

Revised

**ALTA v. Texas Title Insurance Forms and
Endorsements; Title Insurance Issues With
Foreclosures, Deeds in Lieu of Foreclosure and
Equity Infusions**

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September 23 – 24, 2010
October 14-15, 2010

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ALTA AND TEXAS TITLE INSURANCE COVERAGE¹

I. THE 2006 ALTA POLICIES AND RELATED FORMS

A. BACKGROUND OF ALTA FORMS

The predominant title insurance forms in use today are the American Land Title Association (ALTA) forms. These forms are used throughout the United States with minor changes and some additional forms, such as endorsements available in particular states.

The need for uniform title insurance policies in the 1920s led to adoption by the ATA (American Title Association, predecessor to the ALTA) of a standard loan policy in 1929, as discussed in the *Title News*:

The history of the matters covered by title insurance is a parallel to that of the development of other forms of insurance. The early policies of all insurance were rather vague, and indefinite in their terms, and rather replete with conditions, stipulations and exceptions. Gradually these were eliminated and really protective insurance the result. When that came about, then the use of insurance became popular.

The title insurance companies have always anticipated the advent of full coverage in title insurance but certain things prolonged its coming. For various reasons the policy in general circulation did not protect against the following elements: Marketability, mechanics liens not of record; rights of parties in possession and not disclosed of record and such facts as generally might be disclosed by a physical examination of the premises; areas, dimensions and locations of improvements and other such matters that might be disclosed by a survey....

But despite all these things this rambling of a uniform policy kept appearing. The Pennsylvania Title Association prepared and adopted a uniform policy as one of its first achievements, and the New Jersey Association soon followed. These were put into use in their respective states to some extent.

The New York Board of Title Underwriters adopted standard forms for all classes of title insurance which are used universally in New York City and have been used by others as a basis for their forms.

In Northern California groups of companies in various communities began adopting uniform forms and it soon spread to that entire territory until standard forms are now used entirely by all the companies in Northern California.

Three years ago it became apparent that the title companies should adopt some form and the association again appointed a committee to consider the matter, but again it was impossible to achieve it and the committee was discharged after giving it much consideration.

About this time something else entered the picture – the actual lenders of the money upon real estate mortgages began to consider certain things. The real estate mortgage business was experiencing some changes and having new conditions to consider. Some few years ago one of the largest life insurance companies in the East and a lender of millions of dollars annually on real estate mortgages began requiring title insurance for all its loans in order to be relieved of the work and responsibility of examining and handling title matters in connection therewith. Others began to use title insurance for the same reason. This was not confined to certain of the life insurance companies alone, but was taken up by various mortgage companies. One of the big talking points for title insurance is that it relieves the investor from title work, examinations and worry therefrom, as well as affording protection.

But as the use of title insurance increased, the fact soon became apparent to these loaning agencies that there were just as many kinds, sizes, shapes, forms and varieties of title insurance as there were companies and even more, because some title insurance companies were issuing a variety of forms drawn for the specifications and fancies of each loan correspondent. This occasioned that these investors carefully examine and scrutinize all these

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various title insurance policies to see just what they contained – to examine them the same as they had formerly examined abstracts.

Coupled with this situation was the trend and desire toward uniformity as a means for facilitating and expediting business.

About this time another thing came and that was mentioned above – the new elements to be considered in the conduct of a real estate mortgage business. Among them were speculative building, construction loans, increase in business and territory loaned in necessitating more dependence upon the local agent, the general development of the real estate market, home building and loaning, and all the things concurrent with it.

Not only was a uniform policy wanted, but full coverage became necessary.

This was realized again; it was brought before the title people and with it became known the fact that certain of the life insurance companies had undertaken the drafting of a form that would meet their requirements. It was not long until this policy made its appearance by not only being presented to the title companies, but by being requested that when title insurance was furnished to these life insurance companies, it would have to be on this form. The form was furnished to the title companies by the insurance companies or they could print their own. It became known as the “L.I.C.” Form, or “Life Insurance Companies Standard Loan Policy of Title Insurance.” Those companies drafting it were: The Metropolitan Life Insurance Co., New York Life Insurance Company, Prudential Insurance Co. of America, Equitable Life Assurances Society of the United States, and the John Hancock Mutual Life Insurance Co.

Soon others adopted it, not only life insurance companies but real estate mortgage companies, until within a short time its use became of some volume.

When presented to them in this manner, the title insurance companies found themselves acquiescing in writing a policy incorporating features that they had not up until that time been able to convince themselves and agree that they could write; and issue insurance of that kind. It brought problems and matters of consideration to a head that had not been decided for years and can really be said to have been a matter of some moment and impetus in the development of title insurance.

But as is only natural, it was not entirely satisfactory to the title companies. There were some questions and objections to the policy, both as to its language and form but particularly in that it was not an inception and achievement of the title people themselves. It had not only been written for them, but worse yet, it had another’s name!” “The American Title Association Standard Loan Policy of Title Insurance A Uniform Mortgages Form is Presented – Embodies Full Coverage Provisions,” ATA “Title News” 1929.

The 1929 ATA Standard Loan Policy insured against lack of title, defects, liens, or encumbrances on title; invalidity or lack of priority of the mortgage; lack of vesting of the mortgage by any described assignment; and any defect in execution of the mortgage. It also expanded coverage to insure against unmarketability of title and against lack of priority of the insured mortgage over mechanic’s liens.

In 1959 the ALTA first adopted an owner’s policy.

The ALTA subsequently adopted and revised a number of uniform title insurance policies for standard use in commercial and residential transactions:

- The ALTA Owner’s Policy – Standard Form A-1962. This policy included insurance against a lack of right of access, but did not insure against unmarketability of the title, and also excluded refusal of any person to purchase lease or lend money. The policy included a coinsurance provision.
- The ALTA Owner’s Policy – Standard Form B – 1962. This policy also insured against unmarketability of the title.
- The ALTA Standard Loan Policy Revised Coverage – 1962. This policy included insurance against unmarketability of the title, lack of right of access, and “any statutory lien for labor or material which has now gained or hereafter may gain priority over the lien of said mortgage upon said estate.” The policy excluded coverage of mechanic’s liens arising from construction on the land contracted for and commenced after Date of Policy and not financed in whole or in part by mortgage proceeds that the insured had advanced or was presently obligated to advance.

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First appeared as part of the conference materials for the 44th Annual Mortgage Lending Institute session

"ALTA vs. Texas Title Insurance Forms and Endorsements"