



Title Insurance Endorsements: Ignore Them at Your Peril

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Land Title Guarantee Company

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TODAY'S OBJECTIVES

1. Review the definitions and meanings of the terms "Covered Risks" and "Exclusions" in a title insurance policy.
2. Look at examples where a real estate attorney can obtain additional coverage for a client through the use of endorsements to expand and enhance the basic coverages available in the title insurance policies.
3. Explain how using endorsements can facilitate the settlement of a title insurance claim.
4. There are numerous forms of endorsements available - this presentation will focus on a few selected endorsements as examples of how an endorsement can amplify coverage.

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INTRODUCTION

Endorsements can be divided broadly into four categories, based on their effect on the policy:

1. Endorsements which amend the Exclusions from Coverage in the policy
2. Endorsements which amend the Conditions of the policy
3. Endorsements which insure over adverse matters in recorded documents
4. Endorsements which insure over adverse matters disclosed by off-record matters

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COVERED RISKS What is insured?

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, (BLANK TITLE INSURANCE COMPANY) insures, as of Date of Policy against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

- Title being vested other than as stated in Schedule A.
- Any defect in or lien or encumbrance on the Title.
- 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.
- No right of access to and from the Land

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COVERED RISKS

What is insured?

The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to

- (a) the occupancy, use, or enjoyment of the Land;
- (b) the character, dimensions, or location of any improvement erected on the Land;
- (c) the subdivision of land; or
- (d) environmental protection

if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice

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COVERED RISKS

What is insured?

The lack of priority of the lien of the Insured Mortgage upon the Title as security for each and every advance of proceeds of the loan secured by the Insured Mortgage over any statutory lien for services, labor, or material arising from construction of an improvement or work related to the Land when the improvement or work is either

- contracted for or commenced on or before Date of Policy; or
- contracted for, commenced, or continued after Date of Policy if the construction is financed, in whole or in part, by proceeds of the loan secured by the Insured Mortgage that the insured has advanced or is obligated on Date of Policy to advance; and

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EXCLUSIONS FROM COVERAGE

What is not insured?

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to

(i) the occupancy, use, or enjoyment of the Land;

(ii) the character, dimensions, or location of any improvement erected on the Land;

(iii) the subdivision of land; or

(iv) environmental protection;

Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.

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EXCLUSIONS FROM COVERAGE

What is not insured?

3. Defects, liens, encumbrances, adverse claims, or other matters

(a) created, suffered, assumed, or agreed to by the Insured Claimant;

(b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;

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SCHEDULE B

What has been excepted?

This Policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:

- Standard Exceptions
 - Any facts, rights, interests, or claims thereof, not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
 - Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
 - 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 and not shown by the Public Records.
 - Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
- Special Exceptions

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RISK ELIMINATION

Requests for endorsements can be used as a part of the due diligence framework for your client's transaction.

By requesting endorsements, title companies will perform or require additional due diligence to minimize the risk of loss as a result of the subject matter of the endorsement.

Note: Issuance of endorsement is not a guarantee that the subject matter of the endorsement will not cause a loss; rather, it signifies that enough due diligence has been performed that an underwriter is willing to insure the risk.

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SUBDIVISION ENDORSEMENT (Exclusion from Coverage)

1. Land subdivided before and after commencement of SB-35 (CRS 30-28-101) - (May 5, 1972)

2. Land described as "Lot 1 together with the north half of Lot 2"

3. Sale of land subject to a condominium.

Example of problematical legal description:

BLACKACRE FILING NO. 1,

EXCEPT THAT PART PLATTED AS BLACKACRE- A CONDOMINIUM COMMUNITY - PHASE 1 RECORDED MAY 7, 2004 UNDER RECEPTION NO. 204075318 AND BLACKACRE - A CONDOMINIUM COMMUNITY - PHASE 2 RECORDED AUGUST 11, 2005 UNDER RECEPTION NO. 205124853, IN THE CITY OF _____, COUNTY OF _____, STATE OF COLORADO.

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SUBDIVISION ENDORSEMENT ALTA Endorsement 26-06 (Subdivision)

The Company insures against loss or damage sustained by the Insured by reason of the failure of the Land to constitute a lawfully created parcel according to the subdivision statutes and local subdivision ordinances applicable to the Land.

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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ZONING ENDORSEMENTS (Exclusion from Coverage)

- ALTA Endorsement 3-06 (Zoning - Unimproved Land)
- ALTA Endorsement 3.1-06 (Zoning - Completed Structure)
- ALTA Endorsement 3.2-06 (Zoning - Land Under Development)

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ZONING ENDORSEMENTS ALTA Endorsement 3.1-06 (Zoning-Completed Structure)

The Company insures against loss or damage sustained by the Insured in the event that, at Date of Policy,

- a. *according to applicable zoning ordinances and amendments, the Land is not classified Zone _____;*
- b. *the following use or uses are not allowed under that classification:*
- c. *There shall be no liability under paragraph 1.b. if the use or uses are not allowed as the result of any lack of compliance with any conditions, restrictions, or requirements contained in the zoning ordinances and amendments, including but not limited to the failure to secure necessary consents or authorizations as a prerequisite to the use or uses. This paragraph 1.c. does not modify or limit the coverage provided in Covered Risk 5.*

2. The Company further insures against loss or damage sustained by the Insured by reason of a final decree of a court of competent jurisdiction either prohibiting the use of the Land, with any existing structure, as specified in paragraph 1.b. or requiring the removal or alteration of the structure, because, at Date of Policy, the zoning ordinances and amendments have been violated with respect to any of the following matters:

- a. *Area, width, or depth of the Land as a building site for the structure*
- b. *Floor space area of the structure*
- c. *Setback of the structure from the property lines of the Land*
- d. *Height of the structure, or*
- e. *Number of parking spaces.*

3. There shall be no liability under this endorsement based on:

- a. *the invalidity of the zoning ordinances and amendments until after a final decree of a court of competent jurisdiction adjudicating the invalidity, the effect of which is to prohibit the use or uses;*
- b. *the refusal of any person to purchase, lease or lend money on the Title covered by this policy.*

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ZONING ENDORSEMENTS

ALTA Endorsement 3.2-06 (Zoning-Land under Development)

(Same as for ALTA 3.1-06 but Section 1 revised:

1. *For purposes of this endorsement:*

- a. *"Improvement" means a building, structure, road, walkway, driveway, curb, subsurface utility or water well existing at Date of Policy or to be built or constructed according to the Plans that is or will be located on the Land, but excluding crops, landscaping, lawns, shrubbery, or trees.*
- b. *"Plans" means those site and elevation plans made by [name of architect or engineer] dated ____, last revised _____, designated as [name of project] consisting of __ sheets.*

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ACCESS (Covered risk enhancement)

- Access to a public street
- Access by way of an easement to a public street
- Watch for lack of physical access caused by terrain features
 - ALTA Endorsement 17-06 (Access and Entry)
 - ALTA Endorsement 17.1-06 (Indirect Access and Entry)
 - ALTA Endorsement 17.2-06 (Utility Access and Entry)

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ACCESS

ALTA Endorsement 17-06 (Access and Entry)

The Company insures against loss or damage sustained by the Insured if, at Date of Policy (i) the Land does not abut and have both actual vehicular and pedestrian access to and from [insert name of street, road, or highway] (the "Street"), (ii) the Street is not physically open and publicly maintained, or (iii) the Insured has no right to use existing curb cuts or entries along that portion of the Street abutting the Land.

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WHAT DOES LAND INCLUDE? (Conditions of Policy)

Definition of "Land":

(g) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.

ALTA Endorsement 7-06 (Manufactured Housing Unit)

ALTA Endorsement 7.1-06 (Manufactured Housing-Conversion Loan)

ALTA Endorsement 7.2-06 (Manufactured Housing-Conversion Owner's Policy)

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WHAT DOES LAND INCLUDE?

ALTA Endorsement 7.2-06 (Manufactured Housing-Conversion Owner's Policy)

1. *The term "Land" includes the manufactured housing unit located on the land described in Schedule A at Date of Policy.*
2. *Unless excepted in Schedule B, the Company insures against loss or damage, sustained by the Insured if, at Date of Policy:*
 - a. *A manufactured housing unit is not located on the land described in Schedule A.*
 - b. *The manufactured housing unit located on the land is not real property under the law of the state where the Land described in Schedule A is located.*
 - c. *The Insured is not the owner of the manufactured housing unit.*
 - d. *Any lien is attached to the manufactured housing unit as personal property, including*
 - i. *a federal, state, or other governmental tax lien,*
 - ii. *UCC security interest,*
 - iii. *a motor vehicular lien, or*
 - iv. *other personal property lien.*

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MECHANIC'S LIEN ENDORSEMENTS (Exceptions from Coverage-Sch. B)

In the context of a construction loan, make use of the mechanic's lien and disbursing endorsements which are coupled with the disbursement of construction funds

Endorsement 122

Endorsement 101.5

Endorsement 101

ALTA 32-06 Construction Loan-Loss of Priority

ALTA 32.1-06 Construction Loan-Loss of Priority-Direct Payment

ALTA 32.2-06 Construction Loan-Loss of Priority- Insured's Direct Payment

ALTA 33-06 Disbursement Endorsement

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MECHANIC'S LIEN ENDORSEMENTS

ALTA 32-06 Construction Loan-Loss of Priority

1. *Covered Risk 11(a) of this policy is deleted.*
2. *The insurance [for Construction Loan Advances] added by Section 3 of this endorsement is subject to the exclusions in Section 4 of this endorsement and the Exclusions from Coverage in the Policy, the provisions of the Conditions, and the exceptions contained in Schedule B. For the purposes of this endorsement and each subsequent Disbursement Endorsement:*
 - a. *"Date of Coverage", is [] [Date of Policy] unless the Company sets a different Date of Coverage by an ALTA 33-06 Disbursement Endorsement issued at the discretion of the Company.*
 - b. *"Construction Loan Advance," shall mean an advance that constitutes Indebtedness made on or before Date of Coverage for the purpose of financing in whole or in part the construction of improvements on the Land.*
 - c. *"Mechanic's Lien," shall mean any statutory lien or claim of lien, affecting the Title, that arises from services provided, labor performed, or materials or equipment furnished.*
3. *The Company insures against loss or damage sustained by the Insured by reason of:*
 - a. *The invalidity or unenforceability of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage;*
 - b. *The lack of priority of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage, over any lien or encumbrance on the Title recorded in the Public Records and not shown in Schedule B; and*

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MECHANIC'S LIEN ENDORSEMENTS

ALTA 32-06 Construction Loan-Loss of Priority

- c. *The lack of priority of the lien of the Insured Mortgage, as security for each Construction Loan Advance made on or before the Date of Coverage over any Mechanic's Lien, if notice of the Mechanic's Lien is not filed or recorded in the Public Records, but only to the extent that the charges for the services, labor, materials or equipment for which the Mechanic's Lien is claimed 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.*
4. *This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) by reason of any Mechanic's Lien arising from services, labor, material or equipment:*
 - a. *furnished after Date of Coverage; or*
 - b. *not 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.*

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MECHANIC'S LIEN ENDORSEMENTS

ALTA 33-06 Disbursement Endorsement

1. The Date of Coverage is amended to _____.
 [a. The current disbursement is: \$ _____]
 [b. The aggregate amount, including the current disbursement, recognized by the Company as disbursed by the Insured is: \$ _____]
2. Schedule A is amended as follows:
3. Schedule B is amended as follows:
 [Part I]
 [Part II]

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NON IMPUTATION ENDORSEMENT (Exclusion from Coverage)

The knowledge of one party having an interest in an insured entity may be imputed by law to the entity and to other parties having an interest in the named entity. This may result in the denial of coverage as a matter known to the insured, not known to the company, and not disclosed by the public records.

Example:

Title is vested in A, LLC, which is the named insured under the policy.
 New investors acquire an interest in A, LLC.

The endorsement provides that the insurer will not deny liability under Section 3(a), (b), or (e) by reason of knowledge imputed to A, LLC.

Remember to request an endorsement to update the effective date

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NON IMPUTATION ENDORSEMENT

ALTA Endorsement 15-06 Non-Imputation-Full Equity Transfer

The Company agrees that it will not assert the provisions of Exclusions from Coverage 3(a), (b), or (e) to deny liability for loss or damage otherwise insured against under the terms of the policy solely by reason of the action or inaction or Knowledge, as of Date of Policy, of

[identify existing or contributing partner(s) of the insured partnership entity, member(s) or manager(s) of the insured limited liability company entity, or officer(s) and/or director(s) of the insured corporate entity]

whether or not imputed to the Insured by operation of law, provided

[identify the "incoming" partners, members, or shareholders]

acquired the Insured as a purchaser for value without Knowledge of the asserted defect, lien, encumbrance, adverse claim, or other matter insured against by the policy.

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ENCROACHMENTS (Exceptions from Coverage-Sch. B)

ALTA Endorsement 28-06 (Easement-Damage or Forced Removal)

ALTA Endorsement 28.1-06 (Encroachments-Boundaries and Easements)

ALTA Endorsement 28.2-06 (Encroachments-Boundaries and Easements-
Described Improvements)

ALTA Endorsement 28.3-06 (Encroachments-Boundaries and Easements-
Described Improvements and Land under Development)

Watch the wording of these endorsements!

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ENCROACHMENTS

ALTA Endorsement 28.1-06 (Encroachments-Boundaries -Easements)

1. *The insurance provided by this endorsement is subject to the exclusions 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. *For purposes of this endorsement only, "Improvement" means an existing building, located on either the Land or adjoining land at Date of Policy and that by law constitutes real property.*
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.*
4. *This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from the encroachments listed as Exceptions _____ of Schedule B.*

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CLAIM FACILITATION

If we are doing curative work to resolve a covered claim, and the insured wants to refi or sell, there are various endorsements that we can use to provide a prospective buyer or lender peace of mind, allowing them to invest in the property without risk.

We can issue forms 103 or 110.2 to show a defect but then insure over it so the new owner/investor receives the same level of protection as the previous insured.

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LOOK TO THE FUTURE

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

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FUTURE INSURANCE

If you have negotiated a particularly unusual endorsement, then it may be possible to obtain a future insurance endorsement whereby the company agrees to provide the same coverage to a future insured.

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FUTURE INSURANCE

The Company agrees that if, within fifteen (15) years after the date of this Policy, application is made to:

- (1) increase the face amount of the Policy or
- (2) to issue a new policy, or additional policies,

the Company will increase the face amount of the Policy, or issue the New Policies together with the same endorsements to the Policy (together the "New Policies"), insuring such title or interest as may then exist in the insured or the insured's designee, provided that:

- (1) such increased amount represents the fair market value of the land and improvements, as at the date of the application to increase the face amount of the Policy, or
- (2) in the event of the issuance of the New Policies, the amount of the New Policies is in the amount of the purchase price, the value of the leasehold, or the amount of the loan, whichever is applicable; and
- (3) the insured pays the Company's premium applicable to either the increase in the face amount of the Policy, or the New Policies.

In the event that, subsequent to the Date of the Policy:

- (1) a claim has been made or is pending against the Company, or
- (2) a defect in title has been discovered;

arising out of matters that are insured against by the Policy, the Company shall not be required to issue insurance for an amount greater than the face amount of the Policy as to the defect discovered or resulting in said claim, although the Company shall continue to issue insurance as provided herein without coverage as to such claim or defect in title.

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FUTURE INSURANCE

Upon receipt of the application to increase the face amount of the Policy, or to issue the New Policies, the Company will extend its examination of the title to the then current date, and will then increase the face amount of the Policy or issue the New Policies, subject only to such matters as listed in the Policy, or otherwise created and attaching subsequent to the effective date of the Policy, or which have become known to either the Insured or the Company subsequent to the effective date of the Policy.

The insurance to be issued shall be subject to rules, rates and regulations in effect at the date that the face amount of the Policy is increased or the New Policies are issued.

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Title Insurance Endorsements

Thank you for attending this presentation

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