

# Investors Title

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### Endorsements

David Florio, Training Director

For the last couple of years, the topic of endorsements has consistently been in the top ten inquiry topics. While the nature of the inquiries vary, this article will focus on the following questions: what is an endorsement, what does an endorsement do, and why are they issued?

In the book, Fundamentals of Title Insurance, author James L. Gosdin writes the following about endorsements:

“They can change the Date of Policy or otherwise date down some of the policy coverage, such as the Assignment Endorsements (ALTA 10 Series) and Modification Endorsements (ALTA 11 Series)..., They can add new insurance to the policy, such as a Future Advance Endorsements (ALTA 14 series) does, they can modify the Exclusions from Coverage, such as the Doing Business Endorsements (ALTA 24-06) does, they can add new exceptions or limitations on coverage to the policy, usually in tandem with some additional obligations to the title insurer..., they can also modify the Conditions of the Policy...”

Endorsements have a wide reaching effect on the policies to which they are attached. Endorsements can alter the terms of the policy. For example, the Variable Rate Mortgage Endorsements (ALTA 6-06, ALTA 6.1-06, and ALTA 6.2-06), the Assignment Endorsements (ALTA 10-06 and ALTA 10.1-06) and the Modification Endorsements (ALTA 11-06 and ALTA 11.1-06). Endorsements can speak to the liens affecting the title. For example, the condominium endorsements (ALTA 4-06 and ALTA 4.1-06), the Tax Parcel Endorsements (the ALTA 18-06 and ALTA 18.1-06), and the Interest Rate Swap Endorsements (the ALTA 29-06, ALTA 29.1-06, ALTA 29.2-06 and 29.3-06). Endorsements can affect survey coverage; for example, those in the ALTA 9-06 series, the Contiguity Endorsements (ALTA 19-06 and ALTA 19.1-06), and the Easements Endorsements (the ALTA 28-06, ALTA 28.1-06 and ALTA 28.2-06). Endorsements can affect land use, For example, the Minerals and Other Subsurface Substance (ALTA 35-06, ALTA 35.1-06, ALTA 35.2-06 and ALTA 35.3-06) and the Water Endorsements (ALTA 41-06, ALTA 41.1-

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06 and ALTA 41.2-06). Endorsements can affect how loss is calculated. For example, the Leasehold Endorsements (13-06 and 13.1-06), and Tax Credit Endorsements (ALTA 410-06 and 40.1-06 Endorsements). While this is not a complete list of every endorsement created by ALTA or approved for use, it is a window into what an endorsement can do. An endorsement attached to a title insurance policy modifies, edits, deletes, adds, changes the

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terms of, expands, reduces coverage, or clarifies pre-printed policy information appearing in the Covered Risks, Exclusions, and Conditions (the "Jacket").

Condition #14 of the 2006 ALTA Loan Policy and condition #15 of the 2006 ALTA Owner's Policy state: "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." This language can be loosely translated to mean that the endorsement only does what it says and is still subject to the terms of the policy.

Endorsements come from various sources. They can be created by the American Land Title Association (ALTA) and adopted by the company; created, adopted, or altered by a rating bureau in those states where a bureau exists (New York and Pennsylvania are two examples); or created by the company. An endorsement that is "created" by the company is one that is used to modify information found in Schedule A or Schedule B of the policy. These are "general" endorsements or endorsements that are only intended to alter something in the schedules and not alter any of the terms of the policy jacket. "General" endorsements to amend Schedule A and Schedule B typically do not require state filing or approval.

There are endorsements listed in Schedule A of the 2006 Loan Policy of Title Insurance that are "check the box" endorsements

or that are incorporated into the policy by reference when noted on the policy. As mentioned earlier, these endorsements run the spectrum as to what they might affect on the policy jacket and some have requirements that need to be fulfilled prior to their being incorporated.

*ALTA Endorsement 4-06 and ALTA 4.1-06-Condominium* - A condominium is defined as a single real estate unit in a multi-unit development in which a person has both separate ownership of a unit and a common interest, with the development's other owners, in the common area. This endorsement insures that:

- the condominium being insured qualifies as a condominium under the applicable state statutes and by its creating documents;
- there are no violations of restrictive covenants that will cause a forfeiture or reversion of title;
- the liens for homeowner's association assessments will not have priority over the insured mortgage;
- there will be no loss or damage to the insured by reason of the insured's interest not being separately assessed for real estate;
- there are no encroachments that will cause loss or damage to the insured owner or lender because of enforced removal, and there is no right of first refusal to purchase at date of policy that will create a loss to the insured.

The *ALTA 4.1-06-Condominium Endorsement* provides the same coverage as the *ALTA 4-06* endorsement, except, it is intended for use in states where

condominium homeowner association liens for unpaid association charges have super priority status.

*ALTA 5-06 and ALTA 5.1-06-Planned Unit Development* - A planned unit development is defined as a land area zoned for a single-community subdivision with flexible restrictions on residential, commercial, and public uses. The *ALTA 5-06* states the company will insure against loss or damage as a result of:

- a present violation of the restrictions referred to in Schedule B that restrict the use of the land or by a forfeiture or reversion of title by a reason of any provision contained in the restrictions;
- that liens for homeowner's association assessments will not have priority over the insured mortgage;
- the enforced removal of an existing structure because it encroaches onto the adjoining land or easement; except for a boundary wall or fence; and
- that there is no right of first refusal to purchase at date of policy that will create a loss to the insured.

The *ALTA 5.1-06-Planned Unit Development* provides the same coverage as *ALTA 5-06*, but is intended for use in states where PUD homeowners' association liens for unpaid association charges have super priority status.

*ALTA 6-06-Variable Rate and ALTA 6.2-06-Variable Rate-Negative Amortization*-This endorsement insures a lender against loss or damage resulting from the invalidity,

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unenforceability and impairment of priority of the lien of the insured mortgage caused by provisions in the insured mortgage for changes in the rate of interest. The *ALTA Rate-Negative Amortization* insures a lender against loss or damage from the lien having been deemed unenforceable and invalid because of the terms of the loan that allow for interest being accrued on interest, interest rate changes and the addition of unpaid interest to the balance of the loan, the loss of priority that is a result of a change in rate of interest, the addition of interest on interest and an increase in the unpaid principle balance of the loan because of the addition of unpaid interest. Negative amortization is defined as an increase in a loan's principle balance caused by monthly payments insufficient to pay the accruing interest.

These endorsements do not insure against loss of damage should the loan be deemed to be usurious and/or a violation of any consumer protection law. A loan that is usurious is one that violates a state law that prohibits lenders from charging illegally high interest rates.

*ALTA 8.1-06 - Environmental Protection Lien*-As shown in the 2006 policy, exclusion 1(a)(iv) specifically excludes environmental protection matters from coverage, except for that certain coverage shown under Covered Risk #5 (matters shown of Public Record). This endorsement insures a residential lender against loss of priority to (a) an environmental protection lien (federal or state) filed in the public records as defined in the endorsement at Date of Policy and (b) an

environmental lien provided for by a state statute in effect at Date of Policy, except the statutes listed in Paragraph (b). Any statutes disclosed by research would be listed under Paragraph (b). This endorsement was created at the request of the Federal National Mortgage Association (FNMA or Fannie Mae). The FNMA believed that because the title industry searches the public record, there could be affirmative coverage provided that states there are no environmental protection liens recorded against the property.

*ALTA 9-06-Restrictions, Encroachments, Minerals*- the ALTA 9-06 (Restrictions, Encroachments, Minerals – Loan Policy (4/2/12) has two specific terms defined in it that are applicable throughout the entire endorsement. The term “Covenant” is defined in the endorsement as a “...covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.” The term “Improvement” is defined as “...improvement, including any lawn, shrubbery, or trees, affixed to either the Land or adjoining Land at Date of Policy that constitutes real property.”

The “Covenant” coverage under the endorsement provides for loss or damage sustained by the Insured by reason of:

- a violation causing a subordination, extinguishment, invalidation of, unenforceability of, or partial satisfaction of the Insured Mortgage;
- enforced removal of an Improvement located on the Land as a result of the violation, at Date of Policy;
- a notice of violation recorded in the Public Records at

Date of Policy, of an enforceable Covenant relating to environmental concerns;

- a violation of an enforceable Covenant on the Land at Date of Policy unless the exception to under Schedule B identifies the violation;
- enforced removal of an Improvement that is a violation of a building setback line that is shown on the plat unless the exception to under Schedule B identifies the violation;
- a notice of violation of an enforceable Covenant, recorded in the Public Records at Date of Policy, relating to environmental protection describing any part of the Land and referring to that Covenant unless the exception to under Schedule B identifies the violation.

The “encroachment” coverage under the endorsement provides for loss or damage sustained by the Insured by reason of:

- an encroachment of an Improvement located on the Land, at Date of Policy, onto adjoining land or that portion of the Land subject to an easement;
- an encroachment of an Improvement located on adjoining land on the Land at Date of Policy, unless an exception in Sch. B of the policy identifies the encroachment otherwise insured against in Section 4.a.i or 4.a.ii;
- a final court order or judgment requiring the removal from any adjoining Land of an encroachment identified in Sch. B; or

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- damage resulting from the right to maintain an easement upon which an Improvement encroaches or is located on the land, provided the easement is excepted to in Sch. B; or
- damage resulting from the future exercise of a right to use the surface for minerals (extraction or development) or any other subsurface substance excepted from the description of the Land or excepted to in Sch. B.

This information highlights the coverage provided under the *ALTA 9-06-Restrictions, Encroachments, Minerals*. See the 'Endorsement Manual' and the 'General Underwriting Principles Manual' for the requirement that is to be used when the *ALTA 9-06-Restrictions, Encroachments, Minerals* is requested.

**ALTA 13.1-06-Leashold Loan-** The ALTA 13.1-06 is attached to the ALTA Loan Policy to create the leasehold estate and provides additional coverage that was not included in the Leasehold Loan Policy.

This endorsement provides coverage so that the Leasehold estate value is no longer determined by subtracting the rent to be paid under the lease for the remainder of its term from the fair market rental value for the same term. The value of the property now takes items such as any customization made to the property while the lease was in effect and the location of the property into consideration when the value is being determined. This endorsement also covers the insured for the reasonable cost of relocating any personal property, sublease damage, or damages that are payable to an owner of 'paramount title'.

There are certain costs taken into consideration with this endorsement such as, the cost to obtain "land use, zoning, building and occupancy permits, architectural and engineering fees, construction management fees, costs of environmental testing and reviews and landscaping costs."

**ALTA 14-06 Future Advance-Priority** and **ALTA 14.1-06 Future Advance-Knowledge-** the ALTA 14-06 is the primary future advance endorsement to be utilized most frequently by lenders. In addition to its future advance coverage for the lender, the ALTA 14-06 endorsement also contains variable rate coverage comparable to the coverage found in the ALTA 6-06 endorsement. This endorsement provides coverage to the insured lender against loss or damage sustained by reason of the invalidity or loss of priority of the insured mortgage lien as security for each future advance (with certain exceptions – see below). In addition, it provides coverage over the invalidity or loss of priority of the insured mortgage as security for the unpaid indebtedness and future advances resulting from: (1) re-advances and repayments of indebtedness; (2) lack of outstanding indebtedness before an advance; or (3) failure to comply with state law requirements to secure advances. This endorsement also addresses coverage against loss or damage to the insured lender because of variable interest rates. The **ALTA 14.1-06** gives substantially the same coverage as the **ALTA 14-06** endorsement with one key difference: the **ALTA 14.1-06** endorsement does not give affirmative coverage to the

insured for the loss of priority of an advance made after the insured has knowledge of the existence of intervening liens or other matters affecting the land.

**ALTA 14.3-06 Future Advance-Reverse Mortgage-** the ALTA 14.3-06 endorsement is designed to be used only with a Loan Policy on improved residential property. This endorsement is used to provide future advance protection to the lender with the property is secured by a reverse mortgage. A reverse mortgage is a special type of home loan that lets a homeowner convert a portion of the equity in his or her home into cash. The equity built up over years of home mortgage payments can be paid to the borrower, typically in installment payments over a term of years. Unlike a traditional home equity loan or second mortgage, no repayment is required until the borrower(s) no longer uses the home as their principal residence or upon their death. Federal lending guidelines require the borrower to be at least 62 years of age in order to qualify for a federally backed reverse mortgage. The coverage provided by this endorsement is essentially the same as the coverage provided by the **ALTA 14-06** endorsement but has been tailored to deal with specific features of a reverse mortgage. In addition to the standard **ALTA 14-06** coverage, the **ALTA 14.3-06** insures the lender against loss in the event that the borrower is not 62 years old at the date of policy. This endorsement also protects the lender in the event that the mortgage loses priority due to the failure to state the term of the Advance, or the failure to state the maximum amount

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secured by the mortgage. This endorsement contains the same exclusions as the *ALTA 14-06*.

### *ALTA 22-06-Location*

**Endorsement-** this endorsement is approved upon request, after obtaining the property address and a favorable review of the survey. The *ALTA 22-06* is designed to provide the insured with assurance that particular types of improvements are located at a specified street address. Typically, in order to issue the location endorsement, the Company requires an as-built survey in order to determine the type of improvements located on the property. Due to Company standards regarding survey coverage, the Company will

forgo the receipt of a survey to issue the *ALTA 22-06* based on the same guidelines as used to provide Survey Coverage Without A New Survey.

Endorsements are an important part of title insurance. They can provide the extra coverage for items that might not necessarily be part of the coverage under the Jacket. It is important to point out there are some endorsements that are subject to a charge prior to their issuance, and some that are subject to the fulfillment of a requirement prior to their issuance. Everyone is encouraged to review the appropriate underwriting

manuals for complete information regarding endorsements that are available to the insured. Feel free to contact any member of Corporate Legal and Underwriting Services or an attorney of the company with any questions about endorsements.

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## Underwriting/Examining QA

Rich Erdosy, Agency Operations Coordinator

**Q:** A new plat of survey has been prepared in conjunction with a loan for the construction of an office building. George, the counsel for the bank doing the loan, has examined said plat of survey and, pursuant to that examination, has requested that we remove an exception for a recorded power company easement, because the surveyor has stated in his notes that “the easement cannot be located, as it is a blanket easement.” Would you remove the easement? The agent contacts Corporate Legal and Underwriting Support for guidance.

**A:** The attorney is mistaken in thinking that the statement in the notes means that the easement is not located on the land. Easements typically are either specifically described as to their location or, as in this case, they are “blanket easements.” A blanket easement gives the easement holder the right to locate their easement anywhere on the burdened land; therefore, the specific location of the easement cannot be discerned from the easement instrument. In fact, the question often remains as to whether the easement right has even been exercised. So, the statement that the attorney

wants to rely on for mandating removal of the exception will not allow for such removal. We cannot remove the exception based on this language. A statement in the surveyor notes such as “the easement does not affect this property” may be acceptable to comply with the request. In the case where we have this language, the surveyor has either located the easement on other land or has a specific metes and bounds description that sets the easement on other land.

## Spotlight on Settlement

# Are You Unknowingly Engaging in the Practice of Law?

Gina Webster, Manager - Settlement Services

As non-attorney settlement agents, we develop specialized knowledge of the real estate closing process. This knowledge may include an understanding of what it means for buyers to hold property as joint tenants instead of tenants in common, or knowing when a seller should execute a general warranty deed instead of a quitclaim deed. Did you know, however, that sharing this specialized knowledge may mean that you are engaging in the unauthorized practice of law?

### Ask yourself:

- When reviewing the closing documents, am I telling the borrower something about the documents they could not read for themselves?
- Am I starting any sentences with words like “you should...”, “this means...”, or “I think...”?

Your answer should **NEVER** be yes!

In order to avoid the unauthorized practice of law, non-attorney settlement agents must refrain from the following practices:

- Giving legal advice;
- Explaining the rights of the borrowers under any of the loan documents;
- Explaining the purpose or content of any closing documents that the borrower could not ascertain by reading the document text themselves;
- Giving your opinion for questions the borrower may ask;
- Explaining the legal obligations of the parties under the real estate sales contract;
- Explaining the meaning of legal terms used in taking title to property or advising the parties to the transaction how to take title to the property;
- Explaining the legal effect of an item reported as an exception in a title commitment;
- Explaining the legal effect of a document in the chain of title; or
- Drafting legal instruments for a party to the transaction, other than completing form documents selected by and in accordance with the instructions of the parties to the transaction.

Questions such as “What should I do?” or “What are my rights?” should also be avoided.

Remember, you may know the answer to the question, but providing that specialized knowledge may constitute illegal practice of law.



## Did You Know?

**Did you know** that certain qualities of your emails may trigger the recipient's spam filters? Below are some tips to help ensure your email does not get caught in spam filters:

1. Avoid common spam trigger words/phrases in subject lines and the email body (e.g. buy now, free offer, bargain, no obligation, etc.). Note: some common words in the real estate industry are spam triggers such as loans, mortgage, or mortgage rates. Use of any particular word or phrase alone is generally acceptable. It is often the combination of the word and other qualities of the email that can trigger spam filters. If it is necessary to use the common industry term in the subject line, evaluate the overall email and confirm there are no other potential spam triggers present.
2. Do not use ALL CAPS in subject lines or the body of the email.
3. Do not include unnecessary formatting and punctuation in subject lines (e.g. Urgent!!!). Exclamation points are especially risky.
4. Avoid using numbers, special characters, and percent signs (e.g. 1, #1, or 100%) in subject lines – spell out the words instead. Note: even some spelled-out numbers such as “one-hundred percent” can be triggers. The best practice is to avoid numbers in subject lines completely, if possible.

## News from the Hill

- Investors Title announced its fourth quarter and fiscal year 2014 results in Feb. Review the [press release](#) for more information.
- The next underwriting/examining training will be held April 13-17, 2015. Please contact David Florio at [dflorio@invtitle.com](mailto:dflorio@invtitle.com) for more information.

## Stop! It's Grammar Time!

### Whether to Include the “Or Not” with “Whether Or Not”

The word “whether” is typically used in lieu of “if” when there are two distinct choices being presented. For example, in the sentence: “The currier didn't know whether he should leave the package on the doorstep or not,” there are two distinct possibilities—leave the package or not. The “or not” that is typically seen with “whether” is unnecessary and may be omitted. The sentence is perfectly acceptable as: “The currier didn't know whether he should leave the package on the doorstep.”

The only instance the “or not” must be included is when the “whether” is being used in the context of “regardless of whether.” For example: “The currier left the package outside whether you liked it or not.”

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