

**COMPARISON OF THE 1992 AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY WITH AMERICAN LAND TITLE ASSOCIATION  
OWNER'S POLICY 2006**

**This comparison chart is intended as a guide to identifying differences between the 2006 and 1992 ALTA policies. It should not be relied upon for the interpretation of these policies.**

2006 OWNER POLICY	1992 OWNER POLICY	COMMENTS
<p><b>Any notice of claim and any other notice or statement in writing required to be given to the Company under this Policy must be given to the Company at the address shown in Section 18 of the Conditions.</b></p>	<p>No comparable provision.</p>	<p>This clause is designed to help direct the Insured to the appropriate section (Section 18) of the policy so the Insured will know where to file a notice of claim or any other notice to be given to the Insurer. By placing this clause on the face page of the policy it makes it easier for the Insured to know how to access their policy benefits.</p>
<p><b>Covered Risks</b></p>	<p>“Insuring Clauses”</p>	<p>The 1992 policy does not have a section identified as “Insuring Clauses”. The 2006 policy utilizes the term Covered Risks similarly to the way some of the more recent ALTA Residential policies use this term to more descriptively designate matters covered under the policy.</p>
<p>SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, BLANK TITLE INSURANCE COMPANY, a Blank corporation (the “Company”) insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:</p>	<p>SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, BLANK TITLE INSURANCE COMPANY, a Blank corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:</p>	<p>Added coverage. These two lead-in provisions are substantively the same except that the 2006 policy identifies two Covered Risks that provide post-policy coverage. These post-policy coverages are found in Covered Risks 9 and 10. There are no post-policy coverages in the 1992 policy.</p>
<p>1. Title being vested other than as stated in Schedule A.</p>	<p>1. Title to the estate or interest described in Schedule A being vested other than as stated therein;</p>	<p>Same coverage. The streamlined language in the 2006 policy is due to the fact that the word “Title” is defined in the Conditions to mean the estate or interest described in Schedule A.</p>
<p>2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from</p>	<p>2. Any defect in or lien or encumbrance on the title;</p>	<p>Same coverage with the exception of Covered Risk 2(c) of the 2006 policy. Covered Risk 2(c) provides express survey coverage that some</p>



[Denotes added coverage or benefit in the 2006 Policy from the 1992 Policy ↑ ]

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(a) A defect in the Title caused by  
(i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;  
(ii) failure of any person or Entity to have authorized a transfer or conveyance;  
(iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;  
(iv) failure to perform those acts necessary to create a document by electronic means authorized by law;  
(v) a document executed under a falsified, expired, or otherwise invalid power of attorney;  
(vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or  
(vii) a defective judicial or administrative proceeding.  
(b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.  
(c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.

3. Unmarketable Title.

3. Unmarketability of the title;



Added coverage. The 2006 policy definition has been expanded resulting in coverage when a lessee or lender is released from the obligation to lease or lend due to a contractual condition requiring the delivery of marketable title. This additional coverage is not provided by the 1992 policy.

4. No right of access to and from the Land.

4. Lack of a right of access to and from the land;

Same coverage.

5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning)

There is no comparable insuring clause in the 1992 policy.



Added coverage. It was initially believed that the 1992 policy would provide similar coverage by reason of the exception contained in Exclusion

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restricting, regulating, prohibiting, or relating to  
(a) the occupancy, use, or enjoyment of the Land;  
(b) the character, dimensions, or location of any improvement erected on the Land;  
(c) the subdivision of land; or  
(d) environmental protection  
if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.

6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.

7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.

There is no comparable insuring clause in the 1992 policy.

1. Title to the estate or interest described in Schedule A being vested other than as stated therein; 2. Any defect in or lien or encumbrance on the title;

1(a). However, there have been several court decisions that have ruled otherwise. These courts take the position that unless coverage appears in the insuring clauses of the policy coverage will not be found. This seems to be the case even though the Exclusions may contain exceptions that were intended to provide coverage. Therefore, it was the desire of the ALTA to make it clear coverage does exist under the circumstances stated by adding this Covered Risk. Additionally, the word "permit" has been added to the 2006 policy language so that if there is loss or damage resulting from a recorded notice of the violation or enforcement of a permit the Insured would have coverage.

Added coverage for the Insured. It was initially believed that the 1992 policy would provide similar coverage by reason of the exception contained in Exclusion 1(b). However, there have been several court decisions that have ruled otherwise. These courts take the position that unless coverage appears in the insuring clauses of the policy coverage will not be found. This seems to be the case even though the Exclusions may contain exceptions that were intended to provide coverage. Therefore, it was the desire of the ALTA to make it clear coverage does exist under the circumstances stated by adding this Covered Risk.

Same coverage. There is no directly comparable insuring clause in the 1992 policy although if notice of the exercise of rights of eminent domain had been recorded at the Date of Policy this matter would be covered under either Insuring Clause 1 or 2. It was initially believed that the 1992 policy would provide similar coverage by reason of the language of Exclusion 2. However, there have been several court decisions that have ruled otherwise. These courts take the position that unless coverage appears in the insuring clauses of the policy coverage will not be found. This seems to be the case even

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8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.

- 1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
- 2. Any defect in or lien or encumbrance on the title;

though the Exclusions may contain language that was intended to provide coverage. Therefore, it was the desire of the ALTA to more clearly state the coverage and to make it clear coverage does exist under the circumstances stated by adding this Covered Risk in the 2006 policy.

There is no directly comparable insuring clause in the 1992 policy although if a taking has occurred prior to the Date of Policy which is binding on a BFP this matter would be covered under either Insuring Clause 1 or 2. It was initially believed that the 1992 policy would provide similar coverage by reason of the language of Exclusion 2. However, there have been several court decisions that have ruled otherwise. These courts take the position that unless coverage appears in the insuring clauses of the policy coverage will not be found. This seems to be the case even though the Exclusions may contain language that was intended to provide coverage. Therefore, it was the desire of the ALTA to make it clear coverage does exist under the circumstances stated by adding this Covered Risk in the 2006 policy.

9. Title being vested other than as stated in Schedule A or being defective

(a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or

(b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records

- (i) to be timely, or
- (ii) to impart notice of its existence to a

- 1. Title to the estate or interest described in Schedule A being vested other than as stated therein;



Added coverage. This is creditors' rights coverage addressing transactions occurring prior to the transaction creating the interest being insured. There is no directly comparable insuring clause in the 1992 policy although Insuring Clause 1 covers the substance of Covered Risk 9(a) of the 2006 policy. With respect to Covered Risk 9(b) of the 2006 policy, it was initially believed that the 1992 policy would provide similar coverage by reason of the exception contained in Exclusion 4(b). However, there have been several court decisions that have ruled otherwise. These courts take the position that unless coverage appears in the insuring clauses of the policy coverage will not be found. This seems to be the case even though the Exclusions may contain exceptions that were intended to provide coverage. Therefore, it was

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purchaser for value or to a judgment or lien creditor.

10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

**Exclusions from Coverage**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1.(a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting or relating to:

- (i) the occupancy, use, or enjoyment of the Land;
- (ii) the character, dimensions, or location of any improvement erected on the Land;
- (iii) the subdivision of land; or
- (iv) environmental protection;

or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.

There is no comparable insuring clause in the 1992 policy.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title or the lien of the insured mortgage, as insured, but only to the extent provided in the Conditions and Stipulations.

**Exclusions from Coverage**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. a. Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or

the desire of the ALTA to more clearly state the coverage and to make it clear coverage does exist under the circumstances stated by adding this Covered Risk in the 2006 policy.

↑ Added coverage. This Covered Risk provides post-policy title insurance for the gap, if any, between the Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

↑ Added coverage. The 2006 policy covers everything covered by the 1992 "defense clause". However, the 2006 policy defense provision has been expanded to include defense for any matter insured against including such things as access and those matters covered by Covered Risks 5 and 6 none of which are covered by the language of the 1992 policy.

Same language.

Same coverage.

Same coverage. However, the language in the 2006 policy has been simplified making it easier to understand. The exceptions to Exclusions 1(a) and 1(b) of the 1992 policy have been moved to become Covered Risks 5 and 6 of the 2006 policy. The deletion of the words "now or hereafter" from Exclusion 1(a)(ii) of the 1992 policy is a further simplification of the language. This was done in part because it was viewed unnecessary inasmuch as Exclusion 3(d) takes care of excluding things occurring subsequent to Date of Policy.

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(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.

2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.

3. Defects, liens, encumbrances, adverse claims, or other matters

(a) created, suffered, assumed, or agreed to by the Insured Claimant;

(b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;

(c) resulting in no loss or damage to the Insured Claimant;

(d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or

(e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.

4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is

(a) a fraudulent conveyance or fraudulent transfer; or

(b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.

encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.

3. Defects, liens, encumbrances, adverse claims or other matters:

a. created, suffered, assumed or agreed to by the insured claimant;

b. not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;

c. resulting in no loss or damage to the insured claimant;

d. attaching or created subsequent to Date of Policy; or

e. resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.

4. Any claim, which arises out of the transaction vesting in the Insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:

a. the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or

b. the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:

i. to timely record the instrument of transfer; or

Same coverage. The "carve-out" language contained in the 1992 policy has been moved to become Covered Risks 7 and 8 in the 2006 policy.

Same coverage. The 2006 policy language of Exclusion 3(d) makes it clear that this post-policy exclusion does not limit the coverage provided by Covered Risks 9 and 10.

Same coverage. The language of the 2006 policy has been simplified for easier reading. This creditors' rights exclusion pertains only to the transaction vesting the Title shown in Schedule A. It does not relate to any earlier transaction that might be considered a fraudulent or preferential transfer that would be covered under Covered Risk 9. Furthermore, the exception to Exclusion 4(b) in the 1992 policy has been moved to become Covered Risk 9(b) of the 2006 policy.

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<p>5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.</p>	<p>ii. of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.</p>	<p>Same coverage. This exclusion was added to the 2006 policy only because this new policy provides substantial post-policy coverage for many things including liens between the Date of Policy and the date of recording of the deed or other instrument of transfer that vests the Title. This exclusion only pertains to the lien of real estate taxes or assessments that are imposed, created or attach during the period mentioned above. It was not necessary to have such an exclusion in the 1992 policy because there was no post-policy coverage.</p>
<p><b>Conditions</b></p>	<p>Conditions and Stipulations</p>	<p>The words “and Stipulations” were dropped because they were viewed as not adding anything and therefore unnecessary.</p>
<p>1. Definition of Terms</p>	<p>1. Definition of Terms</p>	<p>Same language.</p>
<p>The following terms when used in this policy mean:</p>	<p>The following terms when used in this policy mean:</p>	<p>Same language.</p>
<p>(a) “Amount of Insurance”: The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b), or decreased by Sections 11 and 12 of these Conditions.</p>	<p>No comparable definition.</p>	<p>Same coverage. The “Amount of Insurance” was set forth in Schedule A of the 1992 policy. However, elsewhere in the Conditions and Stipulations the policy uses the term amount of insurance in ways that clearly indicate the amount may change from time to time depending upon the circumstances. This seemed to lead to confusion. By defining this term in the 2006 policy the confusion created by the 1992 policy is eliminated.</p>
<p>(b) “Date of Policy”: The date designated as “Date of Policy” in Schedule A.</p>	<p>No comparable definition.</p>	<p>Same coverage. The “Date of Policy” was set forth in Schedule A of the 1992 policy and therefore any time “Date of Policy” was used in that policy, it was the date shown on Schedule A to which reference was being made. ALTA made the decision to define this term in Section 1 of the Conditions under Definition of Terms for consistency sake.</p>

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(c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.

No comparable definition.



Added coverage. This definition was added to the 2006 policy in order to extend coverage to more Insureds as will be seen when reviewing the definition of the term Insured.

(d) "Insured": The Insured named in Schedule A.  
(i) The term "Insured" also includes  
(A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;  
(B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;  
(C) successors to an Insured by its conversion to another kind of Entity;  
(D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title  
(1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,  
(2) if the grantee wholly owns the named Insured,  
(3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity;  
(4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.  
(ii) With regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.

a. "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.



Added coverage. The 2006 policy includes within this defined term everything that the 1992 policy includes but with more specificity. In addition, the 2006 policy includes a grantee of an Insured under a deed delivered by the Insured without consideration if the grantee is wholly-owned by the Insured, if the grantee wholly owns the named Insured or if the grantee is wholly-owned by an affiliated entity of the named Insured provided the affiliated entity and the named Insured are both wholly-owned by the same party. Arguably the most important change to this definition eliminates a major problem that has existed with all of the predecessors to the 2006 policy by including in Subsection 1(d)(i)(D)(4) a trustee or beneficiary of a trust created by the named Insured for estate planning purposes. There have been a number of reported decisions where the court has ruled that the named Insured loses their title insurance coverage when the named Insured transfers title to the trustee of a trust for their own estate planning. With this new Subsection the Insured will no longer need to worry about losing coverage under these circumstances.

(e) "Insured Claimant": An Insured claiming loss or damage.

b. "insured claimant": an insured claiming loss or damage.

Same coverage.

(f) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public

c. "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public

Same coverage. The language was cleaned up to fit with defined terms and Covered Risks of the 2006 policy.

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Records or any other records that impart constructive notice of matters affecting the Title.

(g) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.

(h) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.

(i) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.

(j) "Title": The estate or interest described in Schedule A.

(k) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title or a prospective purchaser of the Insured Mortgage to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of

records as defined in this policy or any other records which impart constructive notice of matters affecting the land.

d. "land": the land described or referred to in Schedule [A][C], and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule [A][C], nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

e. "mortgage": mortgage, deed of trust, trust deed, or other security instrument.

f. "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a)(iv) of the Exclusions From Coverage, "public records" shall also include environmental protection liens filed in the records of the clerk of the United States district court for the district in which the land is located.

No comparable definition.

g. "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A or the insured mortgage to be released from the obligation to purchase by virtue of a contractual condition requiring the

Same coverage. The language was cleaned up slightly for easier reading. The 1992 policy provided an option for describing the land under either Schedule A or by attaching a Schedule C which contains the legal description. The 2006 policy does not allow for this type of a selection. The reason the "Schedule C option" is no longer needed is because policies today are produced through word processing or automated systems.

Same coverage. The language was modified in the 2006 policy to specifically identify electronic mortgages as being included. Even though electronic mortgages were not specifically mentioned in the 1992 policy definition, they are nonetheless included.

Same coverage. The change in the reference used in this defined term is due to the fact the 2006 policy has added a Covered Risk 5 to include protection for violation or enforcement of environmental protection laws to the extent of a recorded notice.

Same coverage. This newly defined term aids in the simplification of language but does not change the coverage of the policy.

Added coverage. This defined term was cleaned up by deleting the unnecessary clause "not excluded or excepted from coverage" because all coverage is subject to the Exclusions and Exceptions of the policy. In addition, the definition was broadened to include lessees of and lenders on the Title.



marketable title.

## 2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured after acquisition of the Title by an Insured or after conveyance by an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

## 3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured hereunder of any claim of title or interest that is adverse to the Title, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

## 4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss.

delivery of marketable title.

## 2. CONTINUATION OF INSURANCE.

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

## 3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT.

The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

## 5. PROOF OF LOSS OR DAMAGE.

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured

Same coverage. The language of the 2006 policy has been cleaned up, but the substance remains the same.

Same coverage. The language has been cleaned up, in part, due to defined terms in the 2006 policy. Also, the reference to Subsection 5(a) in the 2006 policy, instead of Subsection 4(a), is a result of reordering of certain Sections in the 2006 policy.

Same coverage. The substance of Section 4 of the 2006 policy was taken from a portion of Section 5 of the 1992 policy. The 2006 policy Proof of Loss Section has been shortened and is much more friendly to the Insured Claimant. The

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The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this

burden on the Insured Claimant in the 1992 policy requiring a proof of loss to automatically be given no longer exists in the 2006 policy. The 90 day period for providing the proof of loss has also disappeared. Instead, the Insurer must first attempt to determine the loss and, if it is unable to do so, may require the Insured Claimant to furnish a signed proof of loss. However, there is no requirement that the proof of loss be sworn to by the Insured Claimant. The remedy stated in the 1992 policy for failing to provide a proof of loss was removed. However, implicit in the 2006 policy Section 4 is the right of the Insurer to withhold payment under the policy until the Insured Claimant furnishes a signed proof of loss if requested to do so by the Insurer.

**5. DEFENSE AND PROSECUTION OF ACTIONS**

(a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.

(b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

(c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment

paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

**4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE.**

a. Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured against by this policy.

b. The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

c. Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction

Same coverage. The 2006 policy Section 5 is substantively the same as Subsection 4(a), (b) and (c) of the 1992 policy. The language of the 2006 policy has been simplified by utilizing defined terms. The change in the reference to Section 7 in the 2006 policy as opposed to Section 6 in the 1992 policy is due to reordering of certain Sections in the 2006 policy.

or order.

and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order

d. In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

#### **6. DUTY OF INSURED CLAIMANT TO COOPERATE**

(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter as insured. If

#### **4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE.**

d. In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in

Same coverage. This Section 6 of the 2006 policy does not have a single comparable Section in the 1992 policy. Subsection 6(a) of the 2006 policy was taken from Subsection 4(d) of the 1992 policy. There is no substantive difference in the language of these two Subsections. Subsection 6(b) of the 2006 policy was taken from the second paragraph of Section 5 of the 1992 policy. Even though there are some language changes, in order to bring the policy language more current with this electronic world, there still is no substantive difference between the two referenced paragraphs. The reason for reordering Sections 4, 5 and 6 of the 2006 policy was because the sequence of events and subject matter is more logical.

the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

#### 5. PROOF OF LOSS OR DAMAGE.

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to

examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph shall terminate any liability of the Company under this policy as to that claim.

#### 7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in this subsection, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

(i) To pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and

#### 6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY.

In case of a claim under this policy, the Company shall have the following additional options:

a. To Pay or Tender Payment of the Amount of Insurance.

i. To pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay.

ii. Upon the exercise by the Company of this option, all liability and obligations to the insured under this policy, other than to make the payment required, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

b. To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.

i. to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the

Same coverage. There are language changes in the 2006 policy to make this Section easier to read. The last paragraph of Subsection 7(a) of the 2006 policy does not require the policy to be surrendered to the Company for cancellation as is required in Subsection 6(a)(ii) of the 1992 policy. This requirement was deleted because under current claims handling practices title insurers rarely require the policy to be surrendered. Therefore, it was viewed as being unnecessary.

expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

(ii) To pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

## 8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

(a) The extent of liability of the Company for loss or damage under this policy shall not exceed the lesser of

(i) the Amount of Insurance;

(ii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy.

(b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title, as insured,

Company up to the time of payment and which the Company is obligated to pay; or

ii. to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs (b)(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

## 7. DETERMINATION, EXTENT OF LIABILITY AND COINSURANCE.

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

a. The liability of the Company under this policy shall not exceed the least of:

i. the Amount of Insurance stated in Schedule A; or,

ii. the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

b. In the event the Amount of Insurance stated in Schedule A at the Date of Policy is less than 80 percent of the value of the insured estate or interest or the full consideration paid for the land, whichever is less, or if subsequent to the Date of Policy an improvement is erected on the land which increases the value of the insured estate or interest



Added coverage. There are language changes in Section 8 of the 2006 policy because of defined terms not defined in the 1992 policy. Subsection 8(b) of the 2006 policy expands coverage in two ways. The first expansion is a 10% increase in the Amount of Insurance under Subsection 8(b)(i) in the event the Insurer pursues its rights under Section 5 to defend or prosecute and is unsuccessful in establishing the Title as insured. The second expansion of coverage under Subsection 8(b)(ii) allows the Insured Claimant the choice of determining the loss or damage either as of the date the claim was made or the date it is settled and paid. These are significant added coverages that do not exist in the 1992 policy. Additionally, the co-insurance provision contained in Subsection 7(b) of the 1992 policy has been eliminated in the 2006 policy.

(ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.

(c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

No comparable Section.

#### 9. LIMITATION OF LIABILITY

(a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, all as insured, in a reasonably diligent manner by any

by at least 20 percent over the Amount of Insurance stated in Schedule A, then this Policy is subject to the following:

ii. where a subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that 120 percent of the Amount of Insurance stated in Schedule A bears to the sum of the Amount of Insurance stated in Schedule A and the amount expended for the improvement.

The provisions of this paragraph shall not apply to costs, attorneys' fees and expenses for which the Company is liable under this policy, and shall only apply to that portion of any loss which exceeds, in the aggregate, 10 percent of the Amount of Insurance stated in Schedule A.

c. The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

#### 8. APPORTIONMENT.

If the land described in Schedule [A][C] consists of two or more parcels which are not used as a single site, and a loss is established affecting one or more of the parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each parcel by the Company and the insured at the time of the issuance of this policy and shown by an express statement or by an endorsement attached to this policy.

#### 9. LIMITATION OF LIABILITY.

a. If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, all as insured, in a reasonably diligent manner by



Added coverage. The ALTA agreed to expand coverage in the 2006 policy by not having an Apportionment Section. This gives the Insured the benefit of up to the total Amount of Insurance to be applied to provable loss for a claim on a single parcel even though the policy covers multiple parcels that are not used as a single site. This is similar protection afforded an Insured when a tie-in endorsement is issued on an owner's policy.

Same coverage. Even though there are minor language changes for easier readability, substantively Section 9 of these two policies is the same.

method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as insured.

(c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

#### 10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment.

#### 11. LIABILITY NONCUMULATIVE

The Amount of Insurance shall be reduced by any amount the Company pays under any policy insuring a Mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject or which is executed by an Insured after Date of Policy and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment to the Insured under this policy.

#### 12. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

b. In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title as insured.

c. The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

#### 10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY.

All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto.

#### 11. LIABILITY NONCUMULATIVE.

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.

#### 12. PAYMENT OF LOSS.

a. No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

b. When liability and the extent of loss or

Same coverage. Even though there are minor language changes for easier readability, substantively Section 10 of these two policies is the same.

Same coverage. Even though there are minor language changes for easier readability, substantively Section 11 of these two policies is the same.

Same coverage. The first paragraph of Section 12 of the 1992 policy was deleted in the 2006 policy. This paragraph was deleted because the ALTA believes that in our current world of databases and electronic record keeping by Title Insurers it was no longer necessary.

**13. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT**

(a) Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

**13. SUBROGATION UPON PAYMENT OR SETTLEMENT.**

- a. The Company's Right of Subrogation.

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to these rights and remedies in the proportion which the Company's payment bears to the whole amount of the loss.

Same coverage. In the 2006 policy, the language of this Section has been modified in order to more clearly state the rights of the parties. The heading for the Section has been renamed. Subsection 13(a) of the 2006 policy makes it clear that when a claim has been settled the Insurer is automatically subrogated and entitled to the rights of the Insured Claimant without need of any further documentation. However, the Insurer has a right to request the Insured Claimant to execute documents to evidence the transfer of these rights. The Insured Claimant has an obligation to execute these requested documents. On the other hand, this Subsection makes it clear that if a payment of a claim does not make the Insured Claimant whole, the Insurer defers the exercises of its right to recover until such time as the Insured Claimant recovers its entire loss. The ALTA intended for Subsection 13(a) of the 1992 policy to be treated the same as stated in the 2006 policy but the language is not as clear. Subsection 13(b) of the 2006 policy contain a slight language modification, but the substance is identical to Subsection 13(b) of the 1992 policy.

(b) The Company's right of subrogation includes the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

#### 14. ARBITRATION

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(b) The Company's Rights Against Non-insured Obligors.

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

#### 14. ARBITRATION.

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is \$1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state

Same coverage. Depending upon whether you are pro-arbitration or against arbitration the changes made to Section 14 in the 2006 policy arguably add coverage (pro-arbitration) or decrease coverage (against arbitration). The reason one could adopt either of these views is because the threshold below which either the Insured or the Insurer can force the other into arbitration has been increased from \$1,000,000 in the 1992 policy to \$2,000,000 in the 2006 policy. Notwithstanding the possibility of making either of these arguments it is the belief of the ALTA that the changes to this Section in the 2006 policy result in the same coverage in substance as exists in the 1992 policy. Section 14 of the 2006 policy does not contain the clause: "unless prohibited by applicable law..." as contained in the 1992 policy because that clause is unnecessary as a result of Section 16 (Severability) in both policies. Another change made to this Section in the 2006 policy is to have the claim or controversy arbitrated pursuant to

upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

the Title Insurance Arbitration Rules of the American Land Title Association ("Rules") as opposed to the American Arbitration Association. ALTA has selected the National Arbitration Forum to administer arbitration proceedings pursuant to the Rules. The 2006 policy Arbitration Section makes it clear that, except as provided in the Rules, there can be no joinder or consolidation with claims or controversies of other parties. The second paragraph of Section 14 of the 1992 policy, which states that: "the laws of the situs of the land shall apply to an arbitration..." has been deleted in the 2006 policy because that same provision is included in the Rules. The Rules are available at: <http://www.alta.org/standards/arbitration/1.1.06.cfm>.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules. A copy of the Rules may be obtained from the Company upon request.

**15. 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.

(b) Any claim of loss or damage that arises out of the status of the Title or by any action asserting such claim shall be restricted to this policy.

(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.

(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)

**15. LIABILITY LIMITED TO THIS POLICY;  
POLICY ENTIRE CONTRACT.**

a. This policy together with all endorsements, if any, attached hereto 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.

b. Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

c. No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

Same coverage. The substance of Section 15 in the 2006 policy is the same as the 1992 policy even though there are some language changes in the 2006 policy which make it easier to read. Also, a Subsection 15(d) has been added to the 2006 policy to make it clear that any endorsement to the policy is made a part of the policy and is subject to its terms. This was done so that there is no question when an endorsement is attached that does not contain the usual boilerplate final paragraph incorporating all of the terms of the policy, that endorsement is nonetheless subject to all of the terms and provisions of the policy except as expressly modified by the endorsement.

**2006 OWNER POLICY****1992 OWNER POLICY****COMMENTS**

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.

**16. SEVERABILITY**

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

**17. CHOICE OF LAW; FORUM**

(a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies or enforcement of policies of title insurance of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

**18. NOTICES, WHERE SENT**

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at [fill in].

**16. SEVERABILITY.**

In the event any provision of the policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

No comparable Section.

**17. NOTICES, WHERE SENT.**

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at [fill in].

Same coverage. Section 16 of the 2006 policy is substantively the same as the 1992 policy. However, the 2006 policy language has been modified to make it clear that the Severability provision applies even in situations where only part of a provision of the policy has been declared invalid or unenforceable.

Same coverage. The addition of this Section in the 2006 policy does not result in a reduction of coverage when comparing the 2006 policy to the 1992 policy. The first two paragraphs have been added to the 2006 policy to make it clear what law applies in interpreting and enforcing the terms of the policy. The last paragraph has been added to the 2006 policy because of increased cross-border transactions between border countries.

Same coverage. The language has been cleaned up to fit with other language changes in the policy.

**2006 OWNER POLICY****1992 OWNER POLICY****COMMENTS****SCHEDULE A**

Name and Address of Title Insurance Company:

[File No.: ] Policy No.:

Address Reference:

Amount of Insurance: \$ [Premium: \$ ]

Date of Policy: [at a.m./p.m.]

1. Name of Insured:

2. The estate or interest in the Land that is insured by this policy is:

3. Title is vested in:

4. The Land referred to in this policy is described as follows:

**SCHEDULE B**

[File No. ] Policy No.

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:

1. [Policy may include regional exceptions if so desired by the issuing Company.]
2. [Variable exceptions such as taxes, easements, CC&Rs, etc., shown here.]

**SCHEDULE A**

[File No. \_\_\_\_\_] Policy No. \_\_\_\_\_

Amount of Insurance \$ \_\_\_\_\_

[Premium \$ \_\_\_\_\_]

Date of Policy \_\_\_\_\_[at a.m./p.m.]

1. Name of Insured:

2. The estate or interest in the land which is covered by this policy is:

3. Title to the estate or interest in the land is vested in:

[4. The land referred to in this policy is described as follows:]

If Paragraph 4 is omitted, a Schedule C, captioned the same as Paragraph 4, must be used.

**SCHEDULE B - PART I**

[File No. \_\_\_\_\_] Policy No. \_\_\_\_\_

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. [POLICY MAY INCLUDE REGIONAL EXCEPTIONS IF SO DESIRED BY ISSUING COMPANY]
2. [VARIABLE EXCEPTIONS SUCH AS TAXES, EASEMENTS, CC & Rs, ETC.]

Same coverage. Even though the coverage remains the same, there are changes in the 2006 policy Schedule A that make this policy easier to use both from the Insurer's and the Insured's perspective. First, the 2006 policy Schedule A provides for the Name and Address of the Title Insurance Company whose policy is being issued. The reason for these changes is that occasionally Schedule A becomes separated from the rest of the policy. It is then almost impossible to determine the name and address of the Title Insurance Company to whose policy the Schedule A pertains. Secondly, the 2006 policy Schedule A provides for an Address Reference. The Address Reference was added for the convenience of the Insured to more easily cross reference their file, the policy and the property to which each pertains. The 1992 policy provided an option for describing the land in paragraph 4 of Schedule A or eliminating paragraph 4 of Schedule A and instead attaching a Schedule C which contains the legal description for the land. The 2006 policy does not allow for this type of a selection. The reason the "Schedule C option" is no longer needed is because policies today are produced through word processing or automated systems.

Same coverage.