



Engaging with Endorsements

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Engaging with Endorsements

- Role of Title Insurance
- Purpose of an Endorsement
- Promulgated/Filed
- Types of Endorsements
- Discussion of specific Endorsements



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Role of Title Insurance

- The policy alone is often not enough
- Transaction needs expanded coverage through specific title insurance endorsements based on the specific risks related to the transaction.



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Purpose of an Endorsement

- Endorsements named and may be referred to by their title or purpose but most often referred to by their form number
- Lender normally requests certain endorsements
- Purpose of endorsement—additional or limitation of coverage—adds risk to Underwriter hence the additional premium



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Promulgated/Filed

- Florida uses some ALTA forms which may have Florida modifications and some Florida specific forms
- ALTA forms presented to state underwriters which submit them to state regulators for approval
- We may only use Florida forms approved by the Department of Insurance Regulation



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Lender Most Requested Endorsements



Access: Already covered in policy jacket: no endorsement



Location: Florida policies do not insure street address nor do they have maps attached to them



Zoning: Florida policies do not insure over zoning matters.



Arbitration: Not mandatory in Florida and cannot be deleted from the policy jacket.



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Florida Approved ALTA Endorsements

- Condominium (ALTA 4.1)
- Planned Unit Development (ALTA 5.1-06)
- Variable Rate Mortgage Series (ALTA 6.0; 6.2)
- Manufactured Housing Series (ALTA 7-06; 7.1; 7.2)
- Environmental Protection Lien (ALTA 8.1)
- REM Series (ALTA 9-06; 9.1-06; 9.2-06; 9.3-06)
- Assignment Series (ALTA 10; 10.1)
- Mortgage Modification Series (ALTA 11; 11.1; 11.2)
- Aggregation (ALTA 12)
- Leasehold Series (ALTA 13-06; 13.1-06)
- Future Advance Series (ALTA 14; 14.2; 14.3)
- Co-Insurance Series (ALTA 23-06; 23.1)



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Office of Insurance Regulation Endorsements

- Form E (Form E)
- Additional Interest (AIE)
- Balloon Mortgage (BME)
- Change of Partners, Members or Shareholders (CPE)
- Construction Loan Update (CLU)
- Contiguity (CE)
- Foreign Currency (FCE)
- Navigational Servitude (NSE)
- Option (OE)
- Reverse Mortgage (RME)
- Revolving Credit (RCE)
- Shared Appreciation (SAE)
- Survey (SE)



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Loan Policy Endorsements



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Variable Rate Mortgage (ALTA 6)

Premium: Minimum of \$25

Assures lender priority will be maintained even though certain changes in the loan interest terms may occur

- Mortgage must give notice it is special type of mortgage securing a note containing provisions for changes in interest rate
- Loan documents secured by mortgage, must be specifically identified in mortgage and contain all provisions controlling interest rate changes
- Mortgage may not allow negative amortization



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Variable Rate Mortgage– Negative Amortization (ALTA 6.2)

Premium: Minimum of \$25

Assures lender priority will be maintained even though certain changes in the loan interest terms may occur

- Mortgage must give notice it is special type of mortgage securing a note containing provisions for the specific changes including negative amortization
- Loan documents secured by mortgage, must be specifically identified in mortgage and contain all provisions controlling interest rate changes including negative amortization



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Variable Rate Mortgage (ALTA 6)

Variable Rate Mortgage– Negative Amortization (ALTA 6.2)

Neither insure against loss or damage based upon:

- Usury; or
- Any consumer credit protection or truth in lending law

Neither extend Date of Policy nor increase Amount of Insurance



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Environmental Protection Lien (ALTA 8.1)

(With Florida Modifications)

Premium: Minimum of \$25

- Issued with loan policies to cover loss of priority for environmental lien
- The title search must show no environmental protection liens on property prior to closing
- Since Florida does not have a “superlien” status for violations, insert “NONE” in Section (b) of the endorsement



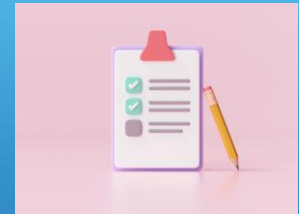
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Loan Policy (ALTA 9-06) Restrictions, Encroachments, Minerals

Premium: minimum 10% of policy premiums

Expanded coverage for violations related to restrictions, encroachments, and mineral rights

1. Review all known Covenants, Conditions and Restrictions
2. Examine current survey showing recorded Sch. B easements
3. Identify existence of severed mineral rights/right of entry



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Loan Policy (ALTA 9.3-06) with Florida modifications Restrictions, Encroachments, Minerals

Premium: minimum 10% of policy premiums

Used interchangeably with ALTA 9-06

Florida version slightly different from national form

Paragraph 4 limits coverage to damage by improvements existing at Date of the Policy

Due to modifications, 9-06 and 9.3-06 used interchangeably



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Assignment (ALTA 10) (Commercial or greater than 1-4 family residential)

- **Premium – Minimum \$100**
- Insures no loss of priority from assignment except as to intervening recorded matters, federal bankruptcy, state insolvency, or similar creditors' rights laws based upon fraudulent or preferential conveyance or transfer
- Often used when institutional mortgagee assigns mortgage on secondary market
- Search title for intervening matters and disclose those which could affect validity of assignment
- Tax lien search as to assignor required
- NOTE: does not change Date of Policy



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Assignment and Date-down (ALTA 10.1) (Commercial or greater than 1-4 family residential)



- Premium – Minimum \$100
- Useful in lieu of ALTA 10 when lender requires assurance related to intervening matters
- No intervening matters affect priority of mortgage except as disclosed
- No ad valorem tax and assessments due and payable unless disclosed
- No federal tax lien or evidence of bankruptcy against borrower found except as disclosed
- NOTE: does not change Date of Policy
- Form E Endorsement (E) is option if additional premium charged, Amount of Insurance is increased, or to change Date of Policy/Effective Date



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Mortgage Modification (ALTA 11)

- **No Premium**
- Insures that a modification of a mortgage does not result in a loss of priority, invalidity, or unenforceability of the Insured Mortgage
- Only issued for a mortgage modification that does not trigger a loss of priority and does not require a premium under Florida Administrative Rule 69O-186.005 (13) F.A.C.
- Does not extend or bring forward the Date of Policy
- Excludes creditors' rights issues which might arise from the modification



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Mortgage Modification (ALTA 11)

- ALTA 11 does not extend the Date of Policy, a Form E Endorsement (E) should be used when the agent is requested to advance the Date of Policy
- In order to issue, title must be examined to confirm the subject mortgage modification has been recorded and does not cause a loss of priority
- Form E Endorsement or new policy must be issued when mortgage modification agreement requires a premium and would cause a loss of priority



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Mortgage Modification with Subordination (ALTA 11.1)

- **No Premium**
- Insures that a modification of a mortgage does not result in a loss of priority, invalidity, or unenforceability of the Insured Mortgage
- Only issued for a mortgage modification that does not trigger a loss of priority and does not require a premium under Florida Administrative Rule 69O-186.005 (13) F.A.C.
- Differs from the ALTA 11 endorsement as the insurer specifically lists intervening matters that are subordinate to the mortgage and continue to be subordinate upon recordation of the modification



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Mortgage Modification with Subordination (ALTA 11.1)

- The ALTA 11.1 does not extend or bring forward the Date of Policy
- It excludes creditors' rights issues which might arise from the modification
- In order to issue an ALTA 11.1 endorsement, the modification must be examined to determine that it does not cause a loss of priority
- Also, title must be examined to confirm that the subject mortgage modification has been recorded and to determine what matters affect title and may take priority over the mortgage as modified
- A Form E Endorsement (E) or a new loan policy must be issued when a mortgage modification agreement requires a premium and would cause a loss of priority



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Mortgage Modification with Additional Insurance (ALTA 11.2)

- **Premium based on amount of future advance**
- Insures that a modification of a mortgage does not result in a loss of priority, invalidity, or unenforceability of the Insured Mortgage
- Only issued for a mortgage modification that does not trigger a loss of priority and does not require a premium under Florida Administrative Rule 69O-186.005 (13) F.A.C.
- Differs from the ALTA 11 endorsement as the insurer specifically lists intervening matters that are subordinate to the mortgage and continue to be subordinate upon recordation of the modification
- Differs from the ALTA 11.1 endorsement in that it contemplates increasing coverage due to a future advance within a sufficient future advance clause appearing in the existing mortgage



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Mortgage Modification with Additional Insurance (ALTA 11.2)

- The ALTA 11.2 does not extend or bring forward the Date of Policy
- It excludes creditors' rights issues which might arise from the modification
- In order to issue an ALTA 11.2 endorsement, the modification must be examined to determine that it does not cause a loss of priority
- Also, title must be examined to confirm that the subject mortgage modification has been recorded and to determine what matters affect title and may take priority over the mortgage as modified
- A Form E Endorsement (E) or a new loan policy must be issued when a mortgage modification agreement requires a premium and would cause a loss of priority--includes where existing mortgage contains no future advance clause or one insufficient support advance



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Aggregation (ALTA 12) (with Florida Modifications)

- No premium

Also known as a “tie-in” endorsement it combines coverage of all loan policies issued in a single transaction

Useful when impractical to issue loan policy covering multi-site transactions

- All properties insured located in Florida
- All loans have cross-collateralization authority
- Each commitment contemplates use of the endorsement which will be attached to each policy issued

Specially requested form authorized by underwriting counsel



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Leasehold – Loan (ALTA 13.1-06)

- No premium
- Defines coverage provided to lender under loan policy insuring a leasehold interest
- Sch. A (M21) identifies interest as leasehold estate
- Department/Secretary of State search for federal and judgment creditor liens against lessee/mortgagor



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Future Advance – Priority (ALTA 14) Future Advance – Letter of Credit (ALTA 14.2)

- ALTA 14 insures validity, priority, and/or enforceability of future advances other than advances pursuant to construction loans.
- ALTA 14.2 insures validity, priority and enforceability of future advances other than advances pursuant to construction loans in mortgages securing letters of credit, surety agreements, and reimbursement agreements

Questions to be asked in a Future Advance:

- Is there a future advance clause in the mortgage?
- Is the amount of the future advance within the limits set by the future advance clause in the mortgage



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Future Advance – Priority (ALTA 14) Future Advance – Letter of Credit (ALTA 14.2)

Premium: \$25 minimum

Insures validity, priority, and enforceability of future advances, not related to construction

- Must comply with future advance statute (Sec. 697.04, F.S.)
 - Secures existing and future advances
 - Provides for advances made within 20 years of mortgage date
 - Specify maximum amount to be secured

Construction loan advances are future events covered by ALTA loan policy



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Future Advance – Priority (ALTA 14) Future Advance – Letter of Credit (ALTA 14.2)

- Future advances require additional premium:
- Form E endorsement increasing Amount of Insurance must then be issued
- Rating Worksheet to calculate additional premium
- Sch. B exception limiting coverage to Amount of Insurance always required when either endorsement issued



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Future Advance – Priority (ALTA 14) Future Advance – Letter of Credit (ALTA 14.2)

- Similar coverages and requirements but Letter of Credit does not provide coverage for interest rate changes
- No exclusion in Letter of Credit for:
 - advances made after bankruptcy
 - recorded notice limiting maximum amount of advance
 - federal tax lien filed more than 45 days before advance
 - usury or consumer protection laws



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Co-insurance – Single Policy (ALTA 23.06) Co-insurance – Multiple Policies (ALTA 23.1)

- No premium
- Multiple underwriters share risk of a transaction
- Typically initiated by insured
- Identifies lead co-insurer, applicable amount of insurance assumed and proportion of liability
- ALTA 23.1 designed for use with ALTA 12 Aggregation endorsement
- Eliminates need to create unique exceptions in policies and co-insurance agreement between underwriters
- Underwriting approval required



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Additional Interest (AIE) Commercial or greater than 1-4 family residential)

- Premium: \$100 minimum
- Is used only when the mortgage has an additional interest provision, such as allowing the lender to participate in the revenues generated by the property such as rents
- “Additional Interest” means the amounts calculated pursuant to the formula provided in the mortgage
- Prior approval from underwriting counsel required



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Balloon Mortgage (BME) Commercial or greater than 1-4 family residential)

- Premium: \$100 minimum
- Assurance mortgage valid and enforceable though it contains conditional right to refinance; mortgage will not lose priority if borrower exercises right
- Rider to mortgage provides conditional right to refinance at maturity
- Borrower can modify and execute a new note; or pay off old loan and execute new note and mortgage and priority will be retained



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Contiguity (CE) (Commercial or greater than 1-4 family residential)

- Premium: \$100 minimum
- Provides that an insured parcel consisting of more than one legal description constitutes one contiguous parcel
- Obtain current survey and surveyor's certificate confirming parcels are contiguous (may be included as Note on survey map)
- Describes manner in which parcels are contiguous
- May not be used to establish contiguity with parcel not included in legal description of property insured



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Construction Loan Update (CLU) (Commercial or greater than 1-4 family residential)

- Premium: \$100 minimum
- Confirms construction loan disbursement has increased liability under the policy to include disbursement
- Anticipate CLU requests when closing construction loan (include pending disbursement clause on Sch. B) (See TN 22.04.03)
- Search title and list intervening matters –confirm none affect priority or could lead to title objection
- Does not change date of policy or effective date
- Similar protection may be provided owner using “escalator clause” in policy



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Navigational Servitude (NSE)

- Premium: 10% of policy minimum
- Insures waterfront property which contains land that was created by the use of fill that was properly done, but nonetheless covers part of an area that was formerly a navigable waterway
- The NSE insures against forced removal of improvements from those filled lands. Eligibility for the endorsement depends on the extent of the fill and improvements on it
- Sch. B will disclose a "Navigational Servitude Exception"
- Determine the filled lands present no risk of interference with navigation; hence, no risk of forced removal
- Underwriting approval required if improvements directly abut boating channel; or policy will exceed \$1 million



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Revolving Credit (RCE)

- Premium: \$25 minimum
- Insures the fluctuating principal over the life of the mortgage but coverage will never exceed stated maximum
- Similar to Future Advance – Priority (ALTA 14) but may be used for construction loans
- Compliance with future advance statute (Sec. 697.04, F.S.)
- Policy amount equal to stated mortgage amount
- Avoids title updates and Form E endorsements for advances



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Survey (SE) Commercial or greater than 1-4 family residential)

- Premium: \$100 minimum
- Insures the real property described in Schedule A is the same as shown on the survey because the two do not match
- Often occurs on metes and bounds surveys that uses a different point of beginning or goes clockwise vs. counterclockwise
- This will usually require a surveyor's affidavit



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Owner Policy Endorsements



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Owner's Policy (ALTA 9.1-06) (ALTA 9.2-06) Restrictions, Encroachments, Minerals Unimproved Land/Improved Land

Premium: minimum 10% of policy premiums

1(a): No present violations of CC&Rs (owner affidavit & survey)

1(b): Easements, rights of first refusal, option to purchase, prior approval requirement, reverters, and forfeitures

1(c): Encroachments of improvements onto adjoining land (unless disclosed by survey with exception made)

1(d): No recorded violation of environmental protection laws

2. Mineral rights of entry

The 9.2 also covers court ordered removal of improvements



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Owner's Policy Leasehold (ALTA 13-06)

- No premium
- Defines coverages provided to tenant under owner's policy insuring a leasehold interest
- Sch. A (O21) identifies interest as leasehold estate
- Valuation
- Proper execution and recording of lease (or short form/memorandum)
- Comply with requirements including Sch. B exceptions for interest of fee owner and interests encumbering fee



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Change of Partners, Members, or Shareholders (CPE) (Commercial or greater than 1-4 family residential)

- Premium – Minimum \$100
- Confirms owner's policy coverage will continue even if new partners, members, shareholders, beneficiaries, or certificate holders are added or if any old ones withdraw
- State laws of entity's domicile, as well as the entity's governing documents (e.g., articles, bylaws, partnership agreement, operating agreement, or trust), are examined to confirm any such change will not result in dissolution or termination of the entity



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Thank You!
for attending

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