

Panelists



- Panelists:
 - J. Donald Cole, Chief Underwriting Counsel – Fidelity National Financial
 - James L. Gosdin, Sr. Vice President, Sr. Underwriting Counsel and Chief Reinsurance Counsel, STGC – Stewart Title Guaranty Company
 - Jack R. Zachow, Sr. Counsel and Reinsurance Manager – Old Republic National Title Insurance Company
 - Gael Uhlig, Vice President and Title Counsel – First American Title Insurance Company
 - Moderator:
Judy Wiesner, VP, National Recording – First American Lenders Advantage
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The 2006 ALTA Loan and Owner's Policies

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

Major Benefits of the New Loan Policy

- Recognition of funds disbursed after the policy date as an element of damages to the extent they are secured by applicable law.
 - Automatic coverage against matters arising in the time gap between closing and recording, except for certain tax matters.
 - Expansion of the parties constituting the insured.
 - Positive insurance against police power losses in instances where notices of violation or of enforcement are recorded in the land records.
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Major Benefits of the New Loan Policy – con't.

- Positive insurance against preferences caused by delayed recording or failure of recording to provide notice.
 - Increases in insurance amount and insured settlement options in when the insurer elects to litigate rather than settle and is not successful.
 - Inclusion of various penalties and exit fees as elements of damages if they are valid under applicable law.
 - Express coverage for defense against right of access claims.
 - Removal of the non-cumulative liability recovery limitation for junior mortgages.
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Major Benefits of the New Owner's Policy

- The new Owner's Policy provides all of the benefits listed above for the Loan Policy that are not unique to the insured mortgage plus the following:
 - » Elimination of the coinsurance clause.
 - » Elimination of the apportionment clause.
 - » Broader definition of Insured eliminates the "Fairway" problem and allows wholly owned transferees standing to make claims.
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Possible Detriments of the New Policies

- The arbitrable amount threshold has doubled from \$1 million to \$2 million.
 - There is really more of a recognition of inflation than an absolute increase.
 - Average annual compounded increase of 3.72 percent over the 19 years.
 - Second arbitration issue is the limitation of class actions per to the specified arbitration rules.
 - Not unique to the ALTA rules also part of the Code of Procedure of the National Arbitration Forum.
 - Forum for bringing suit or arbitration is the jurisdiction in which the land lies.
 - Cannot force jurisdiction on courts.
 - But could limit the available forums for actions against the insurer.
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Endorsements

- The existing standard ALTA endorsements were modified
 - No substantive changes, only paragraph and definition references
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The Short Form – Endorsements and Commitments

- Where is the Short Form Loan Policy These Days?
 - » Everywhere in the Solar System



The Short Form - con't.

- Who Likes the Short Form Loan Policy?
 - » Everyone: Fannie, Freddie, Ginnie, You, Us, Most Lenders

 - How Often Issued?
 - » 33% of the time

 - Some States Love:
 - » Alabama, Arkansas, Georgia, Indiana, Kentucky, Louisiana, Minnesota, Mississippi, North Dakota, South Carolina, Tennessee, Vermont, West Virginia

 - Some States Change:
 - » Examples are Florida, New Mexico, New York, Oklahoma, Oregon, Texas
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The Short Form – con't.

- New Short Form Loan Policy
 - » Incorporated Endorsements – 4.1-06, 5.1-06, 6-06, 6.2-06, 7-06, 8.1-06, 9-06
 - » Optional Endorsements – 4-06, 5-06, 7.1-06, 14-06, 14.1-06, 14.3-06, 22-06
 - » Modified Schedule B – Three Exceptions Left
 - CC&Rs
 - Easements
 - Minerals
 - » Gap Coverage, Survey Coverage, Tax Coverage All Incorporated
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The Short Form – con't.

- Other Short Forms
 - » Short Form Commitment
 - » Short Form Owner's Policy
 - » Commercial Short Form Loan Policy
 - » Short Form Expanded Coverage Residential Loan Policy
 - » Short Form Residential Limited Coverage Junior Loan Policy
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The Short Form – con't.

- Sample Closing Instructions
 - » Long Form Title Policy standard requirements Short Form Title Policy Requirements
 - » Short Form Policy or Regular Title Policy with Extended Coverage
 - » The ALTA Short Form Expanded Coverage Residential Loan Policy One-to-Four Family, adopted October 22, 2003 or the ALTA approved form of lender's final title policy, are acceptable
 - » The Title Insurance Policy must be the ALTA Short Form Loan Policy adopted in 1992, 2000, or 2006, or must be a state promulgated Short Form Loan Policy
 - » The ALTA Short Form Residential Loan Policy (10/17/92) will be issued for this loan settlement, if available
 - » (Mortgage Bankers Association Model Draft General Closing Instructions at C.7) "The Title Policy must be a standard long form ALTA Lender's Title Policy (or the state-specific equivalent). Lender will accept a short form
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The Short Form – con't.

- New, Revised, and Always Awesome Endorsements
 - » ALTA Endorsement 4 (Condominium) (6/17/06)
 - » ALTA Endorsement 4.1 (Condominium) (6/17/06)
 - » ALTA Endorsement 5 (Planned Unit Development) (6/17/06)
 - » ALTA Endorsement 5.1 (Planned Unit Development) (6/17/06)
 - » ALTA Endorsement 7.1 (Manufactured Housing Unit-Conversion; Loan) (6/17/06)
 - » ALTA Endorsement 7.2 (Manufactured Housing Unit-Conversion; Owner's) (6/17/06)
 - » ALTA Endorsement 9 (Restrictions, Encroachments, Minerals) (6/17/06)
 - » ALTA Endorsement 9.1 (Restrictions, Encroachments, Minerals-Owner's Policy-Unimproved Land) (6/17/06)
 - » ALTA Endorsement 9.2 (Restrictions, Encroachments, Minerals-Owner's Policy-Improved Land) (6/17/06)
 - » ALTA Endorsement 9.3 (Restrictions, Encroachments, Minerals-Loan Policy-Future Improvements Re Minerals Extraction) (6/17/06)
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The Short Form – con't.

- » ALTA Endorsement 9.4 (Restrictions, Encroachments, Minerals-Owner's Policy-Unimproved Land-Future Improvements Re Minerals Extraction) (6/17/06)
 - » ALTA Endorsement 9.5 (Restrictions, Encroachments, Minerals-Owner's Policy-Improved Land-Future Improvements Re Minerals Extraction) (6/17/06)
 - » ALTA Endorsement 14.3 (Future Advance-Reverse Mortgage) (6/17/06)
 - » ALTA Endorsement 22 (Location) (6/17/06)
 - » ALTA Endorsement 22.1 (Location and Map) (6/17/06)
 - » All of the Same Endorsements with an "XX-06" Designation for the 2006 Policies (6/17/06)
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Title Insurance Policy Deficiencies

- The Problem
 - » An unenforceable title insurance policy, that is, the title company may deny coverage because of the “deficiency”
 - » Inability to sell the loan
 - » Investor requires repurchase loan in event of default or claim based on “minor” errors
 - » “Minor” violations of Custodial Agreement or Representations and Warranties
 - » “Minor” violation of GSE guidelines/manuals
 - » Whether or not the original policy must be “down dated” after a re-recording
 - » Distinguish changes in payment terms from misspellings
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Title Insurance Policy Deficiencies – con't.

- Examples of what may be considered “deficiencies”
 - » Missing jacket on long form policy
 - » Missing Schedule B Addendum on Short Form Policy
 - » Missing requested endorsement on Long Form Policy
 - » Missing agent’s countersignature
 - » Photocopy or fax policy received instead of original
 - » Incorrect (e.g. typos) or missing entries, or a variance between them in the mortgage and the policy
 - Property address, street type (i.e. Avenue instead of Street) especially on the Short Form Policy
 - Borrowers’ names
 - Insured’s name, Note: standard ALTA policies all include owners of the indebtedness, and successors and assigns
 - Trustee’s name in case of Deed of Trust
 - Policy Amount
 - Legal description
 - Date of policy
 - Recording data/information (e.g. date, book, page, document number)
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Title Insurance Policy Deficiencies – con't.

- Options
 - » New, corrected policy (replacement policy)
 - Error is in the policy only
 - Error is in the recorded mortgage (and perhaps the policy)
 - » An endorsement to the policy correcting the error
 - » An indemnity/hold harmless letter to the lender, custodian, etc. addressing the error
 - » A “general” letter from the title policy issuing company listing deficiencies that the custodian/customer agree are not material enough to be objectionable in case of any problems listed in “The Problem” the section above.
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Property Report

- Also known as “Ownership and Encumbrance Report”, “O&E”, “Tract Search”
 - Widely used in equity loan origination
 - These reports provide a low cost, quick turnaround alternative to traditional title
 - These reports are NOT any form of Title Insurance, Title Opinion or Title Guaranty
 - » They are simply a reflection of the public record as it stands on the date of the search
 - These reports may have a warranty for loss or damage due to incorrect information
 - » Any warranty will be contractually limited, if not limited by law or regulation
 - These reports are usually “current owner” searches
 - » No research is normally conducted for previous owners
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Property Report – con't

- Items typically searched and reported include:
 - » Vesting deed(s) for current owner from which ownership and legal descriptions are taken
 - » Voluntary liens given by the current owner, e.g., mortgages or deeds of trust
 - » Involuntary liens against the current owner, e.g. federal tax liens
 - » Pending civil matters in which the current owner is a defendant, e.g., lawsuits
 - » Civil judgments against the current owner
 - » Real estate and related tax payment information
 - » Probate and family matters may or may not be searched, depending on searcher's judgment and local custom
 - Lender is not required by the title company to "clear" any items
 - » Lender determines its desired lien position from the report and clears accordingly
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Alternative Title Policy

- Known by various proprietary names and acronyms
 - NOT mortgage impairment insurance (casualty product)
 - Widely used in equity loan origination
 - Must be 1-4 family, improved land
 - Generally more cost efficient than full ALTA Policy and Junior Loan Policy
 - “Master” form of policy
 - » One master policy issued per originator
 - » Per loan transaction certificates evidence inclusion under master policy
 - Pre-closing report usually limited to legal description and vesting information
 - » Lien information and lien position determined by insured lender
 - Review of borrower credit report
 - Affidavit containing borrower disclosures
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Alternative Title Policy – con't.

- The Alternative Title Policy generally insures against loss or damage due to:
 - » The mortgagor or trustor shown in the insured mortgage or deed of trust not being the named grantee in the last document recorded in the public records purporting to vest the mortgagor's or trustor's estate or interest to the land
 - » The description of the land not being sufficient to impart constructive notice to purchasers and encumbrancers for value and without knowledge of the mortgage or deed of trust
 - » Any undisclosed monetary lien affecting the title recorded in the public records
 - » Any undisclosed ad valorem taxes or assessments of a governmental taxing authority which constitute a lien on the title and which appear on date of policy in the official ad valorem tax records where the land is located
 - » Invalid execution of the insured mortgage or deed of trust because of forgery, fraud, undue influence, duress, incompetency, incapacity or impersonation
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Alternative Title Policy – con't.

- » Unauthorized execution of the insured mortgage or deed of trust
 - Under a falsified or invalid power of attorney
 - By a trustee or trust established for estate planning purposes
 - » The failure of future advances under the insured mortgage or deed of trust to have the same lien priority as the initial advance
 - » The invalidity or unenforceability of the lien of the insured mortgage or deed of trust resulting from provisions which provide for changes in the rate of interest
 - » Loss of priority of the lien of the insured mortgage or deed of trust because of changes in the rate of interest calculated according to a formula contained in the insured mortgage or deed of trust
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Alternative Title Policy – con't

- The Alternative Title Policy generally does not insure:
 - » Any defect in the chain of title other than monetary liens, e.g., outstanding ownership interests
 - » Marketability of title
 - » The validity or enforceability of the insured mortgage or deed of trust other than as stated above
 - Revolving credit and variable rate endorsements are built in to the policy, and no other endorsements are generally available
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Junior Loan Policy

- Also known as a “JLP” and other various proprietary acronyms
 - Widely used in equity loan origination
 - Must be 1-4 family, improved land
 - Generally more cost efficient than full ALTA Policy
 - Issued without a commitment
 - Contains transaction specific exceptions
 - » Mortgage and deeds of trust
 - » Involuntary liens, e.g., federal tax liens
 - » Taxes
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Junior Loan Policy – con't.

- Based on a limited, usually “current owner” search of the public records, the Junior Loan Policy generally insures against loss or damage due to:
 - » The grantee named in the policy not being the named grantee in the last document recorded in the public records purporting to vest the fee estate in the land
 - » The description of the land in the policy not being the same description as contained in the last document recorded in the public records purporting to vest the fee estate in the land
 - » Any undisclosed monetary lien affecting the title recorded in the public records
 - » Any undisclosed ad valorem taxes or assessments of a governmental taxing authority which constitute a lien on the title and which appear on date of policy in the official ad valorem tax records where the land is located.
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Junior Loan Policy – con't.

- The Junior Loan Policy generally does not insure:
 - » Any defect in the chain of title other than monetary liens, e.g., outstanding ownership interests
 - » Marketability of title
 - » The validity or enforceability of the insured mortgage or deed of trust
 - JR 1 Endorsement
 - » “Datedown” endorsement”
 - Mortgage or deed of trust recording information and amount
 - Intervening matters, e.g., liens and deeds (no GAP coverage)
 - JR 2 Endorsement
 - » Combination variable rate and revolving credit endorsement
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