

New ALTA 2021 Policy Developments and ALTA Policy Case Law Updates

August 23, 2022

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WHERE HAVE WE BEEN?

MU2021002 BULLETIN AND STATE SPECIFIC BULLETINS—
NEW AND REVISED 2021 ALTA FORMS
MU2021002

Dear Associates:

The American Land Title Association (ALTA) recently adopted new/revised forms effective as of July 1, 2021. A list of the new/revised forms is available [here](#).

The new forms and corresponding guidelines are available on Virtual Underwriter in the [**New ALTA 2021 Forms Page**](#).

You can view webinars and PowerPoints regarding the new ALTA forms by accessing the [**Webinars**](#) page on Virtual Underwriter.

virtualunderwriter.com/en.html

New 2021 ALTA Forms



Stewart
Virtual Underwriter



Stewart's Underwriting Manual

With Virtual Underwriter, you have access to information needed to underwrite a real estate transaction, 24 hours a day, seven days a week.

Search by Keyword

All of these words

Search

Status of Forms

- Forms approved by ALTA July 1, 2021
- Approved for use in 45 States + Guam
- <https://www.alta.org/policy-forms/>



2021 ALTA Forms Update – August 15, 2021

States Where Forms Are Approved

1. Colorado – 8/1/21
2. Illinois - 8/1/21
3. Iowa - 8/1/21
4. Massachusetts - 8/1/21
5. Michigan – 8/1/21
6. Mississippi - 8/1/21
7. Oklahoma - 8/1/21
8. Tennessee - 8/1/21
9. North Dakota – 10/22/21
10. Nevada – 9/29/21
11. Connecticut – 10/11/21
12. Alabama – 10/1/21
13. Hawaii – 10/1/21
14. Maine – 10/4/21
15. Arkansas – 9/30/21
16. Wyoming – 10/11/21
17. South Carolina – 10/25/21
18. Rhode Island – 10/8/21
19. North Carolina – 11/19/21
20. Kentucky – 10/25/21
21. Indiana – 10/14/21
22. Missouri – 10/15/21
23. Arizona – 10/4/21
24. Nebraska – 10/8/21
25. Virginia – 10/7/21
26. West Virginia – 10/8/21
27. Georgia – 10/18/21
28. Idaho – 10/11/21
29. South Dakota – 10/13/21
30. Montana – 10/25/21
31. Wisconsin – 11/25/21
32. Utah – 11/12/21
33. New Hampshire – 11/15/21
34. Vermont – 11/5/21
35. Minnesota – 11/9/21
36. Guam – 11/15/21
37. Washington – 12/16/21
38. Maryland – 12/8/21
39. Alaska - 3/1/22
40. California – 10/14/21
41. District of Columbia – 4/6/22
42. Oregon – 6/24/22
43. Ohio – 12/1/22
44. Pennsylvania – 9/1/22
45. Delaware – 10/1/22
46. Louisiana – 10/1/22

States Where Forms Are NOT Approved

1. Florida (10/3/22)*
2. Kansas*
3. New Jersey
4. New Mexico
5. New York
6. Puerto Rico
7. Texas
8. US Virgin Islands*

*Form Filing is currently in progress

Changes to Forms

Forms Filed Without Arbitration

- Arkansas
- District of Columbia
- Georgia
- Indiana
- Kentucky
- Missouri
- Montana
- Oregon
- Rhode Island
- South Dakota
- Virginia
- Vermont
- Washington
- West Virginia
- Wisconsin
- Wyoming

States with Special Modifications

- **Alaska**
 - Alaska Covered Risk Supplemental Endorsement
- **District of Columbia**
 - DC ALTA Commitment Schedule
 - DC ALTA Short Form Commitment Schedule
- **Montana**
 - Montana General Endorsement
- **South Dakota**
 - STG Class Action Deletion Endorsement
- **Vermont**
 - STG Class Action Deletion Endorsement
- **West Virginia**
 - WV Paragraph 11 Endorsement
 - WV Paragraph 12 Endorsement
 - WV Specific (Payment of Loss) Endorsement

Technical Correction to ALTA 23.1-06

This technical correction represents conforming changes:

Allows the references to the 12-series Endorsements that are found within 23.1 to reference either the 2006 or 2021 series 12-series ALTA Endorsements, by bracketing the “-06”:

2006 Form

By issuing this Co-Insurance Endorsement to the Co-Insurance Policy, each of the Co-Insuring Companies adopts the Co-Insurance Policy's Covered Risks, Exclusions, Conditions, Schedules, and endorsements, except an ALTA 12-06 or ALTA 12.1-06 Aggregation Endorsement, if any, issued by any other of the Co-Insuring Companies, subject to the limitations of this Co-Insurance Endorsement.

Co-Insuring Companies	Name and Address	Policy Number [File Number]	Amount of Insurance	Percentage of Liability
Issuing Co-Insurer			\$	
Co-Insurer			\$	
Co-Insurer			\$	
Co-Insurer			\$	
Total Co-Insurance Amount			\$	

Aggregation of Policy Liability

- The Issuing Co-Insurer's liability under the Co-Insurance Policy may be aggregated with other policy liabilities issued by the Issuing Co-Insurer with either an ALTA 12-06 or ALTA 12.1-06 Aggregation Endorsement.
- Each Co-Insurer may aggregate its liability under the Co-Insurance Policy with other policy liabilities issued by that Co-Insurer, but only if this Co-Insurance Endorsement is issued with that Co-Insurer's ALTA 12-06 or ALTA 12.1-06 Aggregation Endorsement.
- Policy liability assumed by each of the Co-Insuring Companies may not be aggregated with other policy liabilities assumed by any other of the Co-Insuring Companies.

Each of the Co-Insuring Companies shall be liable to the Insured only for its Percentage of Liability of:

- the total loss or damage under the Co-Insurance Policy, but in no event greater than the respective Aggregate Amount of Insurance set forth in its ALTA 12-06 or ALTA 12.1-06 Aggregation Endorsement, if any, and
- the costs, attorneys' fees, and expenses provided for in the Conditions.

2021 TC Version

By issuing this Co-Insurance Endorsement to the Co-Insurance Policy, each of the Co-Insuring Companies adopts the Co-Insurance Policy's Covered Risks, Exclusions, Conditions, Schedules, and endorsements, except an ALTA 12[-06] or ALTA 12.1[-06] Aggregation Endorsement, if any, issued by any other of the Co-Insuring Companies, subject to the limitations of this Co-Insurance Endorsement.

Co-Insuring Companies	Name and Address	Policy Number [File Number]	Amount of Insurance	Percentage of Liability
Issuing Co-Insurer			\$	
Co-Insurer			\$	
Co-Insurer			\$	
Co-Insurer			\$	
Total Co-Insurance Amount			\$	

Aggregation of Policy Liability

- The Issuing Co-Insurer's liability under the Co-Insurance Policy may be aggregated with other policy liabilities issued by the Issuing Co-Insurer with either an ALTA 12[-06] or ALTA 12.1[-06] Aggregation Endorsement.
- Each Co-Insurer may aggregate its liability under the Co-Insurance Policy with other policy liabilities issued by that Co-Insurer, but only if this Co-Insurance Endorsement is issued with that Co-Insurer's ALTA 12[-06] or ALTA 12.1[-06] Aggregation Endorsement.
- Policy liability assumed by each of the Co-Insuring Companies may not be aggregated with other policy liabilities assumed by any other of the Co-Insuring Companies.

Each of the Co-Insuring Companies shall be liable to the Insured only for its Percentage of Liability of:

- the total loss or damage under the Co-Insurance Policy, but in no event greater than the respective Aggregate Amount of Insurance set forth in its ALTA 12[-06] or ALTA 12.1[-06] Aggregation Endorsement, if any, and

Where are we now?

WHAT FORM DO I USE?

- Decertification of the 2006 ALTA Forms is scheduled for December 31, 2022, but the decertification will not prohibit use of the 2006 ALTA Forms. While we prefer to use the 2021 ALTA Forms if acceptable and available in the particular market, we will continue to make the 2006 ALTA Forms available if they are requested by your customers.
- As a reminder, the most current version of the ALTA form available in each state for issuance with the applicable version of the ALTA Policy should be used, unless approved by a Stewart underwriter.
- Please contact Property Info Customer Care at customercare@stewart.com or your title production software vendor to have the new forms uploaded to your system.

2021 COMMITMENT-Schedule A

ALTA Commitment Schedule A, BI, BII (7-1-21) 08/10/2021V 13

Issued By Stewart Title Guaranty Company

Transaction Identification Data, for which the Company assumes no liability as set forth in Commitment Condition 5.e.:

- Issuing Agent:
- Issuing Office:
- Issuing Office's ALTA® Registry ID:
- Loan ID Number:
- Commitment Number:
- Issuing Office File Number:
- Property Address:
- Revision Number:

2021 Selected

- 1. Commitment Date:
- 2. Policy to be issued:

Proposed Amount of Insurance

a. **2021 ALTA Owner's Policy**
 Proposed Insured: _____
 [The estate or interest to be insured: _____]

b. **2021 ALTA Loan Policy**
 Proposed Insured: _____
 [The estate or interest to be insured: _____]

3. The estate or interest in the Land at the Commitment Date is: _____.

4. The Title is, at the Commitment Date, vested in:

5. The Land is described as follows:

Discriminatory Covenant-Commitment, OP & LP

Exceptions

File Number: _____

Some historical land records contain Discriminatory Covenants that are illegal and unenforceable by law. This Commitment and the Policy treat any Discriminatory Covenant in a document referenced in Schedule B as if each Discriminatory Covenant is redacted, repudiated, removed, and not republished or recirculated. Only the remaining provisions of the document will be excepted from coverage.

The Policy will not insure against loss or damage resulting from the terms and conditions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I - Requirements are met.

Discriminatory Covenants- State Regulation/Statutes



Bulletin: ID2022001

Bulletin: ID2022001

Date: April 25, 2022

To: All Idaho Issuing Offices

RE: LEGISLATIVE UPDATE - Idaho 2022 State Legislation

Dear Associates,

The following are summaries of some of the bills passed during the 2022 legislative session which are of interest to the title industry:

S 740 Restrictive covenants, race - Effective 07/01/2022 - Modifies Chapter 6, Title 55 of Idaho Code to add two new sections.

Section 55-616

- Prohibits and makes void any existing provision in a written instrument relating to real property that purports to forbid or restrict the conveyance, encumbrance, occupancy, or lease thereof to individuals because of race, color, ethnicity, or national origin and every condition, restriction, or prohibition, including a right of entry or possibility of reverter, that directly or indirectly limits the use or occupancy of real property on the basis of race, color, ethnicity, or national origin.
- Covenants and deeds with racially restrictive language were made illegal by the 1968 Federal Fair Housing Act, but language still exists even if it is not enforceable. This legislation allows an owner OR tenant of property to file a modification if the covenants on the property contain such language. The modification document strikes from the referenced original instrument all provisions based on race, color, ethnicity, or national origin that are void and unenforceable under law.

Section 55-820

- States that no deed recorded on or after July 1, 2022, shall contain a reference to a restrictive covenant prohibited by section 55-616, Idaho Code.

S 787 Affectation of title - Effective 07/01/2022 - Modifies Chapter 6, Title 55 of Idaho Code to add two new sections.

Bulletins showing updated statutes addressing discriminatory covenants:
Idaho
Connecticut
Texas
Washington
California
Virginia
New Jersey

Legal Developments

Definition of State-OP & LP

CONDITIONS

1. DEFINITION OF TERMS

~~The following terms when used in this policy mean:~~

In this policy, the following terms have the meanings given to them below. Any defined term includes both the singular and the plural, as the context requires:

- n. "State": The state or commonwealth of the United States ~~District Court for the district where~~ within whose exterior boundaries the Land is located. -The term "State" also includes the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and Guam.

- McGirt v. Oklahoma, 140 S. Ct. 2452, 207 L. Ed. 2d 985
- Oklahoma v. Castro-Huerta, U.S., No. 21-429

Legal Developments cont'd

Covered Risk 4 (OP & LP)-Access

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, [Blank Title Insurance Company], a [Blank] corporation (the "Company"), insures as of the Date of Policy and, to the extent stated in Covered Risks 9 and 10, after the Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

4. No right of access to and from the Land.

First Am. Title Ins. Co. v. Gs Indus., LLC, 2021 U.S. Dist. LEXIS 240601 (D. Hawaii Dec. 16, 2021).

First Am. Title Ins. Co. v. Gs Indus., LLC, 2022 U.S. Dist. LEXIS 34198 (D. Hawaii Feb. 28, 2022)

Gates v. Chicago Title Ins. Co., 813 S.W.2d 10

Legal Developments Cont'd

Covered Risk 10 (OP) & Covered Risk 14 (LP)-Gap

10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to the Date of Policy and prior to the recording of the deed or other instrument ~~of transfer~~ vesting the Title in the Public Records ~~that vests Title as shown in Schedule A.~~

- Affidavit
- Indemnity

Sample Title Affidavit

The following is an example of a Title Affidavit (**Owner's** Affidavit):

TITLE AFFIDAVIT

GF # _____ Commitment / Preliminary Report # _____ Owner: _____

BEFORE ME, on this day personally appeared: _____

[Alternative 1: The undersigned] [Alternative 2: Seller(s) or Owner(s)-Borrower(s) [Include middle name, if any; state capacity of representative of the Seller(s)]]

PLEASE NOTE: ANY BLANK SPACE IN THIS AFFIDAVIT SHALL BE DEEMED A STATEMENT BY THE UNDERSIGNED THAT THE RESPONSE IS "NO" OR "NONE".

THIS AFFIDAVIT AND INDEMNITY is made in connection with the sale and/or mortgaging of the Land with the knowledge and intent that _____ Company, and its issuing agent, if any (collectively, the "Title Company") will rely on it in issuing title insurance policy(ies). [Option: This Title Affidavit applies only with respect to the period between _____ (date of acquisition) and the date hereof]

The undersigned, under oath, deposes and says:

1. NAME. My/our full name(s) appear above. During the last ____ (__) years, I/we have not been known by any other name except as stated above or as follows: _____ . The judgment(s) and/or other lien(s) appearing on the title commitment / preliminary report, is/are not against me/us, but rather is/are against someone else with a similar name. Initial if applicable: _____

2. POSSESSION AND OWNERSHIP. I/we have no knowledge of any challenge, claim or controversy relating to my/our ownership or possession of the Land. [I am the owner of the Land.] There are no tenants, occupants, or parties in possession of the Land, or leases or licenses affecting the Land, and no one is occupying, using or passing over the Land, other than me/us and my/our immediate family, except the following: _____ .

3. SURVEY.
A. Except as may be shown on any survey, if any, of the Land, that has been provided to the Title Company, I/we have no knowledge of any easements, replattings, encroachments of any improvements (including fences and driveways) onto any easement or setback line or building line or onto my neighbors' property(ies), or of any encroachments of my neighbors' improvements (including fences and driveways) onto the Land, or of any boundary line disputes, except the following: _____ .

B. If a survey of the Land has been provided to the Title Company, there have been no changes to the improvements (including fences and driveways) on the Land, no changes- in the boundary lines, no additions or alterations to the exterior of the improvements that change the exterior of the improvements or change in footprints or new improvements, since the date of the survey, except the following: _____ .

4. **MECHANIC'S LIENS.** [Select one below]

A. _____ No improvements (including but not limited to labor, services, materials, and equipment) have been made to the Land during the last 180 days.

OR

B. _____ There has been no construction on the Land during the last 180 days. All work performed, services rendered, and materials and equipment furnished in connection with the improvements on the Land relate to routine repairs and replacements, and have been paid in full, and there are no unpaid bills, claims, demands or amounts owed for services, labor, materials or equipment, except for routine work, repairs, maintenance, and except other work not exceeding \$_____ in the aggregate, and the following [Please insert description, amount, and name of unpaid claimant(s), if any]: _____ .

I/we undertake to promptly pay the foregoing and any and all charges that may be incurred will be paid in the ordinary course of business and to deliver proof of payment to the Title Company.

[Optional: Mechanics Liens Indemnification (General): The undersigned Mortgage Borrowers hereby jointly and severally indemnify and hold Title Insurer harmless against all loss or damage sustained by reason of the following: Any mechanics liens, including any resulting from any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished or imposed by law. Recorded mechanics liens, as well as any recorded notices of commencement (i.e. in FL) or recorded notice of lien rights (i.e. in GA) or recorded lien agent entries (i.e. in NC), as well as any lien, or right to a lien, for services, labor, or material heretofore furnished, imposed by law. – In addition, the undersigned agrees to use commercially reasonable and expeditious efforts to obtain recordable releases/terminations of (a) any recorded mechanics lien, and (b) if not yet expired, any recorded notice of commencement or recorded lien agent entries in the ordinary course of business once work completed.]

5. DEBTS AND LIENS. Except as described in the commitment / preliminary report, there are no debts, liens (including but not limited to federal or state liens or judgment liens), loans (including but not limited to mortgages or deeds of trust), lawsuits, unpaid judgments, proceedings or legal obligations of any kind against me/us or encumbering or potentially affecting the Land except the following [Please insert name of creditor and amount, if any]: _____ .

6. TAXES AND ASSESSMENTS. Except as described in the commitment / preliminary report, there are no unpaid taxes, charges, fees, fines or assessments of any kind (including but not limited to real property taxes and assessments imposed or collected by a taxing authority, condominium association or homeowner's association fees and assessments, water or sewer charges or other municipal charges) encumbering or potentially affecting the Land currently due and payable, except the following [Please describe item and amount, if any]: _____ .

I/we undertake to promptly pay the foregoing and to deliver proof of payment to the Title Company.

Sample Title Affidavit-cont'd

7. BANKRUPTCY. There are no current proceedings in bankruptcy or receivership affecting me/us/the owner of the Land or its affiliates. I/we/the owner has/have not and do/does not intend to file bankruptcy.
8. PURCHASE RIGHTS. Except for the current transaction (if a sale), there are no contracts to sell the Land, or options, or rights of first refusal to purchase, or right of first offer of, the Land, other than those parties who have waived their rights, except the following: _____.
9. BROKER. All fees and commissions due and payable to any real estate broker relating to the current transaction under a commission agreement have been or will be paid in the ordinary course of business.
10. CURRENT LEASE. That lease set forth in Exhibit ___ is in effect and I/we have no actual knowledge of any material, uncured breaches and have received no written notice from the lessor of uncured breaches of lease. Except as shown in the commitment to the knowledge of the undersigned there are no tenants or parties in possession or who have a right to possession, other than those tenants identified on the attached Rent Roll, which have no options, rights of first refusal, or right of first offer with respect to purchase of the Land.
11. LEASES AND EASEMENTS. Those leases set forth in Exhibit ___ have expired or terminated and are no longer effective. Any lease or easement described in Schedule A of the Commitment or Pro Forma Policy remains in effect and there are no acts or omissions that have occurred that with passage of time or giving of notice would constitute a default under the lease or easement. Those leases identified on the Rent Roll set forth in Exhibit ___ have rights as tenants only and none have an option, contract, right of first refusal, or right of prior approval to purchase the Land or any part thereof.
12. PERISHABLE AGRICULTURAL COMMODITIES ACT (PACA) AND PACKERS AND STOCKYARDS ACT (PSA). [Alternative one] I/We and the owner do not purchase and are not provided products that are subject PACA or PSA and I/we have received no notices or demands relating to claims under PACA or PSA. [Alternative two] To the knowledge of the undersigned, there are no outstanding unpaid sellers or suppliers of PACA/PSA commodities or products, no written notices of claim or written notices of intent to preserve claim rights have been received by the undersigned or owner from PACA/PSA sellers or suppliers, and there are no parties claiming to hold or assert rights, claims, or interests under PACA/PSA against undersigned or the owner.
13. COVENANTS, CONDITIONS, AND RESTRICTIONS. I/we have received no written notice and have no knowledge of material uncured violations of any covenants, conditions, and restrictions and I/we have no actual knowledge of material uncured violations of covenants, conditions, and restrictions, and there are no assessments or other charges established in the covenants, conditions, and restrictions that are currently due and payable.
14. MINERAL PRODUCTION. No mineral activities are being conducted on the Land relating to exploration, development, or extraction of oil, gas, or other minerals on the Land.
15. MARITAL STATUS. If an individual (natural person), the following describes my/our current marital status (check and complete all that are applicable):
 - A. ____ I have never been married.
 - B. ____ I am currently married to: _____ [< name]. We were married in _____ [< state] on _____ [< date] and we have been continuously married to each other, without interruption, since that date.
 - C. ____ I was married to _____ [<name] from: _____ [< date] to _____ [< date]. That marriage ended due to _____ [< describe: e.g., death, divorce].
 - D. ____ We are married to each other. We were married in _____ [< state] on _____ [< date] and we have been continuously married to each other, without interruption, since that date.
 - E. ____ Other: _____
15. INDEMNITY. I/we make this Affidavit to induce the Title Company to issue a policy/ies of title insurance and I/we understand that the Title Company is relying on the statements made herein in issuing such policy/ies. I/we agree to indemnify, defend and hold harmless the Title Company from and against all claims, costs, losses, liabilities, damages, expenses, fees and attorneys' fees, including attorneys' fees and expenses to enforce this indemnity, that the Title Company may incur, arising out of or relating to:
 - A. any errors, omissions or inaccuracies in this Affidavit,
 - B. all liens, encumbrances or other objectionable matters filed or recorded against the Premises between the last Effective Date of the commitment / preliminary report referenced above and the date and time of recording of the deed and/or mortgage/deed of trust, if applicable. I/we undertake to promptly remove, release, bond or otherwise dispose of the such matters, to the satisfaction of the Title Company, in its sole discretion; and
 - C. the failure to timely perform all undertakings, if any, described in this Affidavit.
16. OTHER.
 - A. If the Seller or Borrower is an entity, I have authority to sign on its behalf, based upon: _____.

Date: _____

Under penalties of perjury I/we declare that I/we have examined this affidavit and to the best of my knowledge and belief it is true, correct, and complete.

[Signature]

Print Name: _____

Print Title, if applicable: _____

[Signature]

Sample Title Affidavit-cont'd

(Optional Non-Imputation) To the best knowledge of the undersigned, (a) there are presently no defects in or liens, encumbrances or other claims against the Title to the Land is other than those disclosed by the Commitments; and (b) there are presently no inchoate rights which may ripen into any defect, lien, encumbrance or claim against the Title to the Land other than those (if any) disclosed by the Commitment. The undersigned individual asserts the foregoing after having questioned all of the officers, directors, employees partners and agents, if any, of [Insert name of entity and add individual signature lines below] who have had any substantial contact with any transaction or negotiation involving the Land. The undersigned asserts the foregoing for the purpose of inducing Title Company to issue a Non-Imputation Endorsement in its policies of title insurance covering the Land. Additionally, the undersigned hereby indemnify / indemnifies Title Company against any loss which Title Company may suffer by virtue of any valid claim based on the existence of any defect in or lien, encumbrance, right or claim against or with respect to Title to the Land which was not disclosed in this paragraph but which should have been so disclosed and was within the best knowledge of the undersigned in order to make all assertions rendered herein accurate, true and complete. The undersigned acknowledges that such loss may include court costs and **attorney's** fees expended by Title Company in defending Title to the estate or interest of the Insured against such lien, encumbrance, right or claim. The undersigned further agrees to pay all court costs and reasonable **attorney's** fees which Title Company may expend in enforcing the terms of this paragraph.

(Optional Knowledge/Survival) Any statement "**to the actual knowledge**" (or similar phrase) shall mean that the "**Designated Representative**" (as hereinafter defined) of the Owner has no knowledge that such statement is untrue (and, for this purpose, the **Owner's** knowledge shall mean the present actual knowledge [excluding constructive or imputed knowledge] of the Designated Representative, but such Designated Representative shall not have any liability in connection herewith. Notwithstanding anything to the contrary herein, (1) any cause of action for a breach of this document shall survive until 6 months after the date hereof, at which time the provisions hereof (and any potential cause of action resulting from any breach for which Title Company has not given Owner written notice) shall terminate; and (2) to the extent Title Company shall have knowledge as of the date hereof that any of the statements contained herein is false or inaccurate, then the Owner shall have no liability with respect to the same. The "**Designated Representative**" for the Owner is _____. The Designated Representative of the Owner is an individual affiliated with, or employed by, the Owner or its affiliates who has been directly involved in the asset management or property management of the Land and is in a position to confirm the truth and accuracy of **Owner's** knowledge certifications herein concerning the Land.

The following is a limited Affidavit as to Debts, Liens, Possession, and Gap:

XYZ Partners, LLC, a Delaware limited liability company, and XYZ the XYZ Trust dated June 1, 2010, as tenants-in-common (collectively, the "Owners"), represent to ABC Title Insurance Company (the "Company") in this transaction that:

1. To the best of the undersigned's knowledge, there are no parties in possession, unrecorded leases or occupancy agreements affecting the Property except as described on Exhibit A attached hereto. To the best of the undersigned's knowledge, the undersigned has not granted any tenant a right of first refusal to purchase the Property or an option to purchase the Property pursuant to any of the leases described on Exhibit A.
2. Except as described on Exhibit B, to the best of the undersigned's knowledge, within the last four (4) months, the undersigned: (i) has not made, ordered or contracted to be made to the Property any construction, repairs, alterations or improvements, except for minor repairs, alterations or improvements performed in the ordinary course of business; and (ii) has not ordered any materials for the Property which have not been paid for.
3. As an inducement to COMPANY to issue its policy of title insurance effective as of the date closing occurs without making exception therein of matters which may arise between the last continuation of title referenced in the Report and the date the documents creating the interest being insured have been filed for record (hereinafter "**Gap Period**"), and which matters may constitute an encumbrance on or affect said title, the undersigned agrees to promptly defend, remove, bond or otherwise dispose of any encumbrance, lien, or objectionable matter of title which may arise or be filed, as the case may be, against the captioned premises during the Gap Period and the date of recording of all closing instruments, and to hold harmless and indemnify the Company against all expenses, costs and attorney fees, which may arise out of the failure to so remove, bond or otherwise dispose of any said liens, encumbrances or objectionable matters.
4. This Certification is made for the purpose of aiding the Company in determining the insurability of title to the Property, and to induce said Company to issue its title insurance policies and endorsements, and the undersigned certifies that the foregoing statements are true and correct to the best of the undersigned's knowledge.

The affidavit may place a time limit on any liability for the gap (such as five days from closing to recording or for a cause of action such as six months if not then in litigation. The title affidavit may also limit the liability of the affiant such as "**The** Title Company has shall have no liability hereunder if prior to issuing its policies of title insurance, the Title Company has actual knowledge that contradicts such statements and nonetheless issues such policies of title insurance." In the alternative, the affiant may refuse to provide any indemnity as inconsistent with the obligations under the purchase and sale agreement (if applicable).

STG Gap Indemnity Agreement

Gap Indemnity Agreement File / Commitment / Preliminary Report No.: _____

Premises Address / Location: _____

WHEREAS, Stewart Title Guaranty Company ("Stewart") has been asked to issue its policy(ies) of title insurance or "marked up" commitment(s) to proposed insured(s) covering the Premises referenced above (the "Premises") prior to recording the deed, mortgage, deed of trust and/or other instruments required to be recorded (collectively, the "Closing Documents") without taking exception in such policy(ies) or commitment(s) to matters which may arise between the last Effective Date of the commitment / preliminary report referenced above and the date and time of recording of the Closing Documents (the "Gap Period"), which matters may be an encumbrance on or affect title to the Premises.

NOW, THEREFORE, in consideration of Stewart issuing its policy(ies) of title insurance or "marked up" commitment(s) as of the date of recording of the Closing Documents without taking exception to matters which may arise during the Gap Period, the undersigned agrees to: (1) promptly remove, release, bond or otherwise dispose of, to the satisfaction of Stewart, in its sole discretion, all liens, encumbrances or other objectionable matters filed or recorded against the Premises during the Gap Period, and (2) indemnify, defend and hold Stewart harmless against all claims, costs, losses, liabilities, damages and expenses, including without limitation, attorney's fees and expenses, arising out of or relating to all such matters and the failure to promptly remove, release, bond or otherwise dispose of them, to the satisfaction of Stewart, in its sole discretion.

Executed this _____ day of _____ 20 _____

COVERED RISK 10 (LP)

- Clarified to specify the components of Indebtedness that benefit from priority coverage
- Endorsement required to expand

10. The lack of priority of the lien of the Insured Mortgage upon the Title over any other lien or encumbrance on the Title as security for the following components of the Indebtedness:
- a. the amount of the principal disbursed as of the Date of Policy;
 - b. the interest on the obligation secured by the Insured Mortgage;
 - c. the reasonable expense of foreclosure;
 - d. amounts advanced for insurance premiums by the Insured before the acquisition of the estate or interest in the Title; and
 - e. the following amounts advanced by the Insured before the acquisition of the estate or interest in the Title to protect the priority of the lien of the Insured Mortgage:
 - i. real estate taxes and assessments imposed by a governmental taxing authority; and
 - ii. regular, periodic assessments by a property owners' association.

STG Amendment of Covered Risk 10 (on 2021 ALTA Loan Policy) 7-1-2021

STG Amendment of Covered Risk 10 (on 2021 ALTA Loan Policy) 7-1-2021

Issued By
Stewart Title Guaranty Company

File No.: _____

Covered Risk 10 of the 2021 ALTA Loan Policy is amended to:

1. Delete Covered Risk 10, which reads as follows:

10. The lack of priority of the lien of the Insured Mortgage upon the Title over any other lien or encumbrance on the Title as security for the following components of the Indebtedness:

a. the amount of the principal disbursed as of the Date of Policy;

b. the interest on the obligation secured by the Insured Mortgage;

c. the reasonable expense of foreclosure;

d. amounts advanced for insurance premiums by the Insured before the acquisition of the estate or interest in the Title; and

e. the following amounts advanced by the Insured before the acquisition of the estate or interest in the Title to protect the priority of the lien of the Insured Mortgage:

i. real estate taxes and assessments imposed by a governmental taxing authority; and

ii. regular, periodic assessments by a property owners' association.

2. And substitute the following new Covered Risk 10, which reads as follows:

10. The lack of priority of the lien of the Insured Mortgage upon the Title over any other lien or encumbrance on the Title.

Date: _____

Back to top
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No guidelines are available for this form at this time.



Where do we go from here?



Lender Updates-

From the Fannie Mae Selling Guide:
ALTA forms update The American Land Title Association (ALTA) released 2021 revisions to their loan policy forms. These new forms reflect changes in the marketplace initiated by evolving business practices, advancements in electronic notarizations, and other changes to laws © 2022 Fannie Mae SEL-2022-06 Page 2 of 3 and regulations. We have updated our Guide to reflect use of these updated forms and to differentiate between the use of the 2006 and 2021 versions. As a reminder, in states where standard ALTA forms of coverage are by law or regulation not used, the state-promulgated standard or short form that provides the same coverage as the ALTA equivalent form is acceptable, provided those forms do not materially impair title protection to Fannie Mae. Effective: **Lenders may begin using the 2021 version of ALTA forms immediately but must do so by Jan. 1, 2024.**

Loan Origination Date Title Policy Requirements

On or after January 1, 2024

The title policy must be written on one of the following forms:

- the 2021 American Land Title Association (ALTA) Loan Policy;
- an ALTA short form if it provides coverage equivalent to the 2021 ALTA Loan Policy and does not materially impair protection to Fannie Mae;
- in states in which standard ALTA forms of coverage are, by law or regulation, not used, the state-promulgated standard or short form which provides same coverage as the equivalent ALTA form, provided that those forms do not materially impair protection to Fannie Mae.

Prior to January 1, 2024

The title policy must be written on one of the following forms:

- the 2006 American Land Title Association (ALTA) Loan Policy or 2021 ALTA Loan Policy;
- an ALTA short form if it provides coverage equivalent to either the 2006 ALTA Loan Policy or 2021 ALTA Loan Policy and does not materially impair protection to Fannie Mae;
- in states in which standard ALTA forms of coverage are, by law or regulation, not used, the state-promulgated standard or short form which provides same coverage as the equivalent ALTA form, provided that those forms do not materially impair protection to Fannie Mae.

<https://singlefamily.fanniemae.com/media/31751/display#page=904>

Lender Updates-



From the Freddie Mac Selling Guide:

Forms

The title insurance policy must be written on:

- Effective for Mortgages with Note Dates up to December 31, 2022, Freddie Mac will accept either the 2006 (adopted 6/17/06) or 2021 (adopted 7/1/2021) versions of the following policy forms:
- The American Land Title Association (ALTA) Loan Policy
- The ALTA Short Form Residential Loan Policy One-to-Four-Family or
- The ALTA Expanded Coverage Residential Loan Policy One- to Four-Family
- Effective for Mortgages with Note Dates on or after January 1, 2023, only the 2021 versions of the above policy forms will be accepted

Whichever policy is used, it must be permitted to be issued in the State where the Mortgaged Premises is located under applicable law (e.g., Seller cannot deliver a 2021 Loan Policy in New York until the State of New York has approved use of that form policy).

[https://guide.freddiemac.com/app/guide/section/4702.2#:~:text=The%20title%20insurance%20policy%20must%20be%20written%20on%3A,Title%20Association%20\(ALTA\)%20Loan%20Policy](https://guide.freddiemac.com/app/guide/section/4702.2#:~:text=The%20title%20insurance%20policy%20must%20be%20written%20on%3A,Title%20Association%20(ALTA)%20Loan%20Policy)

Endorsements

- STG Gold
- PACA/PASA
- Post- Policy Forgery



STG Gold Endorsement to 2021 ALTA Homeowner's Policy

This Endorsement is Issued as Part of Policy Number _____

Issued By

Stewart Title Guaranty Company

THIS ENDORSEMENT IS EFFECTIVE ONLY IF THE LAND IS AN EXISTING OWNER-OCCUPIED SINGLE-FAMILY RESIDENCE OR A RESIDENTIAL CONDOMINIUM UNIT

1. ENHANCED COVERAGE FOR LEGAL ENTITIES

The following paragraph of the Coverage Statement is deleted:

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

and replaced with the following:

"This policy covers You only if the Land is improved with an existing single-family residence or a residential condominium unit. If the Land is not an improved single-family residence or a residential condominium unit, then this endorsement is void."

2. ENHANCED POST-POLICY COVERED RISKS

Covered Risk 5, which states "Any of Covered Risks 1 through 4 occurring after the Date of Policy" is replaced by new Covered Risk 5, which states "5. Any of Covered Risks 1 through 4 or Covered Risk 6 or Covered Risk 7 occurring after the Date of Policy."

3. ENHANCED GOVERNMENTAL FORFEITURE COVERED RISK

The following is added at the end of Covered Risk 15:

"With respect to an enforcement of a governmental forfeiture power that occurred before the Date of Policy, You lose your Title but only to the extent the enforcement of a governmental forfeiture occurred before the Date of Policy and is binding on You, if You purchased the Land without Knowledge of the forfeiture."

4. CERTIFICATE OF OCCUPANCY COVERED RISK

The following is added as a new second sentence to Covered Risk 18 to the policy, subject to Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A for Covered Risk 18:

"If You are a natural person, You are ordered by a State or Municipal authority to remove or remedy any portion of Your existing single-family dwelling -- other than boundary walls or fences -- because Your existing single-family dwelling was completed and occupied more than six years prior to the Date of Policy without obtaining a certificate of occupancy from the proper government office."

5. ENHANCED GAP COVERAGE COVERED RISK

The following is substituted for Covered Risk 32 to provide:

"32. If the Insured named in Schedule A first acquires the interest shown in Schedule A by an instrument recorded in the Public Records later than the date and time shown in Schedule A, the Date of Policy is the date and time the instrument is recorded and the Company insures against any defect in, lien, or encumbrance on the Title or any other matter or Covered Risk prior to the recording of the deed or other instrument vesting the Title in the Public Records.

6. PACA-PSA TRUST COVERED RISK

New Covered Risk 34 is added to the Covered Risks:

"34. Any claim of a PACA-PSA Trust. For purposes of this Covered Risk, a PACA-PSA Trust is a trust under the federal Perishable Agricultural Commodities Act or the federal Packers and Stockyards Act or a similar state or federal law."

7. ENHANCED CONTINUATION OF COVERAGE

Condition 2.a. (Continuation of Coverage) is amended to add Condition 2.a.iv below:

"2.a.iv. Your coverage under this policy also continues as of the Date of Policy so long as You have liability for covenants of Title, including any covenant of seisin."

Condition 2.b. (Continuation of Coverage) is amended to add 2.b.vii, 2.b.viii, 2.b.ix, or 2.b.x below:

2.b. This Policy also insures: "2.b.vii. Your spouse who receives Your Title by deed from You because You are the sole owner and You transfer with or without consideration Your Title or a portion thereof to him or her, or viii. Your child or Your grandchild who receives Your Title by gift deed from You without payment of any consideration; or ix. A limited liability company or other entity to which You transfer Your Title by deed provided that you are the sole owner of that company or other entity; or x. a transferee by a transfer effective on Your death."

8. INCREASED AMOUNT OF INSURANCE

Condition 6.d.i. (Contract of Indemnity; Determination and Extent of Liability) is amended as provided below:

The following Condition 6.d.i is deleted

6.d.i. the Amount of Insurance then in force will be increased by 15% of the Amount of Insurance shown in Schedule A; and

and replaced with the following:

6.d.i. the Amount of Insurance then in force will be increased by 20% of the Amount of Insurance shown in Schedule A; and

9. APPLICABLE ONLY FOR AN OWNER-OCCUPIED SINGLE-FAMILY RESIDENCE.

The coverage contained in this endorsement is effective only for an owner-occupied single-family residence or residential condominium unit, and is subject to the Exclusions, Exceptions and Conditions in the Policy and this endorsement will not be effective if the Land is not a single-family residence or a residential condominium unit occupied by You. There shall be no liability under this Endorsement based upon the refusal or failure of any person or entity to purchase, lease or lend money on the Land. This endorsement may only be used in conjunction with the 2021 ALTA Homeowner's Policy (adopted 07-01-21).

Back to top

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

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No guidelines are available for this form at this time.

STG Post Policy Forgery Endorsement (with 2021 ALTA Owner's Policy) (7-1-21)

This Endorsement is Issued as Part of Policy Number _____

Issued By
Stewart Title Guaranty Company

THIS ENDORSEMENT IS NOT TO BE USED FOR RESIDENTIAL PROPERTIES

1. The insurance provided by this endorsement is subject to the exclusion in Section 3 of this endorsement; the maximum dollar limit of liability in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. The Company insures against loss or damage sustained by the Insured by reason of an unrelated third party, after the Date of Policy, claiming to (a) own an interest in the Title, (b) have rights affecting the Title, or (c) have a lien on the Title, in each case because of impersonation of the Insured or forgery of the Insured's signature by an instrument recorded in the Public Records.
3. The coverage under this endorsement shall not (a) extend to any loss or damage, costs, attorneys' fees, or expenses sustained by the Insured if the claimed forgery or impersonation is caused in whole or in part by any related third party, including but not limited to any spouse, relative, or other person of affinity or consanguinity, or any employee, officer, director, partner, member, shareholder, representative, or agent of the Insured or of an affiliated party, or (b) be effective or apply if the Land is designed, intended, or used primarily for residential purposes, including, but not limited to, one-to-four family residential property, or (c) be effective if this policy or title insurance is subject either to reinsurance or to co-insurance.
4. The coverage under this endorsement is subject to a maximum dollar limit of liability of the lesser of (a) \$3 million for loss or damage, costs, attorneys' fees, and expenses in the aggregate, or (b) 25% of the Amount of Insurance. Notwithstanding the provisions of Condition 10 of the policy, any payment under or pursuant to this endorsement, including payments for loss or damage, costs, attorneys' fees, and expenses, reduce the Amount of Insurance under the policy pro tanto and the maximum limit of liability under this endorsement.

[Back to top](#)

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

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No guidelines are available for this form at this time.

STG Deletion of PACA-PSA Exclusion (7-1-21)

STG DELETION OF PACA-PSA EXCLUSION ENDORSEMENT
(2021 OWNER'S OR LOAN POLICY)

The policy is amended by deleting therefrom:

(A) If this endorsement is attached to a 2021 ALTA Loan Policy: Exclusion 7, relating to any claim of a PACA-PSA Trust.

(B) If this endorsement is attached to a 2021 ALTA Owner's Policy: Exclusion 5, relating to any claim of a PACA-PSA Trust.

Date: _____

[Back to top](#)

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Resources

- **Underwriter Training & Guidance- available webinars**
- **Production Software Updates**
- **ALTA News and Information**
- **ALTA Policy Forms Online at alta.org/policy-forms**

QUESTIONS?
