Negotiating Title Commitments

Advanced Topics in Real Property: A Specialization Review

North Carolina Bar Association

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Margaret Shea Burnham
Nexsen Pruet, PLLC

Nancy Short Ferguson
Chicago Title Insurance Company

Diana R. Palecek
Smith Moore Leatherwood LLP

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1. ***Introduction***

A. Title Insurer's perspective[1]

Planning for the insurance and the coverage a client needs can be challenging without an understanding of (1) the basic title insurance policy structure, (2) distinct coverage concerns of particular parties, especially Owners as compared to Lenders[2], (3) variations in forms, costs and procedures across state lines, (4) the basic structural language, and (5) some illustrative affirmative coverage endorsements (the ALTA 28 series and the ALTA 34-06). Much of the last minute title drama at closings as well as at the time of a claim (when it may be too late) arises from lack of internalizing these basic concepts and how they affect clients. ***See* Section 13** "*Why Did The Title Company Say That? Planning for Different Parties, States, Rates, Forms and Coverages*."

The title insurance policy, by its terms, does not insure the status of the title or guarantee that it is marketable. It is a policy of indemnity, according to its coverage terms. So understanding the basics of the policy is critical to the owner's or lender's counsel in determining if the coverage is enough for protecting their clients, or if further curative documentation may be needed given the status of the actual record title, the current situation and the needs of their client.

B. Borrower's counsel perspective[3]

With respect to the title search, borrower's counsel is obviously concerned with verifying "good" title (which is beyond the scope of this CLE manuscript). Assuming good title, borrower's counsel must review each item in the chain of title. Is there legal access to a public right of way? Are there restrictions that limit the use of the property? Are there existing tenants reflected by documents of record (or off record)? Are there encroachments? Are there off site easements for storm water? Has there been recent construction? Did the title searcher check for MLA filings? Are there any options or rights of first refusal of record of record (or off record) that need to be terminated? In addition to checking documents of record, borrower's counsel must carefully check the legal description in the chain against the survey. Does the legal on the deed match the survey match the title insurance policy? Have there been any out conveyances? Will there be a new survey?

After reviewing the title report, the borrower's counsel must then turn to what affirmative coverage and what endorsements are needed. For endorsements, both standard and custom endorsements must be considered Endorsements may be needed for matters of record or matters

[1] Comments by Nancy Short Ferguson

[2] The basic American Land Title Association (ALTA) Loan Policy (6-17-06) (herein the "Loan Policy" with the "Lender" as the Insured) and ALTA Owner's Policy (6-17-06) (herein the "Owner's Policy" with the "Owner" as the Insured) (herein collectively the "ALTA policies" with defined terms in the policies such as "Land," "Insured," and "Mortgage" capitalized herein) are available on-line at: https://www.alta.org/policy-forms/ for further reference.

[3] Comments by Margaret Shea Burnham

of survey. Use an endorsement checklist will be helpful to make sure an endorsement is not overlooked.

After reviewing title and survey, borrower's counsel must review the title insurance commitment to make sure all "requirements" are being addressed with closing documentation.

Borrower's counsel should also verify the coverage. The loan will dictate the amount of title insurance that is "required," but borrower's counsel needs to consult with the client/purchaser/borrower about additional coverage for the delta between the loan amount and the purchase price.

While the tendency may be to assume that borrower's counsel is only concerned with the owner's policy, frequently there is no lender's counsel and borrower's counsel needs to ensure that the lender receives a mortgagee title insurance policy (with required endorsements) that complies with the loan closing instructions. If there is lender's counsel, this task will be handled by lender's counsel.

C. Lender's counsel perspective.[4]

Prudent lenders will approach review of title and survey matters from a perspective similar to an owner or buyer. The lender's objective is to have the lien of their deed of trust insured with the priority the lender expected (often "first" priority) with no prior matters of title which would impair the lender's ability to foreclose and subsequently sell the property. The lender's attorney, unlike the owner's attorney, usually does not have access to the title research, instead relying upon the title commitment and survey submitted to lender from the borrower's attorney. Therefore, the lender's attorney often is not aware of any issues that may have been flagged by the title searcher for the title company's assessment prior to issuance of the title commitment.

The degree to which lender and its counsel will delve into the details of the title and title policy will vary based on a number of factors, including: the size and term of the loan, whether the loan is "recourse" or "non-recourse"[5], whether the loan is securitized, the financial strength of the borrower and guarantor, and the lender's internal audit policies. For example, the lender of a large long-term non-recourse loan (where foreclosure or deed-in-lieu of foreclosure is the primary remedy) will likely be more exacting in its review of title matters and its title policy requirements, then would be a lender of a smaller short-term recourse loan guaranteed by a financially strong individual.

Lenders commonly require title policies be issued by a title company that meets the lenders requirements for financial strength and reputation.

[4] Comments by Diana R. Palecek.

[5] In a typical "recourse" loan the borrower and often a guarantor are personally responsible and liable for repaying the debt. In the typical "non-recourse loan", neither the borrower nor guarantor have personal liability to the lender for payment of the loan, and except for certain enumerated exceptions (often called "bad boy carveouts"), the lender's only recourse, should the loan go into default, is to pursue foreclosure of the property.

2. ***Covenants, Conditions and Restrictions***

A. What are a lender's chief concerns about Covenants, Conditions and Restrictions ("CCR")?

Lenders and buyers should read all CCRs carefully and thoroughly, with an eye toward their particular plans for the project.

The lender's primary objectives for CCR review are to assess whether the CCRs are consistent with the borrower's use of the property, whether the CCRs impose any significant burdens which interfere with the borrower's operations or make the property undesirable to future owners, and whether there are any present violations of the CCRs affecting the borrower and/or the lender's collateral. Thus, a lender may look for the following when reviewing CCRs:

1) To assess the degree to which the operation of the project/development is addressed (if at all). This includes who is responsible for maintenance of common areas and how costs of maintenance are assessed. The lender's desire is a well-functioning project that can be maintained in a commercially reasonable manner throughout many years of operation and through changes in ownership.

2) To determine whether there are any obvious any violations of covenants or restrictions on the part of the borrower and/or the lender's collateral. To the extent there is an association with management authority, the lender may seek an estoppel certificate from the association.

3) To determine the extent to which other parties (such as owners' associations) may have lien rights, the triggers for liens to arise, and the priority of the liens vis-à-vis the lender's deed of trust.

4) Whether there are any forfeiture or reversionary clauses.

5) To assess any potential issues of compliance if the lender were to become owner through foreclosure. For example, there may be radius restrictions on use which may be problematic to a lender if the lender owns property within the radius that may violate the restriction.

6) To determine whether the CCRs provide permission for minor encroachments within the project.

7) Whether there are any options to purchase or rights of first refusal to purchase, and if so, the assess the priority of such options/rights vis-à-vis the lender's deed of trust.

8) Whether the declarant control period has expired, and if not expired, whether the declarant rights can or should be collaterally assigned to the lender.

Do not assume that the declarant and other parties to the CCRs did not make mistakes. When mistakes are detected, they should be corrected even if the correction requires consent of others. For example, tracts can easily be mislabeled or cross-referenced incorrectly. This author has seen a CCR where a particular use was prohibited in the entire project except for one specifically identified tract. The problem was that the prohibited use was not located on the permitted tract, but was instead located on one of the other tracts. It is better to correct a problem than to have to rely upon equitable estoppel arguments later.

B. What are a title insurer's concerns about CCR?

Given the Nationwide case, title insurers have become more proactive in taking exception and providing relevant affirmative coverage. The typical method is using the ALTA 9 series of Endorsements in conjunction with the ALTA 28 and ALTA 35 series. The following chart, provided by ALTA (www.alta.org), outlines the coverages and applicable forms:

Coverage	Lender	Owner
Covenants, Conditions & Restrictions (*not* private rights)	9-06 9.3-06 9.7-06 (Land Under Development) 9.10-06 (current violations)	9.1-06 (Unimproved) 9.2-06 (Improved) 9.8-06 (Land Under Development)
Private rights (assessments, options, rights of first refusal & rights of prior approval of purchasers or occupants)	9.6-06 9.6.1-06	9.9-06
Encroachments over boundaries or onto easements	9-06 9.7-06 (Land Under Development) 9.10-06 (current violations) ALTA 28 series	ALTA 28 series
Mineral & subsurface rights	9-06 9.7-06 (Land Under Development) 9.10-06 (current violations) ALTA 35 series	ALTA 35 series

For more detail, *see* ***Section 13*** and Exhibit E herein.

3. ***Easements***

A. Blanket easements

"Blanket easements" are frequently discovered in a title search. The term blanket easement isn't officially defined, [6] but is used generally to refer to easements that "blanket" the entire parcel of land. Sometimes, the intent of the blanket easement is to reserve the right of a utility company to go upon the property and install utilities in the future, such that the location isn't known yet. This type of easement typically has all of the elements of an easement, except that instead of a specific easement described by metes and bounds, the utility company is granted the right to locate the utility lines anywhere on the property.

In a perfect world, a blanket easement would include certain provisions to protect the rights of the property owner to use and enjoy the remaining property rights, such as:

- the easement would indicate that the utility lines can only be located in a certain defined area that will not interfere with the owner's use and enjoyment of the remainder of the property (instead of "all" of the property;
- the easement would provide that the easement would be amended once the utility lines have been installed (preferably with a map showing the as-built locations of the utility lines);
- in lieu of an amendment, the easement could provide that once the utility lines are installed, the easement would be limited to a certain width on each side of the line (perhaps 10' – 15'on each side, for 20' – 30' total easement width);
- the easement would indicate that the right to locate an easement is lost if not installed within a stated period of time (to rid the title of old, unused blanket easements); and
- at the owner's expense, the utility lines, once installed, could be re-located by the owner if necessary for the owner's future development of the remainder of the property.

Blanket easements, though, do not generally exist in a perfect world. That means an owner, or the owner's predecessor in the chain of title, granted an undefined easement over all of the property. This has led to cases interpreting the scope of blanket easements.

A landmark case is Borders v. Yarbrough, 237 N.C. 540, 75 S.E.2d 541 (1953). Borders established the following parameters for a blanket easement:

It is a settled rule that where there is no express agreement with respect to the location of a way granted but not located, the practical location and user of a reasonable way by the grantee, acquiesced in by the grantor or owner of the servient estate, sufficiently locates the way, which will be deemed to be that which was intended by the grant.

In Border, the conveyance included the following language:

[6] See Fisher v. Carolina Southern Railroad, 141 N.C. App. 73, 539 S.E.2d 337 (2000)(using the term "blanket easement" in describing an 1847 deed).

> [T]his lot is sold subject to an easement across the same for a sewerage line running from lot No. 5 to the disposal in the street. This shall be a perpetual easement over this lot.

The court, using the rule set forth above, held that:

> The user of a reasonable way for a sewerage line by the owner of lot No. 5, the dominant tenement, across lot No. 6 to the disposal in the street, acquiesced in by the owner or grantor of the servient estate, lot No. 6, sufficiently locates the way, which will be deemed to be that which was intended by the grant of the easement.

Borders continues to be cited for the same proposition in current cases. See, e.g., Adelman v. Gantt, _____ N.C.App. ____, 795 S.E.2d 798 (2016)(2016 WL 7976122)(concrete driveway was physically located on the defendant's property and was "plainly visible); Parrish v. Hayworth, 138 N.C.App. 637, 532 S.E.2d 202 (2000)("Although the original right of way cannot be located, we conclude that, based on their usage, the parties and their predecessors in title have accepted the present Cedar Valley Drive as the right of way intended to be reserved by the plat…").

Another court, also citing Borders, added the following:

> [W]here the grant of an easement of way does not definitely locate it, it has been consistently held that a reasonable and convenient way for all parties is thereby implied, in view of all the circumstances.

Edwards v. Hill, 208 N.C.App. 178, 703 S.E.2d 452 (2010)(affirming trial court's findings with regard to the extension of a road, concluding trial court construed the deeds "with reason and common sense to adopt the interpretation that produced the usual and just result"), *quoting* Allen v. Duvall, 311 N.C. 245, 249, 316 S.E.2d 267, 270 (l984). In Allen, the court held:

> The use of the roads in question by plaintiffs' predecessors in title, acquiesced in by defendants' predecessors in title of the servient estate, sufficiently locates the roads on the ground, which is deemed to be that which was intended by the reservation of the easements.

Allen v. Duvall, 311 N.C. 245, 249, 316 S.E.2d 267, 270 (l984)

Note that the courts do not find a blanket easement is void for lack of a specific description – instead, the description is "all" of the property described. Compare a blanket easement (which just needs to be located somewhere on the property) to an easement that cannot be located. See, e.g., Harris v. Greco, 69 N.C.App. 739, 318 S.E.2d 335 (1984)("The description does not furnish any means by which the location of the proposed easement may be ascertained.").

In Intermount Distribution, Inc. v. Public Service Co. of North Carolina, 150 N.C.App. 539, 563 S.E.2d 626 (2003), the court was presented with the issue of an undefined width of an easement. The easement in question was for a natural gas pipeline and the grant provided "the

right to maintain, construct, replace, change the size of, or lay one or more pipelines across the property for the transportation of natural gas and other materials that may be transported through a pipeline." The defendant was allowed to select the initial location. In a case of first impression, the court adopted the following rules of interpretation from other jurisdictions:

> Although not specifically addressed in North Carolina, we find guidance in other jurisdictions that have held that when the width of an easement is not specifically defined in the grant, such as in the instant case, then the "previously undefined width is then established by the rule of reasonable enjoyment." Under the doctrine of reasonable enjoyment, the width of an undefined easement is determined by considering the purpose of the easement and establishing a width necessary to effectuate that purpose. Where an easement is granted without limitations on its use, "the grantee may partake in other reasonable uses that develop over time if such uses significantly relate to the object for which the easement was granted. "Determination of the necessary width under the doctrine of reasonable enjoyment [presents] a question of fact." Although the extent of an easement is limited to that which has been granted, courts have also consistently permitted express easements to accommodate modern developments, "so long as the use remains consistent with the purposes of which the right was originally granted. "This is based upon a presumption that advances in technology are contemplated in the grant of the easement."

Id. (citations omitted). The court concluded that the question of reasonable enjoyment was a question of fact which precluded summary judgment.

The open question in blanket easement cases is how to "perfect" the defined location under the Borders case? Ideally, the easement holder would agree to document the location in an amendment. However, the utility company may not want to give up its rights to expand the utility lines in the future. Short of an agreement to amend, the property owner is left with an unofficial description of the easement based upon the location then in use which is not documented in writing.

In the event the owner seeks to construct improvements, it may be possible to negotiate an endorsement with a title insurance company to insure for loss or damage resulting from the blanket easement being enforced outside the area where it has been located.

From the title insurer's perspective, the exception for the easement may be limited by language such as "shown on survey dated _____ by _____, Professional Land Surveyor, Job #_____." In addition, the title insurer may be willing to provide coverage by utilizing the ALTA 9 series of endorsements (discussed above regarding covenants), the ALTA 34 Identified Risk Endorsement, or the ALTA 28 series.

ALTA Endorsement	**If the "Improvement" for which coverage is at issue involves:**	**And the Encroachment is onto:**	**Coverages**

28	Existing Building on the Land	An easement (without mentioning if there is any "encroachment" at all)	Damage or enforced removal or alteration by easement holder for exercise of rights to use or maintain the easement
28.1	Existing Building on the Land	An easement	*Loss or Damage if no exception in Sch. B (#3.a.)* Enforced removal/relocation *by easement holder* for exercise of rights to use or maintain the easement (#3.c.)
28.1	Existing Building on the Land	Adjoining land	Enforced removal *by adjoiner (#3.d.)* *Loss or Damage if no exception in Sch. B (#3.a.)*
28.1	Existing Building on adjoining land	The Land	*Loss or Damage if no exception in Sch. B (#3.b.)*
28.2	** on the Land	An easement	*Loss or Damage if no exception in Sch. B (#3.a.)* Enforced removal/relocation *by easement holder* for exercise of rights to use or maintain the easement (#3.c.)
28.2	Described Improvement* on the Land	Adjoining land	*Loss or Damage if no exception in Sch. B (#3.a.)* Enforced removal *by adjoiner* (#3.d.)
28.2	Described Improvement* on adjoining land	The Land	*Loss or Damage if no exception in Sch. B (#3.b.)*
28.3	Existing or Future Building, Structure or Paved Area per specific Plans on the Land	Adjoining land	*Loss or Damage if no exception in Sch. B (#3.(a))* Enforced removal/relocation *by adjoiner (#3.(d))*
28.3	Existing or Future Building, Structure or Paved Area per specific Plans on the Land	An easement	*Loss or Damage if no exception in Sch. B (#3.(a))* Enforced removal/relocation *by easement holder* for exercise of rights to use or maintain the easement (#3.(c))

28.3	Existing Building, Structure or Paved Area on adjoining land	The Land	*Loss or Damage if no exception in Sch. B (#3.(b))*

*The "Described Improvement" is as determined by the attorney and title insurer and stated in the endorsement.

The ALTA Endorsement Form 34 (Identified Risk) provides the following coverage:

1. As used in this endorsement "Identified Risk" means: [*insert description of the title defect, restriction encumbrance or other matter*] described in Exception _____ of Schedule B.

2. The Company insures against loss or damage sustained by the Insured by reason of:

   a. A final order or decree enforcing the Identified Risk in favor of an adverse party; or

   b. The release of a prospective purchaser or lessee of the Title or lender on the Title from the obligation to purchase, lease, or lend as a result of the Identified Risk, but only if

      i. there is a contractual condition requiring the delivery of marketable title, and
      ii. neither the Company nor any other title insurance company is willing to insure over the Identified Risk with the same conditions as in this endorsement.

3. The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of the Title by reason of the Identified Risk insured against by Paragraph 2 of this endorsement, but only to the extent provided in the Conditions.

4. This endorsement does not obligate the Company to establish the Title free of the Identified Risk or to remove the Identified Risk, but if the Company does establish the Title free of the Identified Risk or removes it, Section 9(a) of the Conditions applies.

For more detail, *see* ***Section 13*** and Exhibit E herein.

B. Easements and "Burdens"

One of the harshest North Carolina cases in the context of real estate is Swaim v. Simpson, 120 N.C.App. 863, 463 S.E.2d 785 (1995), aff'd per curiam, 343 N.C. 298, 469 S.E.2d 553 (1996).

In that case, the deed of conveyance to buyers granted an easement for purposes of "providing access of ingress and egress" to the described tract (the real property conveyed in the deed) from the highway. The buyers argued the easement grants buyers the right to maintain a residence, which includes access for utilities, and thus, includes ingress and egress for purposes of installation and maintenance of utilities. The court stated "when an easement is created by an express conveyance and the conveyance is 'perfectly precise' as to the extent of the easement, the terms of the conveyance control." Id. at 864, quoting Williams v. Abernethy, 102 N.C.App. 462, 464-65, 402 S.E.2d 438, 440 (1991) (Williams was superseded by the North Carolina Planned Community Act as stated in Happ v. Creek Pointe Homeowner's Ass'n, 215 N.C.App. 96, 717 S.E.2d 401 (2011), however, this holding does not supersede or overturn the above quote). The court reversed the trial court's interpretation of the easement to include the installation and maintenance of utilities as well as general access, finding the easement unambiguous and stating "[h]ad the grantors intended a greater use, such use should have been specified."

See also Stonecreek Sewer Ass'n v. Gary D. Morgan Developer, Inc. for application of the rule from Swaim v. Simpson. The court used and restated the Swaim easement rule:

> First, the scope of an express easement is controlled by the terms of the conveyance if the conveyance is precise as to this issue. Second, if the conveyance speaks to the scope of the easement in less than precise terms (i.e., it is ambiguous), the scope may be determined by reference to the attendant circumstances, the situation of the parties, and by the acts of the parties in the use of the easement immediately following the grant. Third, if the conveyance is silent as to the scope of the easement, extrinsic evidence is inadmissible as to the scope or extent of the easement. However, in this latter situation, a reasonable use is implied.

Stonecreek Sewer Ass'n v. Gary D. Morgan Developer, Inc., 179 N.C.App. 721, 790, 635 S.E.2d 485, 491 (2006).

4. *On-line title search and e-recording issues*

A. Checklists

i. Client

Client disclosures to consider for closings:

On-line title search (see optional sample disclosure form attached as Exhibit A)
E-recording (see optional sample disclosure form attached as Exhibit A)

ii. Title insurance company

Title insurance company disclosures to consider for preliminary/final title opinions:

On-line title search	Sample exceptions: "Any inaccuracies in the public records obtained for this opinion via online access." "Any inaccuracies in the judgment search through the automated civil case processing system ("VCAP") provided by the NC Administrative Office of the Courts."
E-recording	Sample exception: "Any inaccuracies in the public records as a result of: -original documents being electronically recorded, or -delays in recording caused by the e-recording process."

B. Summary of NC State Bar ethics opinions regarding disclosures

The North Carolina State Bar has several opinions on what constitutes appropriate "disclosure" language in the context of other real estate issues:

2009 FEO 17	In the context of tacking from a mortgagee title insurance policy (instead of an owner's title insurance policy), the opinion includes the following statement: "*The lawyer must consult with the client before using a method of rendering a title opinion that might present additional risk for the client.*"
98 FEO 8	In the context of an opinion on "witness closings," the opinion stated:

	"*Competent representation may include disclosure of any concerns that [the lawyer] may have about the preparation of the title opinion and the risks of relaying upon the opinion*."
9 FEO 8	In the context of dual representation in a residential closing, the opinion discussed the disclosure to the client as follows: "*If the lawyer reasonably believes the common representation can be managed, the lawyer must make full disclosure of the advantages and risks of common representation and obtain the consent of both parties before proceeding with the representation*."
RPC 99 [portion of this opinion withdrawn in 2009 FEO 17]	In the original opinion on tacking, the opinion went into great detail on disclosures: *"The Rules of Professional Conduct do not require personal inspection of all documents in the chain of title so long as the lawyer rendering the opinion fully discloses to his or her client the precise nature of the service being rendered and the full extent thereof. The client should be advised that he or she should rely on the title insurance policy as to matters of title and not upon the attorney's certification of the public records. If the Title Insurance Company is willing to base its underwriting decision upon the fact that it or another title insurance company previously issued a title insurance policy and Lawyer B's limited title opinion, that does not offend the Rules of Professional Conduct."*

For a sample client disclosure for and on-line search and e-recording, see Exhibit A.

C. Chicago Title BLAWG:

"Commercial and Residential Attorneys: Are you e-recording yet? If not, why not?"

With an increasing number of counties accepting e-recording, many firms are beginning to e-record at most or all closings in those counties. Why?

- For those with several residential closings per day, especially if the firm's office is remote from the courthouse, this limits the time lost in transport for multiple trips to and from the courthouse – just have your title examiner there handling the updates while you can "submit" from your desktop.
- For commercial closings, this can substantially decrease the gap between expected funding and recording.
- For multi-county closings, this can reduce the logistics of getting between all the counties in a day or less.
- For closings in which a notarial certificate or other "error" is noticed and the document rejected, this can expedite the time in finding this out and correcting the problem, right in your office.
- Typically, you know within 30 minutes of submission (depending on the county) whether all of your documents were accepted or rejected (and, if rejected, why) - expediting your ability to complete the closing! (Visualize happy Realtors!)
- As soon as you have the confirmation of recording, you have immediate access to "recorded" instruments – the original still in your hands and the recording confirmation via computer - expediting your ability to complete the closing package and the final title opinion!

Given the number of years of technological development and the number of firms using e-recording – in North Carolina and across the country – it has become a reliable standard of practice. As noted by Gallimore, "When it comes to updating title, we take the same precautions when e-recording as when recording in person."

Yes, there are still a few limitations.

- Some counties do not have e-recording.
- Some counties do not even have on-line complete records.
- Know the procedures in the county or counties of recording to be sure you understand how current their on-line indexes are and can adjust for necessary updates and local requirements.
- Vendors working with a particular county vary. So the attorney must verify which one(s) can be used for the particular county or counties in which your firm will be e-recording.
- Recording fees are paid using an intervening swipe account which can be cumbersome, but now sanctioned under the Good Funds Settlement Act.
- Since the documents are sent in packets for a particular closing, limitations of only 10 documents per packet can be cumbersome in complex commercial transactions. So

subordinations and documents that are not essential to the time-of-closing priority under GS 47-18 and GS 47-20 may need to be in second or third packets.

- Some registry indexes are behind, *even in person*, which can be a risk with personal recording as well as e-recording. Having a title examiner on-site at the courthouse can minimize this risk if the on-line registry is substantially behind the courthouse on-site registry, while still avoiding the travel time delays. As one attorney noted, "This saves us 30 minutes to and 30 minutes from the courthouse (including time to park and get between the various buildings and offices) for every single closing."

The primary vendors in North Carolina, many of whom identify on their websites the counties in which they are available and provide information, include:

CSC (Corporation Service Company)
Electronic Document Logistics
eRecording Partners Network
Indecomm Global Services
Simplifile

North Carolina was well-served by having adopted the mandatory statutory indexing standards over 20 years ago as well as having adopted URPERA and the electronic notary act nearly 10 years ago. So now both the legal and the physical infrastructure are in place for this new age in recording.

Better yet, this facilitates attorneys' ability to demonstrate to lenders compliance with Pillar #4 of the Best Practices!

D. Protecting Clients and Attorneys: A Proposed Notice of Settlement Act for the Modern Age.[7]

Life and law practice have changed dramatically just in the past 25 years. Gone are the days when you knew all the courthouse personnel in all the offices of the Clerk of Superior Court and Register of Deeds, knew where all the possible "temporary" files were there for you to view at your convenience, and only a single recording line which was only by personal delivery and some US mail deliveries. Today, every county has multiple recording "lines" – personal delivery, U.S. mail, overnight delivery services, and e-recording. The AOC computer terminal information is always behind, depending on how far each county is in inputting data as well as the overnight upload to the central system. The various offices to be checked in the title update are, in many counties, not housed in the same building or, for some, not even within walking distance. For those e-recording, this is exacerbated by delays in availability of recorded instruments online, -- some by not posting online for weeks, others by delays in verifying temporary postings – with registers' systems having a variety of means for the title examiner to try to determine currency of the particular records. Even with an examiner actually physically at the courthouse updating title, these gaps are increasing.

With the increase in complexity of transactions, costs to attorneys also increase, cutting into profits from real property practice. Time pressure increases from clients and referral sources (realtors and lenders, primarily) who expect everything immediately. (Does anyone remember how we communicated in the days before the facsimile machine or email?) Law firms need to adopt efficiencies. E-recording and online title examinations are increasingly important time-savers. (How much does all the mileage, parking and travel time cost your firm?)

BOTTOM LINE: LEGAL PROTECTION FOR CLIENTS AS WELL AS THE ATTORNEYS HANDLING THEIR TRANSACTIONS IS CRITICAL!

To provide this legal protection, a Notice of Settlement Act has been suggested and discussed by a varying group of real property lawyers for nearly 2 years. It is based to some degree on the 1991 act (which expired) and the New Jersey act, but is focused on the specific concerns of North Carolina's pure race priority statutes and the timelines for modern closings which may be 45-60 days from contract to close.

The overall structure of the DRAFT BILL, includes the following:

- "Notice Agent" can be attorney for seller, buyer, mortgagee or title insurer AND, for a pure financing by current owner, the proposed mortgagee
- Single form, that establishes priority as of recording if the closing records within the stated time frame
- 60-day look back priority, during which any intervening creditor must give notice to Notice Agent, and

[7] Reprinted with permission of Nancy Short Ferguson.

- 5 business day lockdown of title prior to closing, to facilitate TRID *and* commercial gap closings, and to keep electronic and personal delivery recording based on registration rather than "submission"
- Extended to deed, deed of trust and leasehold

GOALS are to:

- Protect attorneys and clients from inevitable reliance on public records which may not be current,
- Provide reliable public records to accommodate TRID and commercial gap closing transactions;
- Simplify and clarify the closing and priorities, preserving our "pure race" on record system;
- Maintain equal treatment (to the extent possible) between electronic and paper registration;
- While facilitating the public demand for faster, smoother closings.

The latest draft of the Proposed Notice of Settlement Act for your consideration will be included in the Real Property Section newsletter. At the August 13, 2018, meeting, the Real Property Section Council recommended it for consideration by the NC Bar Association Legislative Advisory Committee. Any questions or comments can be shared with Nancy.Ferguson@ctt.com, or the Officers or Council members of the Real Property Section, https://ncbar.org/members/sections/real-property/

Let the discussions begin!

5. *Tacking issues*

A. What is "tacking" and what are the risks?[8]

For attorneys procuring title insurance policies by giving their opinion to a title company, tacking onto existing title insurance policies can be both efficient and cost saving. Particularly in loan refinances where the existing owner's policy is five to ten years old, tacking is often times preferred by the client. But is it a wise practice, especially when the only available policy is a lender's title policy?

"Tacking" is the term commonly used to describe an abbreviated title search that is less than the 30-year (or longer) search period (also called a "full search") required to fall within the protections, albeit limited protections, afforded by the Real Property Marketable Title Act, Chapter 47B of the North Carolina General Statutes. There are certain risks inherent in the practice of tacking onto an existing title insurance policy. Those risks include inability to discover title defects that were either missed in the prior search or were intentionally omitted from the prior title policy. The decision whether to tack to an existing policy, rather than conducting a full title search, should be made with consideration of the facts surrounding the transaction and the property and in consultation with the client. A terrific resource for guidance on the factors to consider can be found in North Carolina Real Estate With Forms, by Edmund T. Urban, A. Grant Whitney, Jr. and Nancy Short Ferguson, See Sections 5.11, 5:12, 5.13 and 5.14.

While there are certain risks an attorney should consider when tacking onto any title policy, it is well-settled that tacking onto an owner's title insurance policy is not presently an ethical violation under the North Carolina State Bar's ethics opinions. Whether an attorney may legally or ethically tack onto a *lender's* title policy, however, is not as straightforward.

Until 2010, a North Carolina ethics opinion held that "tacking should be limited to tacking onto owners' policies." *See* RPC Opinion 99, published April 12, 1991. However, on October 29, 2010, the Ethics Committee published a formal ethics opinion that essentially deleted that part of the 1991 opinion. In 2009 Formal Ethics Opinion 17, the Ethics Committee was directly asked whether an attorney could "render a title opinion to a title insurance company by tacking to a mortgagee's (lender's) title insurance policy?" The Ethics Committee opined that the answer depended on deciding whether the attorney had utilized the appropriate standard of care and that this issue was outside the Ethics Committee's purview. Specifically, the Committee stated that "[w]hether tacking to an owner's policy or a mortgagee's policy, a lawyer's duty is to provide competent representation to his client, consistent with Rule 1.1" and that to provide such representation, the lawyer must "reasonably consult with the client about the means used to accomplish the client's objectives" consistent with Rule 1.4(a)(2). Thus, the Committee concluded that tacking onto a lender's title policy was not an ethical violation, but that failure to disclose the risks of tacking onto a lender's policy with a client could be a violation of the Rules of Professional Conduct.

[8] Diana R. Palecek and Catherine B. Mitchell, NCBA Real Property Section Newsletter (Vol. 35, No. 2, March 2014).

Before choosing to tack to a lender's title policy, it is recommended that you consult with your title insurer to confirm that the title insurer will allow tacking to the lender's title policy. There are additional risks to tacking to a lender's title insurance policy that are not as likely to be risks in an owner's title insurance policy. The chief of these risks is the more likely possibility, particularly in the context of a commercial transaction, that the prior lender's policy "insured over" certain matters of title by intentionally excluding such matters from the list of exceptions in the lender's policy. This proclivity is recognized in RPC Opinion 99. Title companies are often more willing to insure a lender against loss from title defects when they would not insure the owner because the risk of a claim on a lender's title policy is often viewed as more remote (due to lender's claims typically arising in the context of commencing a foreclosure action) and of less monetary consequence (due to the coverage amount on the loan policy reducing as the loan is paid). "Title insurers make business decisions and take underwriting risks every day and if a company decides that allowing certain 'short cuts' such as tacking or shorter searches is something that they wish to do for competitive reasons, that is a business decision that each company is allowed to make[.]" See *2008 FEO 13 – In response to some misunderstandings and misinformation*, NCTLA, NCBA Real Property Newsletter Vol. 30, No. 3, February 2009, pp. 1 and 4. Thus, even if the attorney decides to tack onto a lender's title policy, this may not be an option if the title insurance company does not approve due to the risk imposed on the insurer of a greater possibility of a claim being made on the new policy due to undiscovered title matters.

Before tacking onto any policy, the attorney has an ethical obligation to inform the client that the attorney is undertaking an abbreviated title search and the risks inherent in the limited search. See RPC Opinion 99. It is recommended that the communication to the client be in writing whenever possible, though the RPC Opinion 99 expressly states that written consent of the client is not required. The risk to the client when all title matters are not discovered due to tacking onto a lender's policy is that the client will not be fully informed of title matters that could affect the client's decision to purchase or lend on the property. Even though may receive a title policy that "insures over" these matters, the existence of undiscovered title matters can still be very problematic for the client. The title claim process can be lengthy, and the outcome will not in all cases address the client's losses or costs, including consequential losses due to delays and the property possibly not being saleable during the pendency of the title claim. The title insurance company has discretion on how to handle a title claim, including paying out the claim (subject to policy limits), defend the title in litigation or negotiation, or otherwise undertake to correct the underlying basis of the claim. (In all of the foregoing, the assumption is that there is no dispute between the insured and the title company on whether the title defect is covered by the title policy.)

An example is in order: An attorney represents a fitness center business looking for a new location for a fitness center. The attorney and client agree that the attorney may undertake a limited title search and "tack" onto a prior lender's policy because the prior owner's policy cannot be found. A restrictive covenant forbidding the operation of fitness centers is not discovered due to this exception not being included on the prior lender's policy. Unbeknownst to the attorney and new title insurer, the prior title insurer and lender expressly negotiated for the exception restricting fitness centers to be excluded from the exceptions in the lender's policy. After purchasing the property, the client discovers that it cannot operate its fitness business on the property and files a claim with the title insurance company. The client is not able to operate its desired business until and unless the restriction is removed through the claims process, and the client may not have an

economically desirable opportunity to sell the property. "But look at the bright side," the attorney says to the client, "at least you have title coverage." Odds are that the client would have rather found out about the restrictive covenant before purchasing the property, at which point they could have decided either not to purchase the property, or to negotiate with its seller to obtain the seller's aid in changing the covenant, or purchasing the property with the full knowledge of the issue.

Although the foregoing example of a use restriction being "insured over" by removal from a lender's policy is in all likelihood an unusual underwriting decision by a title insurer, this writer has seen situations somewhat similar to the fact pattern above. A more common, and likely, example is the title insurer's decision to omit from the exceptions a prior deed of trust which should have been paid and satisfied in the transaction. The insurer in this case will issue the policy upon the opinion of the attorney procuring the lender's policy that the deed of trust has been paid in full with the transaction proceeds. If in fact the prior deed of trust is not paid, whether due to malfeasance or error, then the new unsuspecting owner still must go through the claims process. And, even a short and efficient claims process can create issues for the owner if the underlying title defect is discovered in a context where the owner does not have the luxury of time.

We have not undertaken an exhaustive search for North Carolina cases assessing whether or not tacking to a lender's policy is within the "appropriate standard of care for rendering a title opinion". Anecdotally, we think the practice may be common. We urge that practitioners use caution, deliberation on each individual situation, and open communication with the client when making the decision on whether to tack to an existing title policy, especially if the only title policy available is a lender's policy.

B. Client Informed Consent.

As noted above, there are risks inherent in tacking to existing title policies, and those risks are greater when tacking to a loan title policy. Accordingly some practitioners refuse to tack to loan title policies. In either case, it is important to obtain client consent when tacking.

For a sample formal (long form) client disclosure for tacking to either an owner's policy or a loan policy, see Exhibit B-1.

For a sample informal (short form) client disclosure for tacking to an owner's policy, see Exhibit B-2.

6. ***Priority and micro-seconds***

A. Is North Carolina *really* a "pure race" state?

North Carolina loves a legal fiction. Real estate is replete with legal fictions. Two involve priority: the doctrine that North Carolina is a "pure race" state and the doctrine of "instantaneous seisin."

What is meant by the term "pure race" state? In Department of Transportation v. Humphries, ____ N.C. ____, 496 S.E. 2d 563 (1998)(emphasis added), the Supreme Court summarized the doctrine:

> Unlike the laws of most states, North Carolina's recordation statutes are characterized as "***pure race***" statutes. The effect of a "***pure race***" statute is to protect any purchaser for value who records first, whether or not he has notice of a prior unrecorded conveyance and whether or not he is a prior or subsequent purchaser. As stated in Webster's, "[i]f a conveyance is not recorded, it is considered void as against prior or subsequent purchasers of the same property for value who record first."

Wouldn't it seem that a "pure" race state would have no exceptions then? Yet, in North Carolina, the exceptions are well documented. In the landmark case Hardy v. Fryer, 194 N.C. 420, 139 S.E.833 (1927), the Court was presented with the issue of priority in the context of a prior unrecorded mortgage. The court articulated a four-part test:

> (1) The creditor holding the prior unregistered incumbrance must be named and identified with certainty.
> (2) The property must be conveyed "subject to," or in subordination to, such prior incumbrance.
> (3) The amount of such prior incumbrance must be definitely stated.
> (4) The reference to the prior unregistered incumbrance must amount to a ratification and adoption thereof.

Because a deed in the chain of title referenced the obligation, the court was satisfied that the prior *unrecorded* mortgage should prevail over the later mortgage.

Apparently, notice of a *recorded* deed of trust, with a defective legal description, does not win the race. See Fifth Third Mortgage Company v. Miller, 202 N.C.App. 757, 690 S.Ed.2d 7 (2010)(defective deed of trust treated as unrecorded and a nullity). However, a different result occurs if the defective deed of trust is re-recorded and the only intervening creditors were lien creditors who did not rely upon the original deed of trust. See Noel Williams Masonry, Inc. v. Vision Contractors of Charlotte, Inc., 103 N.C.App. 597, 406 S.E.2d 605 (1991)(reformation of defective deed of trust related back to original conveyance absent evidence of reliance by the subcontractors).

More than 50 years after the Hardy case, another case went on to conclude that Hardy was not an "exception" to the "pure race" theory. In Terry, the court held:

> This principle is not based on notice and does not operate as an "exception" to the pure-race theory of title in North Carolina. It derives from the theory that reference to the unrecorded encumbrances if made with sufficient certainty, creates a trust or agreement that the property is held subject to the encumbrance.

Terry v. Brothers Inv. Co., 77 N.C. App. 1, 6, 334 S.E.2d 469, 472 (1985)(emphasis added). In Terry, a long-term lease was executed in 1963 but not recorded until 1982. Like Hardy, there was a reference to the lease in a deed in the chain of title. The parties in the disputed transaction tried to avoid the reference in the earlier deed by including a provision in the subject deed that the deed was *not* intended to be subject to any leases. However, the court found the reference to the lease in the earlier deed trumped the later effort to avoid the lease.

In the recent case, Anderson v. Walker, ____ N.C.App. _____, _____ S.E.2d _____ (2018)(COA17-782 July 3, 2018), the court was nonchalant about the lack of recordation of a lease and a right of first refusal contained therein, relying on the actual notice of the subsequent purchaser under an option contract. Principles of equity won the race to the courthouse for the holder of the unrecorded ROFR. See ***Section 7*** and Exhibit C for a more in-depth review of the Anderson case.

Another "exception" to the pure race theory is "instantaneous seisin." This legal fiction is described as follows:

> Our jurisdiction recognized that "[t]he doctrine of instantaneous seisin is a legal fiction which provides that when a deed and a purchase money deed of trust are executed, delivered, and recorded as part of the same transaction, the title conveyed by the deed of trust attached at the instant the vendee acquires title and constitutes a lien superior to all others."

West Durham Lumber Company v. Meadows, 179 N.C.App. 347, 635 S.E.2d 301 (2006), quoting Dalton Moran Shook Inc. v. Pitt Development Company, 113, N.C.App. at 712, 440 S.E.2d at 589. West Durham Lumber also went on to say:

> It is well established that "a deed and a mortgage to the vendor for the purchase price, executed at the same time, are regarded as one transaction." ***The title does not rest in the vendee but merely passes through his hands, and during such instantaneous passage no lien against the vendee can attach to the title superior to the right of the holder of the purchase money mortgage***.

Id. (citations omitted).

Another court described the purchase money mortgage as being "when a vendor conveys property and simultaneously takes back a mortgage to secure the payment of all or a part of the purchase price, and such mortgage is ***at once*** registered." Virginia-Carolina Chemical Co. v. Walston, 187 N.C. 817, 123 S.E. 196 (1924).

The most enlightening definition of how "instantaneous" the transaction must be is found in the 1978 case Bunting v. Jones, 78 N.C. 242 (1878). In considering instantaneous seisin, the court quoted the poet Robert Burns from his 1790 poem *Tam O'Shanter* ("like the borealis race, that flits 'ere you can point its place"). The apparent reference is to Aurora Borealis, the northern lights which move faster than you can "point" them out.

As with any other exception, there are exceptions to the exceptions. For example, instantaneous seisin does not apply where the deed and deed of trust "are not simultaneously recorded." Pegram-West, Inc. v. Homes, 12 N.C.App. 519, 184 S.E.2d 65 (1971)(deed of trust executed on same date but not recorded until 11 days later; instantaneous seisin requires recordation as part of the same transaction). See also Carolina Builders Corp. v. Howard-Veasey Homes, Inc., 72 N.C.App. 224, 324 S.E.2d 626 (1985) (doctrine inapplicable where party vendor permits a construction loan deed of trust prior to purchase money deed of trust); Dalton Moran Shook Inc. v. Pitt Development Company, 113 N.C.App. 707, 440 S.E.2d 585 (1994)(doctrine inapplicable to funds loaned in excess of the purchase price).

B. What is the impact of NCGS §§47-18 and 20?

These statutes, NCGS 47-18, first adopted in 1959, but substantially revised in 1975, 1977, 2003 and 2005, and NCGS 47-20, first adopted in 1953, and substantially revised in 1959, 1965, 1967, 1991, 2000, 2003 and 2005, have identical priority provisions, with §47-18 being for conveyances/options/leases and §47-20 being for deeds of trust/mortgages:

> Unless otherwise stated either on the registered instrument or on a separate instrument duly executed by the party whose priority interest is adversely affected,
>
> (i) instruments registered in the office of the register of deeds shall have the priority based on the order of registration as determined by the time of registration, and
>
> (ii) if instruments are ***registered simultaneously***, then the instrument shall be presumed to have priority as determined by:
>
> (1) The earliest document number set forth on the registered instrument.
>
> (2) The sequential book and page number set forth on the registered instrument if no document number is set forth on the registered instrument.
>
> The presumption created by this subsection is rebuttable.

NCGS §§47-18 and 20 (emphasis added).

These priority statutes have been around now for 15 years, yet each one has only been cited one time. Neither the one case under NCGS §47-18 nor the one case under NCGS §47-20 interprets the priority language in the applicable statute.

C. So what does "registered simultaneously" mean?

The landmark case interpreting the impact of priority in the event of simultaneous recording is Hood v. Landreth, 207 N.C. 621, 178 S.E. 222 (1935). In Hood, the court held that two mortgages recorded "at the same instant of time" had equal priority. The evidence showed both mortgages were recorded on "**July 14, 1928 at 10 o'clock A.M."** Since 1935, Hood has been

cited only one time, in 2007, for the proposition that priority is a question of law. The holding in Hood has been modified by NCGS §§47-18 and -20 for "simultaneous" recordings.

Under NCGS §§47-18 and -20, if the date/time stamps are, in fact, exactly simultaneous (down to the micro-second), then the priority statutes in NCGS §§47-18 and -20 govern by providing priority based on first the document number and then, if no document number, the book/page number. In the author's practice, document numbers (apart from §§47-18 and 47-20) have never had any particular relevance and have never been listed on opinions of title (unlike the book/page numbers).

What if, in Hood, one mortgage was recorded at 10:00 am and the second one was recorded at 10:01 am? Or, with today's time stamps that go beyond "seconds," what if one mortgage had been recorded at 10:00:01 am and the second one was recorded at 10:00:01 am?

If the date/time stamps are not exactly simultaneous, NCGS §§47-18 and -20 do not appear to apply. These statutes *assume* there is agreement that the documents were recorded simultaneously and provide a formula for giving priority in such situations of "simultaneous recording" to prior document number and then prior book/page. If this assumption does not apply, these statutes would not (on their express terms) apply.

Absent a statutory definition of how precise "simultaneously" means, we are left with the cases generally interpreting priority (the traditional race to the courthouse), the exceptions, and the rebuttable presumption. And, of course, counsel arguments about intent, equities, estoppel, and, last, but not least, principles of fundamental fairness).

Extrapolating from the cases above, the courts will need to analyze how close the facts are to "simultaneous recording," considering the relative date and time of recording of the two documents to:

(1) the same day/same hour;
(2) the same day/same hour/same second (when "seconds" shown);
(3) the same day/same hour/same second/same micro-second (when micro-seconds shown);
(4) "at once" registered (in the context of instantaneous seisin);
(5) as fast as a "Borealis race" (aka the speed of "northern lights"); or
(6) "part of the same transaction" (notwithstanding a failure to have the "exact" day/time).

D. And what about the rebuttable presumption?

There is a thorough analysis of the impact (or not) of the rebuttable presumption in North Carolina Real Estate with Forms, Section 21:142 (especially footnote 3). It would appear that in the case of the "intended" simultaneous recording, the presumption can be reinforced in the documents before recordation. In the case of a true "race to the courthouse," the door is wide open on legislative intent given the absence of case law interpreting this language.

E. What is the impact of e-recording on priority and the race to record?

In the context of e-recording, in theory there is no difference. However, the closing attorney has lost some control over "the race to the courthouse" since the documents, once uploaded, get recorded when they do and no sooner. If the documents are rejected for any reason, there is an unexpected delay while the closing attorney figures out the party to whom inquiries can be made about the reason for the rejection.

It is not known whether e-recordings may cause unexpected simultaneous recordings. However, the fact that someone may be in line to record at the courthouse at the same time a document is being uploaded for e-recording, this same situation could historically occur in counties with 2 or more recording lines.

7. ***Rights of First Refusal***

Anderson v. Walker, ____ N.C.App., ____, _____ S.E.2d ____ (2018), is an interesting case that was handed down by the Court of Appeals in July 2018 dealing with rights of first refusal ("ROFR"). The case deals with priority issues of an unrecorded ROFR in favor of a tenant under an unrecorded lease "in a race" against a recorded ROFR given to a third party with notice of the prior unrecorded lease and unrecorded ROFR.

The Court made a distinction between options and "preemptive rights" (such as a ROFR). The Court cited the recordation statute, NCGS 47-18, noting that while an "option" is listed, a ROFR is not.

The Court relied upon a 2011 case, Legacy Vulcan Corp. v. Garren, 222 N.C.App. 445, 731 S.E.2d 223 (2011), for the proposition that a ROFR is enforceable against a subsequent purchaser for value who had "actual or constructive knowledge of the preemptive right." Because the defendants were on notice of the prior unrecorded ROFR, the defendants did not win the race to the courthouse.

For an article by Chris Burti, Vice President and Senior Legal Counsel for Statewide Title, analyzing the Anderson case, see Exhibit C.[9]

[9] Reprinted with permission of Chris Burti

8. ***Railroad issues***

A. What are the key issues for a title researcher?

A property owner or title searcher should inquire into railroad property right-of-way issues any time it is suspected that a property may be burdened by a railway corridor, a rail track line or a former railway corridor. Often it is obvious: there is a visible rail track crossing the land or forming a boundary of the land. Other times it is not so obvious that a railroad may have an interest in a property. Less obvious clues include: a rail track nearby, but not seemingly adjoining the land; language in the legal description referring to a railway corridor or to the centerline of a railroad though no railroad is visible on the land; a trail or greenway on or near the land that once was a railroad track; railroad tracks shown on historic tax maps or aerial photographs, including those maps and photos that may be included in environmental site assessment reports or in tax records.

There are three common methods by which rail companies acquired railway corridors in NC: (1) voluntary grant or purchase, (2) operation of law (charter or statute), and (3) condemnation. In some states, early railroads received railway corridors across public lands due to state or federal land grants. The railroad charters set the maximum boundaries for railway corridors acquired through condemnation or presumption. Most charters in North Carolina set the maximum corridor established in this manner to be 100 feet on each side of the track (for a total of 200 feet), with additional amounts allowed if necessary to accommodate the topography of the land in construction of the track, and in the case of condemnation for the purpose of constructing depots and other buildings, then the maximum amount is two (2) acres for any one lot. Railroad charters and bylaws may be obtained from railroad companies, State Library archives in Raleigh, and law school libraries. Some charters may be obtained from the North Carolina Secretary of State's Office.

B. Can a railroad right-of-way be abandoned?

If the railroad owns a fee interest in the railway corridor, then abandonment of the railway corridor will not result in a loss of title, just as with any owner of a fee interest in land. However, unlike other fee simple owners or other easement owners, railroads are protected by statute from adverse possession claims. See N.C.G.S. §1-44 which provides that railroads may not be presumed to have conveyed any interest in property it owns (in fee, easement or lease) by virtue of the passage of a statute of limitation or by occupation of said property by another.

Easement interests in railway corridors can be abandoned by the railroad in certain very limited circumstances. In the case of an abandoned railway corridor, then N.C.G.S. §1-44.2 establishes a rebuttable presumption of ownership by adjoining property owners as follows: (a) where there are property owners on each side of the railway corridor, then the presumption is that each property owner acquires an interest to the center line; (b) where the railway corridor is adjacent to a property and to a public road, then the presumption is that the adjacent property owner acquires the railway corridor to the nearest edge of the public road; and (c) the side lines of adjacent property owners are also extended to the center line or nearest edge of a public road (as applicable), unless the side lines of adjacent owners intersect before

reaching the railway corridor, in which case the side lines will run together until they intersect with the centerline of the railway corridor or the nearest edge of the public road (as applicable).

Determining whether a railway corridor has been abandoned for the purpose of the termination of the easement is not easy. Mere non-use of a railway corridor, or a portion of a railway corridor, does not automatically give rise to the railroad having "abandoned" the easement in whole or as to the unused portion of the easement. Nor does the dissolution of the chartered railroad that initially held the easement result in the abandonment of the railway corridor. The following is a list of queries to determine whether a railway corridor has been abandoned:

(a) The Surface Transportation Board ("STB") governs all common carrier rail lines, including having the authority to approve discontinuance of service and abandonment of a track. Determine whether the STB has authorized the discontinuance of service and abandonment of the track. See the discussion below regarding the Federal authority to approve the discontinuance of rail services.

(b) Determine whether the North Carolina Department of Transportation has acquired the railway corridor and/or leased the railway corridor for recreational purposes. See the discussion below on the "rails to trails" program.

(c) Assuming the STB has authorized abandonment and the NCDOT has not acquired the railway corridor, then determine whether the seven (7) year statutory limitations period for presumption abandonment has been satisfied. (See N.C.G.S. §1-44.1). The statute requires that the railroad have removed the tracks and not replaced the tracks or otherwise have used the railway corridor for "any railroad use" for a period of seven (7) years after the removal of the tracks.

C. What are the boundary issues with Railroad Corridor?

To determine the boundaries – height, depth, and width – of the railroad corridor, look to the instrument that created the interest for guidance, whether a private grant (deed or easement) between the railroad company and landowner, or state or federal grant, or charter, or statutory grant. Usually the width of the railway corridor is expressly stated or is set by statutory presumption (often 100-feet on each side of the original centerline of the track), and thus creates little controversy. Areas of controversy can arise in the following fact patterns: (a) where the width needs to be larger than the statutory presumption due to the topography of the land, or (b) where the original tracks have been removed and the existing tracts are in a different location. The boundaries of the railway corridor (when established by charter or statutory presumption) are set when the first track line is built, and remain thus even if the rail company should add a track or move the track.

The height and depth of the railway corridor are rarely expressly stated in granting instruments. The height of the railroad corridor is typically not a problem for landowners; and to the extent there is any litigation around the country on the question of height, it is usually related to aesthetic issues, such as views obstructed by utility poles and wires. Questions of subsurface rights have generated much litigation over issues of valuable mineral rights, payment for the right of utility companies to lay underground lines within the railway corridor, and resulting from practical issues, such as need for underground drainage (sometimes the need being caused by the railroad embankment altering the natural drainage pattern of the land) or livestock tunnels to link pastures bisected by the railway corridor.

If a railroad's activities spill beyond the boundaries of the easement, then the railroad can be liable to the servient landowner for trespass and/or damages to the property. Conversely, a servient landowner can be liable to the railroad for trespass and/or damages for its use of the railway corridor, in situations where the rail company is deemed to have exclusive right to use the surface of the easement corridor.

Cases around the country have established the general principal that railroads generally do not have the right to mine minerals from under the railway corridor. However, other uses by the railroad of the subsurface or uses the by servient owner of the subsurface are not so clear. Other questions of subsurface rights arise out of one of two contexts: (a) whether the railroad has the right to grant easements to third parties in the subsurface and the right to receive compensation for such grant, and (b) whether the servient owner has the right to use the subsurface or to grant to a third party the right to use the subsurface. Most states disallow the servient owner to grant subsurface rights to third parties. In a majority of states, "subsurface" means everything in the subsurface, except minerals. North Carolina is in the minority of states that will allow some limited right of the servient owner to grant subsurface rights to third parties. In a minority of states (including possibly North Carolina), "subsurface" means something less than everything below the surface except minerals, and consideration is given to the needs of the railroad for support and the breath of the meaning of the term "railroad purposes".

D. What are special issues with railroad crossings?

A railroad's easement interest is considered exclusive, unlike other easement rights. There is no automatic right of a servient landowner to have a drive or road crossing over a track (even when the railway corridor is an easement interest), unless (a) the servient owner reserved a crossing in the deed conveying the railway corridor to the railroad, or the railroad subsequently granted a crossing easement or license, or (b) the servient owner is able to establish an easement by necessity. The location of any crossing is usually at the discretion of the railroad. The fact that a crossing may have existed over the track for many years will not prevent the railroad from later closing the crossing point. Crossing agreements tend to address the following: (a) construction and maintenance of the crossing, (b) required insurance coverage, (c) whether it is a license or an easement and any compensation to be paid to the railroad company for the right to have a crossing, (d) requirements for barricades, gates and signals, and (e) operational safety covenants.

E. Federal Regulation and "Rails to Trails".

Rail operations are overseen by the Surface Transportation Board ("STB") (previously the Interstate Commerce Commission was the regulatory authority) under the Transportation Act of 1920. The process by which a railroad discontinues services and use of a railway corridor is governed by Federal regulations. A railroad must seek approval of the STB to discontinue service along an established rail route and to abandon a railway corridor for future use by the railroad. The railroad must receive a "certificate of discontinuance" from the STB. Once the process of abandonment of the line is completed in accordance with the Certificate of Discontinuance, then the certificate becomes a "certificate of abandonment." But the discontinuance of services and railway corridor is not the same as "abandonment" of the railway corridor for property law purposes. Whether the easement interest in the railway corridor is abandoned is a matter of State property law. (See N.C.G.S. §1-44.1 and §1-44.2.)

The National Trails System Act of 1968 and 1983, 16 U.S.C.A. 1241 *et seq*. and corresponding state statutes were promulgated to assure the availability of railroad corridors for future use for rail transportation. These statutes provide the basis for the program commonly known as the "Rails to Trails Program" which allow for the temporary conversion of railway corridors to recreational trials. The STB oversees abandoned or inactive corridors permitting them to be used as recreational trails until a need arises for the corridor to be reactivated for railroad uses. In North Carolina, the corresponding statute is N.C.G.S. §136-44.35 *et seq*. (known as the Rail Corridor Preservation Action of 1988), which authorizes the North Carolina Department of Transportation to acquire inactive railroad corridors by purchase, gift, condemnation or other method to preserve the railway corridor for future rail purposes. The NCDOT may lease portions of railway corridors to local governments for recreational trail use so long as certain conditions are satisfied, including that the NCDOT has determined that there will not likely be a need to resume active rail service on the railway corridor for a period of at least ten (10) years.

F. What are the relevant North Carolina statutes for the title researcher?

State legislation governing property rights and issues pertaining specifically to railroads include:

- N.C.G.S. §1-44. No title created by possession (adverse possession) of railway corridor.
- N.C.G.S. §1-44.1. Presumption of abandonment of railway corridor under certain conditions.
- N.C.G.S. §1.44.2. Presumptive ownership of abandoned railroad easements.
- N.C.G.S. §1-51. Statute of Limitations to bring an Action for Damages.
- N.C.G.S. §14-280.1. Trespassing on railroad right-of-way a misdemeanor.
- N.C.G.S. §39-1. Fee presumed, though word "heirs" omitted. [Caution: the presumption is rebuttable, and there is much case law interpreting this statute.]
- N.C.G.S. §40A-1. Eminent Domain and N.C.G.S. §40A-3(a)(4). Railroads included in the parties who may exercise eminent domain.

- N.C.G.S. §62-180. Use of railroads and public highways for utility lines.
- N.C.G.S. §124-11, *et. seq.* State-Owned Railroad Company, including condemnation rights.
- N.C.G.S. §136-44.35 *et seq*. Also known as the Rail Corridor Preservation Act of 1988. This act allows the North Carolina Department of Transportation to acquire inactive or abandoned railway corridors for "future rail use and interim compatible use".
- N.C.G.S. §136-190, *et. seq*. (formerly N.C.G.S. §62-220). Powers of railroad corporations. See also the immediately following sections addressing intersections with highways and regulation of crossings.
- N.C.G.S. §136-220 *et seq*. Virginia North Carolina Interstate High Speed Rail Compact.
- N.C.G.S. §160A-498. The right of cities and counties to acquire property from the NCDOT for purposes of railroad corridor preservation.

9. *Leasehold policy issues*

A. What is a "ground lease"?

Though no rigid standards or definitions exist to distinguish a ground lease from a space lease, typically a ground lease is a lease of an entire tract of land that confers on the tenant control over the land that is functionally the equivalent of ownership for a long period of time. In addition to other indicia of ownership, the ground lease tenant usually has the right to develop the land and sublease it to third parties. By contrast, under a traditional space lease, the landlord retains more control over the land, and the tenant leases only a portion of the land or space within a building for a relatively short period of time. The fundamental differences between a ground lease and a space lease dictate that the lease drafter not simply take a space lease form in toto without carefully considering changing certain provisions. The primary issues that often underlie ground lease drafting are: (a) the tenant's intention to construct improvements on the land, (b) the tenant's lender's need to be able to prevent the forfeiture of the leasehold estate, (c) the landlord's need for receipt of uninterrupted rent and preservation of its fee estate, and (d) whether the landlord will "subordinate" its fee interest in the land to the tenant's lender. The term "subordinate" is a misnomer: it means the landlord will subject the fee estate to the lien of the tenant's lender's deed of trust. Conversely, "unsubordinated fee" means the landlord will not subject the fee estate to the lien of the tenant's lender's deed of trust.

B. What are the recordation and priority issues related to ground leases?

It is a basic tenet of North Carolina law that in order to establish the priority of a lease of more than three years against other liens or encumbrances against the fee estate, the lease or a memorandum of lease must be recorded. See N.C. Gen. Stat. § 47-18. On a practical note, one commentator has suggested that for long-term ground leases, the entire lease should be recorded in order to ensure that its entire text could be found generations after it was initially executed. This suggestion should be balanced against any desire or need to maintain the confidentiality of the terms of the lease.

The North Carolina excise tax on conveyances is not charged on recorded leases. See N.C. Gen. Stat. § 105-228.29. In addition to the excise tax, seven (7) North Carolina counties change a land transfer tax on conveyances, and in two of those counties (Dare and Currituck) the land transfer tax is assessed on leasehold transfers.

Both the ground tenant and the leasehold lender should have title to the fee estate searched to determine that there are no unacceptable encumbrances against the fee estate that have priority over the leasehold estate/ground lease. Priority is of particular importance to the leasehold lender when the leasehold estate is the collateral because the foreclosure of any prior lien on the fee estate would result in the termination of the lease. Therefore, if there should exist a fee deed of trust against the property prior to the lease, the leasehold lender will probably insist that the fee deed of trust be either satisfied or subordinated to the lease or that payment of the fee deed of trust be otherwise assured.

C. What kind of title insurance is available to cover leasehold estates?

In 2001, the American Land Title Association (hereinafter "ALTA") decommissioned the old Leasehold Lender's Policy and instead began providing a Leasehold Form Endorsement and a Leasehold Loan Form Endorsement. These endorsements were also commissioned with the 2006 revisions to the ALTA forms and are endorsements 13-06 (Leasehold-Owner's) and 13.1-06 (Leasehold-Loan), respectively. These endorsements provide coverage in the event that the tenant is deprived of loss of possession unless the tenant is dispossessed pursuant to the terms of the lease or in the event that a use permitted in the lease and the tenant is lawfully prevented from using the premises for such use. For both of these areas of coverage, the issue which causes the eviction or prevents the uses permitted by the lease must arise out of a matter covered by the standard ALTA Title Insurance Policy form. The coverage amount consists of two components, capped at the amount of coverage purchased: (a) the value of the remaining lease term, and (b) the value of any tenant leasehold improvements existing on the date of eviction. The method for valuing the remaining lease term and the tenant leasehold improvements is not prescribed in the endorsement. The leasehold endorsement forms also provide for additional items of cost to be covered by the policy, including the reasonable cost of removing and relocating personal property, rent or damages for use and occupancy of the land prior to the eviction which the insured may be obligated to pay to any person having paramount title to that of the landlord, etc.

See Exhibit E attached for some basic information.

See "The ALTA Commercial Endorsements", Robert S. Bozarth, Senior Staff Underwriting Counsel for Chicago Title and the Fidelity National Title Group of insurers, available on-line at www.northcarolina.ctt.com → Legal → Bulls Bulletins Articles and Forms → Endorsements

10. Common Commercial Endorsements

A. Checklist of common commercial endorsements

The following is a list of the most common commercial endorsements:

Series	Coverage	Owner	Lender
3	Zoning	X	X
8	Environmental	X	X
9	CCR's	X	X
14	Future Advances		X
17	Access	X	X
19	Contiguity	X	X
22	Location	X	X
24	Doing Business		X
25	Same as Survey	X	X
26	Subdivision	X	X
27	Usury		X
28	Encroachments	X	X
34	Identified Risk	X	X

An explanation of these endorsements, along with a detailed list of ALTA endorsements, is included in Exhibit E.

B. Chicago Title BLAWG:

"Title Insurance Endorsements for all Occasions!
Meat and Potatoes for your Holiday Real Estate Enjoyment"

Practicing law is often about having the best resources right at your fingertips! So here's a Hot Tip for your Holiday!

Do you get frustrated when people throw around ALTA endorsement numbers, as if you should remember them *all*?!

Do attorneys and lenders require endorsements you have never heard of and, thus, for which you have no clue of the requirements?

Have you had an unusual transaction – i.e. any one where it is not just a single lot with long existing clear boundaries and direct access to a public road?

If so, did you ponder title matters, such as:

- ? What "access" does the policy cover? Is a particular access road or point important to your client?
- ? How important is it to your client that multiple parcels be contiguous – with each other or with other parcels or easements?
- ? Does zoning matter to your client's intended use of the property?
- ? Is there a mobile or manufactured home on the property and, if so, is it important to your client that *its* title also be insured with the Land?
- ? If you are closing based on an old legal description, but have a modern survey or adjoiners, how important is an assurance to your client that the property they are looking at is actually virtually the same as that in the old description?
- ? Are there any exceptions to title that may impact your client's intended use and enjoyment of the property, such as encroachments, easements, ambiguous boundaries or restrictions?

Have you looked past the title insurance policy Schedules A and B, to review the Covered Risks, the Exclusions and the Conditions – and then wondered if you were getting the coverage your client needs?

Are you just intellectually curious what additional coverages are available and how you can better serve your clients?

Well, Chicago Title has the best and brightest resources (in addition to our professional underwriting staff and attorneys, of course)!

Just go to our website, www.northcarolina.ctt.com and click on Legal → Bulls, Bulletins, Articles & Forms, then choose Endorsements and you will find two great resources, periodically updated for your reference:

- ***Title Insurance Underwriting Review: The ALTA Commercial Endorsements***, by Robert S. Bozarth, Senior Staff Underwriting Counsel

- ***American Land Title Association (ALTA) Endorsements: North Carolina Coverages***

As always, we love to hear from you and welcome your questions and comments!

Bon appetit!

11. Chicago Title BLAWG

Construction loans, Mechanics' Lien Agent and mechanic's lien coverage

Scenario: Your client comes to you excited about her own new construction project of her dreams. No longer will she be just a contractor on other people's projects. All of the due diligence is done (except your title opinion, of course). Her lender is ready to make the construction loan. She is hot to start signing up her architect, graders, brick-layers, custom suppliers, -- everybody she always deals with as subcontractors, but this time on her very own project! SHE'S ALMOST READY TO COMMIT HER DAYS AND NIGHTS TO THE PROJECT — after she gets back from a pre-project 3 week celebratory cruise of the Mediterranean!
What do you advise her to do?

Appoint a lien agent and Post it on the property! For her construction project, she is *already the "owner"* -- the person who ordered for the labor, services or materials. GS 44A-7(6). Under the lien law, she is no longer the "general contractor" contracting with "subs." Instead, everyone she contracts with from here on – the architect, the graders, the bricklayers, the suppliers, *everyone* – is a "contractor" on her project under the lien law. GS 44A-7(1)

Even if she has not closed on purchasing the land yet, once she is past due diligence, she is ready to contract for improvements, which means NOW is the time to appoint the lien agent on LiensNC. So, at closing you can quickly generate the Related Filings Report from LiensNC.

Why not wait? Because …

1. *It's the law – owner must comply.* The appointment and posting are required to be completed by the time of the *first "contracting" for "improvements" – not* just first shovel and *not* just visible improvements. GS 44A-11.1(a)

2. *Lender Protection.* The lender obtains the protection of the lien agent act by assuring the appointment and posting are prior to closing and recording of their deed of trust. GS 44A-11.2(m)

3. *Faster permitting.* When your client goes for permits, she will already have the appointment to provide to the permitting office. GS 87-14(a)(3), GS 160A-417 and GS 153A-357

4. *Fewer signers on subordinations.* At the construction loan closing, the NCLTA Form 7 subordinations will only be needed from contractors, subcontractors and suppliers (a) who have actually filed a Notice to Lien Agent on LiensNC (your Related Filings Report), and (b) whose "*first* furnishing" is within *15 days* prior to closing (rather than *all* providers within last 120 days). This can be critical if any part of the "improvements" are begun and the closing gets delayed.

5. *Fewer signers on waivers.* As she starts selling parcels, NCLTA Form 6 waivers will only be needed from contractors, subcontractors and suppliers who (a) have actually filed a Notice to Lien Agent on LiensNC (your Related Filings Report), and (b) are "last furnishers" – *i.e.* those providing "*first* furnishing" within *15 days* prior to closing of the sale (rather than *everyone* whose *last* furnishing was within the last *120* days, and may have started many months or years before).

So the smartest lawyers will advise the smarter clients to spend a few minutes on LiensNC.com to Appoint the lien agent and Post the Appointment at the site timely.

12. ***Authority documentation***

One of the most significant sources of potential claims losses is lack of verification of authority of those signing documents at your closing – whether seller, buyer, borrower, landlord, tenant, or others. Title companies must rely on the closing attorneys to verify and obtain documentation in compliance with the organizational documents and applicable state law of the parties' resident state and North Carolina (including revised N.C.G.S. 47-18.3).

Issues arise about confidentiality and businesses are not likely to voluntarily produce documents such as their Operating Agreements to counsel for the adverse party. The acceptable standard seems to be to rely upon the information available on the applicable Secretary of State's webpage, together with an entity resolution signed by the appropriate parties authorizing the transaction and designating the approved signatories for execution of the closing documents.

The following sample checklists and tips are attached hereto:

D-1	Limited liability company checklist
D-2	Corporation checklist
D-3	Limited partnership checklist
D-4	General partnership tips

13. *Why Did the Title Company Say That? Planning for Different Parties, States, Rates, Forms and Coverages.* [10]

Planning for the insurance and the coverage a client needs can be challenging without an understanding of (1) the basic title insurance policy structure, (2) distinct coverage concerns of particular parties, especially Owners as compared to Lenders[11], (3) variations in forms, costs and procedures across state lines, (4) the basic structural language, and (5) some illustrative affirmative coverage endorsements (the ALTA 28 series and the ALTA 34-06). Much of the last minute title drama at closings as well as at the time of a claim (when it may be too late) arises from lack of internalizing these basic concepts and how they affect clients. Most title insurance counsel could retire wealthy early in their careers if they received a dollar for every request for "affirmative coverage" from real estate counsel – even very sophisticated and experienced counsel – who do not understand what specific affirmative coverage is appropriate (or even available) for his or her client to address the particular client risks and concerns.

Like all things – whether participating in a sport, negotiating or interpreting a purchase and sale agreement, or drafting a high quality development agreement – many issues (and disagreements) require a sharp focus on the basics. The structure of the ALTA policies defines the Insured's protection (or lack thereof). And only by understanding that structure, can the attorney adequately analyze the endorsements truly needed and whether they are worth the extra premium cost and charges for necessary title or curative work and production of the endorsement.

Hence the need for a primer on the basics, as well as a wealth of resources for the "who, where, what, why and how much" questions that arise constantly.[12]

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[10] This portion of the manuscript was written by Nancy Short Ferguson and was originally published by the American College of Real Estate Attorneys. It is reprinted with permission of Nancy Short Ferguson.

[11] The basic American Land Title Association (ALTA) Loan Policy (6-17-06) (herein the "Loan Policy" with the "Lender" as the Insured) and ALTA Owner's Policy (6-17-06) (herein the "Owner's Policy" with the "Owner" as the Insured) (herein collectively the "ALTA policies" with defined terms in the policies such as "Land," "Insured," and "Mortgage" capitalized herein) are available on-line at: https://www.alta.org/policy-forms/ for further reference.

[12] References regarding state laws and practice variations:

- Fidelity National Title Group (including Chicago Title Insurance Company) National Title Insurance website, including state process, regulation, forms, rates and legal references, www.ntiweb.com , and chart of Real Estate Laws & Customs, on-line at: http://fntgstudio.com/ctt/ebooks/Real_Estate_Laws_Customs_NCS/
- Stewart Virtual Underwriter, Real Estate Practices by State http://www.vuwriter.com/en/real-estate-practices.html
- First American Title Underwriting Library, https://ul.firstam.com/ (password protected)
- ALTA Title Insurance Regulatory Survey, (American Land Title Association, with varying updates dependent on the state, on-line at https://www.alta.org/title-insurance-regulatory-survey/)

I. Policy Structure, In A Nutshell

A title policy is a contract of indemnity. Condition 8 of the ALTA policies provides: "This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy." It is not an assurance or guarantee or abstract of the actual title; nor is it a report or opinion on the condition of title or any other representation of the status of title. It is a contract between the title insurance company and the Insured regarding indemnity and defense in the event of certain specified types of losses, if incurred.

In a nutshell: Schedule A and the Covered Risks "giveth." Exceptions, Exclusions and Conditions may "taketh away. Then Endorsements "give back!"

Schedule A provides protection but only limited to:

- The identified Insured. For an Owner's Policy, this is not a theoretical or "to be determined" draft choice to be named later. Of course, a loan policy Insured typically includes the generic "their successors or assigns" as holder of the obligation secured at the time policy coverages are triggered.
- A specific Amount of Policy, often governed (or limited) by the state's statute or regulations. Some examples: A state may require determination of appraised value versus purchase price versus loan amount. An ALTA 12 aggregation endorsement may be needed, but only for limited states authorizing its use. And a larger transaction may trigger the need for reinsurance or coinsurance because of statutory single risk levels which vary widely from state to state. So the entire coverage may need to be approved by multiple insurers and additional premiums will apply.
- The real estate title interest(s) insured, i.e. fee simple or leasehold or easement.
- The specified Land, and only that Land defined. This would not extend to appurtenances or other related parcels that are not specifically included in the defined Land and addressed in the policy negotiations. Costs for additional searches and documentation, such as titles to critical

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References regarding Title Insurance generally, and endorsements:

- Bozarth, Robert S., "The ALTA Commercial Endorsements" (updated regularly, on-line at https://www.northcarolina.ctt.com/articles.asp)
- Gosdin, James L., Title Insurance: A Comprehensive Overview, Fourth Edition (ABA, 2015)
- Palomar, Joyce D., Title Insurance Law, (Thomson-Reuters, updated 2017-2018 Edition)
- Ellis, Robert E., Title Insurance Law Handbook (Lawtext Publishing Company, 2000)
- Nielsen, J. Bushnell, Title and Escrow Claims Guide (American Land Title Association, 2017)
- Chicago Title Insurance Company, "American Land Title Association (ALTA) Endorsements: North Carolina Coverages Adopted as of 8-1-2017" on-line at: https://www.northcarolina.ctt.com/articles.asp

appurtenant easements, re-negotiation of overburdened easements, or leasehold estoppels, may be required.

Covered Risks are the core of the coverages, and they differ substantially between the Owner's Policy and the Loan Policy. Covered Risks (generally) for the Owner's Policy and Loan Policy are compared below. For both policies, of course, these Covered Risks are subject to the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions.

Exclusions

The Exclusions from Coverage for both Loan Policy and Owner's Policy are similar and include:

- Governmental regulations, police powers (such as zoning, subdivision ordinances)
- Eminent domain
- Matters created, suffered, assumed or agreed by Insured
- Matters known to Insured but not disclosed to the Insurer
- Post-Policy matters
- Matters causing no loss or damage to the Insured, or for which no loss or damage would have been sustained had they paid value for the Title
- Creditors' rights issues with regard to the specific transaction insured (other than the Covered Risk, above)
- Taxes and assessments attaching between Date of Policy and recording, if later

However, the Loan Policy adds exclusions for failure to comply with a state's doing business laws or violation of usury or consumer protection laws.

Conditions

The Conditions, -- most especially Condition #8. Determination and Extent of Liability, Condition #9, Limitation of Liability, Condition #10(b) Reduction or Termination of Liability (voluntary satisfaction or release of the Mortgage), and Condition #12, Rights of Recovery Upon Payment or Settlement (*i.e.* subrogation as against owner-borrowers and non-obligors) -- are significantly different given the different interests of an Owner versus a Lender. For a Lender, the Amount of Coverage decreases as payments are made that reduce the outstanding principal balance of the loan. In fact, if a Lender is paid in full or recovers all losses through foreclosure or sale of the property to a third party with no further liability on warranties, then the Loan Policy is terminated. For a Lender, an actual loss is not triggered until the borrower or owner has defaulted on its obligations, the Lender has completed foreclosure on all security interests and guarantees and the total proceeds still do not cover the obligations and expenses to the Lender. The title insurer is subrogated to remedies of the Lender against third parties, including the owner-borrower, guarantors, and indemnitors. In contrast, an Owner's Amount of Coverage does not decrease and one would assume that if the value of the property increases due to appreciation or improvements,

the determination of loss in the event of a title claim would be higher as well. And an Owner's loss may be triggered immediately. If a loss is not sufficiently severe that the Owner is willing to default on the loan, the Lender will not suffer a loss at all; this is the case for most title insurance claims. However, if the owner is not adequately protected by careful negotiation of the policy and endorsements, obtaining a survey and quality title examination, it may suffer a loss notwithstanding the Lender's neutral position. The relevant effects of these policy differences are illustrated by the examples below.

Schedule B -- Exceptions
These should be specific defects, liens or encumbrances that are identified in the title examination, on the survey, and through due diligence with regard to title as of the Date of Policy.

Endorsements
An Endorsement is the mechanism by which the overall policy provisions "give back" some additional specific types of coverage, rather than simply relying on the Covered Risks above. Traditionally, affirmative coverage provisions have been added on some exceptions. But the more modern trend is toward providing the affirmative coverage by means of endorsements to the particular Owner's Policy or Loan Policy, whether by ALTA-adopted (such as the ALTA Endorsement Form 28 series and the ALTA Endorsement Form 34-06 discussed hereafter) or customized forms.

It is incumbent on attorneys to discuss issues with their clients, to flesh out any issues known to them (whether or not of record) and to discuss these with surveyors and title insurers. Often utility lines affecting the property, or old railroad rights-of-way, predate any title examination. Other parties may be using roadways or exercising water rights crossing the property – matters which cannot be determined of record. But these can substantially affect the client's ability to use the property for its intended purpose.

II. Comparing The Owner's Policy And The Loan Policy

Lenders and Owners have separate policies and more importantly, very different Covered Risks and determinations of loss. It cannot be reiterated enough that the risks and, therefore, the coverages available differ markedly between the Owner's Policy and the Loan Policy. The policies may address similar title issues, such as vesting, easements, covenants and other liens or encumbrances. But the risks of loss to the respective parties are very different. Thus, so is the analysis of the risks for the title insurer on affirmative coverages and endorsements.

The following table sets forth the differences in the Covered Risks in the Owner's and Loan Policies.

Owner's Policy	Loan Policy
1. Title being vested other than as stated in Schedule A.	1. Title being vested other than as stated in Schedule A.

2. Defects, liens or encumbrance on the Title.	2. Defects, liens or encumbrance on the Title.
3. Unmarketable Title.	3. Unmarketable Title.
4. No right of access to and from the Land.	4. No right of access to and from the Land.
5. Law, ordinance, permit, or governmental regulation (including those relating to building and zoning)	5. Law, ordinance, permit, or governmental regulation (including those relating to building and zoning)
6. Governmental police power	6. Governmental police power
7. Eminent domain	7. Eminent domain
8. Any taking by a governmental body	8. Any taking by a governmental body
[NO SPECIFIC OWNER'S POLICY EQUIVALENT, OTHER THAN GENERAL COVERED RISK #2 ABOVE.]	9. The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title because of defect in or improper execution, delivery or recording.
[NO OWNER'S POLICY EQUIVALENT.]	10. The lack of priority of the lien of the Insured Mortgage upon the Title over any other lien or encumbrance.
[NO OWNER'S POLICY EQUIVALENT.]	11. The lack of priority of the lien of the Insured Mortgage upon the Title regarding construction advances and assessments for street improvements.
[NO OWNER'S POLICY EQUIVALENT.]	12. The invalidity or unenforceability of any assignment of the Insured Mortgage in Schedule A.
9. Title being vested other than as stated in Schedule A or being defective as a fraudulent or preferential transfer, or preference because of failure to record timely and effectively.	13. The invalidity, unenforceability, lack of priority, or avoidance of the lien of the Insured Mortgage upon the Title as a fraudulent or preferential transfer, or preference because of failure to record timely and effectively.
10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 between Date of Policy and recording.	14. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 13 between Date of Policy and recording.

The primer and the Covered Risks above are illustrated by several examples of the issues that constantly arise in contract negotiations because of misunderstandings of state law nuances.

EXAMPLE 1: In many states, title insurers in residential and small commercial transactions were providing coverage to lenders (only) without obtaining a new survey (or in some cases, without any survey) for matters which might be shown on a survey – typically items such as minor fence encroachments, old setback violations or the possibility of encroachments on platted easements

along property lines. Why? Because most properties do not suffer demands for enforced removal of old encroachments or violations and most mortgages used to be paid off; so the Lender suffered no loss even if there was a technical violation. Then came the 2008 economic crisis with rampant foreclosures. Lenders often became involved in the realities of property ownership. Added to this, technological developments in GIS and aerial views of properties and improvements made identification of possible problems more readily available, even without a survey.

EXAMPLE 2: Access to Land is over a driveway crossing property of a related entity of the owner-borrower. If title to that driveway is not adequately documented, the Owner may suffer no loss since its related entity is unlikely to cut off access. But if the Owner goes into default and the lender tries to foreclose its Insured Mortgage, the related entity will almost assuredly try to prevent that access. And if at the initial closing of the Mortgage, the parties did not obtain appropriate due diligence, title examination, and documentation, and include the specific preferred access in the definition of "Land" and in an ALTA Endorsement Form 17.1-06 to the Loan Policy, that access to a key public right-of-way may not be insured. Thus, the insurer's obligation may only be to obtain *some* access under the general insuring provisions and *not the preferred* access.

EXAMPLE 3: Owner is acquiring multiple properties, insuring the purchase price of each, then obtaining a Mortgage for 75%. The value to the Owner of the compilation may be significantly affected by a defect in a single parcel, especially one central to the property or over which the anticipated access has been planned. But as the Owner pays down the Mortgage, the Loan Policy coverage risk decreases. The property may ultimately be sufficient to generate more than enough to pay the *balance* of the Mortgage. And the Owner may be unwilling to allow a default in and foreclosure of the Mortgage solely because of the particular title issue. Thus, the Lender suffers no loss. However, the Owner could suffer a significant loss from its original planned development. And if the Owner failed to obtain Survey (ALTA Endorsement Form 25-06) and Contiguity (ALTA Endorsement Form 19-06, 19.1-06 or 19.2-06) coverages, the loss from missing parcels or gaps or gores may not be covered at all.

III. Be Aware Of Local Laws! Like Snowflakes, No Two Are Alike!

Title insurance is primarily a state regulated industry, with extremely significant variances across state lines. These differences can create much confusion and unnecessary drama if attorneys and their clients are not aware of the differences and plan ahead to address them. Understanding and planning for these differences can render the attorney a hero in facilitating a smooth and well-communicated transaction!

Costs, premiums, timing, sources of information, local practices, local law provisions, availability (or not) of coverages and endorsements, underwriting requirements and even the regulators (Department of Insurance, Department of Financial Institutions, or others) differ substantially. Some key distinctions among states that can lead to misunderstandings, delays in closing and unnecessary expense are briefly highlighted below, followed by the key resources that real estate attorneys may want to have handy for reference on title insurance issues.

- Premium rates are required to be at least filed and approved by the regulator in most states. In a few states[13], they are actually promulgated by the regulator. Some have rating bureaus or statistical organizations who file for their member underwriter companies. But ultimately, most have very limited flexibility on individual transactions. The rates may include some of the services required for issuance, other than just the premium. They vary widely. Most title insurance companies have on-line rate calculators and information about local requirements to assist the attorney with planning.
- Title examinations may be by outside attorneys or services (especially east coast states)[14], through title plants owned by one or more title companies (in many western states), through independent abstractors or otherwise. Some states include this cost in the premium; in others, this is a separate charge. The time required, cost and detail of documentation varies.
- Practice of Law statutes may significantly affect what services may or even must be provided by attorneys licensed in the state in which the Land is located, especially in east coast states.
- Commitment, closing protection letter, policy and endorsement forms must be filed with the regulator in most states, and are promulgated in cooperation with the regulator in many. Although most states allow for the ALTA forms, some states have their own mandatory promulgated forms.[15] Variations from these filed or promulgated forms may simply not be available; even if available, many states impose additional premiums or charges for variations to the approved forms.
- Local practice variations should be considered from the very beginning, *i.e*. at the time of contract. Tax prorations, the typical party paying for various charges and fees, transfer taxes, mortgage taxes, pre-closing recording and certification requirements, among other items should be considered early in the process to assure they do not delay or impede closing or cause avoidable dissension between the parties.
- For larger transactions, state limits on single risk levels[16] for title insurance companies may affect the choice of title insurer as well as the timing (avoiding delays) and cost of the transaction. Similar considerations may affect agencies and even individual underwriters providing local services on the transaction. The calculations vary widely by state.[17]

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[13] Such as Florida, Texas and New Mexico

[14] See **Goldfarb v.** Virginia State Bar, 421 U.S. 773 (1975), applying the Sherman Anti-Trust Act to attorneys' fees, prohibiting the former practice of attorneys referring to a closing minimum fee schedule for title examination and certification.

[15] Such as Florida, California and Texas

[16] The amount of coverage for which an individual title insurance company may provide coverage on a single transaction (including all aggregated policies) without being required by state law to seek reinsurance or coinsurance from other companies.

[17] For example, the single risk level in North Carolina is approx. 40% of that in most states, and the single risk level in Illinois, Kansas, Michigan, Mississippi, New Mexico, Oregon, Rhode Island and Utah is roughly 50% of that in the majority of states.

IV. Parsing Policies And Endorsements: Why Do They Say That?

Why are those endorsement written that way? Insurance vs. assurance – The *Alliance Mortgage* case

As noted previously, a title policy is not an assurance of the status of title or the property; it is only an indemnity over the Covered Risks, as expanded by Endorsements, but subject to the Exceptions, Exclusions from Coverage and Conditions. It does not insure what *is*. It insures against loss or damage, within the parameters of the policy terms, if there is a *title* loss to the named Insured from a Covered Risk.

This basic concept was (rather painfully) illustrated by the 1995 case of *Alliance Mortgage Company v. Rothwell,*[18] in which the policy contained a specific recital:

> "The Company assures the insured that at the date of this policy there is located on said land 4-unit Residence known as 447 Haight Street, # 1, 2, 3, 4, San Francisco, California 94117. The Company hereby insures the insured against loss which said Insured shall sustain in the event that the assurance herein shall prove to be incorrect."

The Court of Appeal, First District Division 2, in California held that this endorsement "furnishes assurance that the improvements are lawfully constituted as described." And, thus, it "facially provide[s] such assurance and induce[s] reliance." The court allowed imposition of fraud and other non-title related liabilities on the insurer whose employees were aware the assurance was untrue, far in excess of the policy coverages themselves.

Thus, modern endorsements provide affirmative coverage by more indemnity-focused language. They should *not* be structured as an assurance of a fact or condition or the correctness of either. Rather the endorsements are structured as, for example, insuring "against loss or damage incurred solely as a result of" stated risks. The initial most visible example was the ALTA Endorsement Form 3-06 (Zoning – Unimproved Land) which, rather than providing what the zoning classification *is*, insures against loss or damage in the event the Land is *not* classified as being in the specified Zone allowing an identified Permitted Use. Similarly, the ALTA Endorsement Form 9 (Restrictions, Encroachments Minerals – Loan Policy), rather than providing assurance that there are *no* violations or encroachments, instead provides against particular types of loss or damage sustained by reason of certain types of violations or encroachments (if any).

[18] 34 Cal.Rptr.2d 700 (Cal. App. 1994), *aff'd (on other grounds),* 10 Cal. 4th 1226, 44 Cal. Rptr. 2d 352 (1995)

Some other examples:

- The Company insures against loss or damage incurred by Insured solely as a result of *.
- The Company insures against loss or damage incurred by Insured as a result of entry of a final decree by a court of competent jurisdiction ruling that the conveyance insured is void or voidable or subject to a forfeiture or reversion of title solely as a result of *.
- The Company insures against loss or damage incurred by Insured as a result of invalidity, unenforceability, or loss of priority of the Insured Mortgage solely as a result of *.
- The Company insures against loss or damage incurred by Insured as a result of an entry of a final decree by a court of competent jurisdiction ruling that the Insured Mortgage lacks priority, is unenforceable, or is invalid solely as a result of *.

The desire for a consistent structure on a variety of affirmative coverage issues led to development of the ALTA Endorsement Form 28 series regarding easements and encroachments and the ALTA Endorsement Form 34 for Identified Risks, discussed in more detail below.

The art of being specific – Private rights and the *Nationwide* case

A situation illustrating the interplay among Exceptions, Endorsements, Owner's Policy compared to Loan Policy coverage, and appropriate requirements and assurances is that of the private right, whether an option, a right of first refusal or a right of prior approval of a future purchaser or occupant. If Declarations are found in the examination of title, many insurers default to a very broad exception, unless and until they can review the documents and be assured of what is (or is not) contained therein. Then appropriate Requirements, Exceptions and Endorsements will be determined based on that review. For drafting purposes, the landmark case for the title industry was *Nationwide Life Insurance Company v. Commonwealth Land Title Insurance Company.*[19] In that 2012 case, title to the outparcel in a large retail shopping mall was conveyed subject to a Declaration of Restrictions and the Master Declaration which contained an option to purchase and right of prior approval. On later sale to a technical school, the Seller's consent was not obtained. In Nationwide's policy, the Schedule B exception to the Declarations failed to *specifically* mention the option and right of prior approval contained therein. But their loan policy did include an ALTA Endorsement Form 9 (as it existed at that time), which stated, in relevant part:

> The Company [Commonwealth] insures the owner of the indebtedness secured by the insured mortgage [Nationwide] against loss or damage sustained by reason of:
>
> 1. The existence at Date of Policy of any of the following:
>
> . . .
>
> (b) Unless expressly excepted in Schedule B,
>
> . . .
>
> (2) Any instrument referred to in Schedule B as containing covenants, conditions or restrictions on the land which, in addition, (i) establishes an easement on the land; (ii) provides a lien for

[19] 579 F.3d 304 (3d Cir. 2009), aff'd. 687 F.3d 620 (3d Cir. 2012)

> liquidated damages; (iii) provides for a private charge or assessment; (iv) provides for an option to purchase, a right of first refusal or the prior approval of a future purchaser or occupant

The Seller objected to the sale, which it deemed incompatible with its ongoing retail operation. Nationwide (the Insured) filed its claim, but Commonwealth defended on the basis of the Schedule B exception for the Declarations instrument itself. The U.S. Court of Appeals held that "Commonwealth bore the burden of detecting the restrictions stated in the Declaration, and had to list those restrictions explicitly [and not just the Declaration itself] as exceptions to avoid covering the loss from them." *Nationwide Life Ins. Co. v. Commonwealth Land Title Ins. Co.*.[20] In addition, on remand, the Third Circuit Court of Appeals held that:

> "[T]he ALTA 9 Endorsement provides coverage to losses arising from entire instruments that fit within its plain language, not just the ¶ 1(b)(2) restrictions within those instruments that have not been expressly excepted. If ¶ 1(b)(2) was not intended to cover losses arising due to entire instruments, then the phrase "any instrument" would have been omitted, as it was in [the other provisions] of the same ALTA 9 Endorsement."

As a result, the ALTA 9 series of endorsement was substantially revised, segregating the covenants, conditions and restrictions protections from the private rights from the easement and encroachment coverages, creating the new versions now used easement and encroachment coverage issues will be discussed below in the context of the ALTA 28 series of endorsements and the ALTA Endorsement 34-06.

Thus, the default exceptions for covenants, conditions, restrictions or other types of declarations are now often drafted much more broadly, such as "covenants, conditions, restrictions, options, rights of first refusal, . . ." The attorney may request that the exception be pared down as appropriate on review of the particular document(s). However, a final recorded waiver may be required. More importantly, if only a limited waiver is obtained and recorded for the particular transaction and subordination to the particular Insured Mortgage is recorded, then an exception must be taken addressing the actual documentation and status of title. Both the Owner and the Lender may seek separate affirmative assurances or endorsements in their respective policies regarding their distinctly different rights regarding priority of the particular transaction, as well as effect on a future transaction. For example: lender and its title insurer would need to verify that any subordination included not just the particular loan transaction, but any future foreclosure, and possibly any transaction thereafter (effectively, a final waiver). On the other hand, the Owner might typically only be able to obtain a limited waiver for the particular transaction with the private right holder retaining the right to enforce the private right on the next transaction – thus necessitating an ongoing exception in Schedule B of the Owner's Policy. The Exceptions and Endorsements in the Owner's Policy would be quite different from those in the Loan Policy.

[20] 579 F.3d 304, 319 (3d Cir.2009).

V. Endorsements For Affirmative Coverage: The ALTA Endorsement 28 Series And ALTA Endorsement 34-06

Covered Risk 2(c) of the ALTA Policies provides coverage against loss or damage to the Insured due to (among other things):

> "(c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land."

However, this coverage is subject to Exceptions in Schedule B, including those identifying specific recorded instruments as well as any survey exception – whether specific to a current survey showing encroachments or a general exception to any matters of survey (thereby overriding Covered Risk 2(c) entirely).

Accordingly, if a survey identifies all improvements and locates all easements and exceptions, and if there are no encroachments, then there should be no need for an endorsement. Alas, somehow life is never quite that simple! More often than not, either the survey is simply not that detailed *or* surveyor notes indicate easements (excepted in Schedule B of the commitment) which are old, "non-plottable", "blanket" easements *or* the survey actually reflects that encroachments do exist *or* other circumstances exist for which the Lender and Owner desire some type of title insurance affirmative coverage.

The ALTA 9 series of Loan Policy endorsements[21] provide Lender coverage *only* for encroachments with regard to "improvement(s), including any lawn, shrubbery, or trees affixed to either the Land or adjoining land" for:

- *Loss or damage* due to encroachment of the Improvement on the Land *onto an easement or onto adjoining land*, or of an *Improvement on adjoining land* onto the Land, *if no exception for the encroachment is in Schedule B*,
- Final court order or judgment requiring *enforced removal of an encroachment onto adjoining land* identified in Schedule B, or

[21] The ALTA Endorsement 9.0-06 (Restrictions, Encroachments, Minerals – Loan Policy) Revised 04-02-12 Technical Correction 08-01-16, the ALTA Endorsement 9.10-06 (Restrictions, Encroachments, Minerals – Current Violations – Loan Policy) Adopted 04-02-13 Technical Correction 08-01-16), and, for a specific Site Plan for Future Improvements (*i.e.* "building, structure, road, walkway, driveway, curb, lawn, shrubbery or trees to be constructed on or affixed to the Land"), the ALTA Endorsement 9.7-06 (Restrictions, Encroachments, Minerals – Land Under Development – Loan Policy) Adopted 04-02-12 Technical Correction 08-01-16.

- *Damage* to an Improvement located on the Land encroaching *onto an easement* from "the *exercise of the right to maintain the easement* for the purpose for which it was granted or reserved."

[emphasis added]

Thus the ALTA 9 series of endorsements provide limited coverage to a Lender (and no coverage to an Owner) against known encroachments for which an exception is (and should be) taken in Schedule B. That additional coverage for Lenders and any coverage for Owners is provided through the ALTA 28 series of endorsements, an ALTA 34 Identified Risk endorsement (discussed further below) or customized endorsements negotiated with the title insurer.

ALTA 28 Series Endorsements – Easements And Encroachments

The ALTA 28 series of endorsements are designed to address the most commonly found encroachments, often including so-called "blanket" or "non-plottable" easements. The endorsements are each specifically crafted to address:

- The particular "Improvements" – whether an existing building, future improvements on a specific site plan, or other specifically described improvements. (Compare the ALTA 9 series definition of "Improvements")
- The possible encroachment or affected interest – whether onto an easement, or onto an adjoining property, or *from* an adjoining property onto the Land. (Note that the ALTA 28-06 Endorsement is not limited to encroachments and does not even mention that term, though that would be the primary trigger for its use.)
- The type of coverage – which may be for loss or damage incurred by the Insured (if the encroachment is not excepted in Schedule B), for enforced removal, damage or even relocation, whether by a court or the easement holder or the adjoiner onto whose land the improvement encroaches
- The identified Schedule B exceptions for which the endorsement does (or does not) extend coverage

Thus, in contrast to the Covered Risk 2(c) and the ALTA 9 Loan Policy endorsements, the primary coverage provision of the ALTA 28.1-06, mirrored in the related ALTA 28.2-06 (for Described Improvements) and ALTA 28.3-06 (for Land Under Development - Site Plan), are found in paragraph 3 (*emphasis added)*:

3. The Company insures against *loss or damage* sustained by the Insured by reason of:
   a. An encroachment of any Improvement located on the Land *onto adjoining land* or onto that portion of the Land subject to an *easement, unless an exception in Schedule B of the policy identifies the encroachment*;
   b. An encroachment of any Improvement located *on adjoining land* onto the Land at Date of Policy, *unless an exception in Schedule B of the policy identifies the encroachment*;
   c. *Enforced removal* of any Improvement located on the Land as a result of an encroachment by the Improvement onto any portion of the Land subject to any *easement,* in the event

that the *owners of the easement shall, for the purpose of exercising the right of use or maintenance of the easement, compel removal or relocation* of the encroaching Improvement; or

d. *Enforced removal of any Improvement* located on the Land that *encroaches onto adjoining land*.

The chart below provides a handy reference:

ALTA Endorsement	**If the "Improvement" for which coverage is at issue involves:**	**And the Encroachment is onto:**	**Coverages**
28	Existing Building on the Land	An easement (without mentioning if there is any "encroachment" at all)	Damage or enforced removal or alteration by easement holder for exercise of rights to use or maintain the easement
28.1	Existing Building on the Land	An easement	*Loss or Damage if no exception in Sch. B (#3.a.)* Enforced removal/relocation *by easement holder* for exercise of rights to use or maintain the easement (#3.c.)
28.1	Existing Building on the Land	Adjoining land	Enforced removal *by adjoiner (#3.d.)* *Loss or Damage if no exception in Sch. B (#3.a.)*
28.1	Existing Building on adjoining land	The Land	*Loss or Damage if no exception in Sch. B (#3.b.)*

28.2	Described Improvement* on the Land	An easement	*Loss or Damage if no exception in Sch. B (#3.a.)* Enforced removal/relocation *by easement holder* for exercise of rights to use or maintain the easement (#3.c.)
28.2	Described Improvement* on the Land	Adjoining land	*Loss or Damage if no exception in Sch. B (#3.a.)*

			Enforced removal *by adjoiner* (#3.d.)
28.2	Described Improvement* on adjoining land	The Land	*Loss or Damage if no exception in Sch. B (#3.b.)*
28.3	Existing or Future Building, Structure or Paved Area per specific Plans on the Land	Adjoining land	*Loss or Damage if no exception in Sch. B (#3.(a))* Enforced removal/relocation *by adjoiner (#3.(d))*
28.3	Existing or Future Building, Structure or Paved Area per specific Plans on the Land	An easement	*Loss or Damage if no exception in Sch. B (#3.(a))* Enforced removal/relocation *by easement holder* for exercise of rights to use or maintain the easement (#3.(c))
28.3	Existing Building, Structure or Paved Area on adjoining land	The Land	*Loss or Damage if no exception in Sch. B (#3.(b))*

* "Described Improvement" is as determined by the attorney and title insurer and stated in the endorsement

The foregoing endorsements are very precise in their definitions. The attorney and title insurer must identify the particular encroachment in each case and, then, which endorsement in the ALTA 28 series is appropriate and sufficient, if any. Underwriting these endorsements requires a common sense analysis, as much factual as legal. The attorney should discuss with the title insurance underwriter the type of project, the types of Improvements, whether Owner or Lender coverage is being requested, the risk, the anticipated coverage amount (including contemplated or future improvements) and the context. For example, with regard to easements: can the easement be located or is it a so-called "blanket" easement? Does an Improvement encroach upon the easement or is the Improvement solely serviced by the easement? How old is the easement? Does the easement only serve this Land or does it cross the Land to serve other land? For encroachments generally: how long has the encroachment at issue existed – whether onto an easement or adjacent land? Especially with encroachments regarding adjacent land (rather than easements), would adverse possession or prescriptive easement rights potentially be a risk? Does either title reflect any authority granted to retain the encroachment, such as an encroachment agreement, variance or easement for the encroachment? Is joint usage of the encroachment an issue? Are the parties related?

Most critically, it is important to bear in mind the key differences between Owner Policy and Loan Policy coverages discussed in detail above. An ALTA 28 series endorsement may be totally

justifiable for a Lender in many cases in which it would be totally *inappropriate* for an Owner's Policy (or only appropriate for certain limited Improvements), given the risks involved.

Accordingly, it is feasible that different endorsements might cover different encroachments on a given policy. One building may encroach onto an easement, while another building may cross boundary lines, or another important improvement which is not a building may be at issue. The ALTA 28.1-06, ALTA 28.2-06 and ALTA 28.3-06 endorsements allow for carving out the Exceptions not applicable to each particular endorsement (but possibly more appropriately covered by others), whereas the ALTA 28-06 requires identification of the particular Exception being addressed.

Back to Basics: remember that commitment Exception numbering changes (because of "gap" exception) when policies are issued. Therefore, our recommended underwriting is to add a parenthetical at the end of each exception for which an ALTA 28 series endorsement will be issued, *for example*: "Easement(s) to Carolina Power & Light Company recorded in Book 508, page 64. (See ALTA 28-06 Endorsement)"

ALTA Endorsement 34-06 (Identified Risk Coverage) Adopted 08-01-11

The ALTA Endorsement 34-06 is a "go to" form for many of the myriad of "affirmative coverage" requests that do not fall within one of the other ALTA endorsement form coverages. Typically, these are matters that cannot be cleared without significant expense or delay, yet appear to pose little risk of actual loss. This Endorsement provides the appropriate affirmative title insurance language (per the Alliance case above). It requires articulation of the actual "Identified Risk" to be addressed. This would not be the entire Exception in Schedule B to which it refers, but the particular use or improvement or negotiated risk that would be anticipated to be asserted as a violation or impairment triggering the potential loss – with this specific issue negotiated by discussion between the title insurer and the attorney. The ALTA Endorsement 34-06 addresses the coverage provided – enforcement, marketability and defense. The endorsement does not insure that the title issue does not exist; it only offers certain defined coverage regarding the issue and thus protects only insurable title, not marketable title, while leaving the title insurer with the options in the event of a claim of either continuing to provide the coverage or clearing the title of the issue.

The specific provisions of the ALTA Endorsement 34-06 are as follows:

5. As used in this endorsement "Identified Risk" means: [*insert description of the title defect, restriction encumbrance or other matter*] described in Exception _____ of Schedule B.
6. The Company insures against loss or damage sustained by the Insured by reason of:
   c. A final order or decree enforcing the Identified Risk in favor of an adverse party; or

d. The release of a prospective purchaser or lessee of the Title or lender on the Title from the obligation to purchase, lease, or lend as a result of the Identified Risk, but only if

iii. there is a contractual condition requiring the delivery of marketable title, and

iv. neither the Company nor any other title insurance company is willing to insure over the Identified Risk with the same conditions as in this endorsement.

7. The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of the Title by reason of the Identified Risk insured against by Paragraph 2 of this endorsement, but only to the extent provided in the Conditions.

8. This endorsement does not obligate the Company to establish the Title free of the Identified Risk or to remove the Identified Risk, but if the Company does establish the Title free of the Identified Risk or removes it, Section 9(a) of the Conditions applies.

Some examples of recent requests for ALTA 34-06 coverage:

- Damage, enforced removal, alteration, OR relocation of specific improvements (not addressed by the ALTA 9 or ALTA 28 series of endorsements)
- Attempted enforcement of a particular provision of a covenant, condition or restriction, such as a setback or a specific use or type of improvement, or protection based on a waiver from a limited set of parties
- Attempted enforcement of a deed of trust or mortgage paid but not expired and not canceled of record
- Attempted enforcement of a recorded lease for which the tenant has vacated the premises and satisfactory assurances with respect thereto are provided to the title insurer, but the term of the lease has not expired and a recorded termination is not attainable
- Adverse claim by holder of a particular missing interest, such as unknown heirs, especially if no guardian ad litem was appointed, in a foreclosure, partition or other proceeding.
- Loss or damage due to a specific technical violation in a foreclosure or other proceeding

VI. Conclusion

Counsel in a transaction are in a position to know far more about the transaction, the parties and the potential title risks than the individual underwriter. Communication is key in determining what additional coverages may be needed, for which party and in which state. In dealing with properties in different states than the attorney's "home ground", one should never make the assumption that things will be handled just the same since that is almost inevitably not the case. The earlier the attorney and title insurer can discuss the overall transaction, the better informed and prepared everyone will be. With the myriad of variables, the title insurer can be your best friend in at least trying to minimize drama on title coverage issues!

EXHIBIT A

Disclosure regarding [insert law firm]'s practices concerning
on-line title searches and e-recording

Traditionally, title searches were conducted in person at the applicable offices where public records are located, including the offices of the Register of Deeds, the Clerk of Superior Court (judgments and pending civil actions if applicable), Special Proceedings (foreclosures, incompetency and guardianships, etc.), Tax Department, and applicable City services (such as water liens if applicable). Much of this information is now available on line. For example, many Registers of Deeds provide on-line access to all of the same deeds, deeds of trust, easements, etc. that are available at the office of the Register of Deeds. Likewise, judgments may now be checked by an online database provided by the Administrative Office of the Courts. These services provide comparable data but may not be considered the "official" version. In an effort to reduce attorney time and to practice law efficiently, we have incorporated on-line searches when available and when we believe the on-line search to be the reasonable equivalent of the public records available in a traditional title search.

Similarly, North Carolina now permits e-recording in counties which have implemented this service. Electronic recording ("e-recording") means that original documents previously recorded by presentation at each applicable Register of Deeds office (in person or by mail) can now be scanned and uploaded for e-recording. The "original" (wet signature) remains at the law firm since the scanned copy (an exact duplicate of the "wet signature" original) is what is uploaded and then recorded. Our firm's practice is to print a copy of the front page of the recorded document to attach to the "wet signature" original, which we then stamp "Original – E-recording" to identify and preserve the "wet signature" original to distribute to the appropriate party (lender, buyer, seller, tenant, etc.).

We have considered the issues regarding on-line title searches and e-recording and it is our opinion that on-line searches and e-recording protect client interests at the same time as lowering client costs.

If you have any questions about our practices, please let us know. If you prefer that title searches be performed only in the traditional manner, that can be arranged. If you prefer that actual originals be recorded by traditional presentation to the Register of Deeds (in person or by mail), that also can be arranged. In the absence of your objection, we will continue to use on-line title searches and e-recording when available.

Acknowledgement by Client:

Individual:	Company:
By:_____ Printed name:_____ Date:_____	Name:_____ By:_____ Printed name:_____ Date:_____

EXHIBIT B

Tacking: sample disclosure forms

[See Exhibits B-1 and B-2]

EXHIBIT B-1
Long-form disclosure

The undersigned purchaser/borrower acknowledges receipt of the attached ethics opinions issued by the North Carolina State Bar concerning the practice of "tacking" onto a pre-existing title insurance policy. The undersigned has had an opportunity to review the opinions and to ask questions regarding them.

The undersigned further acknowledges that _____[law firm] has disclosed the advantages and disadvantages in relying upon a "limited" title search instead of a "full" search. There is no industry definition of what constitutes a "full" search. This law firm generally defines a full search as at least _____years [30 years? 40 years? longer?].

The undersigned acknowledges that advantages to "tacking" onto a pre-existing title insurance policy include:

- the title insurance company will insure the property for a purchaser/borrower for a full search (even though the law firm is only required to perform a "limited" search because of the practice of tacking);
- the title insurance company will give the borrower a discount or reissue rate based upon the amount and age of the prior title insurance policy;
- a limited search will help keep the cost of the title search down since each closing attorney will not have to duplicate a full search.

There are also certain disadvantages to tacking, which include:

- the law firm is in possession of a prior title insurance policy (provided by either the seller or the title insurance company) to use for tacking, but the law firm is not in possession of the actual preliminary opinion on title that was submitted to the title insurance company by the prior attorney;
- the law firm is usually not aware which attorney submitted the prior opinion.

Sometimes, the prior title insurance policy that is available for tacking is the mortgagee (lender) policy and not an owner's policy. For example, either the seller did not purchase an owner's title insurance policy or the prior owner's policy is not the most recent policy due to refinances by the seller. That means the most current title insurance policy for tacking is the mortgagee policy. In the case of a mortgagee policy, the State Bar originally recommended that "[s]ince title insurers frequently omit exceptions in mortgagees' policies that would appear in owners' policies, tacking should be limited to tacking onto owners' policies." RPC 99. Since then, the State Bar has withdrawn that language, concluding instead:

> Whether tacking to an owner's policy or a mortgagee's policy, a lawyer's duty is to provide competent representation to his client… and to reasonably consult with the client about the means used to accomplish the client's objectives… The lawyer must consult with the client before using a method of rendering a title opinion that might present additional risk for the client.

Notwithstanding the widespread practice of tacking, there are occasions when the law firm, in its discretion, will choose not to tack. For example, if the prior policy does not show known exceptions, it would be deemed to be unreliable. In such a case, the law firm will perform a full search to protect the client's interests.

2009 FEO 17.

The undersigned consents to the following practice with respect to tacking:

	Approved *(please initial)*	Not approved *(please initial)*
Tacking from an owner's policy in the discretion of the law firm		
Tacking from a mortgagee's (lender's) policy in the discretion of the law firm		

If the undersigned does not approve tacking, the law firm will only rely upon a "full" search to be determined in the discretion of the law firm.

This, the _____ day of _____, 2018.

PURCHASERS/BORROWERS:

_____

_____

Attachments:
RPC 99
2009 FEO 17

EXHIBIT B-2

Short-form disclosure

Sample – Email Advice to Client on choosing to tack to an owner's title policy:

We have received estimates from _____ Title for the cost of the title research that is necessary to procure the title policy. The options are (a) an abbreviated title search, "tacking" onto the existing ___[date]____ owner's policy, for $_____, or (b) a full 40-year search for $_____. The reason for the large cost difference is [_insert any specifically know complexity in the title search, such as multiple chains, prior foreclosures, estates, etc._____]. The search cost is in addition to the title premium which will be calculated once we have the full list of lender-required endorsements. You can elect to either get an abbreviated search or a full search. An abbreviated search has some inherent risks, namely: (a) there might be title issues that are not disclosed on the existing owners policy such that you're not fully informed in the decision to purchase the property, and (b) if there are undisclosed title matters, that are later discovered during your ownership or at the point you go to sell or refinance the property, then you may need to resolve the issue at that future time. It's possible you would have title coverage to aid you in the resolution of the issue (if the issue is one that is insured and there is no other reason for the title company to deny the claim), but the title claim process is often lengthy. Please let us know which way you want us to go with the title search. If you have questions, please call me for further discussion. If you understand the choices presented, please confirm by reply email your choice in the type of title search you wish for us to perform.

****

CAUTION: The foregoing does not address the risks of tacking to a loan title policy.

EXHIBIT C

NEWSLETTER
AND LEGAL MEMORANDUM

The Newsletter and Legal Memorandum - Statewide Title, Inc.

Found At: www.statewidetitle.com
Issue 247
Published: 7/1/2018

***Anderson v. Walker* (17-782) 7/3/18**
Specific Performance of RP Contract v. Unrecorded ROFR
Chris Burti, Vice President and Senior Legal Counsel

In *Schiller v. Scott*, 82 N.C.App. 90 (1986), Judge Whichard ably enunciated the North Carolina "race to the courthouse" doctrine established by our recording acts as "No notice, however full or formal, will supply the want of registration of a deed." He also acknowledged that North Carolina courts have recognized that in cases of; "...estoppel, fraud, or actual or constructive knowledge of pending litigation can defeat the priority of valid lien creditors or purchasers for a valuable consideration." *Anderson* is a rare example of one of those cases where a court chose to apply equitable principles to defeat a want of recording and the Court of Appeals affirmed.

The plaintiff in this action filed his complaint and *notice of lis pendens* in 2014 seeking to exercise his interest in the property pursuant to a notarized Right of First Refusal Agreement, (ROFR) and to have defendants' recorded Memorandum of Option declared null and void. The pleadings allege that the plaintiff entered into a lease agreement with Christopher David Walker ("Walker") for the subject real estate ("the property") in 2010. The plaintiff and Walker executed a new lease in 2013 that included a notarized right of first refusal to the plaintiff. Subsequently, Curtis T, LLC, through its member and manager Tsiros, entered into an option agreement with Walker ("the Option Agreement" or "Memorandum of Option") to purchase the property which was subsequently recorded.

The trial court found that although the plaintiff and Walker had executed a ROFR with respect to the property in 2013, the document was never recorded. The court also found that Walker gave Tsiros a copy of the plaintiff's lease when the defendants executed the Option Agreement with the ROFR Agreement specifically referenced in the lease and the lease had not expired. The trial court also found that the defendants met with the plaintiff in 2014 who informed them that he intended to exercise his ROFR.

While the trial court also found that the plaintiff only gave formal notice of his intent to exercise the ROFR after became aware of the defendants' Option Agreement, the court found that "it would be unjust and inequitable to enforce the Option Agreement procured by [defendants] so as to deprive Plaintiff of" his right of first refusal, and that defendants, inasmuch as they relied upon equity, failed to comport with the maxim, "he who comes into equity must come with clean hands." The trial court determined that the defendants' conduct

in securing the option contract was "overreaching and oppressive [,]" and that plaintiff's right of first refusal took precedence.

However, the trial court also determined that the defendants maintained a claim against Walker for breach of contract and ordered Walker to pay damages to the defendants for breach of contract, payable from the proceeds of the sale of the property. The court ordered Walker to convey the property to the plaintiff by a general warranty deed pursuant to the right of first refusal, with the same terms and conditions, after concluding that defendants had no rights in the property.

The defendants' two arguments challenging the trial court's order of specific performance of the plaintiff's ROFR were unsuccessful with the Court of Appeals. The court, with appropriate citation, held the defendants to a high standard of review requiring a showing of an abuse of discretion on the part of the trial court in awarding equitable relief.

Significantly, the Court of Appeals, citing *Smith v. Mitchell*, 301 N.C. 58, (1980) (citation and quotation marks omitted) a ROFR is analogous to an option contract, but they "'are technically distinguishable.' Whereas '[a]n option creates in its holder the power to compel sale of land, . . . [a] preemptive provision, on the other hand, creates in its holder only the right to buy land before other parties if the seller decides to convey it.'"

The opinion states that:

> "...a right of first refusal is enforceable against a subsequent purchaser for value who has "actual or constructive knowledge of the preemptive right." *Legacy Vulcan Corp. v. Garren*, 222 N.C. App. 445, 449, 731 S.E.2d 223, 226 (2011). Generally, a person is
>
> > charged with notice of what appears in the deeds or muniments in his grantor's chain of title, including . . . instruments to which a conveyance refers. . . . Under this rule, the purchaser is charged with notice not only of the existence and legal effects of the instruments, but also of every description, recital, reference, and reservation therein. . . . If the facts disclosed in a deed in the chain of title are sufficient to put the purchaser on inquiry, he will be charged with notice of what a proper inquiry would have disclosed.
>
> *Id.* at 449, 731 S.E.2d at 226-27 (citation and quotation marks omitted). However, "[a]n innocent purchaser takes title free of equities of which he had no actual or constructive notice." *Id.* at 449, 731 S.E.2d at 227 (citation and quotation marks omitted). Accordingly,
>
> > [w]here the defense of "innocent purchaser" is interposed and there has been a bona fide purchase for a valuable consideration, the matter which debases the apparent fee must have been expressly or by reference set out in the muniments of record title or brought to the notice of the purchaser *in such a manner as to put him upon inquiry. Id.* (citation and quotation marks omitted).

The defendants argued that the failure to record either the lease or the ROFR made their recorded option contract superior irrespective of the actual notice. The opinion cites our recording Act, N.C.G.S. Section 47-18 which makes no mention of rights of first refusal and concludes: "according to the plain language of the statute, a right of first refusal need not be recorded in order to be valid." This conclusion is supported by *Smith* as the preemptive rights are distinguishable from option contracts which *are* listed in the recording act.

The Court of Appeals attempts to bolster the analysis as follows:

> Furthermore, "[o]ur registration statute does not protect all purchasers, but only innocent purchasers for value." *Hill v. Pinelawn Mem'l Park, Inc.*, 304 N.C. 159, 165, 282 S.E.2d 779, 783 (1981). "While actual notice of another unrecorded conveyance does not preclude the status of innocent purchaser for value, actual notice of pending litigation affecting title to the property does preclude such status." Id. Where a purchaser claims protection under our registration laws, he has the burden of proving by a preponderance of the evidence that he is an innocent purchaser for value, i.e., that he paid valuable consideration and had no actual notice, or constructive notice by reason of lis pendens, of pending litigation affecting title to the property.

The opinion asserts that the attempt to *exercise* the option did not occur until after the *notice of lis pendens* was filed, but it must be noted that the option agreement was entered into and recorded *before* the filing of the *notice of lis pendens*. As the opinion cites, the North Carolina recordation statute, N.C.G.S. Section 47-18, provides, in pertinent part:

> No (i) conveyance of land, or (ii) contract to convey, or (iii) option to convey, or (iv) lease of land for more than three years shall be valid to pass any property interest as against lien creditors or purchasers for a valuable consideration from the donor, bargainer or lesser but from the time of registration thereof in the county where the land lies[.] . . . [I]nstruments registered in the office of the register of deeds shall have priority based on the order of registration as determined by the time of registration[.]

On the other hand, as the lease, of which the ROFR was a part, was for less than three years, it did not have to be recorded. It might have simply been clearer if the opinion had focused more on the fact that the defendants had actual knowledge "that Plaintiff was a tenant in possession who had preemptive rights under the ROFR and that Plaintiff was planning to exercise those rights." That as neither the lease nor the ROFR were required by the recording Act to be recorded to be enforceable, the defendants were estopped by their actual knowledge from claiming superior title.

In affirming the trial court's order of specific enforcement of the plaintiff's ROFR, the court said: "The right of an innocent purchaser for value to take priority over an unrecorded right in real property only applies to those purchasers who acquire title without knowledge, actual or constructive, of another's unrecorded rights." It might have been better had the opinion read: "The right of an innocent purchaser for value to take priority over an unrecorded right in real property that is not required by statute to be recorded to be enforceable only applies to those purchasers who acquire title without knowledge, actual or constructive, of another's unrecorded rights."

EXHIBIT D

Authority Checklists and Tips

[See Exhibits D-1, D-2, D-3 and D-4]

EXHIBIT D-1

Limited Liability Company Checklist[22]

LIMITED LIABILITY COMPANIES (LLC):
Authority Checklist for North Carolina Attorneys

Good Standing
☐ The entity is in "good standing" in the state in which it was created.
☐ You have reviewed all of the entity's filings.

If there has been a recent change in the filings that adds or deletes parties with authority, you must:

☐ Independently verify that the current parties have authority;

OR
☐ Have the counsel that represents the entity verify the recent changes.

Capacity Format
☐ All signatures on instruments and in the notary or acknowledgement blocks properly reflect the authority or capacity of the signer.

Self-Dealing
☐ The transaction does not involve conveying or mortgaging of land by or to a member.

Foreign Executions
Are any managing members not located in the United States: Y☐ N☐
☐ If so, all signatures on any documentation are acknowledged pursuant to our foreign notarial guidelines, including compliance with the terms of the Hague Convention, if applicable.

General Underwriting Considerations
☐ The LLC property is being conveyed or mortgaged in the same style or manner in which title was acquired.
☐ The signatures on the conveyance or mortgage document are those that are required by state law or practice, and by the terms of the LLC operating agreement.
☐ You obtained specific authority from the other members in accordance with the LLC agreement.
☐ You confirmed that the details of the transaction are spelled out (e.g., sales price or mortgage amount, relevant terms, etc.) within the document providing specific authority.

Under the LLC operating agreement, actions such as selling or refinancing real estate assets may be actions outside the normal course of business. If your transaction appears to be outside of the normal course of business, consult your underwriter or obtain the necessary additional approvals, such as:

- Execution by a managing member of a deed in lieu of foreclosure without the consent of all members, including all non-managing members;
- Execution of a mortgage involving cross-collateralization with different borrowers (even with some commonality among borrowers) without consent;
- Execution of a mortgage where the proceeds of the loan are going to an entity other than the mortgagor LLC;
- Transactions where the LLC or its property is rolled up, merged, contributed, or converted to or into another entity.

Execution by proper signatories

☐ Review the state statutes, the LLC operating agreement, and any specific authority document to determine the identity and propriety of the designated signatory.

☐ The signatory's status described on the insured deed, mortgage or lease is in accordance with the appropriate authorization.

☐ The notary block is correct in format and information.

☐ ANY ADDITIONAL REQUIREMENTS UNDER STATE LAW INVOLVING BOTH THE STATE OF CREATION AND THE STATE IN WHICH THE LAND IS LOCATED HAVE BEEN COMPLIED WITH.

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EXHIBIT D-2

Corporation Checklist[23]

CORPORATIONS: Authority Checklist for North Carolina Attorneys

Good Standing
☐ The entity is in "good standing" in the state in which it was created.
☐ You have reviewed all of the entity's filings.
If there has been a recent change in the filings that adds or deletes parties with authority, you must:
☐ Independently verify that the current parties have authority
OR

☐ Have the counsel that represents the entity verify the recent changes.

Capacity Format
☐ All signatures on instruments and in the notary or acknowledgement blocks properly reflect the authority or capacity of the signer (e.g., the signature block should read: "The ABC Corporation by John Smith, President", and the notary block should read: "John Smith as President of the ABC Corporation").

Self-Dealing
☐ The transaction does not involve conveying or mortgaging of land by or to an officer of the corporation.

Foreign Executions
Are directors or other entity officials not located in the United States: Y ☐ N ☐
☐ If so, all signatures on any documentation, including corporate resolutions, are acknowledged pursuant to our foreign notarial guidelines, including compliance with the terms of the Hague Convention, if applicable.

General Underwriting Considerations
If the corporation is selling or financing LESS than all or substantially all of its assets you should get a resolution of the board of directors adopted at a meeting called pursuant to the corporation's by-laws approving this transaction as described below:

☐ Certified copy of the resolutions (certified by the secretary or other officer with the authority under the bylaws and containing the corporate seal, if necessary).

☐ Confirmed that the details of the transaction are spelled out (e.g., sales price or mortgage amount, relevant terms, etc.) within the resolution.

☐ Resolution clearly indicates who is authorized to sign on behalf of the corporation.

☐ Resolution conforms to any state statute of the resident state which provides limitations on who can be authorized or whether certain attestation is necessary.

A conveyance or mortgage of **substantially all** of a corporation's assets usually requires shareholder consent. Where shareholder consent is required:

☐ Confirm that the voting shareholders have been notified of the details of the transaction
☐ Review the evidence of required consent.

Execution by proper officers
☐ Review the state statutes, the articles of incorporation, and resolutions, whether they are by the board of directors or the shareholders, to determine the identity and propriety of the designated signatory.

☐ The signatory's status is described (e.g., president, vice-president with a corporate seal) on the insured deed, mortgage or lease in accordance with the appropriate authorization.

☐ The notary block is correct in format and information.

Corporate seal
Conveyances, mortgages, leases and even resolutions (see above) should be "under corporate seal" if such is required or contemplated by the law of the state of incorporation. Even if not so required, it may be necessary for a document to be sealed in order to get recorded in the state where the land is located.
☐ Is the use of statutory-required impressed or other type of seal needed in this transaction: Y ☐ N ☐
☐ IF YES, the seal is effectively added.

☐ ANY ADDITIONAL REQUIREMENTS UNDER STATE LAW INVOLVING BOTH THE STATE OF CREATION AND THE STATE IN WHICH THE LAND IS LOCATED HAVE BEEN COMPLIED WITH.

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EXHIBIT D-3

Limited Partnership Checklist[24]

LIMITED PARTNERSHIPS:
Authority Checklist for North Carolina Attorneys

Good Standing
☐ The entity is in "good standing" in the state in which it was created.
☐ You have reviewed all of the entity's filings.

If there has been a recent change in the filings that adds or deletes parties with authority, you must:

☐ Independently verify that the current parties have authority;
OR
☐ Have the counsel that represents the entity verify the recent changes.

Capacity Format
☐ All signatures on instruments and in the notary or acknowledgement blocks properly reflect the authority or capacity of the signer.

Self-Dealing
☐ The transaction does not involve conveying or mortgaging of land by or to a partner.

Foreign Executions
Are any partners not located in the United States: Y☐ N☐
☐ If so, all signatures on any documentation are acknowledged pursuant to our foreign notarial guidelines, including compliance with the terms of the Hague Convention, if applicable.

General Underwriting Considerations
☐ The limited partnership property is being conveyed or mortgaged in the same style or manner in which title was acquired.
☐ The signatures on the conveyance or mortgage document are those that are required by state law or practice, and by the terms of the limited partnership agreement.
☐ You obtained specific authority from the other general and limited partners in accordance with the limited partnership agreement.
☐ You confirmed that the details of the transaction are spelled out (e.g., sales price or mortgage amount, relevant terms, etc.) within the document providing specific authority.

Under the limited partnership agreement, actions such as selling or refinancing real estate assets may be actions outside the normal course of business. If your transaction appears to be outside of the normal course of business you may need:

- Execution by a general partner of a deed in lieu of foreclosure without the consent of all partners, including all limited partners;
- Execution of a mortgage involving cross-collateralization with different borrowers (even with some commonality among borrowers) without consent;
- Execution of a mortgage where the proceeds of the loan are going to an entity other than the mortgagor partnership;
- Transactions where the partnership or its property is rolled up, merged, contributed, or converted to or into another entity.

Execution by proper signatories

☐ You have reviewed the state statutes, the limited partnership agreement, and any specific authority document to determine the identity and propriety of the designated signatory.

☐ The signatory's status described on the insured deed, mortgage or lease is in accordance with the appropriate authorization.

☐ The notary block it correct in format and information.

☐ ANY ADDITIONAL REQUIREMENTS UNDER STATE LAW INVOLVING BOTH THE STATE OF CREATION AND THE STATE IN WHICH THE LAND IS LOCATED HAVE BEEN COMPLIED WITH.

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EXHIBIT D-4

General Partnership Tips -

Chicago Title BLAWG

Assumed Business Names: NEW statute, NEW requirements, NEW search engine![25]

Dec 12, 2017

Effective December 1, 2017*, there is a brand new Assumed Business Name Act in North Carolina – Article 14A, of Chapter 66 of the N. C. General Statutes, N.C. Gen. Stat. §§66-71.1 et seq.! Any individual or business operating under an assumed name, i.e. any name other than their real or official name, must file a Certificate of Assumed Business Name with their local register of deeds. The forms, fees and other information about the process have been completely revised and are on-line at the office of the Secretary of State Assumed Business Names website! A few notable issues are outlined below. (**NOTE regarding EFFECTIVE DATE: S.L. 2016-100 as extended to take effect December 1, 2017, and requirement for existing businesses to re-file was extended to December 1, 2022, by S.L. 2017-23.*)

CAUTION: The requirement may apply when you are not expecting it!

This statute is much more detailed and broader in its mandate than the predecessor (N.C. Gen. Stat. § 66-68). The new provisions specifically apply to any of the following operating under a name which is not their "real name":

- **Person is very broadly defined!** This includes "an individual, partnership, limited partnership, limited liability partnership, limited liability company, corporation, association, society, organization, joint venture, business trust, trust, governmental entity, or any other legal or commercial entity. These may not be and probably will not be unique, as has been the requirement for other entities filed with the Secretary of State. NOTE: Keep in mind the "real name" would be based on compliance with the applicable statute, some of which are noted below.
- **Individual**, such as Joe Smith operating as Joe's Plumbing.
- **Partnership** (N.C. Gen. Stat. § 59-84.1, other than limited liability partnerships or limited partnerships) such as Joe Smith and Sam Jones operating as J&S Resort Investments.

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- **Corporation** (N.C. Gen. Stat. Ch. 55 or Ch. 55A), **limited partnership** (N.C. Gen. Stat. Ch. 59), **limited liability company** (N.C. Gen. Stat. Ch. 57D) or **other entity** filed with the Secretary of State if they are using a different name from their official name filed with the Secretary of State. EXAMPLE: Your developer client has multiple neighborhoods and operates, markets and advertises using a related name specific to each particular neighborhood, such as "Happy Builders at Friendly Acres" while the property is owned by and the only business entity is still just Happy Builders, Inc. EXAMPLE: Smith's Contracting, Inc., which may have a division doing business as Smith's Plumbing Repair but under the same corporate umbrella.
- **Trust** if using a name other than (1) the name specified in the trust agreement or (2) if no name is specified in the trust, the name of the trustee or designation of the trust for which the trustee is acting. NOTE: Again, the "real name" would be determined based on the statutorily mandated filings for the particular type of entity. For example, N.C. Gen. Stat. Ch. 61 would apply to religious societies for which title is held in trust. And N.C. Gen. Stat. § § 39-44 et seq. would apply to business trusts.
- **Other entity (association)** might include, for example, an unincorporated nonprofit association under N.C. Gen. Stat. Ch. 59B.

Forms! Forms! Forms!

The Assumed Business Name Certificate must include:

1. The assumed business name.
2. A real name of the person engaging in business under the assumed business name. If the business is a partnership other than a limited liability partnership or limited partnership, the assumed business name certificate must include a real name of five general partners or of each general partner, whichever is fewer.
3. The nature of the business.
4. The street address of the principal place of business.
5. Each county where the person uses or will be using the assumed business name to engage in business.

As noted above, the forms, fees and other information are on-line at the office of the Secretary of State Assumed Business Names website and offered on-line or in the offices of some registers of deeds. The Certificate must be recorded with the register of deeds in the county in which the business is or will be engaging in business (not the Secretary of State despite their "Search" index). But the filer *can choose* "all counties" – and we recommend that option! We always hope that our businesses will flourish so why not be prepared! The Certificate must be signed by a general partner (for any type partnership), by an officer of a corporation, by a manager of a LLC or by another individual authorized by law to act for the corporation or LLC. Up to 5 assumed business names can be included on one certificate, so long as all are owned and operated by the same "person" filing it. Any amendment must be filed with 60 days of the change in the same register of deeds office, specifically referencing the prior filing by book and page as well as the Secretary of State's SOS ID number.

The transition rule: Existing businesses already operating under certificates of assumed name filed under the previous Article 14 have until December 1, 2022*, to file their new Certificate of Assumed Business Name under new Article 14A, unless otherwise required due to withdrawal or amendment. Unfortunately, no notification provision (or funding) was included in the legislation. So this will be a matter of attorneys advising affected clients and the Secretary of State and registers of deeds providing the information to the public as requested and on their websites.

Searches: So hopefully we will be able to find most "assumed business names" and the related principals' contact information in a centralized location with other entities in the near future! The Certificates will be automatically transmitted by the Registers to the Secretary of State for inclusion in the centralized "Business Registration >> Search" database maintained with the Office of the Secretary of State under "Other Searches" >> Assumed Business Name (by county or statewide). Very shortly, they hope to have a combined search integrated with corporations and other entities, which we all search regularly!

Reliance: Of importance to real estate and business attorneys, the recorded certificate is prima facie evidence of the facts required to be stated therein.

So this should provide one more step for transparency of the parties with whom we transact business daily!

EXHIBIT E

List of endorsements[26]

TOPIC:	**American Land Title Association (ALTA) Endorsements North Carolina Coverages Adopted as of 8-1-2017**

Below are brief descriptions of coverage and the title insurance requirement for each of the current ALTA® Endorsements.

NOTE #1: Endorsements for use with 2006 ALTA Owner's and Loan policy forms include an "-06" extension. Most changes in these endorsements from comparably numbered endorsements for pre-06 ALTA policy forms are for consistency in paragraph references, capitalizing and other stylistic issues with the new 2006 Owner's Policy and 2006 Loan Policy, unless otherwise noted.

NOTE #2: For purposes of these endorsements, the "attorney" means the North Carolina licensed certifying attorney unless otherwise approved by the title insurer and allowed under applicable law.

NOTE #3: The North Carolina Land Title Association (NCLTA) files the ALTA forms for use by member underwriters and agents upon final adoption, after which the companies can issue the policies as filed, so long as the companies are also licensed with ALTA.

NOTE #4: Defined terms in the ALTA 2006 policies and the ALTA adopted endorsements are reflected by capitalizing the terms herein, such as "Land," "Insured Mortgage", "Date of Policy" and "Insured."

ALTA® Endorsement Form 1-06 (Street Assessments) (Adopted 06/17/06)
This endorsement is designed to insure the lender against loss or damage which it might sustain by reason of any assessments for street improvements either under construction or completed at the date of the policy which could gain priority over the Insured Mortgage.

For issuance of ALTA Endorsement Form 1-06 (Street Assessments) (Adopted 6/17/06): Attorney certification that, as of Date of Policy, the Land is not affected or encumbered by any pending or confirmed assessments for street improvements, under construction or completed. NOTE: Some coverage is provided in the 2006 policies.

ALTA® Endorsement Form 2-06 (Truth in Lending) (Adopted 06/17/06)
Decertified 12-01-2015. This endorsement was designed to insure affirmatively an Insured under a loan policy against loss or damage sustained by reason of the exercise of the right of rescission conferred upon a mortgage borrower under the Federal Truth in Lending Act, as implemented by Regulation Z. This coverage was rarely given in North Carolina as it would require additional and complex attorney's certification in a residential context.

For issuance of ALTA Endorsement Form 2-06 (Truth-in-Lending) (Adopted 6/17/06): Certification that the borrowers are not individuals; that the loan is not governed by the Real Estate Settlement Procedures Act ("RESPA"), Truth-in-Lending Act or Usury Laws; or certification that the loan is in full compliance with applicable Truth-in-Lending requirements.

[26] Checklist reprinted with permission from Chicago Title Insurance Company

ALTA® Endorsement Form 3-06 (Zoning – Unimproved Land) (Adopted 06/17/06)
This endorsement is designed to inform the Insured under an owner's or loan policy of the zoning classification under which the Land falls and to insure the Insured against loss or damage that may be sustained by reason of inaccuracies in the information supplied or a final judicial determination invalidating the zoning ordinance establishing such classification and resulting in the prohibition of such uses. The endorsement does not provide marketability coverage (i.e. "refusal of any person to purchase, lease or lend money on the Title…")

For issuance of ALTA Endorsement Form 3-06 (Zoning - Unimproved Land) (Adopted 6/17/06): Satisfactory verification (1) of the current zoning classification of the Land; (2) that the Land has been so zoned for at least two months; and (3) of the specific permitted use for which the Land is currently or intended to be used, cited exactly as set forth in the applicable zoning ordinance or regulation.

ALTA® Endorsement Form 3.1-06 (Zoning – Completed Structure) (Revised 10/22/09)
This endorsement expands the coverage given in Form 3 to provide coverage to the Insured further against loss or damage that may be sustained by reason of a final judgment requiring the removal or alteration of existing structures on the Land, on the grounds that they are violation of the zoning restrictions imposed on the use of the Land relating to the site or floor space area, set back lines, height of the structure or number of parking spaces.

For issuance of ALTA Endorsement Form 3.1-06 (Zoning - Completed Structure) (Revised 10/22/09): Satisfactory verification (1) of the current zoning classification of the Land; (2) that the Land has been so zoned for at least two months; (3) of the specific permitted use for which the Land is currently or intended to be used, cited exactly as set forth in the applicable zoning ordinance or regulation; and (4) that the Land is in compliance with all applicable zoning regulations including area, width, depth of land as building site, floor space area, elevation of structures, setbacks, and number of parking spaces.

ALTA® Endorsement Form 3.2-06 (Zoning – Land Under Development) (Adopted 4/2/12)
This endorsement expands the coverage given in Form 3 to provide coverage to the Insured further against loss or damage that may be sustained by reason of a final judgment requiring the removal or alteration of specific contemplated Improvements to the Land, existing at Date of Policy or to be built or constructed according to the Plans specifically identified in the endorsement, upon compliance with applicable zoning ordinances and amendments. (Note: Review of Severable Improvements coverage under the ALTA® Endorsement Form 31-06, especially for wind farms and power projects, and under the ALTA® Endorsement Series 36 for energy projects should be considered, if applicable.)

For issuance of ALTA Endorsement Form 3.2-06 (Zoning - Land Under Development) (Adopted 4/2/12): Satisfactory verification (1) of the current zoning classification of the Land; (2) that the Land has been so zoned for at least two months; (3) of the specific permitted use for which the Land is currently or intended to be used, cited exactly as set forth in the applicable zoning ordinance or regulation; and (4) that the Improvements on the Land existing at Date of Policy or to be built or constructed according to the Plans are in compliance with all applicable zoning regulations including area, width, depth of land as building site, floor space area, elevation of structures, setbacks, and number of parking spaces.

ALTA® Endorsement Form 4-06 (Condominium) (Revised 2/3/10)
This endorsement is designed to provide special comprehensive title protection as to matters peculiar to condominiums. This endorsement is available to both owners and lenders, subject to review of each item of coverage. This endorsement is not intended to insure the title of the developer.

For issuance of ALTA Endorsement Form 4-06 (Condominium) (Revised 2/3/10): Verification through attorney's opinion on title that the condominium is duly formed and managed in compliance with applicable law; that owners' association dues have been paid current through and including Date of Policy; that the mortgage lien has priority over said dues; that the restrictions do not contain a forfeiture or reversion clause; and that any violations of restrictions, encroachments of existing improvements onto easements, rights of first refusal, or options to purchase have been subordinated or waived in favor of the interests of the proposed Insureds.

ALTA® Endorsement Form 4.1-06 (Condominium) (Revised 10/16/08)

This endorsement is designed for use in those several states where legislation has given super priority status to liens for unpaid association charges. So this form is not customarily issued in North Carolina.

For issuance of ALTA Endorsement Form 4.1-06 (Condominium) (Revised 10/16/08): Verification through attorney's opinion on title that the condominium is duly formed and managed in compliance with applicable law; that owners' association dues have been paid current through and including Date of Policy; that the restrictions do not contain a forfeiture or reversion clause; and that any violations of restrictions, encroachments of existing improvements onto easements, rights of first refusal, or options to purchase have been subordinated or waived in favor of the interests of the proposed Insureds.

ALTA® Endorsement Form 5-06 (Planned Unit Development) (Revised 2/3/10)

This endorsement is available for use for both owner's and loan policies in some jurisdictions. The endorsement insures against loss due to violations of any restrictive covenants, encroachments, prior unpaid homeowners' association dues or outstanding rights of first refusal.

For issuance of ALTA Endorsement Form 5-06 (Planned Unit Development) (Revised 2/3/10): Verification through attorney's opinion on title that the planned community is duly formed and managed in compliance with applicable law; that owners' association dues have been paid current through and including Date of Policy; that the mortgage lien has priority over said dues; that the restrictions do not contain a forfeiture or reversion clause; and that any violations of restrictions, encroachments of existing improvements onto easements, rights of first refusal, or options to purchase have been subordinated or waived in favor of the interests of the proposed Insureds.

ALTA® Endorsement Form 5.1-06 (Planned Unit Development) (Revised 10/16/08)

This endorsement is designed for use in those several states where legislation has given super priority status to liens for unpaid homeowner association charges. So this form is not customarily issued in North Carolina.

For issuance of ALTA Endorsement Form 5.1-06 (Planned Unit Development) (Revised 10/16/08): Verification through attorney's opinion on title that planned community is duly formed and managed in compliance with applicable law; that owners' association dues have been paid current through and including Date of Policy; that the restrictions do not contain a forfeiture or reversion clause; and that any violations of restrictions, encroachments of existing improvements onto easements, rights of first refusal, or options to purchase have been subordinated or waived in favor of the interests of the proposed Insured(s).

ALTA® Endorsement Form 6-06 (Variable Rate Mortgage) (Revised 10/16/08)

This endorsement offers insurance as to the validity and lien priority of Insured Mortgage provisions providing for a variable interest rate.

For issuance of ALTA Endorsement Form 6-06 (Variable Rate Mortgage) (Revised 10/16/08): Deed of trust to be insured must include variable rate mortgage provisions in text or in rider recorded therewith.

ALTA® Endorsement Form 6.2-06 (Variable Rate Mortgage – Negative Amortization) (Revised 10/16/08)

This endorsement offers insurance as to the validity and lien priority of Insured Mortgage provisions providing for both a variable interest rate and negative amortization.

For issuance of ALTA Endorsement Form 6.2-06 (Variable Rate Mortgage-Negative Amortization) (Revised 10/16/08): (1) Attorney to certify that the loan is not a high cost home loan as defined under NCGS 24-1.1E(a)(4) for which negative amortization is prohibited under NCGS 24-1.1E(b)(3), and (2) deed of trust to be insured must include variable rate mortgage provisions in text or in rider recorded therewith and provisions for negative amortization of unpaid interest and charges and the maximum amount secured. NOTE: The coverage amount of the policy should be equal to the maximum principal amount which can be secured by the deed of trust (including negative amortization), typically 125% of the original principal amount, and premium will be based on this higher coverage amount.

ALTA® Endorsement Form 7-06 (Manufactured Housing Unit) (Adopted 06/17/06)

This endorsement is designed to insure a mobile or manufactured home as part of the Land, if the statutory conversion procedures have been completed, including permanent foundation and affixation to the Land and filing of statutory documents to cancel the home title. It does not insure that the mobile home is real estate, just that the policy will treat it as part of the defined and covered "Land."

For issuance of ALTA Endorsement Form 7-06 (Manufactured Housing Unit) (Adopted 6/17/06): Evidence that (1) the identified manufactured housing unit is located on the Land, owned by the owner of the Land, and is not subject to any personal property liens (including but not limited to personal property taxes and UCC Financing Statements); (2) the manufactured housing unit has been listed (or will be listed at the next listing and appraisal period) as real property for ad valorem tax purposes; (3) either (a) if a Certificate of Title has been issued but not canceled prior to 1/1/02, an Affidavit approved by the NC Division of Motor Vehicles was filed with said Division and with the Register of Deeds pursuant to NCGS 47-20.6, or (b) if no Certificate of Title has been issued or if a Certificate of Title was issued and canceled prior to 1/1/02, that a Declaration has been filed with the office of the Register of Deeds in compliance with NCGS 47-20.7; and (4) verification from DMV that the certificate of title to the manufactured home is not outstanding and has not been reissued pursuant to NCGS 20-109.2(d).

ALTA® Endorsement Form 7.1-06 (Manufactured Housing – Conversion; Loan) (Adopted 06/17/06)

This endorsement provides coverage for a lender that (i) a manufactured housing unit is located on the Land, (ii) has been converted to real property, (iii) the owner of the Land and the unit are the same, (iv) no UCC security interest or tax, motor vehicle or other personal property lien attaches to the unit, and (v) the Insured Mortgage is valid and enforceable against the Land and home in one foreclosure procedure. The requirements are the same as for Form 7 above.

For issuance of ALTA Endorsement Form 7.1-06 (Manufactured Housing-Conversion; Loan) (Adopted 6/17/06): Evidence that (1) the identified manufactured housing unit is located on the Land, owned by the owner of the Land, and is not subject to any personal property liens (including but not limited to personal property taxes and UCC Financing Statements); (2) the manufactured housing unit has been listed (or will be listed at the next listing and appraisal period) as real property for ad valorem tax purposes; (3) either (a) if a Certificate of Title has been issued but not canceled prior to 1/1/02, an Affidavit approved by the NC Division of Motor Vehicles was filed with said Division and with the Register of Deeds pursuant to NCGS 47-20.6, or (b) if no Certificate of Title has been issued or if a Certificate of Title was issued and canceled prior to 1/1/02, that a Declaration has been filed with the office of the Register of Deeds in compliance with NCGS 47-20.7; and (4) verification from DMV that the certificate of title to the manufactured home is not outstanding and has not been reissued pursuant to NCGS 20-109.2(d).

ALTA® Endorsement Form 7.2-06 (Manufactured Housing – Conversion; Owners) (Adopted 6/17/06)

This endorsement provides to the owner similar coverages as the Form 7.1 above (other than the mortgage lien priority and enforceability) and has the same requirements.

For issuance of ALTA Endorsement Form 7.2-06 (Manufactured Housing-Conversion; Owners) (Adopted 6/17/06): Evidence that (1) the identified manufactured housing unit is located on the Land, owned by the owner of the Land, and is not subject to any personal property liens (including but not limited to personal property taxes and UCC Financing Statements); (2) the manufactured housing unit has been listed (or will be listed at the next listing and appraisal period) as real property for ad valorem tax purposes; (3) either (a) if a Certificate of Title has been issued but not canceled prior to 1/1/02, an Affidavit approved by the NC Division of Motor Vehicles was filed with said Division and with the Register of Deeds pursuant to NCGS 47-20.6, or (b) if no Certificate of Title has been issued or if a Certificate of Title was issued and canceled prior to 1/1/02, that a Declaration has been filed with the office of the Register of Deeds in compliance with NCGS 47-20.7; and (4) verification from DMV that the certificate of title to the manufactured home is not outstanding and has not been reissued pursuant to NCGS 20-109.2(d).

ALTA® Endorsement Form 8.1-06 (Environmental Protection Lien) (Adopted 6/17/06)

This endorsement is designed to insure a lender in situations where a mortgage is made on Land used primarily for residential purposes against loss by reason of lack of priority of the lender's lien because of environmental protection liens recorded in those records which under state statutes impart constructive notice of matters relating to real estate or which are filed in the records of the clerk of the United States district court unless the lien is excepted to in Schedule B of the policy. This form also protects against lack of priority for any environmental lien provided for in any state statute in effect at Date of Policy unless otherwise designated in the endorsement.

For issuance of ALTA Endorsement Form 8.1-06 (Environmental Protection Lien) (Adopted 6/17/06): Certification that the Land is used primarily for residential purposes and that no environmental protection lien affecting the Land is recorded in those records established under state statutes at or before recording for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge, except as set forth in Schedule B - Exceptions of this Commitment.

ALTA® Endorsement Form 8.2-06 (Commercial Environmental Protection Lien) (Adopted 10/16/08)

This endorsement provides to the owner and lender coverages against environmental protection liens being filed in the Public Records or in the records of the clerk of the United States district court for the district in which the Land is located, *unless identified and excepted in Schedule B* of the policy for commercial transactions, and has the same requirements as Form 8.1-06 above. North Carolina's version of the Uniform Federal Lien Registration Act, N.C. Gen. Stat. Chapter 44, Article 11A, Sections 44-68.10 **et seq.,** requires that federal environmental liens be filed with the office of the Clerk of Superior Court of the county in which the Land is located in order to establish priority as of the time of that filing.

For issuance of ALTA Endorsement Form 8.2-06 (Commercial Environmental Protection Lien) (Adopted 10/16/08): Certification that no environmental protection lien affecting the Land is recorded in those records established under state statutes at or before recording for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge, except as set forth in Schedule B – Exceptions of this Commitment; and specific approval of underwriting counsel for Company.

The ALTA® Endorsement Form 9 series:

In 2012 and 2013, the American Land Title Association (ALTA) substantially revised the ALTA® Endorsement Form 9 series, added the separate ALTA® Endorsement Form 28 series (for affirmative coverages regarding encroachments) and added the separate ALTA® Endorsement Form 35 series (regarding mineral and other subsurface rights). In addition, a separate endorsement was created to address "private rights," i.e. rights of first refusal, options, rights of prior approval of potential purchasers and assessments – the ALTA® Endorsement Form 9.6-06. Coverage for these matters is only provided in this endorsement and only for lender coverage. As with the ALTA® Endorsement Form 3 series (zoning), this series was also expanded to include forms for coverage of projects under development.

The following chart, provided by ALTA (www.alta.org), outlines the coverages and applicable forms:

Coverage	Lender	Owner
Covenants, Conditions & Restrictions (*not* private rights)	9-06 9.3-06 9.7-06 (Land Under Development) 9.10-06 (current violations)	9.1-06 (Unimproved) 9.2-06 (Improved) 9.8-06 (Land Under Development)
Private rights (assessments, options, rights of first refusal & rights of prior approval of purchasers or occupants)	9.6-06 9.6.1-06	9.9-06
Encroachments over boundaries or onto easements	9-06 9.7-06 (Land Under Development) 9.10-06 (current violations) ALTA 28 series	ALTA 28 series
Mineral & subsurface rights	9-06 9.7-06 (Land Under Development) 9.10-06 (current violations) ALTA 35 series	ALTA 35 series

Each endorsement (as applicable):

- Excepts to Exclusions, Exceptions and Conditions of the policy itself
- Defines "Covenant" as "a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy."
- Defines "Improvement" specifically, depending on the coverage
- Excludes "private rights" other than the 9.6-06 (loan policy) and 9.9-06 (owner's policy)
- Excludes, among other things, leases, obligations for maintenance, repair or remediation, environmental protection covenants not recorded in the Public Records normally searched in a title examination, where applicable, physical issues (contamination, explosion, fire fracturing, vibration, earthquake or subsidence), and negligence in extracting mineral or other subsurface rights (on loan policy endorsements providing mineral rights coverage).
- No longer provides owner's coverage for encroachments (now available to owners through separate specific underwriting of the ALTA® Endorsement Form 28 series) and
- No longer provides owner's coverage for minerals and other subsurface rights (now available to owners only through separate specific underwriting of the ALTA® Endorsement Form 35 series).

ALTA® Endorsement Form 9-06 (Restrictions, Encroachments, Minerals – Loan Policy) (Revised 4/2/12)

This endorsement provides a lender an assortment of coverages dealing with violations of restrictions, encroachments by Improvements on the Land or adjoining land and future exercise of a right to use the surface of the Land for the extraction of minerals. It is similar to the CLTA 100 and the Company's Comprehensive Endorsement. Especially in a commercial context, this indicates that a thorough reading and understanding of applicable covenants, conditions, and restrictions, easements, reservations or conveyances of mineral or subsurface rights and plats or surveys regarding the Land is needed.

ALTERNATIVE #1 (Loan survey coverage without a survey for existing residential & small commercial):
For issuance of ALTA Endorsement Form 9-06 (Restrictions, Encroachments, Minerals - Loan Policy) (Revised 4/2/12): Receipt of (1) satisfactory verification that there are no violations of any covenants, conditions or restrictions; no violations of any building setback lines; no encroachments of an Improvement located on the Land onto adjoining land or onto that portion of the Land subject to an easement; and no encroachments onto the Land of improvements appurtenant to adjoining lands; (2) certification from attorney that no third party currently has the present or future right to any minerals located on the Land or, if any, that they require repair of any surface damage caused by exercise of those extraction and development of subsurface rights; and (3) owners' association dues and special assessments, if any are applicable, are paid current through closing.

ALTERNATIVE #2 (Loan survey coverage with specific survey, for new construction or larger commercial):
For issuance of ALTA Endorsement Form 9-06 (Restrictions, Encroachments, Minerals - Loan Policy) (Revised 4/2/12): Receipt of (1) current and accurate survey of the Land evidencing no violation of any covenants, conditions or restrictions; no violation of any building setback lines; no encroachments of an Improvement located on the Land onto adjoining land or onto that portion of the Land subject to an easement; and no encroachment onto the Land of improvements appurtenant to adjoining lands; (2) certification from attorney that (a) to the best of attorney's knowledge the covenants, conditions or restrictions have not been violated, (b) no third party currently has the present or future right to any minerals located on the Land or, if any, that they require repair of any surface damage caused by exercise of those extraction and development of subsurface rights; and (3) owners' association dues and special assessments, if any are applicable, are paid current through closing.

ALTA® Endorsement Form 9.1-06 (Covenants, Conditions and Restrictions – Unimproved Land - Owner's Policy) (Revised 4/2/12)

This endorsement is designed to provide certain frequently requested protections for an owner of unimproved Land concerning private property restrictions or environmental protection liens on the Public Records at Date of Policy, unless exception is taken in Schedule B of the policy. (Coverages in pre-2012 versions of the endorsement for encroachments and minerals were removed; the attorney should review the Form 28 and the Form 35 series, as applicable and if available.)

For issuance of ALTA Endorsement Form 9.1-06 (Covenants, Conditions and Restrictions - Unimproved Land - Owner's Policy) (Revised 4/2/12): Receipt of (1) current and accurate survey of the Land evidencing no violation of any covenants, conditions or restrictions; (2) certification from attorney that to the best of attorney's knowledge the covenants, conditions or restrictions have not been violated; and (3) verification that owners' association dues and special assessments, if any are applicable, are paid current through closing.

ALTA® Endorsement Form 9.2-06 (Covenants, Conditions and Restrictions - Improved Land - Owner's Policy) (Revised 4/2/12)

This endorsement is designed to provide certain frequently requested protections for an owner of improved Land concerning private property restrictions or environmental protection liens on the Public Records at Date of Policy, unless exception is taken in Schedule B of the policy. (Coverages in pre-2012 versions of the endorsement for encroachments and minerals or other subsurface rights were removed; the attorney should review the Form 28 and the Form 35 series, as applicable and if available.)

For issuance of ALTA Endorsement Form 9.2-06 (Covenants, Conditions and Restrictions -- Improved Land - Owner's Policy) (Revised 4/2/12): Receipt of (1) current and accurate survey of the Land evidencing no violation of any covenants, conditions or restrictions and no violation of any building setback lines; (2) certification from attorney that to the best of attorney's knowledge the covenants, conditions or restrictions have not been violated; and (3) verification that owners' association dues and special assessments, if any are applicable, are paid current through closing.

ALTA® Endorsement Form 9.3-06 (Covenants, Conditions and Restrictions - Loan Policy) (Revised 4/2/12)

This endorsement to the loan policy includes the coverage under the Form 9 above for Improvements on the Land (only), but deletes coverage for encroachments (for which the form 28 series may still be applicable) and for mineral or other subsurface rights (for which the form 35 series may be applicable).

For issuance of ALTA Endorsement Form 9.3-06 (Covenants, Conditions and Restrictions - Loan Policy) (Revised 4/2/12): Receipt of (1) current and accurate survey of the Land evidencing no violation of any covenants, conditions or restrictions and no violation of any building setback lines; (2) certification from attorney that to the best of attorney's knowledge the covenants, conditions or restrictions have not been violated; and (3) verification that owners' association dues and special assessments, if any are applicable, are paid current through closing.

ALTA® Endorsement Forms 9.4-06 and 9.5-06

WITHDRAWN BY ALTA.

ALTA® Endorsement 9.6-06 Private Rights – Loan Policy (Revised 4/2/13)

This endorsement provides affirmative coverage to an insured lender against loss or damage in the event that "enforcement of a Private Right in a Covenant affecting the Title at Date of Policy (a) results in the invalidity, unenforceability or lack of priority of the lien of the Mortgage, or (b) causes a loss of the Insured's Title acquired in satisfaction or partial satisfaction of the Indebtedness." The term "Private Right" is specifically defined as "(i) a private charge or assessment; (ii) an option to purchase; (iii) a right of first refusal; or (iv) a right of prior approval of a future purchaser or occupant." This coverage had been provided in the earlier Form 9 versions, but has now been segregated solely to this ALTA form endorsement, in response to the case of *Nationwide Life Insurance Company v. Commonwealth Land Title Insurance Company,* 579 F.3d 304 (3d Cir. 2009), *aff'd.* 687 F.3d 620 (3d Cir. 2012). *NOTE: If any instrument of title reflects these matters which have <u>not</u> been waived of record, it must be specifically referenced under provision 4.d. of the endorsement.*

For issuance of ALTA Endorsement Form 9.6-06 (Private Rights - Loan Policy) (Revised 4/2/13): Receipt of certification from attorney that (1) Title to the Land does not reveal an option to purchase, right of first refusal or right of prior approval of a future purchaser or occupant (whether in covenants, conditions or restrictions, or in a separate instrument) with priority over the lien of the Insured Mortgage or the recording information for any instrument by which any such right has been waived or subordinated of record to the Insured Mortgage and (2) owners' association dues and special assessments, if any are applicable, are paid current through closing.

ALTA® Endorsement 9.6.1-06 (Private Rights – Current Assessments -- Loan Policy (Adopted 4/2/15)

This endorsement would provide lender with some assurance regarding residential owners' association assessment liens in states with "super-priority" statutes. Since North Carolina condominium and planned community statutes do not currently provide for super-priority of owners' association assessment liens over mortgages, this endorsement is probably not appropriate for use in North Carolina

For issuance of ALTA Endorsement Form 9.6.1-06 (Private Rights - Loan Policy) (Adopted 4/2/15): Receipt of certification from attorney that (1) Title to the Land does not reveal an option to purchase, right of first refusal or right of prior approval of a future purchaser or occupant (whether in covenants, conditions or restrictions, or in a separate instrument) with priority over the lien of the Insured Mortgage or the recording information for any instrument by which any such right has been waived or subordinated of record to the Insured Mortgage and (2) owners' association dues and special assessments, if any are applicable, are paid current through closing.

ALTA® Endorsement Form 9.7-06 (Restrictions, Encroachments, Minerals – Land Under Development - Loan Policy) (Adopted 4/2/12)

This endorsement to the loan policy includes the coverage under the Form 9-06 above for Future Improvements in compliance with specified Plans on the Land.

For issuance of ALTA Endorsement Form 9.7-06 (Restrictions, Encroachments, Minerals - Land Under Development - Loan Policy) (Adopted 4/2/12): Receipt of (1) architect's or engineer's Plans (survey, site, elevation & other drawings) for specific Future Improvements contemplated; (2) a current and accurate survey of the Land; (3) verification from Plans and current survey that current Improvements and Future Improvements create no violation of any covenants, conditions or restrictions; no violation of any building setback lines; no encroachments of an Improvement or Future Improvement located on the Land onto adjoining land or onto that portion of the Land subject to an easement; no encroachment onto the Land of improvements appurtenant to adjoining lands; and that the contemplated Future Improvements will not create any such violation or encroachment; (4) certification from attorney that (a) to the best of attorney's knowledge the covenants, conditions or restrictions have not been violated and will not be violated by the Future Improvements, (b) no third party currently has the present or future right to any minerals located on the Land or, if any, that they require repair of any surface damage caused by exercise of those extraction and development of subsurface rights; and (5) owners' association dues and special assessments, if any are applicable, are paid current through closing.

ALTA® Endorsement Form 9.8-06 (Covenants, Conditions and Restrictions – Land Under Development – Owner's Policy) (Adopted 4/2/12)

This endorsement to the owner's policy includes the coverage under the Form 9.2-06 above for Future Improvements in compliance with specified Plans on the Land. Coverage for encroachments and minerals or other subsurface rights are not included; the attorney should review endorsement forms 28.1-06 and the Form 35 series for that coverage, if available.)

For issuance of ALTA Endorsement Form 9.8-06 (Covenants, Conditions and Restrictions - Land Under Development - Owner's Policy) (Adopted 4/2/12): Receipt of (1) architect's or engineer's Plans (survey, site, elevation & other drawings) for specific Future Improvements contemplated; (2) a current and accurate survey of the Land; (3) verification from Plans and current survey that current Improvements and Future Improvements create no violation of any covenants, conditions or restrictions and no violation of any building setback lines and that the contemplated Future Improvements will not create any such violation; (4) certification from attorney that to the best of attorney's knowledge the covenants, conditions or

restrictions have not been violated and will not be violated by the Future Improvements; and (5) owners' association dues and special assessments, if any are applicable, are paid current through closing.

ALTA Endorsement Form 9.9-06 (Private Rights – Owner's Policy) (Adopted 4/2/13)
This endorsement provides affirmative coverage to an insured lender against loss or damage in the event that "if enforcement of a Private Right in a Covenant affecting the Title at Date of Policy based on a transfer of Title on or before Date of Policy causes a loss of the Insured's Title." In contrast to the Form 9.6-06 above, the term "Private Right" is specifically limited to "(i) an option to purchase; (ii) a right of first refusal; or (iii) a right of prior approval of a future purchaser or occupant." This endorsement does *not* provide coverage for assessments or owners' association dues.
NOTE: As with the Form 9.6-06, if any instrument of title reflects these matters and which have <u>not</u> been waived of record, it must be specifically referenced under provision 4.d. of the endorsement.

For issuance of ALTA Endorsement Form 9.9-06 (Private Rights – Owner's Policy) (Adopted 4/2/13): Receipt of certification from attorney that Title to the Land does not reveal an option to purchase, right of first refusal or right of prior approval of a future purchaser or occupant (whether in covenants, conditions or restrictions, or in a separate instrument); or the recording information for any instrument by which any such right has been waived or subordinated of record to the interest of Insured Owner.

ALTA Endorsement Form 9.10-06 (Restrictions, Encroachments, Minerals – Current Violations - Loan Policy) (Adopted 4/2/13)
Like the Form 9-06 above, this endorsement provides a lender an assortment of coverages dealing with violations of restrictions, encroachments by Improvements on the Land or adjoining land and future exercise of a right to use the surface of the Land for the extraction of minerals. However, this Form 9.10-06 specifically provides affirmative coverage under paragraph 3.a. with regard to a violation that exists *at Date of Policy* and does not extend to any future violations; thus, the Form 9.10-06 is similar to the ALTA® Endorsements Form 4 and Form 5 which have limited coverage for existing violations only. This endorsement would be appropriate in situations in which waivers or subordinations of existing violations may have been obtained for the particular transaction or for the particular violation, but the Covenants do not contain an ongoing provision subordinating violations to the liens of mortgagees. As with the Form 9-06 above, especially in a commercial context, this necessitates a thorough review of the applicable Covenants in conjunction with plats and surveys of the Land.

For issuance of ALTA Endorsement Form 9.10-06 (Restrictions, Encroachments, Minerals – Current Violations - Loan Policy) (Adopted 4/2/13): Receipt of (1) current and accurate survey of the Land identifying any violations of any covenants, conditions or restrictions or building setback lines as well as any encroachments of an Improvement located on the Land onto adjoining land or onto that portion of the Land subject to an easement and any encroachment onto the Land of improvements appurtenant to adjoining lands; (2) certification from attorney that (a) to the best of attorney's knowledge the covenants, conditions or restrictions have not been violated other than as shown on the survey, (b) no third party currently has the present or future right to any minerals located on the Land or, if any, that they require repair of any surface damage caused by exercise of those extraction and development of subsurface rights; and (3) owners' association dues and special assessments, if any are applicable, are paid current through closing.

<u>ALTA® Endorsement Form 10-06 (Assignment) (Revised 2/3/10)</u>
This endorsement insures the effectiveness of the assignment of Insured Mortgage but does not cover matters of record after the effective date of the original loan policy, except to insure that there have been no releases or conveyances that appear of record.

For issuance of ALTA Endorsement Form 10-06 (Assignment) (Revised 2/3/10): Receipt of (1) verification of recording of satisfactory assignment of Indebtedness(es) secured by Insured Mortgage, which assignment

has been properly executed by the current owner(s)/holder(s) of the Indebtedness evidenced by the Insured Mortgage, and delivery of original note to Assignee through continuous chain of assignment endorsements on the original note or other evidence of Indebtedness(es) or allonge(s) attached thereto; (2) attorney's certification of current ownership of the Indebtedness(es) secured by the Insured Mortgage and the existence of any amendments, modifications, assignments, partial or full reconveyances, releases, or discharges of the lien of the Insured Mortgage through and including Date of Endorsement, which matters may be shown in the endorsement; and (3) verification of status of the loan payment - current or non-performing. For any assignment of an Insured Mortgage more than 1 year old for which either (a) the Land is other than a 1-4 family residential property or (b) the assignor is a non-institutional lender, a written sworn statement by the record owner of the Land stating that the lien of the mortgage(s) is (are) still good and valid, and in all respects, free from all defenses, both in law and in equity, should be furnished to the Company.

ALTA® Endorsement Form 10.1-06 (Assignment and Date Down) (Revised 2/3/10)
This endorsement covers the same items as Form 10 and gives additional coverage over certain matters occurring after the original Date of Policy and before the Date of Endorsement. These matters, unless specifically shown in the endorsement, include: real estate taxes or assessments; priority over intervening defects liens or encumbrances; and federal tax liens or encumbrances.

For issuance of ALTA Endorsement Form 10.1-06 (Assignment and Date Down) (Revised 2/3/10): Receipt of (1) verification of recording of satisfactory assignment of Indebtedness(es) secured by Insured Mortgage, which assignment has been properly executed by the current owner(s)/holder(s) of the Indebtedness evidenced by the Insured Mortgage, and delivery of original note to Assignee through continuous chain of assignment endorsements on the original note or other evidence of Indebtedness(es) or allonge(s) attached thereto; (2) attorney's certification of current ownership of the Indebtedness(es) secured by the Insured Mortgage and certification of Title to the Land through and including Date of Endorsement; and (3) verification of status of the loan payment - current or non-performing. For any assignment of an Insured Mortgage more than 1 year old for which either (a) the Land is other than a 1-4 family residential property or (b) the assignor is a non-institutional lender, a written sworn statement by the record owner of the Land stating that the lien of the mortgage(s) is (are) still good and valid, and in all respects, free from all defenses, both in law and in equity, should be furnished to the Company. Matters revealed to the Company may be shown in the endorsement unless resolved to the satisfaction of Company.

ALTA® Endorsement Form 11-06 (Mortgage Modification) (Adopted 06/17/06)
This endorsement insures the lender that the modification of the Insured Mortgage evidenced by the document referred to within the endorsement does not impair the validity, enforceability or priority of the Insured Mortgage.

For issuance of ALTA Endorsement Form 11-06 (Mortgage Modification) (Adopted 6/17/06): Receipt of (1) verification of recording of satisfactory modification of the deed of trust insured ("Modification") which Modification has been properly executed by (a) the current record owner(s) of the Land, and spouses, if any; and (b) the current record owner(s) of the Indebtedness evidenced by the deed of trust insured; and (2) attorney's certification of Title to the Land through and including the date and time of recording of the Modification. If the Modification, attorney's certification or other information provided to Company reveals anything which, as of Date of Endorsement, may impair the validity, enforceability or priority of the deed of trust insured (including potential mechanics' and materialmen's liens or rights of tenants in possession), those matters will be shown in the endorsement unless (1) resolved to the satisfaction of Company; or (2) in the case of a superior interests, subordinated to the lien of the insured deed of trust as modified.

If survey coverage is required through Date of Endorsement, Company must be provided with a current and accurate survey of the Land. Note: If survey coverage is provided in the policy and there have been no improvements or alterations since Date of Policy, survey coverage may be extended through Date of Endorsement if Company is provided with a satisfactory Survey Affidavit.

ALTA® Endorsement Form 11.1-06 (Mortgage Modification with Subordination) (Adopted 10/22/09)

This endorsement is substantially similar to the ALTA® Endorsement Form 11 above, but includes an item #3 for itemization of subordinate items. Those would typically be intervening matters which are and remain subordinate to the lien as modified, but still do affect the title to the property. The requirements are substantially the same as for the ALTA® Endorsement Form 11-06.

For issuance of ALTA Endorsement Form 11.1-06 (Mortgage Modification with Subordination) (Adopted 10/22/09): Receipt of (1) verification of recording of satisfactory modification of the deed of trust insured ("Modification") which Modification has been properly executed by (a) the current record owner(s) of the Land, and spouses, if any; and (b) the current record owner(s) of the Indebtedness evidenced by the deed of trust insured; and (2) attorney's certification of Title to the Land through and including the date and time of recording of the Modification. If the Modification, attorney's certification or other information provided to Company reveals anything which, as of Date of Endorsement, may impair the validity, enforceability or priority of the deed of trust insured (including potential mechanics' and materialmen's liens or rights of tenants in possession), those matters will be shown in the endorsement unless (1) resolved to the satisfaction of Company; or (2) in the case of a superior interests, subordinated to the lien of the insured deed of trust as modified.

If survey coverage is required through Date of Endorsement, Company must be provided with a current and accurate survey of the Land. Note: If survey coverage is provided in the policy and there have been no improvements or alterations since Date of Policy, survey coverage may be extended through Date of Endorsement if Company is provided with a satisfactory Survey Affidavit.

ALTA® Endorsement Form 11.2-06 (Mortgage Modification with Additional Amount of Insurance) (Adopted 12/2/13)

This endorsement is substantially similar to the ALTA® Endorsement Form 11-06 and Form 11.1-06 above, but includes item #3.b. for additional priority matters (typically intervening matters or even prior matters that have not been adequately subordinated to the new modification) and item #3.c. for itemization of subordinate items (typically intervening matters which are subordinate or have been subordinated to the lien as modified, but still do affect the title to the property, or prior matters which have been re-subordinated to the modified deed of trust). The requirements are increased from those of the ALTA® Endorsement Form 11-06 and 11.1-06 primarily because of the additional amount – the "new money." In North Carolina, the last bracketed item on the ALTA form, addressing mortgage and intangibles taxes, may be deleted as none apply in this state.

For issuance of ALTA Endorsement Form 11.2-06 (Mortgage Modification with Additional Amount of Insurance) (Adopted 12/02/13): Receipt of (1) verification of recording of satisfactory modification of the deed of trust insured ("Modification") which Modification reflects the increase in maximum liability amount sufficient for the additional Amount of Insurance requested and has been properly executed by (a) the current record owner(s) of the Land, and spouses, if any; and (b) the current record owner(s) of the Indebtedness evidenced by the deed of trust insured; (2) attorney's certification of Title to the Land through and including the date and time of recording of the Modification; (3) subordination of any intervening priority matters and re-subordination of any prior matters for which the earlier subordination was inadequate to extend to the Modification, if those matters are to be reflected in the Endorsement as subordinate matters, as opposed to being included as additional Schedule B-I exceptions. If the

Modification, attorney's certification or other information provided to Company reveals anything which, as of Date of Endorsement, may impair the validity, enforceability or priority of the insured deed of trust, as modified (including potential mechanics' and materialmen's liens or rights of tenants in possession), those matters will be shown as exceptions in the endorsement unless (1) resolved to the satisfaction of Company; or (2) in the case of a superior interests, subordinated to the lien of the insured deed of trust as modified.

If survey coverage is required through Date of Endorsement, Company must be provided with a current and accurate survey of the Land. Note: If survey coverage is provided in the policy and there have been no improvements or alterations since Date of Policy, survey coverage may be extended through Date of Endorsement if Company is provided with a satisfactory Survey Affidavit.

ALTA® Endorsement 12-06 (Aggregation – Loan) (Revised 4/2/13)

This endorsement has also been called the "Tie-in" endorsement. Frequently, deeds of trust and/or mortgages covering many parcels in different recording districts or jurisdictions are recorded for the full amount of the loan. Instead of combining all of the parcels into one large policy, this endorsement allows an insurer to issue a number of policies for lesser amounts but to aggregate the coverage under the combined policies, with the maximum Aggregate Amount of Insurance so that the Insured can take advantage of any increases in the value of a particular parcel should there be a loss.

For issuance of ALTA Endorsement Form 12-06 (Aggregation - Loan) (Revised 4/2/13): Identification of all policies (policy number/state/county/amount) issued insuring the liens of deed(s) of trust on multiple properties and verification that the deed(s) of trust to be insured contain cross-default and cross-collateralization provisions securing the same Indebtedness(es), such that, in the event of default, the Insured lender may foreclose on any one or all properties.

ALTA® Endorsement Form 12.1-06 (Aggregation – State Limits - Loan) (Adopted 4/2/13)

Though similar to the Form 12 above in providing the Aggregate Amount of Insurance, this endorsement allows for lesser amounts in some jurisdictions in which the title insurer's single risk limit may be lower. The avoid inadvertently triggering the need for coinsurance or reinsurance by having an Aggregate Amount of Insurance which is within some of the applicable states' single risk limit for the insurer, but exceeds others.

For issuance of ALTA Endorsement Form 12.1-06 (Aggregation – State Limits – Loan) (Adopted 4/2/13): Identification of all policies (policy number/state/county/amount) issued insuring the liens of deed(s) of trust on multiple properties; identification of states and single risk limitation below the Aggregate Amount of Insurance proposed; and verification that the deed(s) of trust to be insured contain cross-default and cross-collateralization provisions securing the same Indebtedness(es), such that, in the event of default, the Insured lender may foreclose on any one or all properties.

ALTA® Endorsement Form 13-06 (Leasehold – Owner's) (Revised 4/2/12)

This endorsement provides additional tailored coverages for the lessee-owner of a Leasehold Estate (replacing the former ALTA Leasehold Owner's Policy). The Insured is provided coverage for net loss or damage from Eviction from all or a portion of the Land which constitutes the Leasehold Estate, including (1) any Tenant Leasehold Improvements, (2) removing and relocating Personal Property such as trade fixtures, and restoring the Land if required by the Lease, (3) net rental due despite Eviction, and (4) costs to obtain and relocate to replacement leasehold reasonably equivalent to the original Leasehold Estate. However, the endorsement excludes loss or damage from remediation due to environmental damage or contamination.

For issuance of ALTA Endorsement Form 13-06 (Leasehold-Owner's) (Revised 4/2/12): Receipt of verification of recordation of satisfactory lease (or memorandum thereof) evidencing the Leasehold Estate in the Land to be insured.

ALTA® Endorsement Form 13.1-06 (Leasehold – Loan) (Revised 4/2/12)

This endorsement provides additional tailored coverages for the insured lender substantially similar to the Form 13-06 for the owner, for which the security interest is in a Leasehold Estate (replacing the former ALTA Leasehold Loan Policy).

For issuance of ALTA Endorsement Form 13.1-06 (Leasehold-Loan) (Revised 4/2/12): Receipt of verification of recordation of satisfactory lease (or memorandum thereof) and leasehold deed of trust evidencing the Leasehold Estate in the Land to be insured.

ALTA® Endorsement Form 14-06 (Future Advance – Priority) (Revised 2/3/11)

This endorsement provides for continued priority of future advances, which are otherwise post-closing matters not included within the covered risks under the ALTA policies. NCGS 45-67 *et seq.*, which sets out priority in North Carolina, does not distinguish between an obligatory and a non-obligatory (optional) advance. If the Insured Mortgage complies with the statute, the advances have priority as to later recorded liens or encumbrances, other than issues regarding Special Cases: Federal Tax Liens, Mechanics' Liens and Environmental Protection Liens, though a lender making advances after they have notice of financial problems risks losing coverage under the policy for failing to mitigate their losses under the policy exclusions and definition of loss. Thus, even if the lender is aware of an adverse matter, their statutory priority remains unless the adverse matter is of record. However that knowledge may affect the calculation of loss under the policy coverage provisions.

For issuance of ALTA Endorsement Form 14-06 (Future Advance-Priority) (Revised 2/3/11): Verification that the insured deed of trust contains notice that it will secure future advances (including revolving line of credit, if applicable); states the maximum principal amount to be secured at any one time; that all advances must be made within 30 years from the date thereof; and, as applicable, either (1) whether future advances or future obligations or both are to be secured (in compliance with NCGS 45-67 et seq.) for revolving credit lines, future advance loans, or construction loan transactions or (2) that it secures an equity line of credit and that it is governed by the provisions of Chapter 45, Article 9 of the North Carolina General Statutes (NCGS 45-81 et seq.) for an equity line of credit (i.e. securing future advances thereunder, but not future obligations). If removal of the bracketed exception for mechanics' and materialmen's lien priority is required, potential liens for labor, services or materials must be appropriately waived or subordinated to the lien of the Insured Mortgage.

ALTA® Endorsement Form 14.1-06 (Future Advance – Knowledge) (Revised 2/3/11)

This endorsement provides the same coverage as Form 14-06 above but excludes coverage for advances made after Insured has knowledge of an intervening lien, encumbrance or other matter affecting title. (This form is not customarily issued in North Carolina.)

For issuance of ALTA Endorsement Form 14.1-06 (Future Advance-Knowledge) (Revised 2/3/11): Verification that the insured deed of trust contains notice that it will secure future advances (including revolving line of credit, if applicable); states the maximum principal amount to be secured at any one time; that all advances must be made within 30 years from the date thereof; and, as applicable, either (1) whether future advances or future obligations or both are to be secured (in compliance with NCGS 45-67 et seq.) for revolving credit lines, future advance loans, or construction loan transactions or (2) that it secures an equity line of credit and that it is governed by the provisions of Chapter 45, Article 9 of the North Carolina General Statutes (NCGS 45-81 et seq.) for an equity line of credit (i.e. securing future advances thereunder, but not future obligations). If removal of the bracketed exception for mechanics' and materialmen's lien

priority is required, potential liens for labor, services or materials must be appropriately waived or subordinated to the lien of the Insured Mortgage.

ALTA® Endorsement Form 14.2-06 (Future Advance – Letter of Credit) (Revised 2/3/11)

This endorsement provides similar coverage of future advances as the Form 14-06 above in situations where the "agreement" involves a letter of credit and reimbursement agreement. So, in addition to the requirements of the Form 14 above, for issuance of this endorsement, the attorney must provide a copy of the Letter of Credit and verification that (a) the Letter of Credit has been issued and fully executed prior to or simultaneously with closing and recording of the Insured Mortgage and (b) the Mortgage adequately references and incorporates the terms of the Letter of Credit.

For issuance of ALTA Endorsement Form 14.2-06 (Future Advance-Letter of Credit) (Revised 2/3/11): (1) Verification that the insured deed of trust contains notice that it will secure future advances (including revolving line of credit, if applicable); states the maximum principal amount to be secured at any one time; that all advances must be made within 30 years from the date thereof; and, as applicable, either (a) whether future advances or future obligations or both are to be secured (in compliance with NCGS 45-67 et seq.) for revolving credit lines, future advance loans, or construction loan transactions or (b) that it secures an equity line of credit and that it is governed by the provisions of Chapter 45, Article 9 of the North Carolina General Statutes (NCGS 45-81 et seq.) for an equity line of credit (i.e. securing future advances thereunder, but not future obligations); (2) receipt of a copy of the Letter of Credit and verification that (a) the Letter of Credit has been issued and fully executed prior to or simultaneously with closing and recording of the insured deed of trust and (b) the insured deed of trust adequately references and incorporates the terms of the Letter of Credit; and (3) if removal of the bracketed exception for mechanics' and materialmen's lien priority is required, potential liens for labor, services or materials must be appropriately waived or subordinated to the lien of the Insured Mortgage.

ALTA® Endorsement Form 14.3-06 (Future Advance – Reverse Mortgage) (Revised 2/3/11)

This endorsement provides coverage to a lender on a reverse mortgage transaction pursuant to the HUD Home Equity Conversion Mortgage Program requirements and the North Carolina Reverse Mortgage Act, Article 21 of Chapter 53 of the North Carolina General Statutes.

For issuance of ALTA Endorsement Form 14.3-06 (Future Advance-Reverse Mortgage) (Revised 2/3/11): Verification (1) that the insured deed of trust contains notice that it is a reverse mortgage and secures future advances (including revolving line of credit, if applicable); states the maximum principal amount to be secured at any one time; that all advances must be made within 30 years from the date thereof; and, as applicable, either (a) whether future advances or future obligations or both are to be secured (in compliance with NCGS 45-67 et seq.) for revolving credit lines, future advance loans, or construction loan transactions or (b) that it secures an equity line of credit and that it is governed by the provisions of Chapter 45, Article 9 of the North Carolina General Statutes (NCGS 45-81 et seq.) for an equity line of credit (i.e. securing future advances thereunder, but not future obligations); and (2) that mortgagors are at least 62 years of age as of Date of Policy. NOTE: If the deed of trust to be insured is other than a HUD Home Equity Conversion Mortgage (HECM) or Fannie Mae HomeKeeper® security instrument, attorney should contact Company prior to closing this transaction. If removal of the bracketed exception for mechanics' and materialmen's lien priority is required, potential liens for labor, services or materials must be appropriately waived or subordinated to the lien of the Insured Mortgage.

ALTA® Endorsement Form 15-06 (Nonimputation –Full Equity Transfer) (Adopted 06/17/06)
This endorsement provides coverage of the title-holding entity against loss due to knowledge imputed to title-holding entity solely by operation of law due to knowledge or action of named outgoing partners, members, shareholders, officers or directors on transfer of the entire equity ownership to new incoming partners, shareholders or members.

For issuance of ALTA Endorsement Form 15-06 (Nonimputation - Full Equity Transfer) (Adopted 6/17/06): (1) Verification that the full equity interest in the proposed Insured owner (Entity) is to be transferred to the incoming equity purchaser for full value without knowledge by the said purchaser of any defect, lien, encumbrance, adverse claim or other matter affecting Title to the Land not disclosed to Company prior to closing; and (2) receipt by Company of satisfactory Non-Imputation Affidavit and Indemnity by (and satisfactory assurances regarding) all outgoing equity holders that they know of no defect, lien, encumbrance, adverse claim or other matter affecting Title to the Land, not disclosed to Company prior to closing, which would be imputed to proposed Insured owner.

ALTA® Endorsement Form 15.1-06 (Nonimputation – Additional Insured) (Adopted 06/17/06)
This endorsement provides coverage of incoming purchasing partner, member, or shareholder purchasing an interest in the title-holding entity from the entity, for their purchased percentage interest only against loss due to knowledge imputed to the title-holding entity solely by operation of law due to knowledge or action of named shareholders, partners, members, shareholders, officers or directors. Since the policy itself insures the title-holding entity, they must consent to this coverage being for the benefit of an individual partner, member or shareholder, rather than the title-holding entity.

For issuance of ALTA Endorsement Form 15.1-06 (Nonimputation - Additional Insured) (Adopted 6/17/06): (1) Verification that the equity interest in the proposed Insured owner (Entity) is to be transferred to the proposed additional Insured incoming equity purchaser for full value without knowledge by said purchaser of any defect, lien, encumbrance, adverse claim or other matter affecting Title to the Land not disclosed to Company prior to closing; and (2) receipt by Company of satisfactory Non-Imputation Affidavit and Indemnity by (and satisfactory assurances regarding) all outgoing equity holders (and any remaining general partners if a partnership) that they know of no defect, lien, encumbrance, adverse claim or other matter affecting Title to the Land, not disclosed to Company prior to closing, which would be imputed to proposed Insured(s).

ALTA® Endorsement Form 15.2-06 (Nonimputation – Partial Equity Transfer) (Adopted 06/17/06)
This endorsement provides coverage of incoming purchasing partner, member, or shareholder, purchasing an interest in the title-holding entity from an outgoing partner, members or shareholder, against loss due to knowledge imputed to such entity solely by operation of law due to knowledge or action of named outgoing partners, members, shareholders, officers or directors.

For issuance of ALTA Endorsement Form 15.2-06 (Nonimputation - Partial Equity Transfer) (Adopted 6/17/06): (1) Verification that the equity interest in the owning Entity is to be transferred to the proposed Insured incoming equity purchaser for full value without knowledge by said purchaser of any defect, lien, encumbrance, adverse claim or other matter affecting Title to the Land not disclosed to Company prior to closing; (2) receipt by Company of satisfactory Non-Imputation Affidavit and Indemnity by (and satisfactory assurances regarding) all outgoing equity holders (and any remaining general partners if a partnership) that they know of no defect, lien, encumbrance, adverse claim or other matter affecting Title to the Land not disclosed to Company prior to closing, which would be imputed to the owning Entity; and (3) agreement of owning Entity and proposed Insured as to coordination of benefits between ownership policy and policy regarding equity interest to be issued hereunder.

ALTA® Endorsement Form 16-06 (Mezzanine Financing) (Adopted 06/17/06)
This endorsement provides for direct claim of mezzanine lender on owner's policy in property not serving as security interest, but owned by borrower under mezzanine financing arrangement.

For issuance of ALTA Endorsement Form 16-06 (Mezzanine Financing) (Adopted 6/17/06): Verification of (1) agreement of Insured to assign policy protections to lender by execution of endorsement and to delivery of original owner's policy with endorsement to lender, and (2) receipt by Company of satisfactory Non-Imputation Affidavit and Indemnity by (and satisfactory assurances regarding) equity holders of owner-Insured (including general partners if a partnership) that they know of no defect, lien, encumbrance, adverse claim or other matter affecting Title to the Land, not disclosed to Company prior to closing, which would be imputed to the Insured or proposed Insured lender.

ALTA® Endorsement Form 17-06 (Access and Entry) (Adopted 06/17/06)
This endorsement provides coverage against loss due to lack of access to named open, public street, including curb cuts.

For issuance of ALTA Endorsement Form 17-06 (Access and Entry) (Adopted 6/17/06): Verification satisfactory to Company and current survey reflecting: (1) the name of the public street which provides access to the Land; (2) that the street is in fact a physically open public street, maintained by a public authority (city or state); (3) that the Land abuts thereon; (4) that access is not prohibited or limited in any way, either legally (such as controlled access) or physically (i.e. no physical impediment to vehicular or pedestrian access); and (5) Insured has right to use existing curb cuts or entries, if any, along that portion of the street abutting the Land.

ALTA® Endorsement Form 17.1-06 (Indirect Access and Entry) (Adopted 06/17/06)
This endorsement provides coverage against loss due to lack of access over a private easement or right-of-way to named open public street, including curb cuts.

For issuance of ALTA Endorsement Form 17.1-06 (Indirect Access and Entry) (Adopted 6/17/06): Verification satisfactory to Company and current survey reflecting: (1) the name or identification of the private access easement ("easement") to be insured and name of the public street ("street") to which such easement provides access; (2) that the easement is created by duly recorded instrument; (3) Title to the easement is certified such that same can be identified as an insured parcel under Schedule A of the policy and exception taken to any relevant matters related thereto including the terms and conditions of the creating instrument; (4) that the street is in fact a physically open public street, maintained by a public authority (city or state); (5) that the Land abuts the easement and the easement abuts the street; (6) that access over the easement onto the street is not prohibited or limited in any way, either legally (such as controlled access) or physically (i.e. no physical impediment to vehicular or pedestrian access); and (7) Insured has the right to use existing curb cuts or entries, if any, along the easement or street.

ALTA® Endorsement Form 17.2-06 (Utility Access) (Adopted 10/16/08)
This endorsement provides coverage against loss to an insured lender or owner in the event the Land does not have access to specified utilities which must be checked on the form, including water service, electrical power service, telephone service, storm water drainage or other service (filled in by the drafter), due to a gap in easement or a termination by the grantor.

For issuance of ALTA Endorsement Form 17.2-06 (Utility Access) (Adopted 10/16/08): Certification from attorney or utility provider as to those utilities (such as water service, electrical power service, telephone service, storm water drainage or other service) currently available to service the Land either over, under or upon public rights-of-way directly adjacent to the Land, or over, under or upon an easement (not terminable by the grantor thereof or by his heirs, personal representatives, successors or assigns) for the benefit of said

Land that connects to public rights-of-way. This would typically be from review of a current survey, verification from a third party that the reflected public utilities are direct, public and in place, and title certification of private easements by the certifying attorney.

ALTA® Endorsement Form 18-06 (Single Tax Parcel) (Adopted 06/17/06)
This endorsement provides coverage to an insured lender or owner that Land is single separate tax parcel, not included within a larger parcel.

For issuance of ALTA Endorsement Form 18-06 (Single Tax Parcel) (Adopted 6/17/06): Certification from attorney that all of insured Land is covered within the tax parcel number(s) assigned to said Land and that the number(s) do(es) not include any additional land.

ALTA® Endorsement Form 18.1-06 (Multiple Tax Parcel) (Adopted 06/17/06)
Though providing similar coverage as the above ALTA® Endorsement Form 18, this endorsement identifies the actual tax parcel identification numbers of multiple parcels, as well as providing assurance regarding easements.

For issuance of ALTA Endorsement Form 18.1-06 (Multiple Tax Parcel) (Adopted 6/17/06): Certification from attorney as to tax identification numbers covering insured Land, that all of insured Land is covered within said numbers and that the numbers do not include any additional land. NOTE: If an easement is to be insured, the easement interest should be listed for ad valorem tax purposes in the name of the proposed Insured easement owner.

ALTA® Endorsement Form 18.2-06 (Multiple Tax Parcel) (Adopted 08/01/16)
Though providing similar coverage as the above ALTA® Endorsement Form 18.1-06, this endorsement identifies the actual tax parcel identification numbers of multiple parcels, but removed any assurance regarding easements. This may be because no easements are being insured, or because priority of easements over ad valorem taxes cannot be assured, or because the ad valorem taxes on the easement parcel(s) are not paid current.

For issuance of ALTA Endorsement Form 18.2-06 (Multiple Tax Parcel) (Adopted 08/01/16)): Certification from attorney as to tax identification numbers covering insured Land, that all of insured Land is covered within said numbers and that the numbers do not include any additional land.

ALTA® Endorsement Form 19-06 (Contiguity – Multiple Parcels) (Adopted 06/17/06)
This endorsement provides assurances to the insured lender or owner regarding contiguous boundary lines of multiple parcels being insured, identifying the particular parcels and boundaries.

For issuance of ALTA Endorsement Form 19-06 (Contiguity-Multiple Parcels) (Adopted 6/17/06): Current survey of parcels comprising Land to be insured evidencing that the parcels are contiguous with no gaps, strips or gores separating any of the contiguous boundary lines.

ALTA® Endorsement Form 19.1-06 (Contiguity – Single Parcel) (Adopted 06/17/06)
This endorsement provides assurances to the insured lender or owner regarding contiguity of Land to other parcels, not insured under the policy.

For issuance of ALTA Endorsement Form 19.1-06 (Contiguity-Single Parcel) (Adopted 6/17/06): Current survey of Land to be insured evidencing that the Land is contiguous to specifically identified parcel(s) not insured hereunder with no gaps, strips or gores separating any of the contiguous boundary lines.

ALTA® Endorsement Form 19.2-06 (Contiguity – Specified Parcels) (Adopted 4/2/15)

This endorsement provides assurances to the insured lender or owner regarding contiguous boundary lines of multiple, often numerous, parcels being insured, by referencing only the parcels insured as contiguous and the applicable survey, without identifying the respective contiguous boundaries.

For issuance of ALTA Endorsement Form 19.2-06 (Contiguity-Specified Parcels) (Adopted 04/02/15): Current survey of parcels comprising Land to be insured evidencing that the parcels are contiguous with no gaps, strips or gores separating any of the contiguous boundary lines.

ALTA® Endorsement Form 20-06 (First Loss – Multiple Parcel Transactions) (Adopted 06/17/06)

This endorsement allows for recognition of a "loss" in a multi-site lender coverage, if any matter covered by the policy for which a claim is made would decrease the value of all of the collateral providing security for the loan below the outstanding loan amount, without requiring acceleration of the debt and foreclosure of all properties.

For issuance of ALTA Endorsement Form 20-06 (First Loss - Multiple Parcel Transactions) (Adopted 6/17/06): Verification that the Land to be insured is comprised of more than one parcel.

ALTA® Endorsement – (FORMER) Form 21-06 (Creditors' Rights) (6/17/06) NO LONGER AVAILABLE

THIS ENDORSEMENT HAS BEEN WITHDRAWN AND DECERTIFIED. It had provided insurance against certain losses due to a fraudulent transfer or a preference under federal bankruptcy, state insolvency or similar creditors' rights laws, which risks are otherwise Exclusions from Coverage under the ALTA® Owner's Policy (6-17-06) and/or the ALTA® Loan Policy (6-17-06). Issuance of this endorsement required prior approval by the appropriate official(s) of the title insurer, depending on the nature of the transaction, which required submission of substantial information regarding the nature of the transaction, including (a) the structure of the transaction (antecedent debt, upstream or downstream financing, sale-leaseback, leverage buyout, etc.); (b) names and affiliations of parties to or connected with the transaction; (c) the consideration to be paid, including the source of funds (if any); (d) the intended use of proceeds of any loan to be insured; (e) any facts related to the financial status of the borrower or seller; and (f) any additional information which might materially affect the nature of the risk to be insured.

ALTA® Endorsement Form 22-06 (Location) (Adopted 06/17/06)

This endorsement provides assurances against loss to an insured owner or lender if the Land described in Schedule A is not located at an identified address at Date of Policy or is not of the general type of improvement (residence, apartment building, or commercial office building, for example, and not details such as square footage, number of floors or quality or type of construction).

For issuance of ALTA Endorsement Form 22-06 (Location) (Adopted 6/17/06): Adequate independent verification (such as survey, appraisal, aerial tax map) of the type of current improvements on the Land (i.e., residence, apartment building, office building) and the street address of the Land according to the numbering system in use in the jurisdiction in which the Land is located.

ALTA® Endorsement Form 22.1-06 (Location and Map) (Adopted 06/17/06)

This endorsement provides assurances against loss to an insured owner or lender if the property described in Schedule A is not located at an identified street address at Date of Policy or is not the property shown on a map or plat (presumably the recorded plat referenced in the legal description) *attached to the policy* or is not of the general type of improvement (residence, apartment building, or commercial office building, for example, and not details such as square footage, number of floors or quality or type of construction). This type of endorsement has rarely been used in North Carolina since historically title insurers do not attach maps or plats to policies.

For issuance of ALTA Endorsement Form 22.1-06 (Location and Map) (Adopted 6/17/06): Adequate independent verification (such as survey, appraisal, aerial tax map) of the type of current improvements on the Land (i.e., residence, apartment building, office building) and the street address of the Land according to the numbering system in use in the jurisdiction in which the Land is located; and copy of recorded map or plat which accurately depicts the location and dimensions of the Land.

ALTA® Endorsement Form 23-06 (Co-Insurance - Single Policy) (Revised 10/16/08)

This endorsement (sometimes called a "Me Too" endorsement) is attached to a single policy for an insured owner or lender, issued by the Issuing Co-Insurer, in which more than one insurer (the "Co-Insurers") have liability for the Land and transaction insured, - each in the amounts and proportions of insurance specified in the endorsement. The endorsement evidences that the Co-Insurers executing the endorsement adopt the Covered Risks, Exclusions, Conditions, Schedules and Endorsements of the policy issued by the Issuing Co-Insurer and, unlike traditional co-insurance, only the single policy of the Issuing Co-Insurer is actually issued; Co-Insurers do not issue separate identical policies.

For issuance of ALTA Endorsement Form 23-06 (Co-Insurance - Single Policy) (Revised 10/16/08): Specific separate approval from and compliance with any requirements of the Underwriting Department for each of the Co-Insuring Companies. Terms and conditions of the coinsurance agreement will be evidenced by separate execution of the Endorsement by the Issuing Co-Insurer and each Co-Insurer. Additional premium may be required.

ALTA® Endorsement Form 23.1-06 (Co-Insurance – Multiple Policies) (Adopted 08/01/17)

This endorsement provides the co-insurance coverage of the ALTA Endorsement Form 23-06 above, but also recognizes that each co-insurer's policy liability is aggregated with the liability of the lead co-insurer's aggregation endorsement (typically, the ALTA Endorsement Form 12-06 or 12.1-06) if multiple policies are being issued by the Insurer on separate tracts of Land.

For issuance of ALTA Endorsement Form 23.1-06 (Co-Insurance – Multiple Policies) (Adopted 08/01/16): Specific separate approval from and compliance with any requirements of the Underwriting Department for each of the Co-Insuring Companies. Terms and conditions of the coinsurance agreement will be evidenced by separate execution of the Endorsement by the Issuing Co-Insurer and each Co-Insurer, as well as the ALTA Endorsement Form 12-06 or 12.1-06, as applicable. Additional premium may be required.

ALTA® Endorsement Form 24-06 (Doing Business) (Adopted 10/16/08)

This endorsement provides assurances against loss by an insured lender in the event the Insured Mortgage is invalid or unenforceable solely because the lender did not qualify to do business in the state in which the Land is located. It is preferable that the lender comply, as applicable, with the North Carolina Mortgage Lending Act by filing with the North Carolina Commissioner of Banks, with the filing requirements of the North Carolina Secretary of State, or with any other state or federal applicable banking or regulatory requirements. However, that is not a requirement of issuance of the endorsement since failure to so file or quality will not invalidate the lien of the Insured Mortgage or render it unenforceable.

For issuance of ALTA Endorsement 24-06 (Doing Business) (Adopted 10/16/08): Verification that the Insured either has complied with the requirements of the Mortgage Lending Act by filing with the Commissioner of Banks, or has complied with the filing requirements with the Secretary of State of North Carolina, or is a bank, savings bank, credit union, FHA or VA approved lender, insurance company or other nationally recognized lending institution.

ALTA® Endorsement Form 25-06 (Same As Survey) (Adopted 10/16/08)

This endorsement provides assurances against loss or damage to an insured lender or owner if the Land described in the policy is not identical to that property shown on a designated survey. (This is substantially similar to the former CLTA Endorsement 116.1.)

For issuance of ALTA Endorsement Form 25-06 (Same as Survey) (Adopted 10/16/08): Review of specified survey and determination that the Land depicted on the survey is identical to the Land insured under the policy.

ALTA® Endorsement Form 25.1-06 (Same as Portion of Survey) (Adopted 10/16/08)

This endorsement is similar to the Form 25 and has similar requirement for issuance. However, this endorsement form limits its coverage to a specified lot, parcel or tract shown on the referenced survey, and *not all* of the property on the survey. Thus, the endorsement would be applicable when only an identifiable and separately labeled portion of property shown on the survey is actually being insured under the policy.

For issuance of ALTA Endorsement Form 25.1-06 (Same as Portion of Survey) (Adopted 10/16/08): Review of specified survey and determination that the Land to be insured under the policy is identical to an identifiable segregated lot, tract or parcel depicted on the survey.

ALTA® Endorsement Form 26-06 (Subdivision) (Adopted 10/16/08)

This endorsement provides assurances against loss or damage to an insured lender or owner if the Land fails to comprise a lawfully created parcel according to the applicable subdivision statutes or ordinances. The appeal period must have expired for any recent changes, or special approval from underwriting counsel would be required.

For issuance of ALTA Endorsement Form 26-06 (Subdivision) (Adopted 10/16/08): Receipt of (i) a satisfactory survey setting forth compliance with all applicable subdivision laws, ordinances, resolutions, regulations and rules, or (ii) certification from an attorney or surveyor that the insured Land is in compliance with all applicable subdivision laws, ordinances, resolutions, regulations and rules. Special approval from underwriting counsel for Company is required if the appeal period for any recent changes has not expired.

ALTA® Endorsement Form 27-06 (Usury) (Adopted 10/16/08)

This endorsement provides assurances against loss or damage to an insured lender in the event the Insured Mortgage is found unenforceable or invalid as a result of violation of the usury laws of the state in which the Land is located. For North Carolina property, this endorsement can be issued so long as the loan is exempt, as defined under N.C.G.S. 24-9, *i.e.*

a. The loan amount is three hundred thousand dollars ($300,000) or more; or

b. The borrower is a person other than a natural person; or

c. The loan is obtained by a natural person primarily for a purpose other than a personal, family, or household purpose. Whether a loan is obtained primarily for a purpose other than a personal, family, or household purpose shall be guided by the standards established by the federal Truth In Lending Act (Title 1 of Public Law 90-321; 82 Stat. 146; 15 U.S.C. § 160, et seq.) and all regulations and rulings issued pursuant to that Act, as the same may be amended from time to time.

However, coverage under the endorsement must be limited to North Carolina usury laws. So the ALTA® Endorsement Form 27-06 specifically provides that the coverage is limited to the usury law of the state where the Land is located.

For issuance of ALTA Endorsement Form 27-06 (Usury) (Adopted 10/16/08): Receipt of attorney's certification that the loan is exempt under N.C.G.S. 24-9, i.e. (a) the loan amount is three hundred thousand dollars ($300,000) or more; or (b) the borrower is a person other than a natural person; or (c) the loan is obtained by a natural person primarily for a purpose other than a personal, family, or household purpose as determined by the standards established by the federal Truth In Lending Act (Title 1 of Public Law 90-321; 82 Stat. 146; 15 U.S.C. § 160, et seq.) and all regulations and rulings issued pursuant to that Act, as the same may be amended from time to time.

ALTA® Endorsement Form 28-06 (Easement – Damage or Enforced Removal) (Revised 2/3/10)

This endorsement provides assurances against loss or damage to an insured lender or owner for damage to or enforced removal or alteration of an existing building located on the Land which encroaches into or over an easement identified by exception number designation in Schedule B – Exceptions of the policy solely as a result of the exercise of the right of use or maintenance of the specified easement according to its terms. Typically, provision of this coverage will require prior approval by the title insurer based upon review of a current survey of the Land showing the improvements, a copy of the recorded easement document and information about the use of the improvements (current and intended) in conjunction with any other relevant surrounding facts.

For issuance of ALTA Endorsement Form 28-06 (Easement - Damage or Enforced Removal) (Revised 2/3/10): Review of easement(s) recorded in Book _____, page _____; identification of encroachment(s) onto the easement(s) based on a current survey; determination of the purpose for which the affirmative coverage is requested; and prior approval of the Company's Underwriting Department to provide coverage over these encroachment(s).

ALTA® Endorsement Form 28.1-06 (Encroachments – Boundaries and Easements) (Adopted 4/2/12)

This endorsement provides coverage against loss or damage to an Insured (owner or lender) due to encroachment of an Improvement on the Land onto adjoining land or an easement, or encroachment of an improvement on adjoining land onto the Land, including enforced removal of existing Improvements on the Land, other than encroachments itemized in specified exceptions on Schedule B. It contains the same preamble language used in the 2012 revisions to the ALTA 9 series, i.e. "The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement [*encroachments excepted in Schedule B of the policy*]; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy." Issuance of this endorsement would require review of a survey of the Land and analysis of the significance and possible need for waivers or other curative action regarding any encroachments thereon.

For issuance of ALTA Endorsement Form 28.1-06 (Encroachments - Boundaries and Easements) (Adopted 4/2/12): Receipt of current accurate survey or inspection of the Land verifying that there are no encroachments of an Improvement on the Land onto adjoining land or an easement, and no encroachments of an improvement on adjoining land onto the Land. If any encroachments are identified, prior approval must be obtained for additional requirements (waivers or curative action) or exceptions under Schedule B and Item 4 of this endorsement.

ALTA® Endorsement 28.2-06 Encroachments – Boundaries and Easements – Described Improvements (Adopted 4/2/13)

This endorsement provides assurances regarding specifically identified Improvements, which must be actually itemized in the endorsement. Similar to the Form 28 and Form 28.1 above, this endorsement provides coverage against loss or damage to an Insured (owner or lender) due to encroachment of the itemized Improvement(s) on the Land onto adjoining land or an easement, or encroachment of an itemized Improvement on adjoining land onto the Land, including enforced removal of the itemized Improvements on the Land, other than encroachments itemized in specified exceptions on Schedule B. Issuance of this endorsement would require review of a survey of the Land and analysis of the significance and possible need for waivers or other curative action regarding any encroachments thereon.

For issuance of ALTA Endorsement Form 28.2-06 (Encroachments - Boundaries and Easements – Described Improvements) (Adopted 4/2/13): Receipt of (1) current accurate survey of the Land, (2) itemization of the Improvements for which this affirmative coverage is requested, and (3) verification from current survey that Improvements create no encroachments of an Improvement located on the Land onto adjoining land or onto that portion of the Land subject to an easement and no encroachment onto the Land of improvements appurtenant to adjoining lands. If any encroachments are identified, prior approval must be obtained for additional requirements (waivers or curative action) or exceptions under Schedule B and Item 4 of this endorsement.

ALTA® Endorsement 28.3-06 Encroachments – Boundaries and Easements – Described Improvements and Land Under Development (Adopted 4/2/15)

This endorsement provides assurances regarding specifically defined Improvements existing at Date of Policy, or Future Improvements to be built or constructed according to the Plans specifically identified in the endorsement. Issuance of this endorsement would require review of a survey of the Land as well as the Plans, with analysis of the significance and possible need for waivers or other curative action regarding any encroachments reflected.

For issuance of ALTA Endorsement Form 28.3-06 (Encroachments - Boundaries and Easements – Described Improvements and Land Under Development) (Adopted 4/2/15): Receipt of (1) architect's or engineer's Plans (survey, site, elevation & other drawings) for specific Future Improvements contemplated; (2) a current accurate survey of the Land; (3) verification from Plans and current survey that current Improvements and Future Improvements create no encroachments of an Improvement or Future Improvement located on the Land onto adjoining land or onto that portion of the Land subject to an easement; no encroachment onto the Land of improvements appurtenant to adjoining lands; and that the contemplated Future Improvements will not create any such encroachment. If any encroachments are identified, prior approval must be obtained for additional requirements (waivers or curative action) or exceptions under Schedule B and Item 4 of this endorsement.

ALTA® Endorsement Form 29-06 (Interest Rate Swap Endorsement - Direct Obligation) (Adopted 2/3/10)

This endorsement provides assurances against loss or damage to an insured lender that breakage fees under an interest rate exchange or swap agreement executed and in existence at Date of Endorsement will be included in the definition of Indebtedness in Conditions 1(d) and will not be excluded as post-policy under Exclusions from Coverage 3(d) of the ALTA Loan Policy. The endorsement specifically excludes coverage with respect to laws relating to bankruptcy, usury, unconscionability or unreasonableness. This Form 29-06 treats the swap obligation amount as additional principal so the Amount of Coverage should be within the maximum stated in the Insured Mortgage. The swap agreement and Insured Mortgage should be reviewed by underwriting counsel.

For issuance of ALTA Endorsement Form 29-06 (Interest Rate Swap - Direct Obligation) (Adopted 2/3/10): Receipt of verification that (1) the insured deed of trust contains notice that it will secure future advances and obligations (including specifically obligations of the lender for breakage fees under the swap or interest exchange agreement), states the maximum principal amount (including breakage fees under the swap or interest exchange agreement), specifically identifies the Indebtedness(es) (both the note and the swap or interest exchange agreement) to be secured which must be active and in place at Date of Endorsement; and (2) as applicable, states either (a) that all future obligations must be incurred within 30 years from the date thereof (in compliance with NCGS 45-67 et seq.) for future advance or construction loan transactions, or (b) that it secures an equity line of credit and is governed by the provisions of Chapter 45, Article 9 of the North Carolina General Statutes (NCGS 45-81 et seq.).

ALTA® Endorsement Form 29.1-06 (Interest Rate Swap Endorsement - Additional Interest) (Adopted 2/3/10)

This endorsement provides assurances against loss or damage to an Insured similarly to the ALTA® Endorsement Form 29-06 above, except that the amounts advanced under the swap obligation would be treated as additional interest. While Conditions 1 (d) (iv) of the 2006 ALTA Loan Policy includes "interest on the loan" as part of the definition of Indebtedness, the endorsement is necessary in order to insure the validity, priority and enforceability of post-policy interest. This Form 29.1-06 treats the swap obligation amount as additional principal and additional interest so the Amount of Coverage should be within the maximum stated in the Insured Mortgage. The requirements for issuance are, otherwise, the same as for the ALTA® Endorsement Form 29-06.

For issuance of ALTA Endorsement Form 29.1-06 (Interest Rate Swap - Additional Insured) (Adopted 2/3/10): Receipt of verification that (1) the insured deed of trust contains notice that it will secure future advances and obligations (including specifically obligations of the lender for breakage fees under the swap or interest exchange agreement), states the maximum principal amount (including breakage fees under the swap or interest exchange agreement and interest on the loan), specifically identifies the Indebtedness (es) (both the note and the swap or interest exchange agreement including interest on the loan) to be secured which must be active and in place at Date of Endorsement; and (2) as applicable, states either (a) that all future obligations must be incurred within 30 years from the date thereof (in compliance with NCGS 45-67 et seq.) for future advance or construction loan transactions, or (b) that it secures an equity line of credit and is governed by the provisions of Chapter 45, Article 9 of the North Carolina General Statutes (NCGS 45-81 et seq.).

ALTA® Endorsement Form 29.2-06 (Interest Rate Swap Endorsement – Direct Obligation – Defined Amount) (Adopted 8/1/11)

Not appropriate for NC since it does not require a maximum amount to be stated in the deed of trust.

ALTA® Endorsement Form 29.3-06 (Interest Rate Swap Endorsement – Additional Interest – Defined Amount) (Adopted 8/1/11)

Not appropriate for NC since it does not require a maximum amount to be stated in the deed of trust.

ALTA® Endorsement Form 30-06 (Shared Appreciation Mortgage) (Adopted 7/26/10)

This endorsement provides assurances against loss or damage to an insured lender on a shared appreciation mortgage loan, including defense costs, coverage of post-policy appreciation in value according to the formula in the loan documents. It is designed for use with one-to-four family residential transactions, in connection with loan workouts or other finance transactions. The loan documentation must be reviewed by counsel to assure that (a) the recorded Insured Mortgage and loan documentation provide for shared appreciation, *i.e.* a portion of the appreciation in value of the Land accrues to the Lender in addition to interest, as a portion of secured amount due to proposed insured lender, (b) the transaction is an arm's length loan transaction and is not a joint venture, and (c) that the proposed insured lender does not have significant management or control authority such that the transaction is at risk of recharacterization as a joint venture. The endorsement excludes coverage for usury, consumer credit protection and truth in lending law. Therefore, the endorsement can be issued in North Carolina, notwithstanding that the shared appreciation provisions may be subject to usury concerns under the predatory lending act and probably would not be exempt under N.C.G.S. 24-9. The endorsement also excludes coverage for failure to comply with applicable shared appreciation laws and regulations and for creditors' rights issues.

For issuance of ALTA Endorsement Form 30-06 (One to Four Family Shared Appreciation) (Adopted 7/26/10): Receipt of verification that (1) the Land is a one-to-four family residence; (2) the Insured Mortgage is not a reverse mortgage; (3) the recorded Insured Mortgage expressly states that it is a Shared Appreciation Mortgage; i.e., a portion of the appreciation in value of the Land accrues to the Lender in addition to interest, as a portion of secured amount due to proposed insured lender and includes the actual formula or calculation method used to determine the lender's share (not just incorporation by reference); (4) the transaction is an arms-length loan transaction and is not a joint venture; and (5) the proposed insured lender does not have significant management or control authority such that the transaction is at risk of recharacterization as a joint venture.

ALTA® Endorsement Form 30.1-06 (Commercial Participation Interest) (Adopted 8/1/12)

This endorsement provides assurances against loss or damage to an insured lender on a mortgage securing a loan involving lender sharing in appreciation in value, cash flow and/or increase in equity from the Land, including defense costs, according to the formula in the loan documents, including the Mortgage. The loan documentation must be reviewed by counsel to assure that (a) the recorded Insured Mortgage and loan documentation expressly state the formula for shared appreciation (*i.e.* a portion of the appreciation in value of the Land accrues to the Lender in addition to interest), cash flows or increases in equity, as a portion of secured amount due to proposed insured lender, (b) the transaction is an arm's length loan transaction and is not a joint venture, and (c) that the proposed insured lender does not have significant management or control authority such that the transaction is at risk of recharacterization as a joint venture. The Amount of Insurance should, at a minimum, be the sum of principal debt plus a reasonable estimate of the amount of the shared appreciation. The endorsement excludes coverage for usury, consumer credit protection and truth in lending law. Therefore, the endorsement can be issued in North Carolina, notwithstanding that the shared appreciation provisions may be subject to usury concerns under the predatory lending act and probably would not be exempt under N.C.G.S. 24-9. The endorsement also excludes coverage for failure to comply with applicable shared appreciation laws and regulations and for creditors' rights issues.

For issuance of ALTA Endorsement Form 30.1-06 (Commercial Participation Interest) (Adopted 8/1/12): Receipt of verification that (1) recorded Insured Mortgage expressly states that it is a shared appreciation mortgage, i.e. a portion of the appreciation in value of or equity in or cash flow from the Land (as the case may be) accrues to the Lender in addition to interest, as a portion of secured amount due to proposed insured lender; and expressly includes the actual formula or calculation method used to determine the lender's share (not just incorporation by reference); (2) the transaction is an arm's length loan transaction and is not a joint venture; and (3) the proposed insured lender does not have significant management or control authority such that the transaction is at risk of recharacterization as a joint venture.

ALTA® Endorsement Form 31-06 (Severable Improvements Endorsement) (Adopted 2/3/11)

This endorsement is designed to include in the Amount of Insurance and calculation of loss under the policy the diminution in value of and costs of removal and relocation (up to 100 miles) of certain "severable improvements". "Severable Improvements" are defined in the endorsement as "property affixed to the Land on or after Date of Policy that by law does not constitute real property because: a. of its character and manner of attachment to the Land; and b. it can be severed from the Land without causing material damage to it or to the Land." Absent the endorsement, since these are personal property, no coverage would be afforded. The endorsement does not provide coverage that these improvements are owned as personal property nor does it provide any assurances regarding security interests therein. The endorsement only provides an addition to the calculation of loss, but the coverage itself is only triggered in the event of a title loss due to defects, liens or encumbrances on the title to the Land. So the Amount of Insurance should be calculated to address these additional potential loss amounts in excess of amounts otherwise applicable for the title to the Land only.

For issuance of ALTA Endorsement Form 31-06 (Severable Improvements) (Adopted 2/3/11): Receipt of verification (1) that the vesting instrument regarding any interest in the Land provides for the removal by Insured of Severable Improvements (i.e., property affixed to the Land on or after Date of Policy that by law does not constitute real property because of its character and manner of attachment to the Land; and it can be severed from the Land without causing material damage to it or to the Land); and (2) to determine the additional Amount of Insurance for this coverage, the additional potential diminution in value and costs of removal and relocation of those Severable Improvements (up to 100 miles) in the event of a defect, lien, encumbrance or other matter covered by the Policy affecting title to the Land.

The ALTA® Endorsement Form 32 and Form 33 series:

NOTE: The issuance of construction lien or mechanics' lien coverage is considered an extra-hazardous risk, in situations involving "broken priority" (i.e. the proposed Insured cannot under NC law or will not under the circumstances obtain all necessary waivers or subordinations to assure legal statutory priority of their deed or deed of trust). Therefore, the specific requirements of the underwriting title insurer must be followed strictly. Underwriting counsel should be consulted.

The issuance of these endorsements **necessitates** the following exception to be included in Schedule B of the policy in the place of the general mechanic's lien exception:

> ***Any statutory lien or claim of lien, affecting the Title, that arises from services provided, labor performed, or materials or equipment furnished, except as insured by the attached ALTA® Endorsement Form 32-06 [or 32.1-06 or 32.2-06 whichever is used] as it may be revised by ALTA® Endorsement Form 33-06 (Disbursement).***

REMEMBER: Any use of these endorsements must be approved by Company underwriting counsel.

This ALTA® Endorsement Form 32 series endorsements are applicable in situations in which the Insured Mortgage does not have legal priority over the Construction Loan Advance, - typically in situations in which the Insured lender could have but did not obtain statutory priority. So the Company is unwilling to provide coverage against mechanics' liens other than on this narrowly focused coverage. Each of the ALTA® Endorsement Form 32 series endorsements addresses only payments made *prior to* Date of Coverage, providing coverage for:

(1) invalidity or unenforceability of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before Date of Coverage;

(2) lack of priority of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before Date of Coverage over any lien or encumbrance recorded in the Public Records; and
(3) lack of priority of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before Date of Coverage over any Mechanic's Lien if notice of the Mechanic's Lien is not filed or recorded in the Public Records, with the limitations differing based on whether the draws are:

- based on itemization in a draw request, *i.e.* "designated for payment in the documents supporting a Construction Loan Advance disbursed by or on behalf of the Insured " (Form 32-06),
- by direct payments by the Company or by the Insured with the Company's approval*, i.e.* "direct payment to the Mechanic's Lien claimant for the charges for the services, labor, materials or equipment for which the Mechanic's Lien is claimed has been made by the Company or by the Insured with the Company's written approval. " (Form 32.1-06) or
- by the Insured directly *i.e.* "direct payment to the Mechanic's Lien claimant for the charges for the services, labor, materials or equipment for which the Mechanic's Lien is claimed has been made by the Insured or on the Insured's behalf " (Form 32.2-06).

All of the Form 32 series endorsements are subject to the policy Exclusions from Coverage, Conditions and Exceptions in Schedule B, including : (1) Exclusion 3(a) (matters created, suffered, assumed or agreed to by the Insured – such as failure to fully disburse, retainage, disputes over services, or improper disbursement procedure), (2) Exclusion 3(b) (matters not recorded in the Public Records that are known by the Insured and not known by the Company), (3) Exclusion 3(c) (matters resulting in no loss – such as where there is equity in the property, no value to the collateral, or failure to fully disburse), and (4) Exclusion 3(d) (matters attaching or created after Date of Policy – such as improvements contracted for, commenced, or continued after Date of Policy). Date of Coverage will *not* be extended by these endorsement; however, each endorsement states that the Date of Coverage may be extended by compliance with requirements for and issuance of the ALTA® Endorsement Form 33-06 (Disbursement) (below).

ALTA® Endorsement Form 32-06 (Construction Loan – Loss of Priority) (Adopted 2/3/11)
The endorsement provides limited assurance regarding misdisbursement of Construction Loan Advances, as discussed above, "but only to the extent that the charges for the services, labor, materials or equipment were designated for payment in the documents supporting a Construction Loan Advance disbursed by or on behalf of the Insured on or before Date of Coverage."

The following exception must appear in Schedule B of the policy when issued with this endorsement:

> *Any statutory lien or claim of lien, affecting the Title, that arises from services provided, labor performed, or materials or equipment furnished, except as insured by the attached ALTA® Endorsement Form 32-06 as it may be revised by ALTA® Endorsement Form 33-06 (Disbursement).*

For issuance of ALTA Endorsement Form 32-06 (Construction Loan – Loss of Priority) (Adopted 2/3/11):
Receipt of (a) verification that no notice of claim of lien on real property is filed or recorded in the Public Records; (b) evidence of sufficiency of funds to pay for the cost of construction; (c) draw by draw documentation indicating who is to be paid or what is to be paid and how much is to be paid from the various parties at different levels being paid; (d) evidence of payment (usually in the form of lien waivers indicating payment); and (e) indemnification from each payee at time of payment to cover misdisbursement or non-payment by any party at any level, since funds may flow from the owner to the contractor to a subcontractor to a sub-subcontractor to a material supplier for the defined work. Prior approval by Company underwriting counsel is required.

ALTA® Endorsement 32.1-06 (Construction Loan - Loss of Priority - Direct Payment) (Revised 4/2/13)

The endorsement provides limited assurance regarding misdisbursement of Construction Loan Advances, as discussed above, "but only to the extent that direct payment to the Mechanic's Lien claimant for the charges for the services, labor, materials or equipment for which the Mechanic's Lien is claimed has been made by the Company or by the Insured with the Company's written approval." And it only provides coverage for direct payments to claimants, not their lower tier suppliers or subcontractors.

The following exception must appear in Schedule B of the policy when issued with this endorsement:

> *Any statutory lien or claim of lien, affecting the Title, that arises from services provided, labor performed, or materials or equipment furnished, except as insured by the attached ALTA® Endorsement Form 32.1-06 as it may be revised by ALTA® Endorsement Form 33-06 (Disbursement).*

For issuance of ALTA Endorsement 32.1-06 (Construction Loan - Loss of Priority - Direct Payment) (Revised 4/2/13): Receipt of (a) verification that, other than potential lien claimants being paid through this Construction Loan Advance, no claim of lien on funds has been served on the owner or payee, no Notice to Lien Agent has been filed, and no notice of claim of lien on real property is filed or recorded in the Public Records; (b) evidence of sufficiency of funds to pay for the cost of construction; (c) draw by draw documentation indicating and evidence of payment by the Company or the Insured lender, with Company's written approval, to and receipt by potential lien claimants (usually in the form of lien waivers indicating payment); and (d) indemnification from each payee at time of payment to cover misdisbursement or non-payment by any party at any level, since funds may flow from the owner to the contractor to a subcontractor to a sub-subcontractor to a material supplier for the defined work. Prior approval by Company underwriting counsel is required.

ALTA® Endorsement 32.2-06 (Construction Loan – Loss of Priority – Insured's Direct Payment) (Revised 4/2/13)

The endorsement provides limited assurance regarding misdisbursement of Construction Loan Advances, as discussed above, "but only to the extent that direct payment to the Mechanic's Lien claimant for the charges for the services, labor, materials or equipment for which the Mechanic's Lien is claimed has been made by the Insured or on the Insured's behalf on or before Date of Coverage." And it only provides coverage for direct payments to claimants, not their lower tier suppliers or subcontractors.

The following exception must appear in Schedule B of the policy when issued with this endorsement:

> *Any statutory lien or claim of lien, affecting the Title, that arises from services provided, labor performed, or materials or equipment furnished, except as insured by the attached ALTA® Endorsement Form 32.2-06 as it may be revised by ALTA® Endorsement Form 33-06 (Disbursement).*

For issuance of ALTA Endorsement 32.2-06 Construction Loan – Loss of Priority – Insured's Direct Payment (Revised 4/2/13): Receipt of (a) verification that, other than potential lien claimants being paid through this Construction Loan Advance, no claim of lien on funds has been served on the owner or payee, no Notice to Lien Agent has been filed, and no notice of claim of lien on real property is filed or recorded in the Public Records; (b) evidence of sufficiency of funds to pay for the cost of construction; (c) draw by draw documentation indicating and evidence of payment by or on behalf of the Insured (lender) to and receipt by potential lien claimants (usually in the form of lien waivers indicating payment); and (d) indemnification from each payee at time of payment to cover misdisbursement or non-payment by any party

at any level, since funds may flow from the owner to the contractor to a subcontractor to a sub-subcontractor to a material supplier for the defined work. Prior approval by Company underwriting counsel is required.

ALTA® Endorsement Form 33-06 (Disbursement Endorsement) (Adopted 2/3/11)

The endorsement provides a date down of the "Date of Coverage" of mechanic's liens. It also contemplates possible changes to Schedules A and B. It is not unusual to do the disbursement (current and total) endorsement based upon information from the lender together with updated title Date of Coverage. Issuance would require assured priority pursuant to a compliant future advance Mortgage, updated title opinion through the Date of Coverage (including lien agent report), updated survey information (or survey subsequent exception) along with either (a) all required subordinations of potential mechanics' lien claimants or (b) limited lien coverage under applicable ALTA® Endorsement Forms 32-06 or 32.1-06 above, as well as appropriate lien subordinations or waivers and survey information regarding the extension of Date of Coverage. Any matters shown therein and not resolved prior to Date of Coverage or already shown in Schedule B, shall be reflected in the ALTA® Endorsement Form 33-06, when issued.

For issuance of the ALTA Endorsement Form 33-06 (Disbursement) (Adopted 2/3/11): Receipt of (a) attorney's certification of assured priority pursuant to compliance of the Insured Mortgage with either (1) Chapter 45, Article 7 of the North Carolina General States (NCGS 45-67 et seq.) for revolving credit lines, future advance loans, or construction loan transactions or (2) Chapter 45, Article 9 of the North Carolina General Statutes (NCGS 45-81 et seq.) for an equity line of credit (i.e. securing future advances thereunder, but not future obligations); (b) attorney's updated opinion on title opinion through the Date of Coverage, including mechanics' lien agent report and addition of any intervening matters as exceptions; (c) updated survey information (or endorsement will include exception to intervening matters of survey subsequent to existing survey coverage, if any); and (d) either (a) all required subordinations of potential mechanics' lien claimants or (b) limited lien coverage under applicable ALTA Endorsement Form 32-06, 32.1-06, or 32.2-06 as well as appropriate lien subordinations or waivers and survey information regarding the extension of Date of Coverage. Any matters shown therein and not resolved prior to Date of Coverage shall be reflected in the ALTA Endorsement Form 33-06, when issued.

ALTA® Endorsement Form 34-06 Identified Risk Coverage (Adopted 8/1/11)

This endorsement is to be used when a title examination uncovers a nominal title risk for which the title insurer is willing to provide affirmative coverage *limited to loss caused by the title risk, i.e. the "Identified Risk."* The endorsement is intended to be used to standardize "affirmative coverage" and would replace (*i.e.,* is not in addition to) the various affirmative coverage provisions sometimes added to the exception for the title risk itself in Schedule B. The endorsement addresses defense coverage, marketability coverage (insurability only) and clarifies that the coverage is subject to the other Conditions of the policy. This endorsement, and the revisions to many of the earlier endorsements (such as the ALTA® Endorsement Form 3 and 9 series) above were in response to the decision in *Alliance Mortgage Company v. Rothwell* 32 Cal. Rptr. 2d 592, 27 Cal. App. 4th 218 (Cal. App. 1 Dist. 1994), in which the affirmative language "insures against loss …" due to an affirmative statement of the condition of the property (*i.e.* the property is located at X address) was held to render the insurer liable for substantial non-title losses, totally unrelated to the title or the title insurance coverage. Though the loss is triggered by entry of a final decree, the endorsement as written does not relieve the Company of the duty to defend.

For issuance of ALTA Endorsement Form 34-06 (Identified Risk Coverage) (Adopted 8/1/11): Verification of the particular "Identified Risk" for which affirmative coverage is requested, and determination of appropriate affirmative coverage, marketability and defenses provision based on applicable Company underwriting procedures, including but not limited to review and approval by Company counsel.

ALTA® Endorsement Form 35-06 (Minerals and Other Subsurface Substances - Buildings) (Adopted 4/2/12)

This endorsement is available to lenders or owners to provide coverage against loss due to enforced removal or alteration of existing Buildings on the Land resulting from the future exercise of rights to extract and develop subsurface minerals or other substances. Lenders still have some mineral or subsurface rights coverage available in the ALTA® Endorsement Forms 9-06, 9.7-06 and 9.10-06.

For issuance of ALTA Endorsement Form 35-06 (Minerals & Other Subsurface Substances-Buildings) (Adopted 4/2/12): Verification that no third party currently has the present or future right to any minerals located on Land; or, if any, that they require repair of any surface damage or damage to Improvements caused by exercise of those extraction and development of subsurface rights.

ALTA® Endorsement Form 35.1-06 (Minerals and Other Subsurface Substances – Improvements) (Adopted 4/2/12)

This endorsement provides similar protect as the ALTA® Endorsement Form 35-06, but with regard to Improvements (as defined) on the Land.

For issuance of ALTA Endorsement Form 35.1-06 (Minerals & Other Subsurface Substances-Improvements) (Adopted 4/2/12): Verification that no third party currently has the present or future right to any minerals located on Land; or, if any, that they require repair of any surface damage or damage to Improvements caused by exercise of those extraction and development of subsurface rights.

ALTA® Endorsement Form 35.2-06 (Minerals and Other Subsurface Substances – Described Improvements) (Adopted 4/2/12)

This endorsement provides similar protect as the ALTA® Endorsement Form 35-06, but with regard to specifically described Improvements on the Land.

For issuance of ALTA Endorsement Form 35.2-06 (Minerals & Other Subsurface Substances-Described Improvements) (Adopted 4/2/12): Verification that no third party currently has the present or future right to any minerals located on Land; or, if any, that they require repair of any surface damage or damage to Improvements caused by exercise of those extraction and development of subsurface rights.

ALTA® Endorsement Form 35.3-06 (Minerals and Other Subsurface Substances – Land Under Development) (Adopted 4/2/12)

This endorsement provides similar protect as the ALTA® Endorsement Form 35-06, but with regard to specifically identified Improvements and Future Improvements (as defined) on the Land.

For issuance of ALTA Endorsement Form 35.3-06 (Minerals & Other Subsurface Substances-Land Under Development) (Adopted 4/2/12): Verification that no third party currently has the present or future right to any minerals located on Land; or, if any, that they require repair of any surface damage or damage to Improvements on the Land at Date of Policy or Future Improvements to be constructed on or affixed to the Land in the locations according to the Plans caused by exercise of those extraction and development of subsurface rights.

ALTA® Endorsement Form 36 Series – Energy Projects

Energy projects involve many traditional real estate concepts, which recur in often unique ways. As with any large development, they involve large numbers of contiguous and interdependent tracts in an integrated project, often including easements and long-term leasehold interests. So coverage similar to the ALTA® Endorsement Forms 13-06 and 13.1-06 are applicable. Severable improvements are typically involved, necessitating coverage similar to that provided in other contexts by the ALTA® Endorsement Form 31-06.

So all of these coverages, where applicable are incorporated into this Form 36 series of endorsements; the Forms 13, 13.1 and 36 should *not* be used.

ALTA® Endorsement Form 36-06 (Energy Project – Leasehold/Easement – Owner's) (Adopted 4/2/12)

This endorsement for the owner's policy (1) includes energy project-specific definitions, (2) includes coverage for insured easement interests (as well as for insured leasehold estates) that are often utilized in lieu of or along with leases to create the rights in the Land for some or all of the project improvements (as well as other more traditional easement purposes), (3) expands the "Valuation of Title" section to make clear that the computation of loss or damage for a covered defect affecting one parcel (or fewer than all parcels) shall include resulting loss or damage to the "integrated project," (4) builds in coverage pertaining to "Severable Improvements" (as defined) that is also available through the ALTA® Endorsement Form 31-06 ("Severable Improvements") adopted effective 2/3/11, (5) tailors the "Additional Items of Loss" section as appropriate to the energy project context, and (6) adds a new exclusion addressing costs of remediation resulting from environmental damage or contamination.

For issuance of ALTA Endorsement Form 36-06 (Energy Project – Leasehold/Easement – Owner's) (Adopted 4/2/12): Receipt of (1) verification that the Land for the energy project includes leasehold and easement rights which are a common component of energy projects; (2) verification of recordation of satisfactory Lease (or memorandum thereof) evidencing the Leasehold Estate in the Land to be insured, including any covenants, conditions or restrictions contained in the Lease; (3) verification of recordation of satisfactory Easement to be insured, including any terms, covenants, conditions or restrictions contained in the Easement; (4) architect's or engineer's Plans (survey, site, elevation & other drawings) for specific Future Improvements contemplated; (5) a current and accurate survey of the Land; (6) verification that the Lease and Easement provide for the removal by the Insured of Severable Improvements (i.e. property affixed to the Land at Date of Policy or to be affixed in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land); and (7) in order to calculate the additional Amount of Insurance for this coverage, the additional potential losses and costs of removal and relocation of those Severable Improvements for which coverage is provided by this endorsement, in the event of Eviction due to a defect, lien, encumbrance or other matter covered by the Policy affecting the title to the Land. Prior approval by Company underwriting counsel is required.

ALTA® Endorsement Form 36.1-06 (Energy Project – Leasehold/Easement – Loan) (Adopted 4/2/12)

This endorsement is the loan policy counterpart to the ALTA® Endorsement Form 36-06 above.

For issuance of ALTA Endorsement Form 36.1-06 (Energy Project – Leasehold/Easement – Loan) (Adopted 4/2/12): Receipt of (1) verification that the Land for the energy project includes leasehold and easement rights which are a common component of energy projects; (2) verification of recordation of satisfactory Lease (or memorandum thereof) evidencing the Leasehold Estate in the Land to be insured, including any covenants, conditions or restrictions contained in the Lease; (3) verification of recordation of satisfactory Easement to be insured, including any terms, covenants, conditions or restrictions contained in the Easement; (4) verification of recordation of satisfactory Insured Mortgage encumbering the Lease and Easement(s) interests in the Land; (5) architect's or engineer's Plans (survey, site, elevation & other drawings) for specific Future Improvements contemplated; (6) a current and accurate survey of the Land; and (7) verification that the Lease and Easement provide for the removal by the Insured of Severable Improvements (i.e. property affixed to the Land at Date of Policy or to be affixed in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to

the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land). Prior approval by Company underwriting counsel is required.

ALTA® Endorsement Form 36.2-06 (Energy Project – Leasehold – Owner's) (Adopted 4/2/12)
This endorsement for the owner's policy is substantially similar to the ALTA® Endorsement Form 36-06, but would apply to a leasehold project for which no easement interests are being insured.

For issuance of ALTA Endorsement Form 36.2-06 (Energy Project – Leasehold – Owner's) (Adopted 4/2/12): Receipt of (1) verification that the Land for the energy project includes leasehold interest only; (2) verification of recordation of satisfactory Lease (or memorandum thereof) evidencing the Leasehold Estate in the Land to be insured, including any covenants, conditions or restrictions contained in the Lease; (3) architect's or engineer's Plans (survey, site, elevation & other drawings) for specific Future Improvements contemplated; (4) a current and accurate survey of the Land; (5) verification that the Lease provides for the removal by the Insured of Severable Improvements (i.e. property affixed to the Land at Date of Policy or to be affixed in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land); and (6) in order to calculate the additional Amount of Insurance for this coverage, the additional potential losses and costs of removal and relocation of those Severable Improvements for which coverage is provided by this endorsement, in the event of Eviction due to a defect, lien, encumbrance or other matter covered by the Policy affecting the title to the Land. Prior approval by Company underwriting counsel is required.

ALTA® Endorsement Form 36.3-06 (Energy Project – Leasehold – Loan) (Adopted 4/2/12)
This endorsement is the loan policy counterpart to the ALTA® Endorsement Form 36.2-06 above, applicable to situations involving a Leasehold Estate only, for which no easement interested are being insured.

For issuance of ALTA Endorsement Form 36.3-06 (Energy Project – Leasehold – Loan) (Adopted 4/2/12): Receipt of (1) verification that the Land for the energy project includes leasehold interest only; (2) verification of recordation of satisfactory Lease (or memorandum thereof) evidencing the Leasehold Estate in the Land to be insured, including any covenants, conditions or restrictions contained in the Lease; (3) verification of recordation of satisfactory Insured Mortgage encumbering the Leasehold interest in the land; (4) architect's or engineer's Plans (survey, site, elevation & other drawings) for specific Future Improvements contemplated; (5) a current and accurate survey of the Land; and (6) verification that the Lease and Easement provide for the removal by the Insured of Severable Improvements (i.e. property affixed to the Land at Date of Policy or to be affixed in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land). Prior approval by Company underwriting counsel is required.

ALTA® Endorsement Form 36.4-06 (Energy Project – Covenants, Conditions and Restrictions -- Land Under Development – Owner's) (Adopted 4/2/12)
This endorsement is patterned after the ALTA® Endorsement Form 9.8-06, but tailored for providing coverage to an owner regarding new construction in progress on energy projects, to provide coverage for defined Covenants, including violations or enforced removal of any "Electricity Facility" or "Severable Improvement," as defined on Date of Policy and to be constructed pursuant to specifically identified Plans.

For issuance of ALTA Endorsement Form 36.4-06 (Energy Project – Covenants, Conditions and Restrictions - Land Under Development – Owner's) (Adopted 4/2/12): Receipt of (1) architect's or

engineer's Plans (survey, site, elevation & other drawings) for specific Electricity Facility or Severable Improvements contemplated; (2) a current and accurate survey of the Land; (3) verification from Plans and current survey that current Improvements and Electricity Facility or Severable Improvements create no violation of any covenants, conditions or restrictions and no violation of any building setback lines, and that the contemplated Electricity Facility or Severable Improvements will not create any such violation; and (4) certification from attorney that, to the attorney's knowledge, the covenants, conditions or restrictions have not been violated and will not be violated by the Electricity Facility or Severable Improvements. Prior approval by Company underwriting counsel is required.

ALTA® Endorsement Form 36.5-06 (Energy Project – Covenants, Conditions and Restrictions – Land Under Development – Loan) (Adopted 4/2/12)

This endorsement is patterned after the ALTA® Endorsement Form 9.7-06 (without coverage regarding encroachments, *see* Form 36.6-06 below, or minerals, *see* Form 35 series above), but tailored for providing coverage to a lender regarding new construction in progress on energy projects, to provide coverage for defined Covenants, including violations or enforced removal of any "Electricity Facility" or "Severable Improvement," as defined on Date of Policy and to be constructed pursuant to specifically identified Plans. It is the loan policy equivalent of ALTA® Endorsement Form 36.4-06 above.

For issuance of ALTA Endorsement Form 36.5-06 (Energy Project – Covenants, Conditions and Restrictions – Land Under Development – Loan) (Adopted 4/2/12): Receipt of (1) architect's or engineer's Plans (survey, site, elevation & other drawings) for specific Electricity Facility or Severable Improvements contemplated; (2) a current and accurate survey of the Land; (3) verification from Plans and current survey that current Improvements and Electricity Facility or Severable Improvements create no violation of any covenants, conditions or restrictions and no violation of any building setback lines, and that the contemplated Electricity Facility or Severable Improvements will not create any such violation; and (4) certification from attorney that, to the attorney's knowledge, the covenants, conditions or restrictions have not been violated and will not be violated by the Electricity Facility or Severable Improvements. Prior approval by Company underwriting counsel is required.

ALTA® Endorsement Form 36.6-06 (Energy Project - Encroachments) (Adopted 4/2/12)

This endorsement provides coverage to an owner or lender, similar to the ALTA® Endorsement Form 28.1-06, but tailored for energy projects. The coverage includes loss from encroachments (other than those excepted in Schedule B of the policy) by Improvements on the Land onto adjoining property or easement areas (including enforced removal coverage) or by neighboring improvements onto the Land. This includes coverage against enforced removal of any encroaching "Electricity Facility" or "Severable Improvement," the definitions of which include those existing at Date of Policy and those affixed later in the locations identified on the set of defined Plans.

For issuance of ALTA Endorsement Form 36.6-06 (Energy Project - Encroachments) (Adopted 4/2/12): Receipt of (1) architect's or engineer's Plans (survey, site, elevation & other drawings) for specific Electricity Facility or Severable Improvements contemplated; (2) a current and accurate survey of the Land; and (3) verification from Plans and current survey that (a) current Improvements and Electricity Facility or Severable Improvements contemplated create no encroachments of an Improvement or Electricity Facility or Severable Improvements located on the Land onto adjoining land or onto that portion of the Land subject to an easement and (b) that there are no encroachment onto the Land or easements of improvements appurtenant to adjoining lands.

ALTA® Endorsement Form 36.7-06 (Energy Project – Fee Estate – Owner's Policy) (Adopted 12/01/14)

The ALTA Endorsement Form 36.7-06 applies to an Owner's Policy and is the fee estate equivalent to the ALTA® Endorsement Forms 36-06 and 36.2-06 for leasehold and easement interests, respectively.

For issuance of ALTA Endorsement Form 36.7-06 (Energy Project – Fee Estate – Owner's) (Adopted 12/01/14): Receipt of (1) verification that the Land for the energy project includes ownership rights sufficient for common components of an Electricity Facility; (2) verification of recordation of satisfactory deed to the Insured evidencing the Fee Estate in the Land to be insured, including any covenants, conditions or restrictions contained in the deed; (3) verification of recordation of satisfactory Insured Mortgage (if applicable) encumbering the Fee Estate interest(s) in the Land; (4) architect's or engineer's Plans (survey, site, elevation & other drawings) for specific Future Improvements contemplated; (5) a current and accurate survey of the Land; and (6) verification that the conveyance does not limit or restrict the removal by the Insured of Severable Improvements (i.e. property affixed to the Land at Date of Policy or to be affixed in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land). Prior approval by Company underwriting counsel is required.

ALTA® Endorsement Form 36.8-06 (Energy Project – Fee Estate – Loan Policy) (Adopted 12/01/14)

The ALTA® Endorsement Form 36.8-06 applies to the Loan Policy and is the fee estate equivalent to the ALTA® Endorsement Forms 36.1-06 and 36.3-06 for leasehold and easement deeds of trust. This endorsement is the loan policy counterpart to the ALTA® Endorsement Form 36.7-06 above, applicable to situations involving a Fee Estate.

For issuance of ALTA Endorsement Form 36.8-06 (Energy Project – Fee Estate – Loan) (Adopted 12/01/14): Receipt of (1) verification that the Land for the energy project includes ownership rights sufficient for common components of an Electricity Facility; (2) verification of recordation of satisfactory deed to the Insured evidencing the Fee Estate in the Land to be insured, including any covenants, conditions or restrictions contained in the deed; (3) verification of recordation of satisfactory Insured Mortgage encumbering the Fee Estate interest(s) in the Land; (4) architect's or engineer's Plans (survey, site, elevation & other drawings) for specific Future Improvements contemplated; (5) a current and accurate survey of the Land; and (6) verification that the conveyance does not limit or restrict the removal by the Insured of Severable Improvements (i.e. property affixed to the Land at Date of Policy or to be affixed in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land). Prior approval by Company underwriting counsel is required.

ALTA® Endorsement Form 37-06 (Assignment of Rents or Leases) (Adopted 12/3/12)

Often, for loan involving Land with tenants in possession or anticipated future tenants, such as an apartment complex, retail shopping center or office building, as additional collateral the lender will require a recorded assignment of the owner-borrower's interest as a landlord under certain specified leases. Priority of such an assignment of leases and rents can be verified according to the priority statute, N.C. Gen. Stat. §47-20.

For issuance of ALTA Endorsement Form 37-06 (Assignment of Rents or Leases) (Adopted 12/3/12): Receipt of duly authorized recorded Assignment of Rents or Leases, executed by the appropriate representatives of the borrower-assignor in favor of the Insured Lender, and attorney's verification that no other assignments of leases or rents remain outstanding of record affecting the Land except as specifically excepted in Schedule B.

ALTA® Endorsement Form 38-06 (Mortgage Tax) (Adopted 12/3/12)

Some states impose a tax to be paid at the time of recording of the Insured Mortgage. This endorsement would provide affirmative coverage to a lender against invalidity or unenforceability of the Insured Mortgage due to failure to pay the appropriate mortgage tax (but not the tax itself which is the obligation of the Insured under Exclusion 3(a)). However, North Carolina does not impose such a tax, so this ALTA® Endorsement is not applicable in North Carolina.

ALTA® Endorsement 39-06 Policy Authentication (Adopted 4/2/13)

As commitments and policies are increasingly generated electronically, without "wet" signatures, this endorsement was developed to provide additional assurance that coverage is not invalidated if solely generated and delivered electronically, despite Condition 15(c) of the ALTA Owner's Policy and Condition 14(c) of the ALTA Loan Policy, which provides: *"c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy."* This endorsement can be provided upon request and no requirement is necessary.

ALTA® Endorsement Form 40-06 (Tax Credit – Owner's Policy) and ALTA® Endorsement Form 40.1-06 (Tax Credit – Defined Amount – Owner's Policy) (Adopted 4/2/14)

The U.S. Internal Revenue Code as well as some other federal, state and local programs provide for tax credits to investors in certain types of commercial real estate projects, such as certain qualifying low-income housing projects. In these transactions, the value of the property and the investment in the project by the investor is largely due to the tax credits available. Therefore, these endorsements add additional coverage for the specifically identified Tax Credit Investor (not the Insured Owner under the policy) for the value of the benefit of these tax credits themselves (in addition to the standard policy coverage for the Insured Owner). This additional endorsement coverage is, however, limited to the extent that the defect, lien or encumbrance triggering the policy coverage is also the cause of the loss of or damage to the tax credit. The form 40.1-06 also bifurcates the coverage between the basic policy coverage and a separate specified amount, the "Additional Amount of Insurance," allocated solely to the tax credit loss suffered by the Tax Credit Investor.

For issuance of the ALTA® Endorsement Form 40-06 (Tax Credit – Owner's Policy) (Adopted 4/2/14):

Receipt of (1) verification that the transaction and the title to the Land qualify for a tax credit in effect at Date of Policy pertaining to the Land that is available to the Tax Credit Investor under applicable federal, state or local law; and (2) identification of the Tax Credit Investor to be insured specifically. NOTE: The Insured must also sign the endorsement, given the assignment and acknowledgment in item #6 of the endorsement.

For issuance of the ALTA® Endorsement Form 40.1-06 (Tax Credit – Defined Amount – Owner's Policy) (Adopted 4/2/14):

Receipt of (1) verification that the transaction and the title to the Land qualify for a tax credit in effect at Date of Policy pertaining to the Land that is available to the Tax Credit Investor under applicable federal, state or local law; (2) identification of the Tax Credit Investor to be insured specifically; and (3) the Additional Amount of Insurance to be allocated specifically to loss or damage payable as a result of the tax credit endorsement coverage.

ALTA® Endorsement Form 41 Series: Water Endorsements

These Endorsements are designed for issuance on commercial or residential property, to provide assurance against loss or damage by reason of the enforced removal or alteration of any Improvement [defined by each endorsement] because of extraction or development of water, excepted from the legal description or excepted in Schedule B of the policy, with exclusion number 4 regarding loss or damage resulting from contamination, explosion, fire, flooding, vibration, fracturing, earthquake or subsidence, or negligence by a person or Entity exercising a right to extract or develop water. These are structured similarly to the ALTA

35 Series "Minerals and Other Subsurface Substances" Endorsements. Any interest excluded from coverage should be identified at Item 4.c. of the endorsement or the word "none" inserted.

It is not anticipated that these endorsements will be applicable in North Carolina with any frequency. So any request for issuance should be discussed in advance with Underwriting Counsel.

ALTA® Endorsement 41-06 (Water – Buildings) (Adopted 12/2/13)
For purposes of this Water Endorsement, Improvements means a building on the Land at Date of Policy ("Building").

For issuance of ALTA Endorsement Form 41-06 (Water - Buildings) (Adopted 12/2/13): Verification that no third party currently has the present or future right for extraction or development of any water located on Land, including well easements. If such rights exist, prior approval of Company underwriting counsel is required for issuance of this endorsement. Company must be provided with the area of Land impacted by these rights, whether Improvements on the Land could be affected, and evidence that those exercising these rights are required to repair or replace any resulting damage to Improvements.

ALTA® Endorsement 41.1-06 (Water – Improvements) (Adopted 12/2/13)
For purposes of this Water Endorsement, Improvements means a building, structure located on the surface of the Land, and any paved road, walkway, parking area, driveway or curb, affixed to the Land at Date of Policy and that by law constitutes real property, but excluding any crops, landscaping, lawn, shrubbery or trees.

For issuance of ALTA Endorsement Form 41.1-06 (Water - Improvements) (Adopted 12/2/13): Verification that no third party currently has the present or future right for extraction or development of any water located on Land, including well easements. If such rights exist, prior approval of Company underwriting counsel is required for issuance of this endorsement. Company must be provided with the area of Land impacted by these rights, whether Improvements on the Land could be affected, and evidence that those exercising these rights are required to repair or replace any resulting damage to Improvements.

ALTA® Endorsement 41.2-06 (Water – Described Improvements) (Adopted 12/2/13)
For purposes of this Water Endorsement, Improvements means those improvements on the Land at Date of Policy listed in the endorsement or in an attachment.

For issuance of ALTA Endorsement Form 41.2-06 (Water - Described Improvements) (Adopted 12/2/13): Verification that no third party currently has the present or future right for extraction or development of any water located on Land, including well easements. If such rights exist, prior approval of Company underwriting counsel is required for issuance of this endorsement. Company must be provided with the area of Land impacted by these rights, whether Improvements on the Land could be affected, and evidence that those exercising these rights are required to repair or replace any resulting damage to Improvements.

ALTA® Endorsement 41.3-06 (Water – Land Under Development) (Adopted 12/2/13)
This Water Endorsement insures with respect to the existing Improvements and Future Improvements as shown on specifically referenced Plans. Those Improvements include, but are not limited to, a building, structure, paved road, walkway or driveway. Crops, landscaping, lawn, shrubbery, and trees are excluded.

For issuance of ALTA Endorsement Form 41.3-06 (Water - Land Under Development) (Adopted 12/2/13): Verification that no third party currently has the present or future right for extraction or development of any water located on Land, including well easements. If such rights exist, prior approval of Company underwriting counsel is required for issuance of this endorsement. Company must be provided with the area of Land impacted by these rights; whether Improvements on the Land could be affected; a copy of the

survey, site and elevation plans; and evidence that those exercising these rights are required to repair or replace any resulting damage to Improvements.

ALTA® Endorsement 42-06 (Commercial Lender Group) (Adopted 12/2/13)
This loan policy endorsement may be appropriate when a group of lenders own portions of the indebtedness and the Land is *not* improved with a one-to-four family residential dwelling. The endorsement provides coverage against invalidity, unenforceability or loss of priority of the lien of the Insured Mortgage because of transfers after Date of Policy of portions of the Indebtedness by the Participants (members of the Lender Group owning portions of the Indebtedness). *No additional requirement applies for issuance of this endorsement.*

ALTA® Endorsement Form 43-06 (Anti-Taint) (Adopted 12/2/13)
This loan policy endorsement may be appropriate when a portion of the indebtedness secured by the insured deed of trust is a revolving credit facility and a portion is a term loan facility. The endorsement insures against loss of priority of the lien of the Insured Mortgage as security for the amount of Indebtedness advanced as the Term Loan (as defined in the endorsement) resulting from reductions and subsequent increases in the principal amount of the Indebtedness payable as the Revolving Credit Loan (as defined in the endorsement).

For issuance of ALTA Endorsement Form 43-06 (Anti-Taint)(Adopted 12/2/13): Verification that the insured deed of trust contains notice that it will secure both a term loan and a revolving line of credit loan; states the maximum principal amount to be secured at any one time; that all advances must be made within 30 years from the date thereof; and, as applicable, either (1) whether future advances or future obligations or both are to be secured (in compliance with NCGS 45-67 et seq.) for revolving credit lines, or (2) that it secures an equity line of credit and that it is governed by the provisions of Chapter 45, Article 9 of the North Carolina General Statutes (NCGS 45-81 et seq.) for an equity line of credit (i.e. securing future advances thereunder, but not future obligations). Company must additionally be provided with a copy of the Loan Agreement to be specifically identified in the endorsement.

ALTA® Endorsement Form 44-06 (Insured Mortgage Recording - Loan) (Adopted 12/2/13)
This endorsement specifically identifies the Insured Mortgage (i.e. deed of trust) in situations in which Paragraph 4 of Schedule A of the policy as originally issued was not complete as to recording information for the deed of trust, such as if the policy was issued at time of closing. In North Carolina, the policy originally issued typically includes this information in Schedule A. Under the Good Funds Settlement Act, no "gap" should apply in a residential transaction; so this endorsement should not be applicable in a residential transaction. If the closing is based on "gap" coverage (i.e. sometimes applicable in a commercial transaction), any requirements and intervening matters should have been addressed in the original policy underwriting. Prior approval by Company underwriting counsel is required.

For issuance of ALTA Endorsement Form 44-06 (Insured Mortgage Recording – Loan)(Adopted 12/2/13):
Receipt of the applicable premium and the attorney's final title certification through and including the date, time, book and page of final recording of the Insured Mortgage and any related documents and compliance with all requirements contained in the corresponding Commitment. If the attorney's certification or other information provided to Company reveals any matters not previously disclosed to Company which may impair the validity, enforceability or priority of the Insured Mortgage or the coverage provided by the policy (including potential mechanics' and materialmen's liens or rights of tenants in possession), those matters will be shown as exceptions in an endorsement to the policy unless (1) resolved to the satisfaction of Company; or (2) in the case of a superior interests, subordinated to the lien of the Insured Mortgage.

ALTA Endorsement 45-06 (Pari Passu Mortgage – Loan Policy) (Adopted 12/01/14)
This endorsement would be requested and applicable for situations in which multiple lenders may obtain separate *but co-equal* liens on the same Land. This endorsement coverage is typically requested for credit

facility transactions with multiple lenders, virtually simultaneous deeds of trust on the same Land (whether one or multiple parcels), associated with an intercreditor agreement addressing the terms of equal priority, especially with regard to foreclosure and partial payments. The deeds of trust must provide that they have equal priority even though securing separate loans, even if possibly differing amounts and terms, payable to separate lenders or beneficiaries. The Pari Passu endorsement would be attached to each of the loan policies, each cross-referencing the other equal priority deeds of trust on the property which would also be exceptions in Schedule B, Part I, of the policy with a notation referencing the Pari Passu endorsement. The coverage is conditioned on the lenders complying with the intercreditor agreement. In the event of a dispute, the endorsement does not provide coverage for the costs of litigating the dispute but instead provides for interpleader of the loss amount so that the title insurer is no longer involved in the dispute between multiple Insureds. Underwriting Counsel approval is required. In addition to itemizing the specific deeds of trust to be recorded in Schedule B, Requirements, of the Commitment, the below requirement should be included.

For issuance of ALTA Endorsement Form 45-06 (Pari Passu Mortgage – Loan Policy) (Adopted 12/01/14): The deeds of trust referenced in Schedule B, Requirement #1 above must be recorded with satisfactory reference to the co-parity provisions of each to the other, and/or an adequate intercreditor agreement or memorandum thereof must be recorded referencing same. Underwriting Counsel review and approval of the co-parity provisions of the proposed Insured Mortgages and intercreditor agreement (or memorandum thereof) to be recorded are required.

ALTA Endorsement 46-06 (Option) (Adopted 8/01/15)

This endorsement is designed for use in situation in which the Insured named in a policy is also the holder of an option on a specified parcel of Land, under a written option agreement giving the holder of the option the right, but not the obligation, to acquire an interest in the Land for a specific price or terms within a specified time. However, this particular form does not provide any assurances regarding priority of the option right upon recordation of the option agreement. Given that North Carolina provides for such priority rights under N.C. G.S. 47-18, and that we do not insure options unless the option (or a sufficient memorandum thereof) is recorded, this endorsement will presumably not be the preferred coverage in North Carolina.