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**Truths and Myths about the ALTA
Homeowner's Policy of Title Insurance**

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What is the value of the Homeowner's Policy?

- The new Closing Disclosure will say that a title insurance policy for the purchaser is optional.
- What will you say if asked whether it is worth the money shown on that statement?
- ALTA Form: “Notice of Availability” eff 4-2-15.



NOTICE OF AVAILABILITY OF OWNER'S TITLE INSURANCE FOR ONE-TO-FOUR FAMILY RESIDENTIAL PROPERTY

If You want the benefit of Your own title insurance protection, You must buy Your own ALTA Owner's Policy of Title Insurance ("Owner's Policy").

An Owner's Policy is available with a coverage amount equal to the purchase price of the Property. An Owner's Policy is purchased for a one-time premium and protects You for as long as You own the Property. Possible problems covered by an Owner's Policy can include:

- Someone else claims to own an interest in Your Property;
- Someone else claims a lien on Your Property, including an unpaid lien for real estate taxes, a mortgage, a judgment, or an unpaid homeowner's association lien; or
- You do not have a legal right of access to Your Property.



NOTICE OF AVAILABILITY OF OWNER'S TITLE INSURANCE FOR ONE-TO-FOUR FAMILY RESIDENTIAL PROPERTY

A preliminary report or title insurance commitment issued in connection with the Property is an offer to provide title insurance, is not a representation as to the condition of title, does not constitute an abstract of title, and does not provide You the protection of an Owner's Policy.

[You also have the option of purchasing an ALTA Homeowner's Policy of Title Insurance that covers more matters ("Homeowner's Title Policy"). Ask Your [title company] for an explanation of a Homeowner's Title Policy so that You can decide which policy is the best one for You.]



NOTICE OF AVAILABILITY OF OWNER'S TITLE INSURANCE FOR ONE-TO-FOUR FAMILY RESIDENTIAL PROPERTY

If You are uncertain as to whether You should obtain an Owner's Policy [or a Homeowner's Title Policy], You are urged to seek independent advice.

_____ I/We [Buyer] do request _____ an Owner's Policy [_____ a Homeowner's Title Policy (*check one*)]

_____ I/We [Buyer] decline an Owner's Policy [or a Homeowner's Title Policy]. I/We [Buyer] understand and agree to accept the risks associated with this decision.

[Witness clause optional]

[BLANK TITLE INSURANCE COMPANY]

By: _____

By: _____

BUYER



Most people do not realistically estimate their chances of losses that would be covered by a title insurance policy.

Most people do not understand the differences between the basic, or “standard coverage,” compared to the Homeowner’s Policy.



Comparison Chart

	Owner's Std. Coverage	Owner's Ext'd. Coverage	Homeowner's Coverage
1. Someone else owns an interest in your title.	✓	✓	✓
2. Someone else has rights affecting your title because of leases, contracts or options.	✓	✓	✓
3. Someone else claims to have rights affecting your title because of forgery or impersonation.	✓	✓	✓
4. Someone else has an easement on the land.	✓	✓	✓
5. Someone else has a right to limit your use of the land.	✓	✓	✓
6. Your title is defective. Some of these defects are:	✓	✓	✓
a. Someone else's failure to have authorized a transfer or conveyance of your title.			
b. Someone else's failure to create a valid document by electronic means.			
c. A document upon which your title is based is invalid because it was not properly signed, sealed, acknowledged, delivered or recorded.			
d. A document upon which your title is based was signed using a falsified, expired, or otherwise invalid power of attorney.			
e. A document upon which your title is based was not properly filed, recorded, or indexed in the Public Records.			
f. A defective judicial or administrative proceeding.			
7. Any of the Covered Risks 1-6 above <i>occurring after the Policy Date</i> .			✓
8. Someone else has a lien on your title, including a:	✓	✓	✓
a. Lien of real estate taxes or assessments imposed on your title by a governmental authority that are due or payable, but unpaid.			



Trivia Quiz

1. How many Covered Risks are numbered on the ALTA Homeowner's Policy since 2013?
2. How many Covered Risks were on all the ALTA Owner's policies from 1970 through 2006?



Coverage Quiz:

How many of these types of loss would be covered by the Homeowner's Policy?

1. Does it protect against a challenge to set aside a prior deed based upon creditor's rights?
2. Does it protect against loss if a neighbor later builds a road that goes onto the Land?
3. Does it protect against loss if the map does not show the correct location of the residence with the stated address?
4. Does it protect against the risk of being forced to remove an improvement that was built without a permit?



Which of these risks is not covered by the Homeowner's Policy?

1. 7 years after the policy, someone impersonates the owners by granting a mortgage. That lender starts a foreclosure.
2. Schedule B shows an easement that allows the neighbor to extract water, but no well exists. After your purchase, the neighbor requires you to remove a tree that interferes with where he wants to locate his well. The Insured claims reimbursement for the value of the tree.
3. The homeowner's association demands that the tiles on the roof installed by the seller must be replaced with cedar shake to comply with the covenants. The covenants are shown as an exception on the policy.



Which of these risks is not covered by the Homeowner's Policy?

4. All the owners within a subdivision are assessed for the cost to repair a failing bridge that must be crossed for vehicular access. The easement allowing use of the bridge is not insured on the policy.
5. The neighbors file a lawsuit to stop the construction of a second floor construction, claiming they have an unrecorded view easement acquired by prescriptive use by the neighbor adverse to the Insured's title.



Which of these risks is not covered by the Homeowner's Policy?

1. 7 years after the policy, someone impersonates the owners by granting a mortgage. That lender starts a foreclosure.
3. Someone else claims to have rights affecting Your Title because of forgery or impersonation.
7. Any of Covered Risks 1 through 6 occurring after the Policy Date.
10. Someone else claims to have rights affecting Your Title because of fraud, duress, incompetency or incapacity.



Which of these risks is not covered by the Homeowner's Policy?

2. Schedule B shows an easement that allows the neighbor to extract water, but no well exists. After your purchase, the neighbor requires you to remove a tree that interferes with where he wants to locate his well. The Insured claims reimbursement for the value of the tree.

25. Your existing improvements (or a replacement or modification made to them after the Policy Date), including lawns, shrubbery or trees, are damaged because of the future exercise of a right to use the surface of the Land for the extraction or development of minerals, water or any other substance, even if those rights are excepted or reserved from the description of the Land or excepted in Schedule B.



Which of these risks is not covered by the Homeowner's Policy?

3. The homeowner's association demands that the tiles on the roof installed by the seller must be replaced with cedar shake to comply with the covenants. The covenants are shown as an exception on the policy.

12. You are forced to correct or remove an existing violation of any covenant, condition or restriction affecting the Land, even if the covenant, condition or restriction is excepted in Schedule B. However, You are not covered for any violation that relates to:

- a. any obligation to perform maintenance or repair on the Land; or
- b. environmental protection of any kind, including hazardous or toxic conditions or substances

unless there is a notice recorded in the Public Records, describing any part of the Land, claiming a violation exists. Our liability for this Covered Risk is limited to the extent of the violation stated in that notice.



Which of these risks is not covered by the Homeowner's Policy?

4. All the owners within a subdivision are assessed for the cost to repair a failing bridge needed for access. The easement allowing use of the bridge is not insured on the policy.

11. You do not have actual vehicular and pedestrian access to and from the Land, based upon a legal right.



Which of these risks is not covered by the Homeowner's Policy?

5. The neighbors file a lawsuit to stop the construction of a second floor claiming an unrecorded view easement was acquired by prescription.
4. Someone else has an Easement on the Land.
7. Any of Covered Risks 1 through 6 occurring after the Policy Date.

OUR DUTY TO DEFEND AGAINST LEGAL ACTIONS

We will defend Your Title in any legal action only as to that part of the action which is based on a Covered Risk and which is not excepted or excluded from coverage in this Policy. We will pay the costs, attorneys' fees, and expenses We incur in that defense.



Trick Questions:

1. Does the 2006 ALTA Owner's Policy form provide coverage against unrecorded encroachments and survey problems?
2. Does the ALTA Homeowner's Policy form include a Schedule B that includes the same general exceptions as the Schedule B for the 2006 Owner's Policy?



Differences Compared to Basic Owner's Policy

The most remarkable differences in protection provided by its Covered Risks are:

1. post-policy coverage,
2. coverage against issues even if the document creating the issue is an exception in Schedule B, and
3. coverage for losses beyond traditional title policies.



Differences Compared to Basic Owner's Policy

The Homeowner's Policy provides protection against matters that may occur in the future:

7. Any of Covered Risks 1 through 6 occurring after the Policy Date.

8. Someone else has a lien on Your Title, including a: ... (e) lien, occurring before or after the Policy Date, for labor and material furnished before the Policy Date.

25. Your existing improvements ... are damaged because of the future exercise of a right to use the surface of the Land for the extraction or development of minerals, water or any other substance, ...

28. Your neighbor builds any structures after the Policy Date -- other than boundary walls or fences -- which encroach onto the Land.



Differences Compared to Basic Owner's Policy

The Homeowner's Policy provides protection against the effect of violations of covenants, easements and other issues, even though the document that would disclose that burden on the land is listed as an exception to title:

12. You are forced to correct or remove an existing violation of any covenant, condition or restriction affecting the Land, even if the covenant, condition or restriction is excepted in Schedule B. ...

13. Your Title is lost or taken because of a violation of any covenant, condition or restriction, which occurred before You acquired Your Title, even if the covenant, condition or restriction is excepted in Schedule B.

23. You are forced to remove Your existing structures because they encroach onto an Easement or over a building set-back line, even if the Easement or building set-back line is excepted in Schedule B.



Differences Compared to Basic Owner's Policy

The Homeowner's Policy provides protection against the effect of violations of covenants, easements and other issues, even though the document that would disclose that burden on the land is listed as an exception to title:

24. Your existing structures are damaged because of the exercise of a right to maintain or use any Easement affecting the Land, even if the Easement is excepted in Schedule B.

25. Your existing improvements ... are damaged because of the future exercise of a right to use the surface of the Land for the extraction or development of minerals, water or any other substance, even if those rights are excepted or reserved from the description of the Land or excepted in Schedule B.



Differences Compared to Basic Owner's Policy

The Homeowner's Policy provides protection against losses for issues that are beyond traditional title insurance:

16. Because of an existing violation of a subdivision law or regulation affecting the Land: a. You are unable to obtain a building permit; b. You are required to correct or remove the violation; or ... *
18. You are forced to remove or remedy Your existing structures, or any part of them - other than boundary walls or fences - because any portion was built without obtaining a building permit from the proper government office. ...*
19. You are forced to remove or remedy Your existing structures, or any part of them, because they violate an existing zoning law or zoning regulation. *
20. You cannot use the Land because use as a single-family residence violates an existing zoning law or zoning regulation.
21. You are forced to remove Your existing structures because they encroach onto Your neighbor's Land. [This coverage is not limited to owner occupied, as stated on the Homeowner's Additional Protection Endorsement, and also applies to boundary walls and fences (with limitation)] ...*



Underwriting Guidelines

- The form limits the protection to individuals. What about family LLCs?
- Many companies prohibited this form for new construction. Why?
- Many companies prohibited this form for policies above \$1 million. Why?
- Many companies prohibited this form for waterfront properties. Why?



2013 Changes:

- New Exclusions:
 8. Contamination, explosion, fire, flooding, vibration, fracturing, earthquake or subsidence.
 9. Negligence by a person or an Entity exercising a right to extract or develop minerals, water, or any other substances.



2013 Changes:

2. CONTINUATION OF COVERAGE

(3)the trustee or successor trustee of aYour Trust or any Estate Planning Entity created for You to whom or to which You transfer Your Title after the Policy Date;



Successor's Rights

- Dwight bought a condo apartment that is shown as limited common element for that apartment on the Declaration. The policy does not describe the parking spaces in Land, nor is there an exception other than for the Declaration.
- Later, Dwight marries, but not wisely, leading to a divorce. The Decree awards the apartment to the ex-Ms. Bickel.
- Now a neighbor claims ownership of one of the parking spaces by a deed recorded before Dwight's purchase.
- *Will the title company be obligated under the policy to pay for ex-Ms. Bickel's loss of the parking space?*



Successor's Rights

2. CONTINUATION OF COVERAGE

a. This Policy insures You forever, even after You no longer have Your Title. You cannot assign this Policy to anyone else.

b. **This Policy also insures:**

- (1) anyone who inherits Your Title because of Your death;
- (2) Your spouse who receives Your Title because of dissolution of Your marriage;**
- (3) the trustee or successor trustee of Your Trust or any Estate Planning Entity created for You to whom or to which You transfer Your Title after the Policy Date;
- (4) the beneficiaries of Your Trust upon Your death; or
- (5) anyone who receives Your Title by a transfer effective on Your death as authorized by law.



Questions?

