

New(ish) ALTA Endorsements

Marjorie Ramseyer Bardwell
FIDELITY NATIONAL TITLE GROUP
JACKSONVILLE, FL



A Selection of recently adopted **ALTA** endorsement forms:

- **Aggregation:** 12-06 and 12.1-06
 - **Assignment of Rents:** 37-06
 - **Mortgage Tax:** 38-06
 - **Policy Authentication:** 39-06
 - **Restrictions, Encroachments, Minerals:** 9 series
 - **Encroachments:** 28 series
 - **Minerals:** 35 series
 - **Energy:** 36 series
- And some not so new:
- **Non- Imputation:** the 15 series.

Aggregation

ALTA Forms 12-06 and 12.1-06

- Also known as “Tie-In” endorsements
- Pool the AMOUNT of Insurance NOT the coverages.
- NC has a statutory cap of 40% of surplus to Shareholders as the total single risk allowed
- For example NC cap is (\$543,963,100) for our Family which is **less** than our self imposed cap (\$1,354,000,000) for single risk.

- Multi-site transactions **within** NC tied together would use the 12-06 with the **lesser** of the statutory cap or the total sum of the policies as the *Aggregate Amount of Insurance*

3. *Subject to the limits in Section 4 of this endorsement, the Aggregate Amount of Insurance under these policies is \$ _____.*

- **Multi-state** transactions including NC sites tied in together would use the 12.1-06 with the statutory cap as the total Aggregate Amount of Insurance available under the policies.

*3. The Aggregate Amount of Insurance under this policy is either:
a. \$ _____; or.*

b. If the Land is located in one of the states identified in this subsection, then the Aggregate Amount of Insurance is restricted to the amount shown below:

<u>STATE</u>	<u>AGGREGATE AMOUNT OF INSURANCE</u>
NC	\$543,963,100.00

Assignment of Rents of Leases

ALTA Form 37-06

- Since the assignment is not properly an insured instrument in Sch. A, this endorsement gives the lender additional coverage:
- Proper execution
- No other previous assignment recorded

Mortgage Tax

ALTA Form 38-06

- The effect of the mortgage tax upon the priority of the mortgage
- Requires the Insured to pay the tax
- Reiterates that the Company is not liable for the payment of any tax

Policy Authentication

ALTA Form 39-06

- Condition 14 (c) of the Loan Policy
- Condition 15 (c) of the Owners 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

Policy Authentication

ALTA Form 39-06

- Requires a policy number and Date of Policy
- Company agrees it will not deny liability SOLELY on the grounds that the policy and/or endorsements were issued electronically

OR

- Lack signatures.

ALTA 9 Series

There are now 10 different versions of the old ALTA 9. They differ by which policy and how much coverage is included. You will need to issue several individual endorsements to replicate the coverage of the original 9's including some from other ALTA series.

Owners and Loan coverage also differ.

The Revised Forms in the ALTA 9 Series

Endorsement	Revisions through 04-03-2013	
ALTA 9	Restrictions, Encroachments, Minerals Loan Policy	Restrictions, Encroachments, Minerals Loan Policy
ALTA 9.1	Restrictions, Encroachments, Minerals Owner's Policy - Unimproved Land	Covenants, Conditions, Restrictions Owner's Policy - Unimproved Land
ALTA 9.2	Restrictions, Encroachments, Minerals Owner's Policy - Improved Land	Covenants, Conditions, Restrictions Owner's Policy - Improved Land
ALTA 9.3	Restrictions, Encroachments, Minerals Loan Policy	Covenants, Conditions, Restrictions Loan Policy

The New Forms in the ALTA 9 Series

Endorsement		
ALTA 9.4	Restrictions, Encroachments, Minerals Owner's Policy - Unimproved Land	Decertified
ALTA 9.5	Restrictions, Encroachments, Minerals Owner's Policy - Improved Land	Decertified
ALTA 9.6	Note: These are the Nationwide Coverages	Private Rights Loan Policy
ALTA 9.7		Restrictions, Encroachments, Minerals Land Under Development – Loan Policy
ALTA 9.8		Covenants, Conditions, Restrictions Land Under Development – Owners Policy

The New Forms in the ALTA 9 Series

Endorsement	Revisions through 4-3 -2013	New
ALTA 9.9	Note: These are the Nationwide Coverages	Private Rights Owner's Policy - Unimproved Land
ALTA 9.10		Restrictions, Encroachments, Minerals-Current Violations Loan Policy

The New Forms in the ALTA 9 Series

Restrictions, Encroachments, Minerals

ALTA 9 REM Loan Policy

ALTA 9.7 REM LP Land Under Development

ALTA 9.10 REM LP Current Violations

Covenants, Conditions, Restrictions:

ALTA 9.1- Owner - Unimproved

ALTA 9.2- Owner - Improved

ALTA 9.8- Owner - Land Under Development

ALTA 9.3- Loan Policy

Private Rights

ALTA 9.6 - Loan Policy

ALTA 9.9- Owner

ALTA 9 Series Endorsements

New ALTA 9 Definitions

- a. “Covenant” means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.
- b. “Improvement” means an improvement, including any lawn, shrubbery, or trees, affixed to either the Land or adjoining land at Date of Policy that by law constitutes real property.

Instead of The new forms say

- (b) Unless expressly excepted in Schedule B...
- b. A violation on the Land at Date of Policy of an enforceable Covenant, unless an exception in Schedule B of the policy identifies the violation;

ALTA 9 Series Endorsements

ALTA 9.1

ALTA 9.2

ALTA 9.3

- The CC&R endorsements **do not include** insurance for minerals or encroachments
 - Minerals coverage in ALTA 35 -06 to 35.3-06
 - Encroachments Coverage in Covered Risk 2c (“survey”) and ALTA 28.1-06

ALTA 9.6

- Private Rights are the rights involved in *Nationwide*
- Recently amended to allow for use when such rights are found in a recorded instrument

ALTA 9 Series Endorsements

ALTA 9.7

- Like the 9-REM LP but for Land Under Development

ALTA 9.8

- Like the 9.2-CCR OP but for Land Under Development

ALTA 9.9

- Like the 9.6 Private Rights but for the Owners Policy

ALTA 9.10

- Like the 9-REM LP but limits coverage for violations *at Date of Policy*

ALTA 28 Series

Easements and Encroachments

ALTA 28

- Easement –Damage to existing building or Enforced Removal or alteration of building

ALTA 28.1

- Encroachments-Boundaries and Easements- adds back coverage removed from the 9's

ALTA 28.2

- Encroachments –Boundaries and Easements
- Like the 28.1 but allows the carving out of specific encroachments we are unwilling to cover

ALTA 35 Series

ALTA 35 Series

Minerals and Other Sub-Surface Substances

- These add the minerals coverage dropped from the CC&R Endorsements.
- The difference between them is in the definition of Improvement in Section 2
 - ALTA 35 it means a building
 - ALTA 35.1 it is the ALTA 9 definition
 - ALTA 35.2 fill in the blank
 - ALTA 35.3 Land Under Development

ALTA 36 Series

ALTA 36 Series Energy Project

- Developed from the wind farm endorsements circulating in the industry
- Apply to projects for any means of power generation
 - ALTA 36 Leasehold Easement - Owners
 - Derived from the ALTA 13 to apply to projects built on a leasehold or easement in gross.
 - It defines an “Electricity Facility”
 - Values as an “integrated project”

ALTA 36 Series

ALTA 36 Series Energy Project

- ALTA 36.1 Leasehold Easement – Loan
- ALTA 36.2 Leasehold – Owners
- ALTA 36.3 Leasehold – Loan
- ALTA 36.4 CC&R – Owners
- ALTA 36.5 CC&R – Loan
- ALTA 36.6 – Encroachments
 - Applies to Electricity Facility and Severable Improvements

ALTA 15 Series- Non-imputation

- Conditions 3 (a) and 3 (b)
- Off record matters
- Require affidavits and indemnities

*The following matters are expressly excluded from coverage...
3. Defects, liens, encumbrances, adverse claims or other matters:*

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

(b) not Known to the Company, not recorded in the Public records but Known to the Insured.....

ALTA 15 Series

Non-Imputation

ALTA 15

- Full Equity Transfer-purchase of all stock, membership interests or partnership interests

ALTA 15.1

- Additional Insured-Partial transfer and Insured under the policy is the entity

ALTA 15.2

- Partial Equity- Incoming purchaser is named in the Policy as the Insured

ALTA 15 Series

Non-Imputation

ALTA 15

- Query the out-going parties to see if they know or agreed to anything off record

ALTA 15.1

- Query the outgoing and remaining parties

ALTA 15.2

- Query the outgoing and remaining partners
- May need to add a co-ordination of benefits clause with existing owners policy

ALTA New “ish” Endorsements

Questions?