

BASIC CONCEPTS

Title Commitment

The title commitment, as its name implies, is a commitment or promise to issue a policy of title insurance consistent with the terms, conditions, and exceptions set forth in the commitment. Although liability attaches to the Company (underwriter) for actual loss suffered by the proposed insured in reliance on the contents of the commitment, the commitment, itself, is not a policy of insurance. Furthermore, the commitment to insure ceases to be effective six months after the date of issuance.

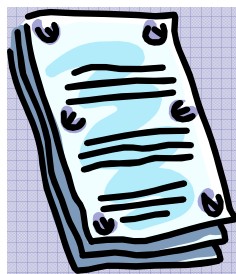
Loan Policy

The loan policy insures the lender's interest in the property being insured. The policy insures that the lien of the mortgage is enforceable and that the insured lender has a valid, priority lien on the property subject to the terms, conditions, exclusions, and exceptions contained within the policy. The policy becomes effective as of the date and time the mortgage is recorded with the Recorder, and exists only for the life of the loan. In other words, the policy extinguishes or expires upon satisfaction of the debt.

Owner's Policy

The owner policy insures the owner's interest in the property being insured. It becomes effective as of the date and time the deed is recorded with the Recorder and insures that the owner has:

1. Title to the property;
2. Legal access to the property;
3. Marketable title to the property; and
4. Property is free of all defects, liens or encumbrances other than those matters set out on Schedule B as exceptions and the terms, conditions, and exclusions reflected in the policy jacket.



Loan Policy of Title Insurance

Loan policies of title insurance have been drafted by the American Land Title Association (ALTA), the national trade association of the title industry. These policies are accepted throughout the country. The standard “long form” loan policy is the 1992 policy. Other forms may only be issued at special instruction of the Company.

The loan policy insures a lender that the recorded mortgage has priority except for matters shown on Schedule B. The most common mortgage is the purchase money mortgage; however, second and /or other mortgages may be insured with exception taken to the other mortgages having a superior priority. The insurance coverage is normally the amount of the note secured by the mortgage but may be written for an amount in excess of the note to include potential accrued interest, foreclosure costs and/or negative amortization. The coverage may be less than the note in situations where multiple parcels of real estate are mortgaged and the lender has made an allocation as to the real estate which is the subject of the policy and the real estate that is not included in the policy.

The loan policy coverage is not limited to the public records but extends to matters not discoverable in the public records such as forgery, fraud, and errors in the records. The mortgage banking industry, being cognizant of these “hidden defects,” has demanded protection from these defects and this protection is the Loan Policy of Title Insurance as drafted and promulgated by the American Land Title Association (ALTA). The loan policy of title insurance has a standard format which includes the general Contract of Insurance and its Exclusions, Conditions, and Stipulations, and further, the identifying the Schedule A and Exceptions in Schedule B. This loan policy, although standardized in language, may appear in several forms including a Short Form Loan Policy, Master Loan Policy or Leasehold Policy. The insured lender may also require one or more standard endorsements expanding the normal liability to cover other matters of concern to the lender or, in some circumstances, the lender’s counsel may require customized endorsements for unique circumstances.

Short Form Residential Loan Policy

The Short Form Residential Loan Policy affords the lender the same basic coverage as the ALTA Loan Policy but there are some restrictions regarding the use of these policies, the guidelines for which are as follows:

- ◆ Residential one-to-four family
- ◆ The improvements must be totally completed, with no construction in progress
- ◆ The property must be part of a properly created and recorded platted subdivision and must be a whole and complete building lot within said subdivision OR it must be a “metes and bounds” description for property LESS THAN 5 acres
- ◆ The loan amount must not be in excess of \$500,000.00
- ◆ Seller (or borrower in a refinance) must sign an affidavit stating that no major improvements have been done on the property since they obtained title
- ◆ Not capable of being endorsed other than those provided on the policy form
- ◆ Obtain copy of old survey (this may be waived under certain circumstances)

The Schedule A and Schedule B constitute the entire policy. There is no separate policy jacket as in the ALTA loan policy.

Owner's Policy of Title Insurance

Owner's Policies of Title Insurance have been drafted by the American Land Title (ALTA), the national trade association of the title industry. These policies are accepted throughout the country.

The Owner's Policy insures the interest of an owner in real property. The most common insurable interest is fee simple ownership; however, leasehold interests can be insured. The insurance coverage is normally the purchase price of the real estate but may be an amount in excess of the purchase price to include the cost of contemplated improvements. The coverage amount for a leasehold interest should be either the aggregate amount of rent for the primary term or the fair market value of the real property, whichever is less.

The Owner's Policy coverage is not limited to the public records by extends to matters not discoverable in the public records such as forgery, fraud, and errors in the records.

The 1992 ALTA Owner's Policy is the present standard form. This form provides for prorate payment of losses when the insured is severely underinsured and for arbitration when the policy liability is less than one million dollars.

Residential Limited Coverage Junior Loan Policy

The Residential Limited Coverage Junior Loan Policy, as the name implies, is a loan policy of title insurance for a secured line of credit and other forms of second, third, etc. mortgages secured by a one-to-four family residence or a condominium unit. Additionally, the insurance coverage is limited compared to the coverage available under the 1992 ALTA Loan Policy.

The coverage provided by the Residential Limited Coverage Junior Loan Policy includes insurance against loss by reason of the Grantee identified in Schedule A not being the named grantee on the last document in the public records purporting to vest title to the fee estate or the legal description of the property; in the policy not being the same as that contained in the recorded document/instrument. It also insures the insured lender against loss due to any monetary lien affecting the title, recorded in the public records and not shown as an exception on Schedule B of the policy as well as against any loss due to real estate taxes or assessments which appear in the real estate tax records on the date of the policy.

The Junior Loan Policy cannot be issued if there is no first mortgage in place.

Endorsements

There will be many instances in which it will be necessary to amend or correct commitments, policies or title guaranties. Insureds will also request special coverages which are outside the purview of normal commitments and title policy coverages. There are a number of endorsements which are available to the agent. There are certain endorsements that are most commonly requested (see list below). Endorsements commonly available through First American and Ohio Bar Title:

1. Street Assessment (ALTA 1)
2. Truth in Lending (ALTA 2)
3. Zoning Endorsement—Unimproved (ALTA 3.0)
4. Zoning Endorsement—Improved (ALTA 3.1)
5. Condominium Endorsement—Loan (ALTA 4.0)
6. Condominium Endorsement—Loan (ALTA 4.1)
7. Planned Unit Development Loan (ALTA 5.0)
8. Planned Unit Development Owners (ALTA 5.1)
9. Variable Rate Mortgage Endorsement (ALTA 6.0)
10. Variable Rate Mortgage Endorsement (ALTA 6.1)
11. Variable Rate Mortgage Endorsement—Negative Amortization (ALTA 6.2)
12. Manufactured Housing Unit Endorsement (ALTA 7)
13. Environmental Protection Lien Endorsement (ALTA 8.0)
14. Environmental Protection Lien Endorsement—Non-residential (ALTA 8.1)
15. Restrictions, Encroachments, and Mineral Endorsement (ALTA 9.0 & ALTA 9.1)
16. Restrictions, Encroachments, and Mineral, Owner's Policy, Improved Land (ALTA 9.2)
17. Assignment of Mortgage Loan (ALTA 10)
18. Assignment and Date Down—Extension (ALTA 10.1)
19. Mortgage Modification Endorsement (ALTA 11)
20. Aggregation Endorsement (ALTA 12)
21. Leasehold—Owner's (ALTA 13)
22. Leasehold—Loan (ALTA 13.1)
23. Future Advance—Priority (ALTA 14)
24. Future Advance—Knowledge (ALTA 14.1)
25. Future Advance—Letter of Credit (ALTA 14.2)
26. Non-imputation—Full Equity Transfer (ALTA 15)
27. Non-imputation—Additional Insured (ALTA 15.1)
28. Non-imputation—Partial Equity Transfer (ALTA 15.2)
29. Mezzanine Financing (ALTA 16)
30. Access and Entry—Direct (ALTA 17)
31. Access and Entry—Indirect (ALTA 17.1)
32. Single Tax Parcel (ALTA 18)
33. Multiple Tax Parcels (ALTA 18.1)
34. Contiguity—Multiple Tax Parcels (ALTA 19)
35. Contiguity—Single Tax Parcel (ALTA 19.1)
36. Deletion of Creditor's Rights Exclusion
37. Creditors Rights Affirmative (ALTA 21)
38. Survey Coverage: Loan Policy
39. Survey Coverage: Owner's Policy
40. CLTA Form 100 & other so-called "Comprehensive Endorsements"
41. Doing Business Endorsement
42. Owner's Inflation Endorsement
43. Commercial Revolving Credit Endorsement
44. Home Equity Revolving Credit Endorsement
45. Partnership/LLC—Permitted Transfer "Fairway" Endorsement
46. First Loss Payable Endorsement
47. Last Dollar Endorsement
48. Usury Endorsement
49. Balloon Endorsement
50. Address Endorsement CLTA 116
51. Construction Loan Disbursement Endorsement
52. Gap Endorsement
53. Blank Endorsement

Commitment

Schedule A

Schedule A sets forth the basic information relative to the policy or proposed insurance for a commitment, the identity of the title holders to the property, and legal description.

Item 1: For purposes of completing Schedule A, the information relative to the policy or policies to be issued (Item 1), needs to be fully completed. If either the name of the proposed insured or the amount is unknown, do not leave blank; rather, the phrase “To be determined,” or words of similar import, should be noted. If a commitment is being issued for both the contemplated lender and purchase, it is acceptable to merely issue one commitment with items 1(a) and 1 (b) completed. In doing so, caution must be noted if the commitment indicates elsewhere the final policy will provide affirmative or special coverage to only one of the insured parties, usually the lender. Some sort of distinguishing language in such coverage must be inserted to avoid inadvertently affording the purchaser such unintended protection. Separate commitments may be issued as an alternative.

Item 2: The identity of the title holder should appear in Item 2 as it appears in the public records. Generally, this is merely ascertained by reference to the title deed, but paying attention to the estate actually created. For example, Mary Smith may convey to Tom Jones and Lucy Jones, but reserving unto herself a life estate. All three parties and their interest should appear in Item 2. Also, this item can reflect information ascertained elsewhere other than the title deed. Suppose John and Mary White appear as the Grantees in the deed, but the title examination revealed Mary died on December 18, 1992. Item 2 should read: “John White and Mary White, Husband and Wife, (as of the date of her death December 17, 1992).” Finally, it is not *necessary* to make reference to the instrument and recording information by which the present title holders acquired title, but there is no harm in doing so either.

Item 3: The legal description should be entered under Item 3. If the legal description also contains an easement, it is not necessary to include the easement under Item 3 if the easement is an exception to title. Rather, it would be better to include it under Schedule B, Section II. Additionally, if the legal description has as its beginning point a center line of a road, an exception to the rights of the public to use that road needs to appear in Schedule B, Section II. Similarly, if the legal description makes reference to acreage, an exception as to quantity should be noted under Schedule B, Section II.

Commitment (continued)

Schedule B

Section I: Schedule B, Section I (B-1), should be used to accomplish two purposes. First, to put the parties on notice of what is required to allow issuance of a policy. Generally, this is a deed and mortgage although other documents may also be noted as required. For example, land sale proceedings where the title holder is a minor, certificates of partnership, or survivorship affidavits. If the title holder is married, the deed requirement must make reference to the spouse releasing dower. Similarly, if the borrower is married, a requirement of the spouse releasing dower on the mortgage should also be noted. If marital status has not been determined, use the phrase, “with release of dower, if any,” in the appropriate places.

Secondly, B-1 can be used to impart information to the parties under the heading “For Information Only.” For example, to make notation there is a power of attorney of record for the proposed purchaser.

Section II: Schedule B, Section II (B-II), makes notations of certain matters to which the final policy will take exception unless eliminated or made inconsequential to our satisfaction.

The first six items are commonly known as the Standard Exceptions and are generally removed or insured through on the loan policy.

Specifically, the Standard Exceptions can be summarized as follows:

Item 1: takes exceptions to those adverse interests appearing of record between the date of the Commitment and the date of recording the deed and mortgage. This item is removed by virtue of the bring-up of the title in anticipation of filing.

Item 2: concerns matters a title examination would not discover, but which could be discovered by reasonable inquiry or inspection.

Item 3: is the survey exception. If the mortgage location survey shows no encroachment, this can be removed on the owner’s policy. Even with an encroachment present, affirmative coverage can generally be afforded the lender, but such coverage is generally not available on the Owner’s Policy.

Item 4: regards mechanics liens which can generally be removed provided a Seller’s affidavit is obtained. More particular supporting documentation may be required in construction loan transactions.

Item 5: concerns tenants, whether under lease agreement or not.

Item 6: deals with taxes and assessments that have been enacted but not yet certified to the tax duplicate. A special tax search, which is basically an inquiry to the municipality in which the property is located, should allow its removal unless, of course, there is a special assessment or tax pending. In that instance, this fact should be reflected under “Taxes” in B-II.

Commitment (continued)

After these standard exceptions, B-II exceptions have a dual focus. First, are matters against the title holder which attach to the real estate. Examples would be mortgages, judgment liens and tax liens. Also, include Federal Tax Liens against the proposed insured/purchaser since these lien would attach to the subject after acquired property in the instant between the time the deed is recorded and the time of recording the mortgage. Second, are those matters against the real estate itself such as restrictions, reservations, easements, mineral rights, and taxes. The former matters are generally satisfied or paid off, or in some instances, subrogated, at the time of the closing; the latter matters survive. As to the lender, in certain circumstances we can provide affirmative coverage or insure over such latter matters. Such protection is generally not something available on the owner's commitment.

Regarding affirmative coverage, care must be used to ensure proper coverage. Already mentioned is the need to differentiate affirmative coverage for the lender, to the exclusion of the purchaser, where only one commitment is being issued for both. Also, be certain the correct affirmative coverage is given. For example, the non-forfeiture assurances apply to restrictions only. They should not be utilized for encroachments. When giving affirmative coverage, the coverage should be prefaced with the following phrase: "The final policy when issued..."

Affirmative coverage may be given either as a note under the item in question or by separate endorsement.

Rate Sheet

Effective January 1, 2003

I. OWNER'S AND LEASEHOLD POLICIES

Up to \$150,000 of liability written	\$5.75/M
Over \$150,000 and up to \$250,000 add	\$4.50/M
Over \$250,000 and up to \$500,000 add	\$3.50/M
Over \$500,000 and up to \$10,000,000 add	\$2.75/M
Over \$10,000,000 add	\$2.25/M
Minimum \$175.00	
Reissue rate 70% within 10 years	

II. FIRST MORTGAGE AND LEASEHOLD LOAN POLICIES

Up to \$150,000 of liability written	\$4.50/M
Over \$150,000 and up to \$250,000 add	\$3.25/M
Over \$250,000 and up to \$500,000 add	\$2.50/M
Over \$500,000 and up to \$10,000,000 add	\$2.25/M
Over \$10,000,000 add	\$2.00/M
Minimum \$125.00	
Reissue and refinance rate 70% within 10 years	
Simultaneous issue: Owner's rate Plus \$100.00	

Effective October 1, 2004

III. TITLE CUARANTIES AND GUARANTEED CERTIFICATE OF TITLE

Up to \$100,000 of liability written	\$3.50/M
Over \$100,000 and up to \$250,000 add	\$3.00/M
Over \$250,000 add	\$2.50/M
Title Guaranty Commitment	\$50.00

IV. PRELIMIARY JUDICIAL REPORTS

\$3.00/M	
Minimum \$75.00	
Supplemental and/or Final Judicial Report \$50.00 each	

Premium Calculations

I. Reissue Rates

Basic Concepts:

- ◆ The reissue rate applies to situations where there is:
 1. An old owner's policy and a new owner's policy
 2. An old owner's policy to a new loan policy
- ◆ The reissue rate applies only to an old policy that is less than 10 years old
- ◆ The reissued policy insures the current owner
- ◆ Up to the amount of the old policy, the rate is 70% of the original rate. To put it another way, it's a 30% discount. Beyond that amount, the full rate is charged in the appropriate rate bracket.
- ◆ The premium for the old policy is what that premium would present-date, not what it was at the time of issuance. (For example, for a \$215,00 policy issued in 1997, the reissue rate now would be calculated from the 2005 rate for a \$215,000 policy, not the 1997 rate.)
- ◆ For Amounts over an even dollar amount, you must round UP to the nearest thousand. For example, a policy for \$231,463.16 should be rounded to \$232,000.00 for purposes of rate calculations.
- ◆ When new policy is less than the old policy, deduct 30% of the new amount and do nothing with the old. (See example #2)
- ◆ For reissue amounts up to \$30,000, physical calculations at \$4.00 per thousand must be performed, as the "rate book" only covers "straight rates," which include rate minimums that don't apply to reissue rates. (See example #4)

EXAMPLE 1:

		<u>Premium</u>	
Old owner's policy from 1998	\$215,000		
New owner's policy	\$278,000		
New owner's policy (straight rate)	\$278,000	\$1,410.50	\$1,410.50
New owner's policy (reissue)	\$215,000	\$1,155.00 x 30% = \$346.50	<u>(\$346.50)</u>
		Net Premium:	\$1,064.00

EXAMPLE 2:

		<u>Premium</u>	
Old owner's policy from 1997	\$310,000		
New owner's policy	\$263,000		
New owner's policy (straight rate)	\$263,000	\$957.50	\$957.00
New owner's policy (reissue)	\$263,000	\$957.50 x 30% = \$287.25	<u>(\$287.25)</u>
		Net Premium:	\$670.25

EXAMPLE 3:

		<u>Premium</u>	
Old owner's policy from 1997	\$252,000		
New owner's policy	\$315,000		
New owner's policy (straight rate)	\$315,000	\$1,087.50	\$1,087.50
New owner's policy (reissue)	\$252,000	\$930.00x 30% = \$279.00	<u>(\$279.00)</u>
		Net Premium:	\$808.50

EXAMPLE 4:

		<u>Premium</u>	
Old owner's policy from 1997	\$24,000*		
New owner's policy	\$293,000		
New owner's policy (straight rate)	\$293,000	\$1,032.50	\$1,032.50
New owner's policy (reissue)	\$24,000	\$96.00 x 30% = \$28.80	<u>(\$28.80)</u>
		Net Premium:	\$1,003.70**

*Whereas the "straight rate" for a \$24,000 policy is the minimum of \$125.00, please note that, because this is reissue, you must calculate the reissue rate (since it is less than \$30,000) at \$4.00 per thousand. Here, \$4.00 x 24 (thousand) is \$96.00.

**Because this transaction will leave the owner underinsured (i.e. they only have a policy on \$24,000, but are borrowing \$293,000), a better solution is for the owner to increase his owner's policy to \$317,000 (the full amount invested). As you can see below, the greater coverage only costs the borrower approximately \$470.00 more. This is done by issuing an endorsement, not by issuing a whole new policy. Please contact a member of the underwriting staff should this situation arise in your practice.

The new calculation would look as follows:

		<u>Premium</u>	
Full amount invested (\$24,000 + \$293,000)	\$317,000	\$1,547.00	\$1,547.00
Previous premium paid	\$24,000	\$175.00	<u>(\$175.00)</u>
			\$1,372.00
		Simultaneous issue:	+\$100.00
		Net Premium	\$1,472.00

II. Refinance Rate

Basic Concepts:

- ◆ The refinance rate applies to a current borrower with an insured mortgage to a new lender.
- ◆ It applies only when the old policy is less than ten year old.
- ◆ Up to the balance of the mortgage or the amount of the policy, whichever is less, the premium is 70% of original rate. To put it another way, it's a 30% discount. Beyond that amount, the full rate is charged in the appropriate rate bracket.

EXAMPLE 5:

		<u>Premium</u>	
Old loan policy from 1997	\$115,000		
Current loan balance (payoff amt.)	\$105,643		
New loan policy	\$105,643		
New loan policy (straight rate)	\$105,643*	\$424.00	\$424.00
New loan policy (refinance)	\$105,643*	\$424.00 x 30% = \$127.20	<u>(\$127.20)</u>
		Net Premium:	\$296.80

*Remember to round UP to the nearest thousand, so \$105,643 becomes \$106,000.

EXAMPLE 6:

		<u>Premium</u>	
Old loan policy from 1997	\$244,000		
Current loan balance (payoff amt.)	\$210,000		
New loan policy	\$253,000		
New loan policy (straight rate)	\$253,000	\$932.50	\$932.50
New loan policy (refinance)	\$210,000	\$795.00 x 30% = \$127.20	<u>(\$238.50)</u>
		Net Premium:	\$694.00

Sample and Suggested Language for Title Commitments

Center Line Legal Descriptions:

Subject to the rights of the public and others entitled thereto in and to the use of that portion of the property within the bounds of _____ Road.

Acreage Description:

Notwithstanding the reference to acreage in the legal description, the final policy when issued will not insure the quantity described as acreage.

Affirmative Coverage - Encroachment:

The Final Loan Policy only, when issued, will insure against any loss or damage incurred as a result of the forced removal of the encroachment by final order of a Court of competent jurisdiction.

Affirmative Coverage - Restrictions:

The Final Loan Policy only, when issued, will insure that said restrictive covenants contain no forfeiture or reversionary clause and therefore no existing or future violations will cause a forfeiture or reversion of title.

Affirmative Coverage - Easement/Right of Way:

The Final Loan Policy only, when issued, will insure that the exercise of the rights created by the above easement/right of way does not interfere with the improvements currently located on the premises described in Schedule A.