

THE 2006 ALTA LOAN AND OWNER'S POLICIES

New Loan and Owner's Policies were approved by the American Land Title Association on June 17, 2006. The following is an overview of the attributes of these new forms.

Major Benefits of the New Loan Policy

There is much to commend the new policy over the current ALTA Loan Policy and the earlier 1970 version. Listed in no particular order are some of its positive features of the new loan policy (subject to the usual limitations of title insurance policies).

- Recognition of funds disbursed after the policy date as an element of damages to the extent they are secured by applicable law.
- Automatic coverage against matters arising in the time gap, if any, between date of policy (which may be date of closing) and recording, except for certain tax matters.
- Expansion of the parties constituting the insured.
- Positive insurance against police power losses in instances where notices of violation or of enforcement are recorded in the land records.
- Positive insurance against preferences caused by delayed recording or failure of recording to provide notice.
- Increases in insurance amount and insured settlement options in when the insurer elects to litigate rather than settle and is not successful.
- Inclusion of various penalties and exit fees as elements of damages if they are valid under applicable law.
- Express coverage for defense against right of access claims.
- Removal of the non-cumulative liability recovery limitation for junior mortgages.

Major Benefits of the New Owner's Policy

The new Owner's Policy provides all of the benefits listed above for the Loan Policy that are not unique to the insured mortgage plus the following:

- Elimination of the coinsurance clause.
- Elimination of the apportionment clause.
- Broader definition of Insured eliminates the "Fairway" problem and allows wholly owned transferees standing to make claims.

Possible Detriments of the New Policies

There is very little in the policies that is less favorable to the insured than in the current ALTA forms. One thing that stands out is the section on arbitration. Here, the arbitrable amount threshold has doubled from \$1 million to \$2 million. However, this is really more of a recognition of inflation than an absolute increase. Why? Because it amounts to an average annual compounded increase of 3.72 percent over the 19 years since the \$1 million amount was established. A second arbitration issue is the limitation of class actions pursuant to the specified arbitration rules. However, this is not unique to the ALTA rules, being a part of the Code of Procedure of the National Arbitration Forum which is incorporated in them.

Another potential issue is the limitation on the forum for bring suit or arbitration under the policy. It is stated in the new policies to be the jurisdiction in which the land lies. Of course, one cannot force jurisdiction on courts but if the courts find these enforceable as restraints on seeking otherwise available jurisdictions, it would limit the available forums for actions against the insurer. However, this may not be much of a detriment either as, in most cases, actions against insurers are already brought in the jurisdiction now specified by the policy.