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**ALTA FORMS**

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# ANALYSIS OF THE TEXAS OWNER'S AND LOAN POLICIES AND THE ALTA DISCUSSION DRAFT OWNER'S AND LOAN POLICIES

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The 2006 American Land Title Association (ALTA) Owner's and Loan Policies are available in all states (although in Iowa, the similar Title Guaranty Certificate is primarily available), with minor modifications in some of the states. The 2006 ALTA Owner's and Loan Policies extensively revised and improved the coverage of prior title policies and were largely incorporated in the promulgated Texas Owner's Policy of Title Insurance (T-1) and Texas Loan Policy of Title Insurance (T-2), which were adopted May 1, 2008. The differences between the Texas and ALTA Forms primarily consisted of insurance of good and indefeasible title in Texas, as opposed to marketable title, a different provision in the Texas Loan Policy regarding priority over mechanic's liens, different Schedules A and B, additional obligations to investigate a claim and undertake a response as set forth in Condition 3, and a modified arbitration clause. Subsequently, the ALTA has undertaken a multi-year review of the 2006 ALTA Owner's and Loan Policies and has posted Discussion Draft Owner's and Loan Policies on the ALTA website for comments. Consideration of both the Texas Policies and the ALTA Discussion Drafts assists us in understanding what coverage is afforded by the Texas Owner's and Loan Policies, and what changes may be anticipated for the Texas Policies. The ALTA also has adopted 46 series of endorsements that modify the coverage of the Policies, and many, but not all, of these endorsements have been promulgated in Texas, although in many cases with modifications.

## A. COVERED RISKS

TEXAS LOAN POLICY	TEXAS OWNER'S POLICY
<b>LOAN POLICY OF TITLE INSURANCE</b> Issued by Blank Title Insurance Company  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 17 of the Conditions.	<b>OWNER'S POLICY OF TITLE INSURANCE</b> Issued by Blank Title Insurance Company  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.
ALTA DISCUSSION DRAFT LOAN POLICY	ALTA DISCUSSION DRAFT OWNER'S POLICY
<b>LOAN POLICY OF TITLE INSURANCE</b> Issued by Blank Title Insurance Company  When this policy is issued by the Company with a Policy Number and the Date of Policy, the Company will not deny liability under this policy or any endorsement to this policy solely on the grounds that this policy or any endorsement to this policy is issued electronically or lacks signatures in accordance with the Conditions. 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 Condition 16.	<b>OWNER'S POLICY OF TITLE INSURANCE</b> Issued by Blank Title Insurance Company  When this policy is issued by the Company with a Policy Number and the Date of Policy, the Company will not deny liability under this policy or any endorsement to this policy solely on the grounds that this policy or any endorsement to this policy is issued electronically or lacks signatures in accordance with the Conditions. 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 Condition 17.

## COMMENTS

The Texas Policies include a prominent notice of claim disclosure that refers to the location of the notice section. Notice should be given to the title insurer at the address shown in Condition 17 (of the Loan Policy) or Condition 18 (of the Owner's Policy), and not to another location of the title insurer or to the title insurance agent. The disclosure is intended to assist the customer in making any claim to the proper office of the title insurer. Otherwise, if the notice may be given to the issuing agent, which typically has no authority to process claims. The ALTA Discussion Drafts add the ALTA 39-06 (Policy Authentication), which is not available in Texas.

TEXAS LOAN POLICY	TEXAS OWNER'S POLICY
<p><b>COVERED RISKS</b></p> <p><b>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 11, 13 and 14, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:</b></p>	<p><b>COVERED RISKS</b></p> <p><b>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:</b></p>
ALTA DISCUSSION DRAFT LOAN POLICY	ALTA DISCUSSION DRAFT OWNER'S POLICY
<p><b>COVERED RISKS</b></p> <p><b>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 the Date of Policy and, to the extent stated in Covered Risks 11, 13 and 14, after the Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:</b></p>	<p><b>COVERED RISKS</b></p> <p><b>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 the 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:</b></p>

### COMMENTS

The insuring provisions are called "Covered Risks" in the Texas Policies and in the ALTA Discussion Drafts. Most of the Covered Risks in the Texas Loan Policy insure as of the Date of Policy, but Covered Risk 11(a) (as to mechanic's lien coverage), Covered Risk 11(b) (as to assessment coverage for street improvements under construction or completed), Covered Risk 13 (as to creditors' rights coverage relating to prior transactions and preferences due to delayed or ineffective recording), and Covered Risk 14 (as to gap coverage) also relate to matters arising after the Date of Policy. Most of the Covered Risks in the Texas Owner's Policy insure as of the Date of Policy, but Covered Risk 9 (as to creditors' rights coverage relating to prior transactions and preferences due to delayed or ineffective recording) and Covered Risk 10 (as to gap coverage) also relate to matters arising after the Date of Policy.

The title insurance policy is an indemnity contract for the actual monetary loss that the insured sustains.<sup>1</sup> The title insurance policy does not guarantee that contingencies insured against will not occur or that the title will be as insured.<sup>2</sup>

An abstract of title prepared from an abstract plant for a chain of title to real property described in the abstract of title is not title insurance, a commitment for title insurance, or any other title insurance form. A commitment for title insurance, title insurance policy, or other title insurance form is not an abstract of title.<sup>3</sup> The title policy is not a representation of the status of title. The only duty under the policy is to indemnify the insured against loss because of defects in title.<sup>4</sup>

Consistent with this understanding of the title insurance policy, the preamble does not provide language of representation, but contains only indemnification language. The indemnity is limited by the Schedule B Exceptions from Coverage, Conditions, and Exclusions from Coverage. Thus, to the extent a Schedule B Exception from Coverage is contained in the policy, the Covered Risks will be restricted.

The title insurer has no duty to issue subsequent title insurance policies (absent agreement to do so).<sup>5</sup>

The deletion of an exception, with the word "deleted" typed in the space provided, is not a representation that the exception does not attach to the property.<sup>6</sup>

Although the prior policies have insured *as of* the Date of Policy only in the preamble, the current Texas Policies modify the preamble to refer to post-policy coverage concerning mechanic's lien coverage (Covered Risk 11(a) of the Loan Policy); street improvement assessment coverage (Covered Risk 11(b) of the Loan Policy); creditors' rights coverage (Covered Risk 9 of the Owner's Policy and Covered Risk 13 of the Loan

<sup>1</sup> Grunberger v. Ileson, 75 A.D.2d 329, 429 N.Y.S.2d 209 (N.Y. App. Div. 1st Dep't 1980); Sattler v. Phila. Title Ins. Co., 192 Pa. Super. 337, 162 A.2d 22 (1960); Stewart Title Guar. Co. v. Cheatham, 764 S.W.2d 315 (Tex. App. Texarkana 1988) (*writ denied*); Golden Sec. Thrift & Loan Ass'n v. First Am. Title Ins. Co., 53 Cal. App. 4th 250, 61 Cal. Rptr. 2d 442 (Cal. App. 4th Dist. 1997) (the CLTA 116-06 (Designation of Improvements, Address) is not basis for negligent misrepresentation; it is an indemnity against loss); Lee v. Duncan, 88 Conn. App. 319, 870 A.2d 1 (2005), *appeal denied* by 274 Conn. 902, 876 A.2d 12 (2005).

<sup>2</sup> Walters v. Marler, 83 Cal. App. 3d 1, 147 Cal. Rptr. 655 (Cal. App. 1st Dist. 1978); Diversified Mortg. Investors v. U.S. Life Title Ins. Co., 544 F.2d 571 (2d Cir. N.Y. 1976); Secs. Serv., Inc. v. Transamerica Title Ins. Co., 20 Wash. App. 664, 583 P.2d 1217 (1978), *review denied* by 91 Wash. 2d 1008 (1978); Stewart Title Guar. Co. v. Cheatham, 764 S.W.2d 315, 319 (Tex. App. Texarkana 1988) (*writ denied*) ("The language guaranteeing title is only for the purpose of entitling the insured to the considerations set out in the policy in the event that there are defects or encumbrances in the title. To hold otherwise would mean that every time there is a loss under the risks covered by the policy, an insurance company commits an unfair trade practice. This was clearly not the purpose of the DTPA."); First American Title Ins. Co. v. Johnson Bank, No. CV-15-0244-PR, 2016 Ariz. LEXIS 152, 239 Ariz. 348, 372 P.3d 292 (Ariz. June 13, 2016) (a party cannot reasonably rely on a title commitment as a representation of the condition of title to the land).

<sup>3</sup> TEX. INS. CODE § 2701.001.

<sup>4</sup> Chi. Title Ins. Co. v. McDaniel, 875 S.W.2d 310 (Tex. 1994); First American Title Ins. Co. v. Patriot Bank, No. 01-14-00170-CV, 2015 Tex. App. LEXIS 4793 (Tex. App.—Houston [1<sup>st</sup> Dist.] May 12, 2015, no pet.); TEX. INS. CODE § 2701.001; Walters v. Marler, 83 Cal. App. 3d 1, 147 Cal. Rptr. 655 (Cal. App. 1st Dist. 1978); Diversified Mortg. Investors v. U.S. Life Title Ins. Co., 544 F.2d 571 (2d Cir. N.Y. 1976); Secs. Serv., Inc. v. Transamerica Title Ins. Co., 20 Wash. App. 664, 583 P.2d 1217 (1978), *review denied* by 91 Wash. 2d 1008 (1978); Stewart Title Guar. Co. v. Cheatham, 764 S.W.2d 315, 319 (Tex. App. Texarkana 1988) (*writ denied*) ("The language guaranteeing title is only for the purpose of entitling the insured to the considerations set out in the policy in the event that there are defects or encumbrances in the title. To hold otherwise would mean that every time there is a loss under the risks covered by the policy, an insurance company commits an unfair trade practice. This was clearly not the purpose of the DTPA."); First American Title Ins. Co. v. Johnson Bank, No. CV-15-0244-PR, 2016 Ariz. LEXIS 152, 239 Ariz. 348, 372 P.3d 292 (Ariz. June 13, 2016) (a party cannot reasonably rely on a title commitment as a representation of the condition of title to the land).

<sup>5</sup> Kondaur Capital Corp. v. Fid. Nat'l Title Ins. Corp., No. 1 CA-CV 12-0295, 2013 Ariz. App. Unpub. LEXIS 521 (2013).

<sup>6</sup> McGonagle v. Stewart Title Guar. Co., 432 S.W.3d 535 (Tex. App. Dallas 2014), *rehearing denied by, rehearing, en banc, denied by* 2014 Tex. App. LEXIS 7115 (Tex. App.—Dallas June 24, 2014).

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