

# ENDORSEMENTS AND AFFIRMATIVE COVERAGE

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# LOUISIANA BANKERS ASSOCIATION

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"THE COMPUTER SAYS I NEED TO UPGRADE MY BRAIN  
TO BE COMPATIBLE WITH ITS NEW SOFTWARE."

# TODAY'S OBJECTIVES

- Refresher on Title Insurance
- Review of Standard Endorsements
- New 2012 ALTA Endorsements
- What is Affirmative Coverage?
- Making a Claim

# WHAT IS TITLE INSURANCE?

- Contract of Indemnity
  - ✓ Past – not future
- Owner's and Lenders

# POLICIES: LOAN & OWNER'S

## **BOTH**

- Title vested other than as stated
- Defects/liens not listed
- Unmarketability of title
- Lack of access

## **LOAN ONLY**

The first four and:

- Invalidity of insured lien
- Any superior lien
- Labor lien priority
- Assignment (if listed)

# WE DO NOT INSURE:

1. Exclusions
2. Exceptions

# EXCLUSIONS:

1. Government Laws and Regulations
2. Eminent Domain
3. Problems ‘created or assumed’ by insured
4. Bankruptcy-Fraudulent Conveyances



# EXCEPTIONS:

1. Survey matters
2. Construction liens not filed
3. Parties in possession
4. Matters noted in title exam such as: restrictions, easements, etc.

# EXPANDED COVERAGE ENDORSEMENTS

- MOHO ALTA 7 Modifications ALTA 11
- Tie-In ALTA 12 Non-Imputation ALTA 15
- Access/Utilities ALTA 17
- Tax Parcel ALTA 18 Contiguity ALTA 19
- Address ALTA 22 Survey ALTA 25
- Encroachments ALTA 28

# EXCLUSION ENDORSEMENTS

- TIL ALTA 2      Zoning ALTA 3
- Environmental ALTA 8
- Doing Business ALTA 24
- Usury ALTA 27

# 'CONDITIONS' ENDORSEMENTS

- Leasehold ALTA 13
- Future Advances ALTA 14
- Mezzanine ALTA 16
- First Loss ALTA 20
- Deletion of Arbitration

# 2012 ALTA ENDORSEMENTS

- 15 New Endorsements
- 7 Revised Endorsements
- Adopted 4-2-2012
- Not yet filed/approved in all states

# ALTA ENDORSEMENT 3.2-06 (ZONING-LAND UNDER DEVELOPMENT)

- New Form – Louisiana Approved
- Provides coverage related to compliance of existing and planned improvements
- Existing ALTA Endorsements 3-06 and 3.1-06 do not meet this need
- Will require site and elevation plans, among other underwriting criteria

# ALTA 9-06 SERIES

- Generally speaking, previous versions addressed three areas:
  - ✓ Violations of covenants, conditions, restrictions
  - ✓ Encroachments
  - ✓ Mineral rights

# ALTA 9-06 SERIES (CONTINUED)

- New/revised Endorsements:
  - ✓ Better define what is covered
  - ✓ In some cases, remove coverage for private covenants, encroachments, and mineral rights
  - ✓ Similar coverage can be provided through other endorsements



# ALTA 9-06 SERIES (CONTINUED)

- What forms will be available?
  - ✓ ALTA Endorsements 9-06 and 9.3-06 (Loan Policies), 9.1-06 and 9.2-06 (Owner's Policies), and 9.6-06 (Loan Policies) are revised – Louisiana Approved
  - ✓ ALTA Endorsements 9.4-06 and 9.5-06 (Owner's Policies) are withdrawn – Not Available in Louisiana
  - ✓ ALTA Endorsements 9.7-06 (Loan Policies) and 9.8-06 (Owner's Policies) are new – Louisiana Approved
  - ✓ See 'Desk Reference'

# ALTA 9-06 SERIES (CONTINUED)

- Loan Policies
  - ✓ 9-06 still available as revised
  - ✓ “Covenant” and “Improvement” defined
  - ✓ No longer covers certain Covenants that establish an easement, provide a lien for liquidated damages, provide for a private charge or assessment, provide for an option to purchase, a right of first refusal, or the prior approval of a future purchaser or occupant (now called “Private Rights”)
  - ✓ Minerals coverage has additional limitations

# ALTA 9-06 SERIES (CONTINUED)

- Loan Policies
  - ✓ 9.3-06 still available, but is now more narrow: in addition to lacking “Private Rights” coverage removed from 9-06, also lacks coverage for encroachments or mineral rights
  - ✓ 9.6-06 is a new endorsement specifically designed to provide similar (but not identical) “Covenants” coverage that was removed from 9-06, which it defines as a “Private Right”

# ALTA 9-06 SERIES (CONTINUED)

- Loan Policies
  - ✓ 9.7-06 is a new endorsement for Land Under Development
  - ✓ Includes certain coverage for Covenants, encroachments, mineral rights, including enforced removal of or damage to a Future Improvement (which is defined)
  - ✓ Does not cover Private Rights
  - ✓ The 9.7-06 is a 9-06 (4-2-12) that includes Future Improvements

# FOR “OLD” ALTA 9 LOAN POLICY COVERAGE

- Use the new 9.06 and the 9.7-06 (4-2-2012)
- Close to the same coverage

# FOR “OLD” ALTA 9.3 LOAN POLICY COVERAGE-FUTURE IMPROVEMENTS CONSIDER USING:

ALTA 2012

9.3

+ 9.6

+ 28.1

+35.3

OR

- ALTA 2012
- 9.7 with 9.6

BASED ON ALL THE HEAD TILTS,  
MAYBE I'D BETTER EXPLAIN  
THIS AGAIN...



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# ALTA 9 OWNER'S COVERAGE IN 2012

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# DISTINGUISH IMPROVED VS UNIMPROVED

- In 2012 consider:
  - Private Rights not available to Owner

For Unimproved Land:

Combine  $28.1 + 35.3 + 9.1$

For Improved Land:

combine  $28.1 + 35 + 9.2$

# ALTA 28-06 SERIES

- ALTA Endorsement 28-06 not a “new” endorsement, but may be useful in providing coverage not included in ALTA 9 series
- Available for Loan Policy only
- Insures against loss or damage by reason of damage to or enforced removal or alteration of an existing building as the result of an easement referred to in a Schedule B exception
- Louisiana Approved

# ALTA 28-06 SERIES (CONTINUED)

- ALTA Endorsement 28.1-06 is a new endorsement; available for Owner's Policy or Loan Policy
- 28.1-06 insures against loss by reason of the following unless excepted in Schedule B:
  - ✓ An Improvement on the subject land encroaching onto adjoining land or encroaching onto an easement on the subject land
  - ✓ An Improvement on adjoining land encroaching on the subject land

# ALTA 28-06 SERIES (CONTINUED)

- ALTA Endorsement 28.1-06 also insures against loss by reason of:
  - ✓ Enforced removal of an Improvement on the subject land as a result of encroachment onto an easement if easement holder seeks enforced removal due to easement use or maintenance
  - ✓ Enforced removal of an Improvement on the subject land that encroaches onto adjoining land
- 28.1-06 can specify encroachments not covered

# MINERAL SURFACE DAMAGE ALTA 35 SERIES FOR 2012

Improvement is variously defined in each

- ‘Building’ ALTA 35
- ‘Building, structure...paved road, walkway, parking area, driveway, or curb...’ ALTA 35.1
- “..improvement...itemized....” ALTA 35.2
- “Enforced Removal or Alteration”

# MINERAL SURFACE DAMAGE ALTA 35 SERIES FOR 2012

- Exclusion is added:
  - “resulting contamination, explosion, fire, fracturing, vibration, earthquake, subsidence and negligence...”

# ENERGY ENDORSEMENTS ALTA 36 SERIES

- Wind and Solar Projects
- Specialized endorsements for specialized transactions
  - Valuation language, energy project definitions, severable improvements coverage

# AFFIRMATIVE COVERAGE

For clarity of coverage, consider:

- ALTA 34-06 (08-01-11) Identified Risk
- Gives indemnity and defense cost coverage but protects Company from Marketability Claims



# CLAIMS

- Process Addressed in Conditions
- Notice of Claim
- Duty of Insured Claimant to Cooperate
- Arbitration Clause not available in Louisiana
- Notices, Where Sent

# THANK YOU

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The logo for Kean Miller LLP, Attorneys at Law. It features the name "KEAN MILLER" in a large, serif font, with "LLP" in a smaller font to the right. Below "MILLER" is the text "ATTORNEYS AT LAW" in a smaller, all-caps font. A vertical line separates "KEAN" and "MILLER".

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