

Underwriting Endorsements

2016 WLTA Seminars

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Presented by:

Megan Powell, Senior Underwriter

First American Title Insurance Company

What is the purpose of an endorsement?

To build additional affirmative coverage into the policy.

LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy **together with all endorsements**, if any, attached to it by the Company is the **entire policy and contract between the Insured and the Company**. In interpreting any provision of this policy, this policy shall be construed as a whole.

(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

How much additional risk can an endorsement add to the policy?

- 2006 ALTA Owner's Policy (10 Covered Risks)
- 2006 ALTA Loan Policy (14 Covered Risks)
- ALTA Homeowner's Policy (32 Covered Risks)
- Hundreds of endorsements available to provide additional coverage.

General Info.

- Some endorsements are only designed for certain policy forms.
- ALTA Endorsements vs. CLTA Endorsements
- Endorsement Series
- Proper Endorsement Pricing
 - Elevated risk means elevated pricing
- Should be issued based on instructions
 - Do not select endorsements in reliance on vague language such as “if applicable”.

And most importantly...

Endorsements must be underwritten!

Access Endorsements

ALTA 17 Series, CLTA 103.11, CLTA 103.12,
CLTA 103.13, CLTA 103.7

- The policy insures a right of access
 - HO Policy insures vehicular and pedestrian
- The access endorsements give additional assurance as to access, such as:
 - Street physically open and publically maintained
 - Right to use curb cuts
 - Identifies the public roadway that can be accessed from the property
 - Access to utilities

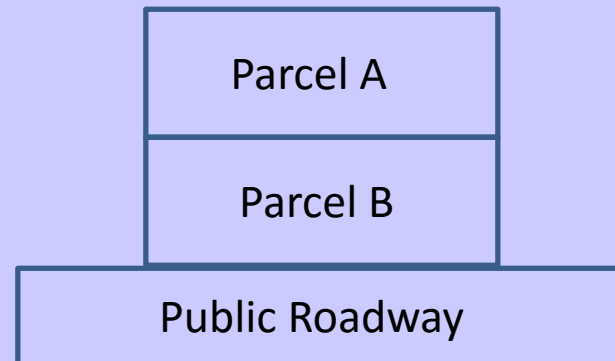
Underwriting Access Endorsements

Potential Tools:

- Survey
- Physical Inspection

If multiple parcels, examine each parcel separately for access.

i.e. If issuing the ALTA 17-06 and all parcels do not abut a public roadway, you may need to limit your coverage to the parcels that do abut.



Easement Endorsements

ALTA 28 Series, CLTA 103.1-06, CLTA 103.3-06

Example: ALTA 28-06

- You need to know which exceptions you are being asked to insert into the endorsement.
 - It needs to be an easement!
- Review the underlying easements for those exceptions and consider:
 - Nature and purpose of the easement.
 - Age of the easement.
 - Location of the easement vs. buildings on the property.
 - Risk that the use or maintenance of the easement would cause damage or enforced removal of existing building.
 - Whether there are any terms in the easement that help mitigate loss.

Zoning Endorsements

ALTA 3 Series, CLTA 123.1, CLTA 123.2

- Is it for improved or unimproved land?

Example: 3.1-06

- This endorsement is for improved land.
- Insures compliance with zoning including floor space, setbacks, height, parking spaces, etc.
- Obtain written representation from zoning authority that structures are compliance or survey that affirms compliance.
- Alternatively, review zoning ordinance and attempt to determine compliance.
- You may need to confirm permitted non-conforming use.

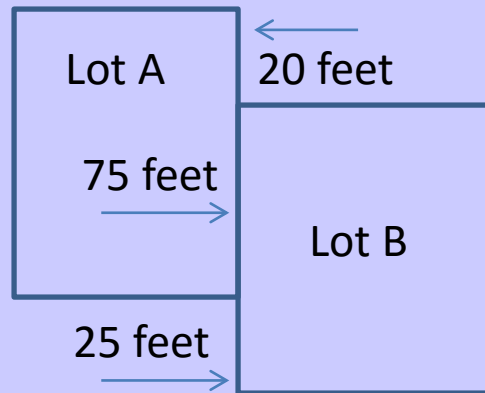
Contiguity Endorsements

ALTA 19 Series, CLTA 116.4, CLTA 116.4.1

- Provides coverage resulting from the failure of the specified boundary lines of parcels to be contiguous.
- You must use different endorsements if you have multiple parcels vs. a single parcel.
- If single parcel, the customer needs to explain what other adjoining land not described in the policy they want identified in the endorsement.

Contiguity Endorsements

- Be precise in your description of how the parcels are contiguous. Avoid generic statements like “the failure of the Land to be contiguous”.
- Odd shapes may affect drafting.



The failure of the south 75 feet of the east boundary of Lot A to be contiguous to the north 75 feet of the west boundary of Lot B.

Instead of

The failure of Lot A to be contiguous to Lot B.

Future Development Endorsements

ALTA 3.2-06, ALTA 9.7-06, ALTA 28.3-06, CLTA 123.3,
CLTA 100.2.7, CLTA 103.16

- These endorsements require a review of the plans, because you are insuring based on what the property will look like when the improvements have been constructed.
- The plans can be up to several hundred pages. Ask for them early and allow time to underwrite.
- The endorsement allows you to define the plans.

Aggregation Endorsements

ALTA 12 Series, CLTA 117 (AKA a “Tie-In Endorsement”)

- Aggregates the policy liability with other projects.
- Often used for multi-site projects.

Example:

- Borrower signs Master Loan Agreement for \$10 million loan.
- Borrower secures the loan with 5 different sites, each located in a different state.
- 5 different DOTs for \$10 million each are recorded, however, 5 different policies insuring these DOTs are issued for \$2 million each.
- Aggregated together, total policy liability is \$10 million.

Aggregation Endorsements

Remember: All aggregated policies must be issued by the same underwriter.

Identified Risk Endorsement

ALTA 34-06, CLTA 139

- Provides coverage for a specific risk that is being “insured over”.
- Allows the Insured to realize the risk is there, but they are receiving coverage for it.

Identified Risk Endorsement

Example:

- Jones purchased the property from Smith in 2013.
- Smith was the borrower under a DOT recorded against the property for \$40,000 that was missed by the title company. Consequently, DOT was not paid off at closing.
- DOT was the security instrument for a credit line at the bank. Smith paid the credit line for 9 months after selling the property, but then stopped paying it.
- Deed of Trust is in foreclosure.
- Smith now wants to sell the property. Title company is still negotiating payoff with the beneficiary. Smith is ready to close now.
- Rather than issue a policy without showing the DOT, the policy should be issued disclosing the DOT and affirmative coverage as to the DOT should be provided.
- Why?

PUD Endorsements

ALTA 5 series, CLTA 115.2 & CLTA 115.4

What is a Planned Unit Development?

- Both a type of development and regulatory process.
- There is no statutory definition in WA like there is in other states (such as CA).
- Definition varies depending on jurisdiction.
- Usually involves a group of homes with common open space that is managed by an association.

PUD Endorsements

- Lenders will often ask for a PUD Endorsement if the property they are encumbering is within a platted subdivision and there are CC&Rs.
- Does this automatically mean it is a PUD?
- No, but what is the risk in giving them the coverage provided by the endorsement?

PUD Endorsement Content

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

1. Present violations of any restrictive covenants referred to in Schedule B that restrict the use of the Land or the forfeiture or reversion of Title by reason of any provision contained in the restrictive covenants. As used in this paragraph 1, the words "restrictive covenants" do not refer to or include any covenant, condition or restriction (a) relating to obligations of any type to perform maintenance, repair or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy and is not excepted in Schedule B.
2. The priority of any lien for charges and assessments in favor of any association of homeowners that are provided for in any document at Date of Policy and referred to in Schedule B over the lien of any Insured Mortgage identified in Schedule A.
3. The enforced removal of any existing structure on the Land (other than a boundary wall or fence) because it encroaches onto adjoining land or onto any easements.
4. The failure of the Title by reason of a right of first refusal to purchase the Land that was exercised or could have been exercised at Date of Policy.

What is the risk we will incur a loss by issuing this endorsement when it is not a PUD, as long as the risk associated with the coverage contained in the endorsement is properly underwritten?

Condo Endorsements

ALTA 4 Series, CLTA 115.1, CLTA 115.3

- Commonly requested by lenders when the property is a condo.
- The most important thing to remember about issuing this endorsement in Washington is deciding which version of the endorsement is appropriate to use.

Condo Endorsements

- Horizontal Property Regimes Act (“HPR”)
 - Adopted June 13, 1963
 - Codified as RCW 64.32, et seq
- Washington Condominium Act (“WCA”)
 - Effective July 1, 1990
 - Codified as RCW 64.34, et seq.

HPR

RCW 64.32.200(2):

“All sums assessed by the association of apartment owners but unpaid for the share of the common expenses chargeable to any apartment shall constitute a lien on such apartment prior to all other liens **except** only (a) tax liens on the apartment in favor of any assessing unit and/or special district, and (b) **all sums unpaid on all mortgages of record.**”

WCA

RCW 64.34.364(2):

“A lien under this section shall be prior to all other liens and encumbrances on a unit except: (a) Liens and encumbrances recorded before the recording of the declaration; (b) **a mortgage on the unit recorded before the date on which the assessment sought to be enforced became delinquent**; and (c) liens for real property taxes and other governmental assessments or charges against the unit. A lien under this section is not subject to the provisions of chapter [6.13](#) RCW.”

RCW 64.36.364(3)

“Except as provided in subsections (4) and (5) of this section, **the lien shall also be prior to the mortgages described in subsection (2)(b)** of this section to the extent of assessments for common expenses, excluding any amounts for capital improvements, based on the periodic budget adopted by the association pursuant to RCW [64.34.360](#)(1) **which would have become due during the six months immediately preceding the date of a sheriff's sale in an action for judicial foreclosure by either the association or a mortgagee, the date of a trustee's sale in a nonjudicial foreclosure by a mortgagee, or the date of recording of the declaration of forfeiture in a proceeding by the vendor under a real estate contract.**”

In other words...

- Under HPA, there is no super-lien priority for HOA assessments.
- Under WCA, there is a 6 month super-lien priority status for some HOA assessments.

So which endorsement should you use, the ALTA 4-06 or the ALTA 4.1-06?

Use ALTA 4-06 for HPR, Use ALTA 4.1-06 for WCA

ALTA 4-06

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

4. The **priority of any lien** for charges and assessments provided for in the condominium statutes and condominium documents at Date of Policy over the lien of any Insured Mortgage identified in Schedule A.

ALTA 4.1-06

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

4. Any charges or assessments provided for in the condominium statutes and condominium documents **due and unpaid** at Date of Policy.

Use the ALTA 9-06 for HPR

Use the ALTA 9.10-06 for WCA

ALTA 9-06

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

- a. A violation of a Covenant that:
 - i. divests, subordinates, or extinguishes the lien of the Insured Mortgage,
 - ii. Results in the invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage,

ALTA 9.10-06

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

- a. A violation **at Date of Policy** of a Covenant that:
 - i. divests, subordinates, or extinguishes the lien of the Insured Mortgage,
 - ii. Results in the invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage,

The only difference between these two endorsements is the addition of the phrase "at Date of Policy".

Non-Imputation Endorsement

ALTA 15 Series, CLTA 127 Series

- Provides for a partial waiver of policy exclusions with regard to loss or damage that would otherwise be excluded from coverage on account of the action, inaction or knowledge of a person/entity involved with the fee title holder.
- Typically used when the person/entity is exiting organization and a new person/entity (often an investor) is entering the organization.
- Entering entity/person does not want the knowledge or action of the exiting person/entity to be “imputed” to them by operation of law, thereby impacting their coverage.

Non-Imputation Endorsement

Example:

- John, Mary and Joe are all Members of Smart, LLC.
- Smart LLC is the vested title holder.
- Joe decides to leave the LLC and sells his membership interest in the LLC to Sarah.
- The members of the LLC are now John, Mary and Sarah.
- Sarah requests an owner's policy with a Non-Imputation Endorsement so that she is not denied coverage as a result of Joe's knowledge or action of an adverse issue.

What do we need?

Remember...

- Endorsements are a part of the contract (policy).
- Endorsements build additional affirmative coverage into the policy.
- Endorsements should be issued based on instructions.
- Endorsements should be appropriately priced.
- Endorsements need to be underwritten.

Questions on specific endorsements?