

**COMPARISON OF THE 1992 AMERICAN LAND TITLE ASSOCIATION LOAN POLICY WITH AMERICAN LAND TITLE ASSOCIATION LOAN POLICY 2006**

This comparison chart is intended as a guide to identifying differences between the 2006 and 1992 ALTA policies. It should not be relied upon for the interpretation of these policies.

**2006 LOAN POLICY**

**1992 LOAN POLICY**

**COMMENTS**

**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.**

No comparable provision.

This clause is designed to help direct the Insured to the appropriate section (Section 17) of the policy so the Insured will know where to file a notice of claim or any other notice to be given to the Insurer. By placing this clause on the face page of the policy it makes it easier for Insureds to access policy benefits.

**Covered Risks**

"Insuring Clauses"

The 1992 policy does not have a section identified as "Insuring Clauses". The 2006 policy utilizes the term Covered Risks similarly to the way some of the more recent ALTA Residential policies use this term to more descriptively designate matters covered under the policy.

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:

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, BLANK TITLE INSURANCE COMPANY, a Blank corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:



Added coverage. These two lead-in provisions are substantively the same except that the 2006 policy identifies three Covered Risks that provide post-policy coverage. These post-policy coverages are found in Covered Risks 11, 13 and 14.

1. Title being vested other than as stated in Schedule A.

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;

Same coverage. The streamlined language in the 2006 policy is due to the fact that the word "Title" is defined in the Conditions to mean the estate or interest described in Schedule A.

2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from

(a) A defect in the Title caused by

(i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;

(ii) failure of any person or Entity to have authorized a transfer or conveyance;

(iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;

(iv) failure to perform those acts necessary to create a document by electronic means authorized by law;

(v) a document executed under a falsified, expired, or otherwise invalid power of attorney;

(vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or

(vii) a defective judicial or administrative proceeding.

(b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.

(c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.

2. Any defect in or lien or encumbrance on the title;

Same coverage with the exception of Covered Risk 2(c) of the 2006 policy. Covered Risk 2(c) provides express survey coverage that some courts have held does not exist in the printed provisions of the earlier ALTA policy forms. This Covered Risk makes it clear that absent a survey exception in Schedule B this new policy does provide survey coverage including encroachments of improvements onto adjoining land. Even though the substance of the coverage in Covered Risks 2(a) and (b) is included in the second insuring clause of the 1992 policy, the 2006 policy language makes it easier for the Insured to understand the breadth of the coverage. Additionally, Covered Risks 2(a)(iv) and (vi) make it clear that certain aspects of electronic transactions are covered by this policy.

3. Unmarketable Title.

3. Unmarketability of the title;



Added coverage. The 2006 policy definition has been expanded resulting in coverage when a lessee or lender is released from the obligation to lease or lend due to a contractual condition requiring the delivery of marketable title. This additional coverage is not provided by the 1992 policy.

4. No right of access to and from the Land.

4. Lack of a right of access to and from the land;

Same coverage.

5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to

There is no comparable insuring clause in the 1992 policy.



Added coverage. It was initially believed that the 1992 policy would provide similar coverage by reason of the exception contained in Exclusion 1(a). However, there have been several court decisions that have ruled otherwise. These courts take the position that unless coverage appears in the insuring clauses of the policy coverage will not be found. This seems to be the case even though the Exclusions may contain exceptions that were intended to provide coverage. Therefore, it was the desire of the ALTA to make it clear coverage does exist under the circumstances stated by adding this Covered Risk. Additionally, the word "permit" has been added to the 2006 policy language so that if there is loss or damage resulting from a recorded notice of the violation or enforcement of a permit the Insured would have coverage.

- (a) the occupancy, use, or enjoyment of the Land;
  - (b) the character, dimensions or location of any improvement erected on the Land;
  - (c) the subdivision of land; or
  - (d) environmental protection
- if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.

6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.

There is no comparable insuring clause in the 1992 policy.



Added coverage for the Insured. It was initially believed that the 1992 policy would provide similar coverage by reason of the exception contained in Exclusion 1(b). However, there have been several court decisions that have ruled otherwise. These courts take the position that unless coverage appears in the insuring clauses of the policy coverage will not be found. This seems to be the case even though the Exclusions may contain exceptions that were intended to provide coverage. Therefore, it was the desire of the ALTA to make it clear coverage does exist under the circumstances stated by adding this Covered Risk.

7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.

1. Title to the estate or interest described in Schedule A being vested other than as stated therein; 2. Any defect in or lien or encumbrance on the title;

Same coverage. There is no directly comparable insuring clause in the 1992 policy although if notice of the exercise of rights of eminent domain had been recorded at the Date of Policy this matter would be covered under either Insuring Clause 1 or 2. It was initially believed that the 1992 policy would provide similar coverage by reason of the language of Exclusion 2. However, there have been several court decisions that have ruled otherwise. These courts take the position that unless coverage appears in the insuring clauses of the policy coverage will not be found. This seems to be the case even though the Exclusions may contain language that was intended to provide coverage. Therefore, it was the desire of the ALTA to more clearly state the coverage and to make it clear coverage does exist under the circumstances stated by adding this Covered Risk in the 2006 policy.

8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.

1. Title to the estate or interest described in Schedule A being vested other than as stated therein; 2. Any defect in or lien or encumbrance on the title;

There is no directly comparable insuring clause in the 1992 policy although if a taking has occurred prior to the Date of Policy which is binding on a BFP this matter would be covered under either Insuring Clause 1 or 2. It was initially believed that the 1992 policy would provide similar coverage by reason of the language of Exclusion 2. However, there have been several court decisions that have ruled otherwise. These courts take the position that unless coverage appears in the insuring clauses of the policy coverage will not be found. This seems to be the case even though the Exclusions may contain language that was intended to provide coverage. Therefore, it was the desire of the ALTA to make it clear coverage does exist under the circumstances stated by adding this Covered Risk in the 2006 policy.

9. The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title. This Covered Risk includes but is not limited to insurance against loss from any of the following impairing the lien of the Insured Mortgage

5. The invalidity or unenforceability of the lien of the insured mortgage upon the title;

Same coverage. Even though the substance of the coverage in Covered Risk 9 is included in insuring clause 5 of the 1992 policy, the 2006 policy language makes it easier for the Insured to understand the breadth of the coverage. Additionally, Covered Risks 9(d) and (f) make it clear that certain aspects of electronic transactions are covered by this policy.

- (a) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
- (b) failure of any person or Entity to have authorized a transfer or conveyance;
- (c) the Insured Mortgage not being properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
- (d) failure to perform those acts necessary to create a document by electronic means authorized by law;
- (e) a document executed under a falsified, expired, or otherwise invalid power of attorney;

- (f) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
- (g) a defective judicial or administrative proceeding.

10. The lack of priority of the lien of the Insured Mortgage upon the Title over any other lien or encumbrance.

6. The priority of any lien or encumbrance over the lien of the insured mortgage;

Same coverage. However, the 2006 policy, for consistency, places the emphasis on the *lack of priority* of the lien of the Insured Mortgage as opposed to the priority of any other lien or encumbrance over the lien of the Insured Mortgage. This causes Covered Risks 10 and 11 of the 2006 policy to approach the priority insurance from the same direction. In the 1992 policy Insuring Clause 6 approached priority from the direction of any lien or encumbrance while Insuring Clause 7 approached priority from the direction of the Insured Mortgage.

11. The lack of priority of the lien of the Insured Mortgage upon the Title

(a) as security for each and every advance of proceeds of the loan secured by the Insured Mortgage over any statutory lien for services, labor, or material arising from construction of an improvement or work related to the Land when the improvement or work is either

- (i) contracted for or commenced on or before Date of Policy; or
- (ii) contracted for, commenced or continued after Date of Policy if the construction is financed, in whole or in part, by proceeds of the loan secured by the Insured Mortgage that the Insured has advanced or is obligated on Date of Policy to advance; and

7. Lack of priority of the lien of the insured mortgage over any statutory lien for services, labor or material:

a. arising from an improvement or work related to the land which is contracted for or commenced prior to Date of Policy; or

b. arising from an improvement or work related to the land which is contracted for or commenced subsequent to Date of Policy and which is financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance;

Same coverage for mechanics' liens however, Covered Risk 11(b) of the 2006 policy adds coverage for street assessment liens that is essentially the same coverage provided by an ALTA form 1 endorsement for street assessments. The 1992 policy does not have a comparable insuring clause. However, some title insurance companies printed 1992 loan policy jackets that included a similar insuring clause that in substance is the same as the ALTA form 1 endorsement for street assessments. Those companies policies would then have 9 insuring clauses instead of 8. Covered Risk 11(a)(ii) of the 2006 policy adds the word "continued" that was not included in Insuring Clause 7(b) of the 1992 policy. This additional word brings clarity rather than adding any coverage.

(b) over the lien of any assessments for street improvements under construction or completed at Date of Policy.

12. The invalidity or unenforceability of any assignment of the Insured Mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the Insured Mortgage in the named Insured assignee free and clear of all liens.

13. The invalidity, unenforceability, lack of priority or avoidance of the lien of the Insured Mortgage upon the Title

(a) resulting from the avoidance in whole or in part, or from a court order providing an alternative remedy, of any transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction creating the lien of the Insured Mortgage because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or

(b) because the Insured Mortgage constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records

(i) to be timely, or

(ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor

8. The invalidity or unenforceability of any assignment of the insured mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the insured mortgage in the named insured assignee free and clear of all liens.

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;

Same coverage.

Added coverage. This is creditors' rights coverage addressing transactions occurring prior to the transaction creating the interest being insured. There is no directly comparable insuring clause in the 1992 policy although Insuring Clause 1 covers the substance of Covered Risk 13(a) of the 2006 policy. With respect to Covered Risk 13(b) of the 2006 policy, it was initially believed that the 1992 policy would provide similar coverage by reason of the exception contained in Exclusion 7(c). However, there have been several court decisions that have ruled otherwise. These courts take the position that unless coverage appears in the insuring clauses of the policy coverage will not be found. This seems to be the case even though the exclusions may contain exceptions that were intended to provide coverage. Therefore, it was the desire of the ALTA to more clearly state the

coverage and to make it clear coverage does exist under the circumstances stated by adding this Covered Risk.

14. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 13 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the Insured Mortgage in the Public Records.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

#### Exclusions from Coverage

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1.(a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to

- (i) the occupancy, use, or enjoyment of the Land;
- (ii) the character, dimensions, or location of any improvement erected on the Land;
- (iii) the subdivision of land; or
- (iv) environmental protection;

or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.

There is no comparable insuring clause in the 1992 policy.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title or the lien of the insured mortgage, as insured, but only to the extent provided in the Conditions and Stipulations.

#### Exclusions from Coverage

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. a. Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting

Added coverage. This Covered Risk provides post-policy title insurance for the gap, if any, between the Date of Policy (now defined in Section 1(b) of the Conditions) and the date the Insured Mortgage records in the Public Records.

Added coverage. The 2006 policy covers everything covered by the 1992 "defense clause". However, the 2006 policy defense provision has been expanded to include defense for any matter insured against including such things as access and those matters covered by Covered Risks 5 and 6 none of which are covered by the language of the 1992 policy.

Same language.

Same coverage.

Same coverage. However, the language in the 2006 policy has been simplified making it easier to understand. The exceptions to Exclusions 1(a) and 1(b) of the 1992 policy have been moved to become Covered Risks 5 and 6 of the 2006 policy. The deletion of the words "now or hereafter" from Exclusion 1(a)(ii) of the 1992 policy is a further simplification of the language. This was done in part because it was viewed unnecessary inasmuch as Exclusion 3(d) takes care of excluding things occurring subsequent to Date of Policy.

(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.

from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

b. Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.

2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.

Same coverage. The "carve-out" language contained in the 1992 policy has been moved to become Covered Risks 7 and 8 in the 2006 policy.

3. Defects, liens, encumbrances, adverse claims, or other matters

(a) created, suffered, assumed, or agreed to by the Insured Claimant;  
(b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;

3. Defects, liens, encumbrances, adverse claims or other matters:

a. created, suffered, assumed or agreed to by the insured claimant;  
b. not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;

Same coverage. The 2006 policy language of Exclusion 3(d) makes it clear that this post-policy exclusion does not limit the coverage provided by Covered Risks 11, 13 and 14.

(c) resulting in no loss or damage to the Insured Claimant;  
(d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or

c. resulting in no loss or damage to the insured claimant;  
d. attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or material); or

(e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.

e. resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.

4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.

5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.

6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is

(a) a fraudulent conveyance or fraudulent transfer, or

(b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.

4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the land is situated.

5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.

7. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:

a. the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or

b. the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or

c. the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:

- i. to timely record the instrument of transfer; or
- ii. of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

Same coverage. The language of the 2006 policy has been simplified for easier reading.

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Same coverage. The language of the 2006 policy has been simplified for easier reading. This creditors' rights exclusion pertains only to the transaction creating the lien of the Insured Mortgage. It does not relate to any earlier transaction that might be considered a fraudulent or preferential transfer that would be covered under Covered Risk 13. Furthermore, the exception to Exclusion 7(c) in the 1992 policy has been moved to become Covered Risk 13(b) of the 2006 policy. Reference in Exclusion 7(b) of the 1992 policy to equitable subordination was not specifically carried over to be included in Exclusion 6 of the 2006 policy because it was viewed that equitable subordination was already excluded under Exclusion 3.

No comparable exclusion.

6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.

Same coverage. This exclusion was eliminated from the 2006 policy because it was viewed as being unnecessary in either of these two policy forms. This is due to the fact that both the 1992 and 2006 policies contain similar mechanics' lien insuring clauses which limit liability for work that is contracted for and commenced after Date of Policy to include only those situations where the construction is financed in whole or in part by proceeds of the Insured Mortgage. Furthermore, both policies already include a "post-policy" Exclusion 3(d).

7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

No directly comparable exclusion.

Same coverage. This exclusion was added to the 2006 policy only because this new policy provides, by Covered Risk 14, substantial post-policy coverage for many things including liens between the Date of Policy and the date of recording of the Insured Mortgage. This exclusion only pertains to the lien of real estate taxes or assessments that are imposed, created or attach during the period mentioned above. It was not necessary to have such an exclusion in the 1992 policy because there was no post-policy coverage that would have picked up liability for newly due or payable taxes.

**Conditions**

Conditions and Stipulations

The words "and Stipulations" were dropped because they were viewed as not adding anything and therefore unnecessary.

1. Definition of Terms

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Same language.

The following terms when used in this policy mean:

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Same language.

<p>(a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b) or decreased by Section 10 of these Conditions.</p>	<p>No comparable definition.</p>	<p>Same coverage. The "Amount of Insurance" was set forth in Schedule A of the 1992 policy. However, elsewhere in the Conditions and Stipulations the policy uses the term amount of insurance in ways that clearly indicate the amount may change from time to time depending upon the circumstances. This seemed to lead to confusion. By defining this term in the 2006 policy the confusion created by the 1992 policy is eliminated.</p>
<p>(b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.</p>	<p>No comparable definition.</p>	<p>Same coverage. The "Date of Policy" was set forth in Schedule A of the 1992 policy and therefore any time "Date of Policy" was used in that policy, it was the date shown on Schedule A to which reference was being made. ALTA made the decision to define this term in Section 1 of the Conditions under Definition of Terms for consistency.</p>
<p>(c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.</p>	<p>No comparable definition.</p>	<p>↑ Added coverage. This definition was added to the 2006 policy in order to extend coverage to more Insureds as will be seen when reviewing the definition of the term "Insured".</p>
<p>(d) "Indebtedness": The obligation secured by the Insured Mortgage including one evidenced by electronic means authorized by law, and if that obligation is the payment of a debt, the Indebtedness is the sum of</p> <ul style="list-style-type: none"> <li>(i) the amount of the principal disbursed as of Date of Policy;</li> <li>(ii) the amount of the principal disbursed subsequent to Date of Policy;</li> <li>(iii) the construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the Land or related to the Land that the Insured was and continued to be obligated to advance at Date of Policy and at the date of the advance;</li> </ul>	<p>No comparable definition.</p>	<p>↑ Added coverage. This newly defined term not only includes everything included in Section 2(c) of the 1992 policy but has been expanded to include many more elements of indebtedness that one would expect to be included in the contractual provisions of the evidence of indebtedness secured by the Insured Mortgage. This definition specifically includes obligations secured by the Insured Mortgage evidenced by electronic means. This definition even includes advances disbursed subsequent to Date of Policy. However, the policy does not insure the validity, enforceability or priority of the Insured Mortgage as security for these advances unless they are covered under Covered Risk 11 as construction loan advances, but rather allows these advances to be included in the measure of loss. If coverage is desired for the</p>

- (iv) interest on the loan;
- (v) the prepayment premiums, exit fees and other similar fees or penalties allowed by law;
- (vi) the expenses of foreclosure and any other costs of enforcement;
- (vii) the amounts advanced to assure compliance with laws or to protect the lien or the priority of the lien of the Insured Mortgage before the acquisition of the estate or interest in the Title;
- (viii) the amounts to pay taxes and insurance; and,
- (ix) the reasonable amounts expended to prevent deterioration of improvements; but the Indebtedness is reduced by the total of all payments and by any amount forgiven by an Insured.

(e) "Insured": The Insured named in Schedule A.

- (i) The term "Insured" also includes
  - (A) the owner of the Indebtedness and each successor in ownership of the Indebtedness, whether the owner or successor owns the Indebtedness for its own account or as a trustee or other fiduciary, except a successor who is an obligor under the provisions of Section 12(c) of these Conditions;
  - (B) the person or Entity who has "control" of the "transferable record," if the Indebtedness is evidenced by a "transferable record," as these terms are defined by applicable electronic transactions law;
  - (C) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
  - (D) successors to an Insured by its conversion to another kind of Entity;

a. "insured": the insured named in Schedule A. The term "insured" also includes

- i. the owner of the indebtedness secured by the insured mortgage and each successor in ownership of the indebtedness except a successor who is an obligor under the provisions of Section 12(c) of these Conditions and Stipulations (reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor insured, unless the successor acquired the indebtedness as a purchaser for value without knowledge of the asserted defect, lien, encumbrance, adverse claim or other matter insured against by this policy as affecting title to the estate or interest in the land);
- ii. any governmental agency or governmental instrumentality which is an insurer or

validity, enforceability or priority of the lien of the Insured Mortgage as security for the advances, the Insured should require an ALTA 14 or 14.1 endorsement.



Added coverage. The 2006 policy includes within this defined term everything that the 1992 policy includes. In addition, the 2006 policy includes successors in ownership whether the successor owns the Indebteness on its own account or as a trustee or other fiduciary. Also, the 2006 policy specifically includes as an Insured the person or Entity who has "control" of the "transferable record" as these terms are defined by applicable transactions law. This language was added to make it clear third parties such as MERS or any other entity performing similar services is also an Insured even though not specifically named when electronic mortgage transactions are involved. Additionally, the new policy includes within the definition of "Insured" certain specified successors and grantees in voluntary transfers not included in the 1992 policy.

(E) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title

(1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,

(2) if the grantee wholly owns the named Insured, or

(3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity;

(F) any government agency or instrumentality that is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the Indebtedness secured by the Insured Mortgage, or any part of it, whether named as an Insured or not;

(ii) With regard to (A), (B), (C), (D), and (E) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured, unless the successor acquired the Indebtedness as a purchaser for value without Knowledge of the asserted defect, lien, encumbrance, or other matter insured against by this policy.

(f) "Insured Claimant": An Insured claiming loss or damage.

guarantor under an insurance contract or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage, or any part thereof, whether named as an insured herein or not;

iii. the parties designated in Section 2(a) of these Conditions and Stipulations.

b. "insured claimant": an insured claiming loss or damage.

Same coverage.

(g) "Insured Mortgage": The Mortgage described in paragraph 4 of Schedule A.

No comparable definition.

Same coverage. Even though the 1992 policy does not contain a specific definition for "Insured Mortgage", it has been treated as a defined term by reason of the fact the mortgage being insured is specifically described in paragraph 4 of Schedule A.

(h) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.

c. "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.

Same coverage. The language was cleaned up to fit with defined terms and Covered Risks of the 2006 policy.

(i) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.

d. "land": the land described or referred to in Schedule [A][C], and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule [A][C], nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

Same coverage. The language was cleaned up slightly for easier reading.

(j) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.

e. "mortgage": mortgage, deed of trust, trust deed, or other security instrument.

Same coverage. The language was modified in the 2006 policy to specifically identify electronic mortgages as being included. Even though electronic mortgages were not specifically mentioned in the 1992 policy definition, they are nonetheless included.

(k) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.

f. "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a)(iv) of the Exclusions From Coverage, "public records" shall also include environmental protection liens filed in the records of the clerk of the United States district court for the district in which the land is located.

Same coverage. The change in the reference used in this defined term is due to the fact the 2006 policy has added a Covered Risk 5 to include protection for violation or enforcement of environmental protection laws to the extent of a recorded notice.

(l) "Title": The estate or interest described in Schedule A.

No comparable definition.

Same coverage. This newly defined term aids in the simplification of language but does not change the coverage of the policy.

(m) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title or a prospective purchaser of the Insured Mortgage to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

g. "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A or the insured mortgage to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.



Added coverage. This defined term was cleaned up by deleting the unnecessary clause "not excluded or excepted from coverage" because all coverage is subject to the Exclusions and Exceptions of the policy. In addition, the definition was broadened to include lessees of and lenders on the Title.

## 2. CONTINUATION OF INSURANCE

## 2. CONTINUATION OF INSURANCE.

Same coverage. The language of the 2006 policy

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured after acquisition of the Title by an Insured or after conveyance by an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

a. After Acquisition of Title. The coverage of this policy shall continue in force as of Date of Policy in favor of (i) an insured who acquires all or any part of the estate or interest in the land by foreclosure, trustee's sale, conveyance in lieu of foreclosure, or other legal manner which discharges the lien of the insured mortgage; (ii) a transferee of the estate or interest so acquired from an insured corporation, provided the transferee is the parent or wholly-owned subsidiary of the insured corporation, and their corporate successors by operation of law and not by purchase, subject to any rights or defenses the Company may have against any predecessor insureds; and (iii) any governmental agency or governmental instrumentality which acquires all or any part of the estate or interest pursuant to a contract of insurance or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage.

b. After Conveyance of Title. The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

has been changed because of other changes made in the policy and for easier reading. The substance of Subsection 2(a)(i) and (b) of the 1992 policy is included in Section 2 of the 2006 policy. Subsection 2(c) of the 1992 policy is unnecessary in Section 2 of the 2006 policy due to the definitions of Amount of Insurance and Indebtedness in Section 1 and because of Subsection 8(a)(iv) of the 2006 policy. Subsection 2(a)(ii) and (iii) of the 1992 policy are unnecessary in Section 2 of the 2006 policy because of the definition of Insured in the 2006 policy.

- c. Amount of Insurance. The amount of insurance after the acquisition or after the conveyance shall in neither event exceed the least of:
- i. the Amount of Insurance stated in Schedule A;
  - ii. the amount of the principal of the indebtedness secured by the insured mortgage as of Date of Policy, interest thereon, expenses of foreclosure, amounts advanced pursuant to the insured mortgage to assure compliance with laws or to protect the lien of the insured mortgage prior to the time of acquisition of the estate or interest in the land and secured thereby and reasonable amounts expended to prevent deterioration of improvements, but reduced by the amount of all payments made; or
  - iii. the amount paid by any governmental agency or governmental instrumentality, if the agency or instrumentality is the insured claimant, in the acquisition of the estate or interest in satisfaction of its insurance contract or guaranty.

**3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT**

**3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT.**

Same coverage. The language has been cleaned up, in part, due to defined terms in the 2006

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured of any claim of title or interest that is adverse to the Title or the lien of the Insured Mortgage, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title or the lien of the Insured Mortgage, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest or the lien of the insured mortgage, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest or the lien of the insured mortgage, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

policy. Also, the reference to Subsection 5(a) in the 2006 policy, instead of Subsection 4(a), is a result of reordering of certain Sections in the 2006 policy.

#### **4. PROOF OF LOSS**

#### **5. PROOF OF LOSS OR DAMAGE.**

Same coverage. The substance of Section 4 of

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

the 2006 policy was taken from a portion of Section 5 of the 1992 policy. The 2006 policy Proof of Loss Section has been shortened and is much more friendly to the Insured Claimant. The burden on the Insured Claimant in the 1992 policy requiring a proof of loss to automatically be given no longer exists in the 2006 policy. The 90 day period for providing the proof of loss has also disappeared. Instead, the Insurer must first attempt to determine the loss and, if it is unable to do so, may require the Insured Claimant to furnish a signed proof of loss. However, there is no requirement that the proof of loss be sworn to by the Insured Claimant. The remedy stated in the 1992 policy for failing to provide a proof of loss was removed. However, implicit in the 2006 policy Section 4 is the right of the Insurer to withhold payment under the policy until the Insured Claimant furnishes a signed proof of loss if requested to do so by the Insurer.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the insured c

**5. DEFENSE AND PROSECUTION OF ACTIONS**

4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE.

Same coverage. The 2006 policy Section 5 is substantively the same as Subsection 4(a), (b) and (c) of the 1992 policy. The language of the

(a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.

(b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title or the lien of the Insured Mortgage, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

a. Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured against by this policy.

b. The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

2006 policy has been simplified by utilizing defined terms. The change in the reference to Section 7 in the 2006 policy as opposed to Section 6 in the 1992 policy is due to reordering of certain Sections in the 2006 policy.

(c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

c. Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

d. In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with

regard to the matter or matters requiring such cooperation.

**6. DUTY OF INSURED CLAIMANT TO COOPERATE**

**4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE.**

Same coverage. This Section 6 of the 2006 policy does not have a single comparable Section in the 1992 policy. Subsection 6(a) of the 2006 policy

(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title, the lien of the Insured Mortgage, or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters req

(b) The Company may reasonably require

d. In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any l

regard to the matter or matters requiring such cooperation.

5. PROOF OF LOSS OR DAMAGE.

was taken from Subsection 4(d) of the 1992 policy. There is no substantive difference in the language of these two Subsections. Subsection 6(b) of the 2006 policy was taken from the second paragraph of Section 5 of the 1992 policy. Even though there are some language changes, in order to bring the policy language more current with this electronic world, there still is no substantive difference between the two referenced paragraphs. The reason for reordering Sections 4, 5 and 6 of the 2006 policy was because the sequence of events and subject matter is more logical.

the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

administration of the claim. Failure of the Insured

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed

to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

**7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY**

In case of a claim under this policy, the Company shall have the following additional options:

**6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY.**

In case of a claim under this policy, the Company shall have the following additional options:



Added coverage. There are language changes because of defined terms in the 2006 policy. For instance, the words "secured by the insured mortgage" following the word indebtedness in Subsection 6(a)(ii) of the 1992 policy does not appear in the 2006 policy because the term

(a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.

(i) To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay; or

(ii) To purchase the Indebtedness for the amount of the Indebtedness on the date of purchase, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of purchase and that the Company is obligated to pay.

When the Company purchases the Indebtedness, the Insured shall transfer, assign, and convey to the Company the Indebtedness and the Insured Mortgage, together with any collateral security.

Upon the exercise by the Company of either of the options provided for in subsections (a)(i) or (ii), all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in those subsections, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

a. To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.

i. to pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay; or

ii. to purchase the indebtedness secured by the insured mortgage for the amount owing thereon together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of purchase and which the Company is obligated to pay.

If the Company offers to purchase the indebtedness as herein provided, the owner of the indebtedness shall transfer, assign, and convey the indebtedness and the insured mortgage, together with any collateral security, to the Company upon payment therefor.

Upon the exercise by the Company of either of the options provided for in paragraphs a(i) or (ii), all liability and obligations to the insured under this policy, other than to make the payment required in those paragraphs, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

"Indebtedness" is defined in the 2006 policy as "the obligation secured by the Insured Mortgage..." thus eliminating the need for redundant language. Because Indebtedness is defined in the 2006 policy so broadly, there is additional coverage provided by this Section. The last paragraph of Subsection 7(a) of the 2006 policy does not require the policy to be surrendered to the Company for cancellation as is required in the last paragraph of 6(a) of the 1992 policy. This requirement was deleted because it was viewed as being unnecessary. If the Insurer purchases the Indebtedness it automatically becomes the Insured under the 2006 policy by reason of the definition of "Insured" in Section 1.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

b. To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

i. to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

ii. to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

Upon the exercise by the Company of either of the options provided for in paragraphs b(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

**8. DETERMINATION AND EXTENT OF LIABILITY**

7. DETERMINATION AND EXTENT OF LIABILITY.

Added coverage. There are language changes in Section 8 of the 2006 policy because of defined

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

(a) The extent of liability of the Company for loss or damage under this policy shall not exceed the least of

(i) the Amount of Insurance,

(ii) the Indebtedness,

(iii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy, or

(iv) if a government agency or instrumentality is the Insured Claimant, the amount it paid in the acquisition of the Title or the Insured Mortgage in satisfaction of its insurance contract or guaranty.

(b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title or the lien of the Insured Mortgage, as insured,

(i) the Amount of Insurance shall be increased by 10%, and

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

a. The liability of the Company under this policy shall not exceed the least of:

i. the Amount of Insurance stated in Schedule A, or, if applicable, the amount of insurance as defined in Section 2(c) of these Conditions and Stipulations;

ii. the amount of the unpaid principal indebtedness secured by the insured mortgage as limited or provided under Section 8 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and Stipulations, at the time the loss or damage insured against by this policy occurs, together with interest thereon; or

iii. the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

b. In the event the insured has acquired the estate or interest in the manner described in Section 2(a) of these Conditions and Stipulations or has conveyed the title, then the liability of the Company shall continue as set forth in Section 7(a) of these Conditions and Stipulations.

c. The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.



terms not defined in the 1992 policy. There is added coverage because of the broad definition of Indebtedness used in the 2006 policy. Also, Subsection 8(b) of the 2006 policy expands coverage in two ways. The first expansion is a 10% increase in the Amount of Insurance under Subsection 8(b)(i) in the event the Insurer pursues its rights under Section 5 to defend or prosecute and is unsuccessful in establishing the Title or the lien of the Insured Mortgage as insured. The second expansion of coverage under Subsection 8(b)(ii) allows the Insured Claimant the choice of determining the loss or damage either as of the date the claim was made or the date it is settled and paid. These are significant added coverages that do not exist in the 1992 policy. Additionally, Subsection 8(a)(iv) of the 2006 policy came from Subsection 2(c)(iii) of the 1992 policy in order to cover the Insurer's

liability to Governmental Agencies or Instrumentalities insuring or guaranteeing Mortgages.

(ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.

(c) In the event the Insured has acquired the Title in the manner described in Section 2 of these Conditions or has conveyed the Title, then the extent of liability of the Company shall continue as set forth in Section 8(a) of these Conditions.

(d) In addition to the extent of liability under (a), (b), and (c), the Company will also pay those costs, attorneys' fees and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

#### 9. LIMITATION OF LIABILITY

(a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, or establishes the lien of the Insured Mortgage, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title or to the lien of the Insured Mortgage, as insured.

#### 8. LIMITATION OF LIABILITY.

a. If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, or otherwise establishes the lien of the insured mortgage, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

b. In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title or to the lien of the insured mortgage, as insured.



Added coverage. Subsection 9(a), (b) and (c) of the 2006 policy are virtually identical to Subsection 8(a), (b) and (c) of the 1992 policy. Subsection 8(d) of the 1992 policy was deleted in the 2006 policy. By eliminating this subsection coverage has been expanded in the 2006 policy because of the definition of Indebtedness in Section 1 which includes amounts disbursed subsequent to Date of Policy.

(c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

c. The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

d. The Company shall not be liable for: (i) any indebtedness created subsequent to Date of Policy except for advances made to protect the lien of the insured mortgage and secured thereby and reasonable amounts expended to prevent deterioration of improvements; or (ii) construction loan advances made subsequent to Date of Policy, except construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the land which at Date of Policy were secured by the insured mortgage and which the insured was and continued to be obligated to advance at and after Date of Policy.

#### **10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY**

(a) All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment. However, any payments made prior to the acquisition of Title as provided in Section 2 of these Conditions shall not reduce the Amount of Insurance afforded under this policy except to the extent that the payments reduce the Indebtedness.

#### **9. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY.**

a. All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto. However, any payments made prior to the acquisition of title to the estate or interest as provided in Section 2 of these Conditions and Stipulations shall not reduce pro tanto the amount of the insurance afforded under this policy except to the extent that the payments reduce the amount of the indebtedness secured by the insured mortgage.

Added coverage. Subsection 10(a) of the 2006 policy is substantively the same as Subsection 9(a) of the 1992 policy. Subsection 10(b) of the 2006 policy is substantively the same as the last part of Subsection 9(c) of the 1992 policy. Subsection 9(b) and the first part of Subsection 9(c) of the 1992 policy has been deleted from the 2006 policy which results in adding coverage. Unlike the 1992 policy, a payment on the Mortgage under the 2006 policy, does not result in a reduction in the Amount of Insurance. Instead, it results in a reduction in the Indebtedness because of the definition of Indebtedness in Section 1. Therefore, the "last-dollar" coverage issue has been eliminated in the 2006 policy. The Insured does not need to request a last-dollar



(b) The voluntary satisfaction or release of the Insured Mortgage shall terminate all liability of the Company except as provided in Section 2 of these Conditions.

b. Payment in part by any person of the principal of the indebtedness, or any other obligation secured by the insured mortgage, or any voluntary partial satisfaction or release of the insured mortgage, to the extent of the payment, satisfaction or release, shall reduce the amount of insurance pro tanto. The amount of insurance may thereafter be increased by accruing interest and advances made to protect the lien of the insured mortgage and secured thereby, with interest thereon, provided in no event shall the amount of insurance be greater than the Amount of Insurance stated in Schedule A.

endorsement when using the new policy form.

c. Payment in full by any person or the voluntary satisfaction or release of the insured mortgage shall terminate all liability of the Company except as provided in Section 2(a) of these Conditions and Stipulations.

No comparable Section.

#### 10. LIABILITY NONCUMULATIVE.

If the insured acquires title to the estate or interest in satisfaction of the indebtedness secured by the insured mortgage, or any part thereof, it is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy.

Added coverage. The Liability Noncumulative Section contained in the 1992 policy was deleted in the 2006 policy. This Section has been a problem for some lenders because under the circumstances of certain claims a lender could totally lose coverage without having benefited from any payment made under the policy, pursuant to this Section, to another mortgage holder on the same land.

#### 11. PAYMENT OF LOSS

#### 11. PAYMENT OF LOSS.

Same coverage. The first paragraph of Section

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

11 of the 1992 policy was deleted in the 2006 policy. This paragraph was deleted because the ALTA believes that in our current world of databases and electronic record keeping by Title Insurers it was no longer necessary.

When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

## **12. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT**

### **(a) The Company's Right to Recover**

Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title or Insured Mortgage and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

## **12. SUBROGATION UPON PAYMENT OR SETTLEMENT.**

### **a. The Company's Right of Subrogation.**

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant. The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

Same coverage. In the 2006 policy, the language of this Section has been modified in order to more clearly state the rights of the parties. The heading for the Section has been renamed. Subsection 12(a) of the 2006 policy makes it clear that when a claim has been settled the Insurer is automatically subrogated and entitled to the rights of the Insured Claimant without need of any further documentation. However, the Insurer has a right to request the Insured Claimant to execute documents to evidence the transfer of these rights. The Insured Claimant has an obligation to execute these requested documents. On the other hand, this Subsection makes it clear that if a payment of a claim does not make the Insured Claimant whole, the Insurer defers the exercise of its right to recover until such time as the Insured Claimant recovers its entire loss. The ALTA intended for Subsection 12(a) of the 1992 policy to be treated the same as stated in the 2006 policy but the language is not clear. Subsection 12(b) and (c) of the 2006 policy

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

(b) The Insured's Rights and Limitations

(i) The owner of the Indebtedness may release or substitute the personal liability of any debtor or guarantor, extend or otherwise modify the terms of payment, release a portion of the Title from the lien of the Insured Mortgage, or release any collateral security for the Indebtedness, if it does not affect the enforceability or priority of the lien of the Insured Mortgage.

(ii) If the Insured exercises a right provided in (b)(i), but has Knowledge of any claim adverse to the Title or the lien of the Insured Mortgage insured against by this policy, the Company shall be required to pay only that part of any losses insured against by this policy that shall exceed the amount, if any, lost to the Company by reason of the impairment by the Insured Claimant of the Company's right of subrogation.

(c) The Company's Rights Against Noninsured Obligors.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to all rights and remedies of the insured claimant after the insured claimant shall have recovered its principal, interest, and costs of collection.

b. The Insured's Rights and Limitations.

Notwithstanding the foregoing, the owner of the indebtedness secured by the insured mortgage, provided the priority of the lien of the insured mortgage or its enforceability is not affected, may release or substitute the personal liability of any debtor or guarantor, or extend or otherwise modify the terms of payment, or release a portion of the estate or interest from the lien of the insured mortgage, or release any collateral security for the indebtedness.

When the permitted acts of the insured claimant occur and the insured has knowledge of any claim of title or interest adverse to the title to the estate or interest or the priority or enforceability of the lien of the insured mortgage, as insured, the Company shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

c. The Company's Rights Against Non-insured Obligors.

contain slight language modification, but the substance is identical to Subsections 12(b) and (c) of the 1992 policy.

The Company's right of subrogation includes the Insured's rights against non-insured obligors including the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

The Company's right of subrogation shall not be avoided by acquisition of the Insured Mortgage by an obligor (except an obligor described in Section 1(e)(i)(F) of these Conditions) who acquires the Insured Mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond, and the obligor will not be an Insured under this policy.

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

The Company's right of subrogation shall not be avoided by acquisition of the insured mortgage by an obligor (except an obligor described in Section 1(a)(ii) of these Conditions and Stipulations) who acquires the insured mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond and the obligor will not be an insured under this policy, notwithstanding Section 1(a)(i) of these Conditions and Stipulations.

### 13. ARBITRATION

### 13. ARBITRATION.

Same coverage. Depending upon whether you

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered

by the Arbitrator(s) may be entered in any court of competent jurisdiction.

**14. LIABILITY LIMITED TO THIS POLICY;  
POLICY ENTIRE CONTRACT**

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is \$1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees

to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules. A copy of the Rules may be obtained from the Company upon request.

**14. LIABILITY LIMITED TO THIS POLICY;  
POLICY ENTIRE CONTRACT.**

are pro-arbitration or against arbitration the changes made to Section 13 in the 2006 policy arguably add coverage (pro-arbitration) or decrease coverage (against arbitration). The reason one could adopt either of these views is because the threshold below which either the Insured or the Insurer can force the other into arbitration has been increased from \$1,000,000 in the 1992 policy to \$2,000,000 in the 2006 policy. Notwithstanding the possibility of making either of these arguments it is the belief of the ALTA that the changes to this Section in the 2006 policy result in the same coverage in substance as exists in the 1992 policy. Section 13 of the 2006 policy does not contain the clause: "unless prohibited by applicable law..." as contained in the 1992 policy because that clause is unnecessary as a result of Section 15 (Severability) in both policies. Another change made to this Section in the 2006 policy is to have the claim or controversy arbitrated pursuant to the Title Insurance Arbitration Rules of the American Land Title Assoc

Same coverage. The substance of Section 14 in the 2006 policy is the same as the 1992 policy

(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage that arises out of the status of the Title or lien of the Insured Mortgage or by any action asserting such claim shall be restricted to this 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.

(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

#### **15. SEVERABILITY**

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

#### **16. CHOICE OF LAW; FORUM**

a. This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

b. Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the lien of the insured mortgage or of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

c. No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

#### **15. SEVERABILITY.**

In the event any provision of this policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

No comparable Section.

even though there are some language changes in the 2006 policy which make it easier to read. Also, a Subsection 14(d) has been added to the 2006 policy to make it clear that any endorsement to the policy is made a part of the policy and is subject to its terms. This was done so that there is no question when an endorsement is attached that does not contain the usual boilerplate final paragraph incorporating all of the terms of the policy, that endorsement is nonetheless subject to all of the terms and provisions of the policy except as expressly modified by the endorsement.

Same coverage. Section 15 of the 2006 policy is substantively the same as the 1992 policy. However, the 2006 policy language has been modified to make it clear that the Severability provision applies even in situations where only part of a provision of the policy has been declared invalid or unenforceable.

Same coverage. The addition of this Section in

(a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title or the lien of the Insured Mortgage that are adverse to the Insured and to interpret and and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

**17. NOTICES, WHERE SENT**

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 [fill in].

**SCHEDULE A**

Name and Address of Title Insurance Company:

[File No.: ] Policy No.:

Loan No.:

Address Reference:

Amount of Insurance: \$ [Premium: \$ ]

Date of Policy: [at a.m./p.m.]

1. Name of Insured:

**16. NOTICES, WHERE SENT.**

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at [fill in].

**SCHEDULE A**

[File No. \_\_\_\_\_] Policy No. \_\_\_\_\_

Amount of Insurance \$ \_\_\_\_\_

[Premium \$ \_\_\_\_\_]

Date of Policy \_\_\_\_\_ [at a.m./p.m.]

1. Name of Insured:

the 2006 policy does not result in a reduction of coverage when comparing the 2006 policy to the 1992 policy. Subsection 16(a) has been added to the 2006 policy to make it clear what law applies in interpreting and enforcing the terms of the policy. Subsection 16(b) has been added to the 2006 policy because of increased cross-border transactions between border countries.

Same coverage. The language has been cleaned up to fit with other language changes in the policy.

Same coverage. Even though the coverage remains the same, there are changes in the 2006 policy Schedule A that make this policy easier to use both from the Insurer's and the Insured's perspective. First, the 2006 policy Schedule A provides for the Name and Address of the Title Insurance Company whose policy is being issued. The reason for these changes is that occasionally Schedule A becomes separated from the rest of

2. The estate or interest in the Land that is encumbered by the Insured Mortgage is:
3. Title is vested in:
4. The Insured Mortgage and its assignments, if any, are described as follows:
5. The Land referred to in this policy is described as follows:
- [6. This policy incorporates by reference those ALTA endorsements selected below:

- 4-06 (Condominium)
- 4.1-06
- 5-06 (Planned Unit Development)
- 5.1-06
- 6-06 (Variable Rate)
- 6.2-06 (Variable Rate -- Negative Amortization)
- 8.1-06 (Environmental Protection Lien)  
Paragraph b refers to the following state statute(s):
- 9-06 (Restrictions, Encroachments, Minerals)
- 13.1-06 (Leasehold Loan)
- 14-06 (Future Advance - Priority)
- 14.1-06 (Future Advance - Knowledge)
- 14.3-06 (Future Advance - Reverse Mortgage)
- 22-06 (Location) The type of improvement is a \_\_\_\_\_, and the street address is as shown above.]

**SCHEDULE B**

[File No.     ] Policy No.

**EXCEPTIONS FROM COVERAGE**

[Except as provided in Schedule B - Part II,] t[or T]his policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:

[PART I

2. The estate or interest in the land which is encumbered by the insured mortgage is:
3. Title to the estate or interest in the land is vested in:
4. The insured mortgage and assignments thereof, if any, are described as follows:
- [5. The land referred to in this policy is described as follows:]
- If Paragraph 5 is omitted, a Schedule C, captioned the same as Paragraph 5, must be used.

SCHEDULE B - PART I

[File No. \_\_\_\_\_] Policy No. \_\_\_\_\_

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

PART I

the policy. It is then almost impossible to determine the name and address of the Title Insurance Company to whose policy the Schedule A pertains. Secondly, the 2006 policy Schedule A provides for an Address Reference. The Address Reference was added for the convenience of the Insured to more easily cross reference their loan file, the policy and the property to which each pertains. Lastly, the 2006 policy Schedule A contains an optional 6th paragraph that would, if used, incorporate by reference certain commonly requested endorsements. This particular paragraph makes it much more efficient for

both the Insurer and the Insured because the endorsements selected by checking the box do not have to be attached to the policy to be effective. The 1992 policy provided an option for describing the land in paragraph 5 of Schedule A or eliminating paragraph 5 of Schedule A and instead attaching a Schedule C which contains the legal description for the land. The 2006 policy does not allow for this type of a selection. The reason the "Schedule C option" is no longer needed is because policies today are produced through word processing or automated systems.

Same coverage. Even though the coverage is the same, the 2006 policy Schedule B language has been modified for easier reading and clarity.

PART II

In addition to the matters set forth in Part I of this Schedule, the Title is subject to the following matters, and the Company insures against loss or damage sustained in the event that they are not subordinate to the lien of the Insured Mortgage:]

1. [POLICY MAY INCLUDE REGIONAL EXCEPTIONS IF SO

2. DESIRED BY ISSUING COMPANY]

[VARIABLE EXCEPTIONS SUCH AS TAXES, EASEMENTS, CC & Rs, ETC.]

Note: If there are matters which affect the title to the estate or interest in the land described in Schedule [A][C], but which are subordinate to the lien of the insured mortgage, Part II of Schedule B must be added, or Part I of Schedule B must contain the following statement:

"Matters which affect the title to the estate or interest, but which are subordinate to the lien of the insured mortgage"

SCHEDULE B - PART II

In addition to the matters set forth in Part I of this Schedule, the title to the estate or interest in the land described or referred to in Schedule [A][C] is subject to the following matters, if any be shown, but the Company insures that these matters are subordinate to the lien or charge of the insured mortgage upon the estate or interest:

Denotes added coverage or benefit in the 2006 Policy from the 1992 Policy

