



CHICAGO TITLE INSURANCE COMPANY

NATIONAL COMMERCIAL SERVICES | CHICAGO

2021 ALTA Policy Forms - Overview of Changes

The American Land Title Association (ALTA) has approved new forms of the title commitment, Owner's Policy, and Loan Policy, to be effective July 1, 2021. These are the first new ALTA policy forms since the adoption of the current forms in 2006.

We have attempted to highlight some of the more-substantive changes below. For additional information as to all of the revisions, ALTA has posted "red-line" comparisons of the 2006 and 2021 policy forms – and of the 2016 and 2021 commitment forms – on its website: <https://www.alta.org/policy-forms>.

- The introductory statement of both policies now incorporates the provisions of the ALTA 39 endorsement; namely, that the policy is valid even if endorsements attached thereto are signed electronically, or lack a signature. This will render the ALTA 39 moot.
- Covered Risk 2(a) in both policies now includes documents executed pursuant to Remote Online Notarization (RON). **Please note:** as RON has not been adopted in all jurisdictions, we continue to recommend that parties confirm availability prior to execution of transaction documents.
- Covered Risks 5, 6, and 7 in both policies include reference to "Enforcement Notice" – now a defined term (Condition 1.e. of the LP and 1.d. of the OP). An Enforcement Notice is a document affecting the insured land that is recorded in the public records at date of policy, and identifies a violation or enforcement of a law, ordinance, permit or governmental regulation.
- Covered Risk 8 is new coverage – both the OP and LP now provide coverage as to the enforcement of PACA-PSA liens, but only to the extent of the enforcement described in an Enforcement Notice. This provision will preclude the need to include an owner's affidavit statement as to such liens. **Please note:** Exclusion 5 (OP) and Exclusion 7 (LP) also have been added. These exclude coverage for PACA-PSA liens to the extent an Enforcement Notice for such liens is not recorded against the land to be insured.
- Covered Risk 9 (OP) and 12 (LP): while creditor's rights coverage for current transactions was withdrawn by the industry in 2010, the 2006 policy jackets include coverage as to prior transactions. This coverage for prior transactions has been modified to include reference to the Uniform Voidable Transactions Act.
- Covered Risk 11 (LP): this provision has been revised to include services and equipment, in addition to labor and materials. This revision is consistent with the coverage provided in the ALTA 32 series of construction loan endorsements.
- Acreage/square footage: previous policies often included Schedule B exceptions as to area, square footage or acreage of the land to be insured. This language is now incorporated as an Exclusion from Coverage – Exclusion 7 (OP) and 9 (LP).
- The definition of "Insured" contained in the Conditions has been revised in both policy jackets:

- OP – Condition 1.f.:
 - ◆ Paragraphs i.(3) and i.(4) have been updated to include “the successor to the Title of an Insured”
 - ◆ Paragraph (1.f.) has been expanded to include transfer to affiliates of the insured, even where consideration is paid. Previously, the definition only included such transfers for no consideration.
- LP – Condition 1.i.:
 - ◆ As with the OP, Paragraphs i.(3) and i.(4) have been updated to include “the successor to the Title of an Insured”
 - ◆ Paragraph i.(6) has been revised to include an Affiliate of the Insured that acquires the Title through foreclosure or deed-in-lieu.
- Condition 8: this provision has been modified in both policies to provide additional choices as to the date for determining the amount of loss or damage.
- Condition 10 (LP): this provision has been updated to note that when Title is acquired by the Insured as the result of foreclosure or deed in lieu, the amount credited against the indebtedness does not reduce the Amount of Insurance.
- Schedule B (OP)/Schedule B-Part I (LP): the introductory paragraphs to the Schedule now includes additional provisions, which are consistent with changes first incorporated into the 2016 form of the commitment:
 - Excludes discriminatory provisions contained in recorded instruments. This eliminates the need to include such carve-outs in all applicable exceptions.
 - Terms and conditions of insured leases or easements are also excepted, eliminating the need to include separate exceptions for same.
- Schedule B-Part II of the LP: the introductory provision now references the coverage provided to the insured based on Covered Risk 10 (against loss or damage sustained by the lack of priority of the lien of the Insured Mortgage) over matters listed in Part II, subject to the terms and conditions of any subordination provision noted in a matter referenced in Part II.
- A new Condition has been added to both policies, prohibiting class actions – Condition 18 (OP) and 17 (LP). Claims must be brought in an individual capacity.

One final note: although the policy forms are approved as of July 1, 2021, availability will vary among the states, based on how quickly the forms are adopted in each jurisdiction. We encourage you to reach out to your contacts with Chicago Title for more information – or if you have any additional questions or comments about the new forms.

This article was written by Robert C. Strybel, Esq., dated March 2021.