2	Commercial Environmental Protection Lien	ALTA 22.1	Location and Map
ALTA 17	Access and Entry	ALTA 23	Coinurance – Single Policy
ALTA 17.1	Indirect Access and Entry	ALTA 25	Same as Survey
		ALTA 25.1	Same as Portion of Survey

ALTA 26	Subdivision	ALTA 35.2	Minerals and Other Subsurface Substances – Described Improvements
ALTA 28	Easement- Damage or Enforced Removal	ALTA 35.3	Minerals and Other Subsurface Substances – Land Under Development
ALTA 28.1	Encroachments – Boundaries and Easements	ALTA 36.6	Energy Project – Encroachments
ALTA 28.2	Encroachments – Boundaries and Easements – Described Improvements	ALTA 39	Policy Authentication
ALTA 31	Severable improvements	ALTA 41	Water –Buildings
ALTA 34	Identified Risk Coverage	ALTA 41.1	Water – Land Under Development
ALTA 35	Minerals and Other Subsurface Substances – Buildings	ALTA 41.2	Water - Described Improvements
ALTA 35.1	Minerals and Other Subsurface Substances –Improvements	ALTA 41.3	Water – Water – Land Under Development

7. Commercial endorsements

Most endorsements may prove suitable for properties of many types and uses. Some endorsements, such as ALTA 7 (Manufactured Housing Unit), are designed for property that is residential in nature. Other endorsements are designed for property that is commercial in nature. Although ALTA has not delineated endorsements as residential and commercial as such, the following endorsements have proven of particular interest to investors in commercial property.

Zoning: ALTA 3, 3.1 and 3.2	Encroachments – Boundaries and Easements – Described Improvements ALTA 28.2
Mortgage Modification: ALTA 11 and 11.1	Interest Rate Swap: ALTA 29 Series
Aggregation: ALTA 12 and 12.1	Shared Appreciation: ALTA 30
Leasehold: ALTA 13 and 13.1	Construction Loan Pending Disbursement: ALTA 32 and 32.1
Future Advance: ALTA 14 Series	Energy Project: ALTA 36 Series
Non-imputation: ALTA 15 Series	Assignment of Rents or Leases: ALTA 37
Mezzanine Financing: ALTA 16	Mortgage Tax ALTA 38
Access: ALTA 17, 17.1 and 17.2	Tax Credit: ALTA 40, 40.1
Tax Parcel: ALTA 18 and 18.1	Water: ALTA 41 Series
Contiguity: ALTA 19 and 19.1	Commercial Lender Group: ALTA 42
First Loss: ALTA 20	Anti-Taint: ALTA 43
Doing Business: ALTA 24	Insured Mortgage Recording: ALTA 44
Same as Survey: ALTA 25	Pari Passu Mortgage: ALTA 45
Subdivision: ALTA 26	Option: ALTA 46
Easement – Damage or Enforced Removal: ALTA 28	
Encroachments – Boundaries and Easements: ALTA 28.1	

8. Criteria for obtaining endorsements

The parties to the transaction should never assume that endorsements requested will be issued without the title insurer or title agent first having had sufficient time to evaluate the title to assure that title insurer criteria for the endorsement has been met. Criteria will vary with the title insurer, the state, and

the economic and regulatory environment, such that the party requesting the endorsement should not assume that having succeeded in obtaining the endorsement before, it will surely be issued a second time. Certain endorsements are issued with little or no underwriting on the part of the issuing title office, and other endorsements require intensive underwriting review. The following discussion briefly summarizes underwriting criteria for several of the more popular endorsements.

a. ALTA 17 (Access and Entry)

Generally, before ALTA 17 is issued, a recent survey showing the existence of a travelled public road and entrances thereto, together with verification that the entrances are approved by the highway authority will be required.

b. ALTA 9 Series

If ALTA 9 (Restrictions, Encroachments and Minerals) is to be issued with a loan policy insuring owner-occupied residential property, in many cases, the title insurer will not require a survey. However, if ALTA 9 is to be issued with a loan policy insuring commercial, industrial or vacant land, a survey will likely be required. If ALTA 9.1 or 9.2 is to be issued with an owner's policy, a survey will be required. If ALTA 9.3 is to be issued with a loan policy, a survey may or may not be required depending upon the circumstances of the site. If ALTA 9.6 is to be issued with the loan policy or ALTA 9.9 with the owner's policy, an investigation into the existence of private charges or assessments, options to purchase, rights of first refusal and rights of prior approval of a future purchaser, will be made. If ALTA 9.7 is to be issued with a loan policy or ALTA 9.8 with an owner's policy, specific plans will be reviewed. If ALTA 9.10 is to be issued, a survey will be required.

c. ALTA 19 (Contiguity –Multiple Parcels), 19.1 (Contiguity – Single Parcels)

Unless the title insurer succeeds from an examination of the title in establishing that the parcels are contiguous, before ALTA 19 is issued, a survey will be required.

d. ALTA 25 (Same as Survey)

ALTA Endorsement 25 (Same as Survey) assures that the insured Land is the same as that described in a survey. Therefore, the title insurer will require that a survey be provided, without which the endorsement is inappropriate.

e. ALTA 14 Series

As a condition to issuing a future advance endorsement, the title insurer will likely require that the insured mortgage contain a statement to the effect that the mortgage secures future advances, without which prospective lenders may not necessarily know from examining the title that such advances could occur, such that the subsequent mortgagee's lien position will be subordinate to future advances.

f. ALTA 3 (Zoning Unimproved Land), ALTA 3.1 (Zoning Completed Structure)

The most consistent source, among endorsements, of a time-consuming investigation and research required on the part of the title insurer and title agent is the ALTA Endorsement 3 (Zoning) and ALTA Endorsement 3.1. Zoning information is challenging to obtain for two unrelated reasons.

First, zoning ordinances and building regulations are typically not, at least not in their entirety, found in the public offices with which most title companies are familiar, but with the municipality or the county zoning administrator. Procuring the current ordinance and official map may require a digressing personal visit to the zoning office, not necessarily in or near the county courthouse, and a reading of the applicable provisions of the ordinance is necessary before any decision to issue the ALTA Zoning Endorsement can be reached. Although the national sales and closing offices of many title insurer organizations negotiate title insurance business from national customers, these same closing offices when remote from the property site are not always capable of obtaining the zoning information essential for the zoning endorsements without the intercession of local counsel or county title agency personnel, and coordination of information requires good relations between national and local representatives. Current zoning information of the kind to resolve ambiguity in the ordinance's meaning sometimes requires communication with the department head or a knowledgeable zoning staff member, and their absence may delay the requisite information. Finally, title agencies are usually not authorized to issue the zoning endorsement without first obtaining the title underwriter's approval. Regardless of whose participation the title company must involve in the process, the time required to issue a zoning endorsement is usually lengthier than the time required to issue a commitment for title insurance, and the parties should plan accordingly.

One consideration concerning the ALTA 3.1 Endorsement is a need on the part of the title insurer to obtain contemporaneous site information to compare with the applicable ordinance. Title companies do not, with rare exception, make on-site inspections of the site. Yet, without up-to-date site information, it will not be possible to know whether the buildings located on the site comply with the latest building setback lines, height limitations, and with restrictions applicable to property use and parking. Therefore, a current land survey will almost always be necessary in order for the title company to evaluate whether the improvements and uses comply with zoning ordinances. It should not be assumed that any land survey will suffice in this regard, since the title company will examine the survey and the survey certificate to assure itself that the land surveyor has included the distance of the building from the street right-of-way, the building height, building uses and number of parking spaces. It is best to deliver the land survey to the title company well in advance of the closing, so that any additional information required by the title company can be added in the event it has been omitted from the survey.

When property proves to be a non-conforming use or include a non-conforming structure, the title company will also need information concerning the history of the property, so that it can document that the building was constructed in conformity with the then ordinance. For example, the title company may require building permits, letter correspondence, or other historical information before issuing a modified endorsement assuring that notwithstanding the noncompliance with the current ordinance, the building constitutes a legal non-conforming use.

9. The latest ALTA endorsements

In 2012, the ALTA promulgated sixteen (16) new endorsements, revised five (5) endorsements, and withdrew two (2) endorsements (ALTA 9.4 and ALTA 9.5). Among the endorsements that experienced significant changes were those that comprise the ALTA 9 Series discussed below. ALTA

13-06 was revised to include a revision of the definition of Personal Property, and to add a new section 4, recognizing that the endorsement does not insure as to remediation resulting from environmental damage or contamination. ALTA 28.1-06 Encroachments – Boundaries and Easements, provides coverage for encroachments onto adjoining land or onto an easement. A new series of endorsements, the ALTA 35 Series, was promulgated to provide coverage relating to minerals and subsurface substances. Lastly in 2012, a new series, the ALTA 36 Series, designed to provide coverage for energy projects, including those for wind and solar energy.

The 2012 endorsements are:

ALTA 3.2	Zoning – Land Under Development	ALTA 35.3	Minerals and Other Subsurface Substances – Land Under Development
ALTA 9.6	Private Rights – Loan	ALTA 36	Energy Project – Leasehold/Easement – Owners
ALTA 9.7	Restrictions, Encroachments, Minerals – Land Under Development – Loan	ALTA 36.1	Energy Project – Leasehold/Easement – Loan
ALTA 9.8	Covenants, Conditions and Restrictions – Land Under Development – Owners	ALTA 36.2	Energy Project – Leasehold – Owners
ALTA 28.1	Encroachments – Boundaries and Easements	ALTA 36.3	Energy Project – Leasehold – Loan
ALTA 35	Minerals and Other Subsurface Substances – Buildings	ALTA 36.4	Energy Project – Covenants, Conditions and Restrictions – Land Under Development – Owners
ALTA 35.1	Minerals and Other Subsurface substances –Described Improvements	ALTA 36.5	Energy Project – Covenants, Conditions and Restrictions – Land Under Development – Loan
ALTA 35.2	Minerals and Other Subsurface Substances – Improvements	ALTA 36.6	Energy Project – Encroachments

As of August 3, 2012, the ALTA promulgated two additional endorsements:

ALTA 30.1	Commercial Participation Interest	ALTA 32.2	Construction Loan Disbursement
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As of December 3, 2012, the ALTA promulgated two additional endorsements:

ALTA 37	Assignment of Rents or Leases	ALTA 38	Mortgage Tax
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As of April 2, 2013, the ALTA promulgated seven additional endorsements:

ALTA 9.9	Private Right – Owner’s Policy	ALTA 32.1	Construction Loan Pending Disbursement
ALTA 9.10	Restrictions, Encroachments, Minerals – Current Violations – Loan Policy	ALTA 32.2	Construction Loan – Loss of Priority – Insured’s Direct Payment
ALTA 12.1	Aggregation – State Limits – Loan Policy	ALTA 39	Policy Authentication
ALTA 28.2	Encroachments – Boundaries and Easements – Described Improvements		

As of December 2, 2013, the ALTA promulgated eight additional endorsements:

ALTA 11.2 Mortgage Modification with Additional Amount of Insurance	ALTA 41.3 Water – Land Under Development
ALTA 41 Water – Buildings	ALTA 42 Commercial Lender Group
ALTA 41.1 Water – Improvements	ALTA 43 Anti-Taint
ALTA 41.2 Water – Described Improvements	ALTA 44 Insured Mortgage Recording

As of April 2, 2014, the ALTA promulgated two additional endorsements:

ALTA Endorsement 40-06 Tax Credit - Owner's Policy
ALTA Endorsement 40.1-06 Tax Credit - Defined Amount - Owner's Policy

As of December 1, 2014, the ALTA promulgated three additional endorsements:

ALTA Endorsement 36.7 Energy Project – Fee Estate – Owner's Policy
ALTA Endorsement 36.8 Energy Project – Fee Estate – Loan Policy
ALTA Endorsement 45 Pari Passu Mortgage – Loan Policy

As of April 2, 2015, the ALTA promulgated three additional endorsements:

ALTA Endorsement 9.6.1 Private Rights - Current Assessments - Loan Policy
ALTA Endorsement 19.2 Contiguity - Specified Parcels
ALTA Endorsement 28.3 Encroachments - Boundaries and Easements - Described Improvements
and Land Under Development

As of August 1, 2015, the ALTA promulgated ALTA Endorsement 46 Option.

As of December 1, 2015, the ALTA decertified ALTA Endorsement 2 (Truth in Lending).

As of August 1, 2016, the ALTA promulgated two additional endorsements:

ALTA Endorsement 18.2 Multiple Tax Parcel
ALTA Endorsement 23.1 Co-Insurance – Multiple Policies

Finally, as of December 1, 2018, the ALTA promulgated three additional endorsements:

ALTA Endorsement 3.3 Zoning – Completed Improvement – Non-Conforming Use.
ALTA Endorsement 3.4 Zoning – No Zoning Classification
ALTA Endorsement 18.3 Single Tax Parcel and ID

10. The ALTA 9 Series: Current status

a. ALTA Endorsement 9

ALTA Endorsement 9-06 (Restrictions, Encroachments, Minerals) is a popular loan policy endorsement that provides coverage against several different risks. The endorsement in its current form is different from that promulgated at its inception. In April 2012, the endorsement form's description of the risks changed in several important ways. In April 2013, there were further revisions and additions.

b. Background

Among the first of the standardized title insurance endorsements developed by the title industry, promulgated in 1969 by the California Land Title Association (CLTA), was the Comprehensive Endorsement (CLTA Form 100). In 1988, the American Land Title Association (ALTA) promulgated a similar form entitled ALTA Endorsement 9 ("Restrictions, Easements, Minerals"). At the time, ALTA Endorsement 9 was a loan policy-only endorsement for which there was no owner's policy equivalent. Former ALTA 9 contained coverage by which the insurer insured against loss or damage sustained by reason of:

- Violations of covenants
- Violations of recorded building setback lines
- Encroachments
- Extraction or development of minerals
- Covenants relating to environmental protection
- Private rights (lien for liquidated damages, private charge, option to purchase, right of first refusal or prior approval of a future purchaser)

In 1998, the ALTA introduced two owner's policy-only endorsements, ALTA 9.1 (Unimproved Land) and ALTA 9.2 (Improved Land) that were designed to provide coverage similar to ALTA 9 to owners. In 2006, the ALTA introduced three more endorsements: ALTA 9.3-06, ALTA 9.4-06 and ALTA 9.5-06. Thus, ALTA Endorsement 9, originally one endorsement, eventually became a *series* of endorsements (ALTA 9 Series). More new ALTA 9 Series endorsements are anticipated.

c. ALTA 9 Series revised in 2012

Effective April 2, 2012, the ALTA revised the ALTA 9 Series in part as a result of Nationwide Life Insurance Company v. Commonwealth Land Title Insurance Company, 579 F.3d 304 (3d Cir. 2009). In Nationwide, the title insurer raised an exception for a recorded instrument that contained an option to repurchase, but the exception did not mention the words "option to repurchase" and referred only to an instrument within which the option right was contained. The court held that the general exception that was raised in Schedule B for covenants, conditions and restrictions was not sufficient to remove coverage for the option to repurchase that was contained as within the covenant instrument. The ALTA revised the remaining ALTA 9 Series endorsements to make more specific what they did not cover, decertified ALTA 9.4 and 9.5, and added two new endorsements to the ALTA 9 Series. ALTA Endorsements 9.06, 9.1-06, 9.2-06, 9.6-06, 9.7-06 and 9.8-06 were revised by adding a preamble to reassert the applicability of the policy terms and revising the insurance provisions to make the references to insured matters singular instead of plural. In addition, several other changes were made described below.

d. Changes to ALTA 9-06

ALTA 9-06 was revised to delete former section 1.b.(ii): “(The Company insures... against loss or damage sustained by reason of... the existence, at Date of Policy, of... Any instrument referred to in Schedule B as containing covenants, conditions or restrictions on the Land that, in addition, (A) establishes an easement on the Land; (B) provides a lien for liquidated damages; (C) provides for a private charge or assessment; (D) provides for an option to purchase, a right of first refusal, or the prior approval of a future purchaser or occupant.” Former section 1 was the subject of the decision in Nationwide. To obtain coverage against the matters described in former paragraph 1.b.(ii), the insured mortgagee must now obtain an additional endorsement, ALTA 9.6-06 Private Rights – Loan Policy.

e. Changes to ALTA 9.1-06

ALTA 9.1-06 was revised to eliminate former section 1 coverage concerning encroachments and section 2 coverage concerning minerals. To obtain coverage for building encroachments, the insured owner must now obtain an additional endorsement, ALTA 28-06 Easement – Damage or Enforced Removal or ALTA 28.1-06 Encroachments – Boundaries and Easements. To obtain coverage for minerals, the insured owner must now obtain an additional endorsement from the ALTA 35 Series.

f. Changes to ALTA 9.2-06

ALTA 9.2-06 was revised to eliminate former section 1 coverage concerning encroachments and section 2 coverage concerning minerals. To obtain coverage for building encroachments, the insured owner must now obtain an additional endorsement, ALTA 28-06 Easement – Damage or Enforced Removal or ALTA 28.1-06 Encroachments – Boundaries and Easements. To obtain coverage for minerals, the insured owner must now obtain an additional endorsement from the ALTA 35 Series.

g. Changes to ALTA 9.3-06

ALTA 9.3-06 was revised to eliminate former sections 1, 3 and 5 coverage concerning encroachments and former section 4 coverage for minerals. To obtain coverage for building encroachments, the insured mortgagee must now obtain an additional endorsement, ALTA 28-06 Easement – Damage or Enforced Removal or ALTA 28.1-06 Encroachments – Boundaries and Easements. To obtain coverage for minerals, the insured mortgagee must now obtain an additional endorsement from the ALTA 35 Series. It should be noted that the ALTA 35 Series does not, in contrast to former ALTA 9.3-06 section 4, provide coverage for damage to lawn, shrubbery or trees. It should also be noted that the existing numbering of ALTA 9.3-06 was retained, notwithstanding that new ALTA 9.3-06 differs markedly from former ALTA 9.3-06, and that persons requesting coverage should not inadvertently assume that the coverage of these identically numbered endorsements is the same.

h. Former ALTA 9.4-06 and 9.5-06

Both ALTA 9.4 and 9.5 were decertified by ALTA effective April 2, 2012 and are no longer available. To obtain coverage contained in former ALTA 9.4-06, the insured must now obtain ALTA 9.1-06, ALTA 28.1-06 and ALTA 35.3-06. To obtain coverage contained in former ALTA 9.5-06, the insured must now obtain ALTA 9.2-06, ALTA 28.1-06 and ALTA 35.3-06.

- i. In 2013, the ALTA again revised, added endorsements in ALTA 9 Series

Effective April 2, 2013, the ALTA revised ALTA 9.6 and promulgated two more new endorsements: ALTA 9.9-06 Private Right – Owner’s Policy, and ALTA 9.10 Restrictions, Encroachments, Minerals – Current Violations – Loan Policy.

- j. In 2013, the ALTA again revised and added endorsements to ALTA 9 Series

Effective April 2, 2013, the ALTA revised ALTA 9.6 and promulgated two more new endorsements: ALTA 9.9-06 Private Right – Owner’s Policy, and ALTA 9.10 Restrictions, Encroachments, Minerals – Current Violations – Loan Policy.

- k. In 2015, the ALTA promulgated ALTA 9.6.1 Private Rights – Current Assessments – Loan Policy.

What are the names and numbers of the endorsements that currently make up the ALTA 9 Series?

As of the date of publication of these materials, the ALTA 9 Series consists of ten endorsements:

ALTA 9-06	Restrictions, Encroachments, Minerals – Loan Policy
ALTA 9.1-06	Covenants, Conditions and Restrictions – Unimproved Land –Owner’s Policy
ALTA 9.2-06	Comprehensive – Improved Land – Owner’s Policy
ALTA 9.3-06	Covenants, Conditions and Restrictions – Loan Policy
ALTA 9.6-06	Private Rights – Loan Policy
ALTA 9.6.1-06	Private Rights - Current Assessments - Loan Policy
ALTA 9.7-06	Restrictions, Encroachments, Minerals – Land Under Development – Loan Policy
ALTA 9.8-06	Covenants, Conditions and Restrictions – Land Under Development – Owner’s Policy
ALTA 9.9-06	Private Right – Owner’s Policy
ALTA 9.10-06	Restrictions, Encroachments, Minerals – Current Violations – Loan Policy

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