

TITLE INSURANCE ENHANCEMENTS
The ALTA® Homeowner's Policy of Title Insurance
for Residential Transactions

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- I. Adoption of Enhanced Coverage Residential Policy Forms by American Land Title Association and Title Insurers
 - A. ALTA® Homeowner's Policy of Title Insurance for a One-to-Four Family Residence, adopted October 17, 1998; standardized form of enhanced coverage policies offered by some underwriters previously.
 - B. ALTA® Expanded Coverage Residential Loan Policy for a One-to-Four Family Residence, adopted October 13, 2001; provided standardized form of enhanced coverage for residential lenders.
 - C. ALTA® Homeowner's Policy of Title Insurance for a One-to-Four Family Residence was revised and updated December 2, 2013 (the "Homeowner's Policy", ORT Form 4445)
 - D. ALTA® Expanded Coverage Residential Loan Policy – Assessments Priority for a One-to-Four Family Residence, adopted April 2, 2015 (the "Expanded Residential Loan Policy", ORT Form 4686)
 - E. Various short form expanded coverage residential loan policies have been adopted and are available, but not commonly issued.
 - F. Adoption by title insurance companies is subject to different underwriting guidelines as to availability and requirements.
- II. Comparison of Standard and Enhanced Coverage Title Insurance
 - A. Owner's policies
 1. Standard 2006 policy Covered Risks provide coverage against loss or damage resulting from ten (10) risks:
 - a. title being vested other than as stated in the policy
 - b. defects, liens, and encumbrances affecting the title (including matters that would be disclosed by a physical survey)
 - c. unmarketability of title
 - d. lack of a legal right of access to and from the Land
 - e. notices of violations of any law, ordinance, permit, or governmental regulation
 - f. enforcement actions for such noticed violations
 - g. notices of the exercise of rights of eminent domain
 - h. takings by a governmental body binding on a purchaser for value without Knowledge (*i.e.*, due to notice of record, generally)
 - i. certain voluntary or fraudulent transfers

- j. “gap” risk
2. Homeowner’s Policies list 32 Covered Risks (Covered Risk 32 refers to a survey attached to the policy).
 - a. Standard insuring provisions would cover most Homeowner’s Policy Covered Risks
 - b. Several Homeowner’s Policy Covered Risks would not be covered by standard insuring provisions or are covered differently by the enhanced coverage
 - (1) lack of actual vehicular and pedestrian access to and from the Land
 - (2) forgery, impersonation, or identity theft affecting the insured owner’s title before *or after* the effective date of the policy
 - (3) existing violations of restrictions, covenants, or conditions¹
 - (4) inability to obtain a building permit, required correction or removal of the violation, or refusal by another party to purchase, lease, or make a Mortgage due to existing violations of subdivision laws or regulations²
 - (5) failure to obtain building permits for construction of existing structures (other than boundary walls or fences)³
 - (6) forced removal or modification of existing structures due to violation of existing zoning laws or regulations⁴
 - (7) inability to use the Land for a single-family residence due to violation of existing zoning laws or regulations
 - (8) encroachments by existing structures onto adjoining property⁵, easements, or building setback areas
 - (9) damage to existing improvements due to use or maintenance of easements (even those easements to which the policy takes exception)
 - (10) damage due to use of the Land for extraction or development of minerals, water, or any other substances (even under rights to which the policy takes exception)
 - (11) supplemental real estate taxes due to construction or a change of ownership or use before the effective date of the policy
 - (12) encroachments onto the Land by structures neighbors build *after the policy effective date* (other than boundary walls or fences)
 - (13) the residence with the address shown in Schedule A being located elsewhere (*i.e.*, the house isn’t on the right land)
 3. The amount of coverage under an enhanced coverage policy increases automatically by 10% annually up to 150% of the face amount of the policy.
 4. Homeowner’s Policy premium rates are 20% higher than standard owner’s title insurance premium rates for Old Republic Title.

¹ Unless the policy takes specific exception to the violations, as opposed to just taking exception to the restrictions, covenants, or conditions generally

² Subject to certain policy deductibles and maximums

³ Subject to certain policy deductibles and maximums

⁴ Subject to certain policy deductibles and maximums

⁵ Subject to policy deductibles and maximums for boundary walls and fences

B. Loan policies

1. Standard loan policies add Covered Risks relating to the validity, enforceability, and priority of the insured lien (deed of trust or mortgage) and any assignment referenced in the policy.
2. Expanded Coverage Residential Loan Policies list 28 Covered Risks.
 - a. Standard loan policies would provide coverage for many of the Covered Risks under the expanded coverage residential loan policies.
 - b. Several Expanded Coverage Residential Loan Policy Covered Risks would not be covered by standard insuring provisions or are covered differently in the expanded coverage policies.
 - (1) lack of priority of *future advances* under the deed of trust
 - (2) fraudulent subordination, assignment, release, conveyance, re-conveyance, or encumbrance of the interest of the insured by forgery *after the policy effective date*
 - (3) inaccuracy in the street address shown in Schedule A of the policy⁶
 - (4) lack of one-to-four family residential improvements (or a residential condominium unit) on the Land⁷
 - (5) violations of zoning and subdivision laws, ordinances or regulations
 - (6) failure of the land to be taxed separately
 - (7) failure to obtain a building permit for existing improvements *or future modifications or replacements of existing improvements*
 - (8) violation of a restriction against residential use to which the policy takes exception
 - (9) encroachment onto the Land of an improvement constructed *after the policy effective date*
 - (10) encroachment by improvements constructed on the Land *after the policy effective date* onto adjoining property, an easement, or the building setback area
 - (11) use of the surface of the land for extraction or development of minerals, water, or any other substance
 - (12) maintenance or use of any easement to which the policy takes exception
 - (13) supplemental real estate taxes due to construction or a change of ownership or use before the effective date of the policy
 - (14) violation of usury laws (unless the insured deed of trust is not a first lien)
3. Several standard ALTA® form endorsements are incorporated into the Expanded Coverage Residential Loan Policy, even though most risks covered by those endorsements also are Covered Risks under the expanded coverage policy.
 - a. ALTA® Form 4-06 (Condominium)
 - b. ALTA® Form 5-06 (Planned Unit Development)
 - c. ALTA® Form 6-06 (Variable Rate Mortgage)

⁶ Apparently to address a situation in which the lender obtains a valid lien on the wrong land

⁷ As noted above, to protect against a situation in which the lender obtains a valid lien on unimproved land but means to have a lien on improved residential property

- d. ALTA® Form 6.2-06 (Variable Rate Mortgage-Negative Amortization)
 - e. ALTA® Form 8.1-06 (Environmental Protection Lien)
 - f. ALTA® Form 9-06 (Restrictions, Encroachments, Minerals)
4. The amount of coverage under the expanded coverage policy is 125% of the face amount of the policy.
 5. Expanded Coverage Residential Loan Policy premium rates are 20% higher than standard loan coverage premium rates for Old Republic Title.

III. Availability and Underwriting of Enhanced Coverage Title Insurance Policies

A. Va. Code § 38.2-4616 notification

1. The settlement agent or attorney is required to obtain a *written statement* from the buyer acknowledging the settlement agent notified the buyer about the availability of owner's title insurance *and the general nature of such coverage* and indicating whether or not the buyer wants owner's title insurance coverage. (*see also*, Va. Code § 55-525.11)
2. Explaining "the general nature of [owner's title insurance] coverage" would seem to require explaining alternative coverages (including enhanced coverage) as well.
3. Old Republic Title recommends Virginia settlement agents and attorneys modify their Va. Code §38.2-4616 buyer's statement form to acknowledge enhanced coverage was offered and explained and to indicate whether the buyer wants to purchase enhanced owner's coverage, standard owner's coverage, or no owner's coverage.

B. Kinds of real property for enhanced coverage policies

1. Residential property
 - a. not commercial, retail, or industrial property
 - b. improved (not vacant land)
 - c. subdivision lots, residential condominium units, and some acreage parcels
2. One-to-Four Family—some companies limit the availability of enhanced coverage policies to single-family residential property.

C. Ownership

1. The homeowners must be human beings or the trustees of an estate planning living trust holding title for the beneficial owners of the property (who must be human beings.)
2. Some companies may require the insured homeowners to occupy the residence.

D. Special requirements

1. Some companies may require special affidavits relating to survey matters, local land use regulations (including building permits), or development restrictions, covenants, and easements; such special requirements have become less common.
2. Some companies may require current physical surveys or other evidence of matters that would be disclosed by current physical surveys (especially encroachments); survey requirements may be relaxed for property shown on subdivision, condominium, or other recorded plats.

E. Special exceptions based on particular Covered Risks may appear in Schedule B when violations of applicable local land use regulations or development restrictions, covenants, and easements (including encroachments) are known; certain Covered Risks provide coverage against such violations even if the policy takes exception generally to the particular restriction, covenant, easement, or setback.

1. lack of actual vehicular and pedestrian access to and from the Land if it does not front on a public road unless a specific appurtenant access easement also is insured and actually used
2. violation of restrictions, covenants, or conditions
3. encroachments onto adjoining property or easements
4. encroachments from adjoining property
5. violation of building setbacks, including setbacks shown in the land records and known local land use ordinance or regulation setbacks
6. other known violations of local land use regulations or ordinances disclosed in the land records (*e.g.*, subdivision plat notes, stormwater management agreements, road maintenance agreements, *etc.*)⁸
7. damage to existing improvements because of the exercise of mineral or water rights granted or reserved in recorded documents
8. discrepancies in street addresses
9. lack of separate real property tax assessments
10. lack of priority of the lien of an insured deed of trust that is not a credit line deed of trust complying with Va. Code §55-58.2 as to any future advances otherwise covered by Expanded Coverage – Assessments Residential Loan Policy Covered Risks 11 or 22

IV. Conclusions

- A. In appropriate cases, enhanced coverage title insurance can and should be offered to purchasers of property improved by one-to-four residential dwelling units (including residential condominium units)
 1. Natural Person purchasers
 2. *Inter vivos* trust for estate planning by a Natural Person
- B. Covered Risks under the Homeowner's Policy include several things that would affect ownership of residential property that would not be covered by standard title insurance

⁸ Agents are not required to research local land use regulations and ordinances that are not disclosed by the land records in the local Clerks' offices.

1. Some post-policy issues, including identity theft
 2. Greater coverage for local land use regulation issues
 3. Practical vehicular and pedestrian access
 4. Encroachments
- C. Greater cost is balanced against greater coverage, as above, and increased amount of coverage over the first five years of ownership.
- D. Special underwriting based on the expanded Covered Risks must be done.

Supplemental materials:

Enhanced/expanded coverage policy forms

Suggested form of notice to buyer of availability of owner's title insurance (incl. enhanced coverage)