

Current Developments and Issues in Title Insurance

By:

Dawn M. Lewallen
First American Title Insurance Company
(713) 402-4377
dlewallen@firstam.com

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Dawn M. Lewallen

Houston, Texas

Senior Underwriting Counsel,

National Commercial Services- Houston

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Recent New & Revised ALTA Endorsements

The American Land Title Association Board of Governors approved a recommendation to revise the ALTA Closing Protection Letters and adopt new Endorsements during an October 10, 2018 meeting. The subject forms have passed through an industry comment period and are published in final form. See *Exhibit A* for the New and Revised ALTA Forms.

ALTA Endorsement 3.3-06 (Zoning- Completed Improvements- Non-Conforming Use) (12-01-18)

Zoning laws in the United States are generally prospective, not retroactive. This means they regulate future uses of property rather than pre-existing uses. Thus, zoning laws typically allow a property owner to maintain any use of property that does not comply with current zoning laws, so long as that use complied with all applicable zoning laws when the use began. This type of use is often referred to as a “grandfathered use” or a “legal non-conforming use” (as distinguished from an *illegal* non-conforming use that began *after* the property became subject to the relevant zoning laws and is not permitted). The ALTA Forms Committee recognized the need for industry standard coverage where an insurer chooses to provide coverage for a known non-conforming use that applies to an existing building. The standard ALTA Endorsements in the 3-Series do not provide specific coverage for these types of non-conforming uses.

This endorsement may be used with the Loan Policy or Owner's Policy for commercial or residential land which is improved with an existing building where there is known non-conforming use. This endorsement is intended for use when an identifiable use of the Land is permitted to continue even though the use violates the current Zoning Ordinances (as defined in the endorsement) because the use pre-existed those Zoning Ordinances. This endorsement insures against loss or damage if a specified identified non-conforming use of the land is no longer allowed by a county or municipality because the use violates a municipal or county zoning ordinance or zoning regulation. Further, this endorsement insures against loss from a final court order either prohibiting the present non-conforming use or requiring removal or alteration of an existing building because of certain types of current zoning ordinance violations. Whether an existing use of property constitutes a legal non-conforming use will vary from state-to-state and even between cities and towns within the same state. The level of protection afforded to non-conforming uses will also vary. For example, applicable law may or may not allow for a non-conforming building to be rebuilt after destruction, require continuing government re-authorization of the non-conforming use, or provide for termination of the non-conforming use upon abandonment or a defined amortization schedule. Because of these variations, many of these nuances are specifically carved out of the coverage of the endorsement by the exclusions identified in Section 3 of the endorsement.

ALTA Endorsement 3.4-06 (Zoning- No Zoning Classification) (12-01-18)

The ALTA Forms Committee recognizes the need for standard coverage where an insurer requests coverage in areas with no existing zoning classifications. This endorsement is designed for use with the Loan Policy or Owner's Policy on commercial or residential land improved with an existing building or structure. The endorsement insures against loss or damage if a specific use is no longer allowed because the use violates a municipal or county zoning ordinance or regulation. It further insures against loss or damage resulting from a court order prohibiting the present identified use or

requiring removal or alteration of an existing building because of certain types of current zoning ordinance violations. This endorsement is intended for use when the current land use does not violate any zoning ordinances (as defined in the endorsement) either because the governing municipality or county has not enacted any zoning ordinances or regulations applicable to the land or because the land has no existing zoning classification. It will rarely be used for land located in urban areas of the United States because most urban property is subject to comprehensive zoning schemes.

ALTA Endorsement 18.3-06 (Single Tax Parcel and ID) (12-01-18)

This endorsement is designed for use with the Loan Policy or Owner's Policy, on both improved and unimproved commercial and residential land. This endorsement insures against loss or damage as follows: (1) if the Land, or identified portions of the Land, is taxed as part of a larger parcel of land or fails to constitute a separate tax parcel for real estate taxes; or (2) any portion of the land is not assessed under the specified tax identification number. The ALTA 18.3-06 is designed for these situations where all the Land is taxed as a single tax parcel, and there are no insured easements located on non-insured parcels as is the ALTA 18-06. The 18.3-06 differs from the ALTA 18-06 by including a space to identify the tax parcel number for the Land like the ALTA 18.1-06 and 18.2-06.

There are also technical changes to the following forms:

- ALTA Endorsement 9-06 Restrictions, Encroachments, Minerals – Loan Policy (04-02-2012) has been corrected to align the text following paragraph 4.a.ii. for clarity.
- ALTA Endorsement 32-Series have been corrected to remove the reference to “Loss of Priority” in the name of the endorsement as follows:
 - ✓ From “ALTA Endorsement 32-06 Construction Loan - Loss of Priority” to “ALTA® Endorsement 32-06 Construction Loan”
 - ✓ From “ALTA Endorsement 32.1-06 Construction Loan - Loss of Priority - Direct Payment” to “ALTA Endorsement 32.1-06 Construction Loan - Direct Payment”
 - ✓ From “ALTA Endorsement 32.2-06 Construction Loan - Loss of Priority - Insured's Direct Payment” to “ALTA Endorsement 32.2-06 Construction Loan - Insured's Direct Payment”

The ALTA Forms Committee, Title Insurance also has discussion drafts for comment posted at <https://www.alta.org/policy-forms> as follows:

- ✓ ALTA Loan Policy (06-17-06- Revision Discussion Draft #2 (Updated 01-15-2019)
- ✓ ALTA Loan Policy (06-17-06- Revision Discussion Draft #2 (Updated 01-15-2019)

Texas Rules and Forms

One common misconception relates to the availability of [the T-35.1 Commercial Environmental Protection Lien Endorsement](#). This endorsement is intended to be issued with a Loan Policy covering commercial land. It insures that there are no environmental liens filed in the public records or filed in the records of the Clerk of the United States District Court for the district where the land is located with priority over the insured mortgage unless specifically excepted to in Schedule B. While this form became effective January 3, 2014, the Texas Department of Insurance has not set a rate for this endorsement as of the date of this paper. Title companies are prohibited from issuing this endorsement until a premium rate is set even though the form is available at this time.

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