

WELCOME TO THE NEW 2006 ALTA TITLE INSURANCE POLICY

WHY IS THIS POLICY MORE "USER-FRIENDLY?"

A. RECOGNITION OF THE FUNDS DISBURSED AFTER THE DATE OF POLICY AS AN ELEMENT OF DAMAGES, TO THE EXTENT THAT THEY ARE SECURED BY APPLICABLE LAW.

B. AUTOMATIC COVERAGE OF THE GAP IF THE RECORDING IS DONE WITHIN A REASONABLE TIME

C. EXPANSION OF PARTIES INCLUDED AS "THE INSURED"

D. POSITIVE INSURANCE AGAINST POLICE POWER LOSSES IN INSTANCES WHERE NOTICES OF VIOLATION OF ENFORCEMENT APPEAR ON THE LAND RECORDS.

E. POSITIVE INSURANCE AGAINST PREFERENCES CAUSED BY DELAYED RECORDING OR FAILURE OF RECORDING TO PROVIDE NOTICE.

F. INCREASES IN INSURANCE AMOUNT AND INSURED SETTLEMENT OPTIONS WHEN WE ELECT TO LITIGATE RATHER THAN SETTLE, AND THEN WE LOSE THE LITIGATION.

G. INCLUSION OF VARIOUS PENALTIES AND EXIT FEES AS ELEMENTS OF DAMAGES IF THEY ARE VALID UNDER APPLICABLE LAWS

H. EXPRESS COVERAGE FOR DEFENSE OF RIGHT OF ACCESS CLAIMS

I. REMOVAL OF THE NON-CUMULATIVE LIABILITY RECOVERY LIMITATION FOR JUNIOR MORTGAGES

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K. ELIMINATION OF APPORTIONMENT CLAUSE

L. BROADER DEFINITION OF "INSURED" ELIMINATES THE "FAIRWAY" PROBLEM

M. SURVEY COVERAGE IS NOW A CREATED "COVERED RISK"

*******See attached for differences and examples of changes*******

LOAN POLICY

A.

RECOGNITION OF THE FUNDS DISBURSED AFTER THE DATE OF POLICY AS AN ELEMENT OF DAMAGES, TO THE EXTENT THAT THEY ARE SECURED BY APPLICABLE LAW.

Where found in new policy: Section 11(a) of the "Covered Risks"

Example: A takes out a Construction Mortgage on January 2nd. On that date \$100,000.00 is disbursed for land acquisition. The balance of \$400,000.00 is disbursed on the first of every succeeding month over the course of construction. That additional \$400,000.00 is insured notwithstanding the fact that it has been disbursed post policy, without any Construction Mortgage or Future Advances endorsement.

What's the difference: These advances were not included as a covered risk in the 1992 policy. The Connecticut Construction mortgage statute provides that they had the same priority as the initial advance, but Lenders felt more comfortable with an Endorsement to that effect. The endorsement is no longer necessary.

B.

AUTOMATIC COVERAGE OF THE GAP IF THE RECORDING IS DONE WITHIN A REASONABLE TIME

Where found in new policy: Section 14 of the "Covered Risks"

Example: Closing occurs on January 2nd and Lender wants Policy issued and /or dated as of Date of Closing. Agent proceeds to record on January 3rd at 10:00 A.M. and finds that a creditor of the Insured has filed a Judgment Lien at 9:00 A.M. The Policy provides coverage over the Judgment Lien.

What's the difference: The Gap, between the delivery of the policy and the recording of the insured instrument, is automatically covered, without the necessity of a Gap Endorsement.

C.

EXPANSION OF PARTIES INCLUDED AS "THE INSURED"

Where found in new policy: Section 1 of "Conditions" under "Definitions"

Example: Lenders Anonymous forecloses on an Insured mortgage. After Lenders Anonymous takes title, it conveys to L.A. Acquisitions. The principals of L.A. Acquisitions are the same as the principals of Lenders Anonymous. L.A. Acquisitions becomes an Insured under the same policy.

In an Owner Policy, Ima Buyer purchases property, takes out a policy, and is insured under that name. Thereafter, she conveys the property to I.B., LLC. Ima is the sole member of I.B., LLC. I.B., LLC becomes an Insured under the Policy

What's the difference: The 1992 Policy provided that the coverage continued so long as the "Insured" held an interest. The Insured as defined in the 1992 policy was the Insured as stated in Schedule A. It did not included grantees that were in essence the same entity.

D.

POSITIVE INSURANCE AGAINST POLICE POWER LOSSES IN INSTANCES WHERE NOTICES OF VIOLATION OF ENFORCEMENT APPEAR ON THE LAND RECORDS.

Where found in new policy: Section 5 of "Covered Risks"

Example: Notice is filed by the municipality in the Land Records that a residence is a safety hazard pursuant to a town ordinance. No exception is taken in Schedule B of the policy for the Notice. The municipality, pursuant to the statute, repairs the problem itself and files a lien for the repair bill, which lien has the same priority of the date of the notice. The Insured is covered.

What's the difference: The Insured was covered in the 1992 policy but one had to look to the Exclusions from Coverage for police powers and then look to the *exception from the exclusion* for matters of record. The new Policy carves the exception out of the exclusion and makes it a Covered Risk.

E.

POSITIVE INSURANCE AGAINST PREFERENCES CAUSED BY DELAYED RECORDING OR FAILURE OF RECORDING TO PROVIDE NOTICE.

Where found in new policy: Section 13(b) of "Covered Risks"

Example: ABC Inc. borrows money from Lenders Anonymous and secures it with an Insured mortgage. The closing occurs on January 2nd. The mortgage is not recorded until January 5th due to weather related problems. On May 2nd, 119 days after the recording, ABC Inc. files a bankruptcy petition. The Bankruptcy Trustee attempts to treat the matter as a preference, meaning that Lenders Anonymous should be treated the same as if it was an unsecured creditor, since the bankruptcy was within 120 days from the recording of the mortgage. Nevertheless, the mortgage is covered under the policy since it was signed and delivered on January 2nd, outside the 120 days.

What's the difference: The Insured was covered in the 1992 policy but one had to look to the Exclusions from Coverage for Creditor's Rights then look to the *exception from the exclusion* for the above fact situation. The new Policy carves the exception out of the exclusion and makes it a Covered Risk.

F.

INCREASES IN INSURANCE AMOUNT AND INSURED SETTLEMENT OPTIONS WHEN WE ELECT TO LITIGATE RATHER THAN SETTLE, AND THEN WE LOSE THE LITIGATION.

Where found in new policy: Section 8 (b) (i) and (ii) of the "Conditions"

Example: We insure for \$500,000.00. An adverse possession claim is made in which an abutter claims he owns the insured property. Rather than settle with the claimant, the Company chooses to litigate and defend. The Company loses the litigation. The "Amount of Insurance" is automatically increased, because the Company lost the litigation, by another 10%, to \$550,000.00. Then the Insured has the choice - to assess damages as of the date the claim was made, or as of the date the claim is resolved.

What's the difference: There was no such provision in the 1992 Policy.

G.

INCLUSION OF VARIOUS PENALTIES AND EXIT FEES AS ELEMENTS OF DAMAGES IF THEY ARE VALID UNDER APPLICABLE LAWS

Where found in new policy: Section 1 (d) (v.) of the "Conditions"

Example: The Insured Mortgage is set aside as invalid or unenforceable. The Insured Lender then is entitled to any prepayment penalty or exit fees it would have recovered had the mortgage been fully enforceable.

What's the difference: "Indebtedness" was not defined in the 1992 Policy, but these damages are included in the definition of "Indebtedness" in the new policy.

H.

EXPRESS COVERAGE FOR DEFENSE OF RIGHT OF ACCESS CLAIMS

Where found in new policy: Last paragraph in "Covered Risks"

Example: Insured is denied access to his land and a lawsuit is brought to enjoin him from accessing it. Company defends the lawsuit.

What's the difference: TECHNICALITY. In the 1992 Policy, in the last paragraph after the "Covered Risks", it was stated that the Company would pay the costs of defense *of the title or lien of the insured mortgage*. Lack of access is not technically a title issue, even though it was covered as an insuring provision. The 2006 policy has "cleaned up" this ambiguity.

I.

REMOVAL OF THE NON-CUMULATIVE LIABILITY RECOVERY LIMITATION FOR JUNIOR MORTGAGES

Where found in new policy: Nowhere. Elimination of Section 10 of the "Conditions and Stipulations" of 1992 policy.

Example: People's Bank has a first mortgage of \$100,000.00 which was insured under a 1992 policy, and Bank of America has a second mortgage on the same property for \$50,000.00, which is insured under another 1992 policy (exception on that one for the People's mortgage). Bank of America forecloses on their

second mortgage and takes title. There's an old judgment lien on the property for \$20,000.00 which was missed and Bank of America lodges a claim. The Company pays the claim. Under the 1992 policy, the amount of coverage under the People's policy is reduced by \$20,000.00 too.

What's the difference: That clause has been eliminated. No reason for People's Bank to have their amount of coverage reduced. Practically speaking, we doubt that anyone has ever experienced this issue. The clause was eliminated probably because it's a non issue.

OWNER POLICY

ALL OF THE ABOVE WOULD APPLY TO OWNER'S COVERAGE ALSO

J.

ELIMINATION OF CO-INSURANCE CLAUSE

Where found in new policy: Nowhere. Elimination of Section 7 (b) of the "Conditions and Stipulations" of the 1992 policy

Example: Insured purchases home for \$1,000,000.00. To save money, he only insures, under the 1992 policy, for \$500,000.00 (50%).

An old lien is found and a claim is asserted under the lien for \$20,000.00. Company, under 1992 policy, is only liable for 50% of the claim, or \$10,000.00. Under the new policy, the Company is liable for full damages.

What's the difference: No "co-insurance" provision in new policy. *Caution:* to insure for less than fair market value is a disservice to the insured/client.

K.

ELIMINATION OF APPORTIONMENT CLAUSE

Where found in new policy? Nowhere. Elimination of Section 8 of the "Conditions and Stipulations" of the 1992 policy

Example: Insured's Owner Policy insures two non-contiguous parcels, Parcel A and Parcel B, under the 1992 policy, for a total of \$200,000.00. Parcel A has a title defect for which the Company is obligated to pay \$10,000.00. The claim payment is apportioned between the two parcels. Later it is discovered that Parcel B has a title defect resulting in a total loss. It is then determined that Parcel B is worth \$100,000.00, but because of Section 8 and the prior claim

being apportioned, the Insured is only entitled to \$95,000.00. No longer true.

What's the difference: Under the 2006 policy, without that section, the Insured would receive full value of \$100,000.00 for the title loss on Parcel B.

L.

BROADER DEFINITION OF "INSURED" ELIMINATES THE "FAIRWAY" PROBLEM

Where found in new policy: Section 1 of "Conditions" under Definition of "Insured".

Example: Smith Street Company LP, has a general partner, GP, and a limited partner, LP. GP sells his interest to PG and LP sells his interest to PL. The Named Insured remains the same. Certain case law provided that the Named Insured was no longer covered. 2006 policy overrides the issue.

What's the difference: Definition of "Insured" includes the grantee "if the grantee wholly owns the Named Insured".

M.

IN ADDITION, SURVEY COVERAGE IS NOW A CREATED "COVERED RISK"

Section 2(c) of "Covered Risks.

(When no survey is provided for Owner's coverage, a specific exception must be taken on Schedule B.)