

OLD REPUBLIC TITLE

Title Insurance Enhancements


The ALTA® Homeowner's Policy of Title Insurance

Ronald D. Wiley, Jr.
Underwriting Counsel
Old Republic National Title Insurance Company
Southern Virginia Division
rwiley@oldrepublictitle.com
804-281-7497 (office)
434-422-6591 (mobile)

OLD REPUBLIC INSURANCE GROUP

Background

- ALTA® Homeowner's Policy of Title Insurance for a One-to-Four Family Residence, adopted October 17, 1998, standardized enhanced coverage policies offered by some title insurers previously.



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Background




- 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.

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Current Policy Forms

- ALTA® Homeowner’s Policy of Title Insurance for a One-to-Four Family Residence, revised and updated December 2, 2013 (ORT Form 4445)
- ALTA® Expanded Coverage Residential Loan Policy – Assessments Priority for a One-to-Four Family Residence, adopted April 2, 2015 (ORT Form 4686)




Various short form expanded coverage residential loan policies have been adopted and are available, but rarely used.


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Standard Owner’s Coverage

- Title vested other than as stated in policy
- Defects, liens, and encumbrances (including matters that would be disclosed by a current physical survey)
- Unmarketability of title
- Lack of a legal right of access to and from the Land
- Notices of violations of law
- Enforcement actions for noticed violations of law
- Notices of the exercise of rights of eminent domain
- Takings by a governmental body binding on a BFP for value
- Certain voluntary or fraudulent transfers
- “Gap” risk


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Owner’s Coverage Enhancements



- Lack of actual vehicular and pedestrian access
- Forgery, impersonation, or identity theft affecting the homeowner’s title before or after Date of Policy
- Existing violations of RCEs
- Consequences of existing violations of subdivision or zoning laws or regulations

Standard Covered Risks actually cover most Homeowner’s Policy Covered Risks


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Owner's Coverage Enhancements

- Failure to obtain building permits for construction of existing structures (other than boundary walls or fences)
- Inability to use the Land for a single-family residence due to violation of existing zoning laws or regulations
- Encroachments by existing structures onto adjoining property, easements, or building setback areas
- Damage to existing improvements due to the use or maintenance of easements (even with exceptions)

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Owner's Coverage Enhancements

- Damage due to use of the Land for extraction or development of minerals, water, or other substances (even with exceptions)
- Supplemental real estate taxes due to construction or change of ownership or use before Date of Policy



"Enhanced" One-to-Four Family Residential Property?

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Owner's Coverage Enhancements

- Encroachments onto the Land by structures neighbors *build after the Date of Policy* (other than boundary walls or fences)
- Residence with address shown in Schedule A being located elsewhere
- Coverage increases 10% per year up to 150% of face amount of policy



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Standard Loan Policy Covered Risks



- Like standard owner's coverage, the Covered Risks in a standard loan policy cover most of the Covered Risks under the Expanded Coverage loan policy
- Standard Covered Risks include coverage relating to the validity, enforceability, and priority of the insured lien and any assignment referenced in the policy

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Expanded Coverage for Residential Loans

- Lack of priority of future advances under the insured deed of trust
- Fraudulent subordination, assignment, release, conveyance, re-conveyance, or encumbrances of the interest of the Insured by forgery after the Date of Policy
- Inaccuracy of the referenced street address
- Lack of one-to-four family residential improvements (or a residential condo unit) on the Land
- Violations of zoning and subdivision laws, ordinances, and regulations
- Failure of the Land to be taxed separately
- Violation of an excepted restriction against residential use

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Expanded Coverage for Residential Loans

- Failure to obtain building permits for existing improvements or future modifications or replacements of existing improvements
- Encroachment onto the Land of an improvement constructed after the Date of Policy
- Encroachment by improvements constructed after the Date of Policy onto adjoining land, an easement, or building setback area
- Use of the surface of the Land for extraction or development of minerals, water, or any other substance

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Expanded Coverage for Residential Loans

- Maintenance or use of any excepted easement
- Supplemental real estate taxes due to construction or a change of ownership or use before Date of Policy
- Violation of usury laws (unless the insured lien is not a first lien)



The amount of coverage under the Expanded Coverage loan policy is 125% of the face amount of the policy

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Expanded Coverage Endorsements

- Incorporated by reference:
- ALTA® Form 4-06 (Condominium)
 - ALTA® Form 5-06 (PUD)
 - ALTA® Form 6-06 (Variable Rate)
 - ALTA® Form 6.2-06 (Variable Rate – Negative Amortization)
 - ALTA® 8.1-06 (Environmental Protection Lien)
 - ALTA® 9-06 (Restrictions, Encroachments, Minerals)
- (Note: many of the coverages provided by these endorsements also would be covered by the Covered Risks)

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Availability of Enhanced Coverage



Va. Code §§ 38.2-4616 and 55-525.11

- Statutory requirements for settlement agent/attorney to obtain a written statement from the buyer acknowledging notice of availability *and the general nature of owner's title insurance coverage*
- Giving notice of the general nature of owner's title insurance coverage would seem to require offering alternative (enhanced) coverages

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Availability of Enhanced Coverage

IMPROVED 1-4 FAMILY RESIDENTIAL PROPERTY

- Subdivision lots
- Some acreage parcels
- Residential condominium units

NOT

- Commercial, retail, or industrial property
- Vacant land



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“Homeowners”



Underwriting guidelines may require the residential property to be owner-occupied.

Insured Homeowners must be Natural Persons

- Human beings

OR

- The trustee of a living trust established by human beings for estate planning

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Underwriting Enhanced Coverage

- Special seller affidavits regarding some Covered Risks for Enhanced coverage may be required but special requirements have become less common
- Current physical surveys may be required but requirements may be relaxed for property shown on subdivision or other recorded plats



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Special Exceptions

- Known violations of matters covered by Enhanced Covered Risks even if the policy takes exception to the matter generally
 - RCEs
 - Setbacks
 - Local land use regulation
 - Easements
- Possible lack of actual vehicular and pedestrian access
- Encroachments
- Damage to existing improvements due to exercise of mineral or water rights granted or reserved of record
- Discrepancies in street address
- Insured lien not a CLDT



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Conclusions



Greater cost should be balanced against better coverage and increased amount of coverage over the first five years of homeownership.

The Homeowner's Policy of Title Insurance should be offered in appropriate cases

- One-to-four family improved residential property (incl. residential condo unit)
- Natural Person purchasers



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Conclusions

Covered Risks under the Homeowner's Policy include several things that would affect homeownership and not be covered by standard owner's title insurance

- Some post-policy issues, including identity theft
- Greater coverage for local land use regulation issues
- Practical vehicular and pedestrian access
- Encroachments



Special underwriting based on the expanded Covered Risks must be done by the issuing agent.



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