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The NC Connection

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Insuring Leasehold Transactions

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For commercial real estate tenants with long-term leases, a leasehold title insurance policy may be a good investment for both the lessee and its lender. In the past, the American Land Title Association ("ALTA") promulgated leasehold policies for use in insuring leasehold transactions; however, the current practice for insuring a leasehold interest in real property is to attach the pertinent endorsement to the standard ALTA title insurance policy. Leasehold loan policies may be issued via the ALTA 13.1-06 Endorsement, and leasehold owner policies may be issued with the ALTA 13-06 Endorsement. Each respective endorsement effectively changes and amends the coverage in the standard title insurance policy to reflect coverage for a leasehold transaction.

Typically, the title insurance company will structure its policy to show the recorded lease agreement or memorandum of lease in Schedule A. In addition, both the fee simple owner and the leasehold owner shall be named in Schedule A. The title insurance company will also make exceptions in Schedule B as to the interest of the fee simple owner along with the failure to comply with the terms and conditions of the lease.

In order to determine the appropriate coverage amount for a leasehold policy, the insured may look to the fair market value of the property or the amortized value of the lease. In addition, an insured may wish to take into consideration any improvements to be added to the property when determining the coverage amount. A typical formula for calculating the value of a lease for the purpose of title insurance coverage is: the amount of rental payment multiplied by the total number of payments.

The ALTA 13.1-06 Endorsement is designed for use in a leasehold loan transaction. The endorsement spells out how determination of value shall be calculated for a leasehold lender for any covered matters that result in the eviction of the tenant from the property; in an eviction, the leasehold loan value consists of the value for the remaining lease term and any tenant leasehold improvements existing as of the date of the eviction.

The leasehold lender has the right to have the leasehold estate and the tenant leasehold improvements valued together or apart; regardless, the amount of rent no longer required to be paid for the remaining lease term shall be calculated in order to determine the appropriate value.

In addition, the following items are covered by the ALTA 13.1-06 Endorsement for the leasehold lender, as applicable:

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Commercial Services Division



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Insuring Leasehold Transactions (cont. from page 1):

1. Reasonable cost of removing and relocating any personal property located on the property at the time of eviction; cost of transportation of said personal property for the initial one hundred (100) miles; and reasonable cost for repairing any personal property damaged because of said relocation;
2. Rent that the leasehold lender may be obligated to pay to a person with paramount title to that of the lessor in the lease;
3. Rent that the leasehold lender must continue to pay due to terms in the lease;
4. Fair market value of the leasehold lender in any lease or sublease made by Tenant;
5. Damages that leasehold lender must pay to lessees or sublessees because of the breach of said lease or sublease;
6. Reasonable costs incurred by leasehold lender to secure a replacement leasehold; and
7. If tenant leasehold improvements are not finished by time of the eviction, then the actual cost incurred by the leasehold lender (minus the salvage value) to complete the tenant leasehold improvements. These costs include obtaining zoning, building, or occupancy permits, architectural and engineering fees, construction management fees, environmental testing fees, and landscaping costs.

The ALTA 13-06 Endorsement is designed for the leasehold owner. Its coverage mirrors the coverage provided to the leasehold lender in the ALTA 13.1-06 Endorsement.

The ALTA leasehold endorsements contain valuable coverage to an insured leasehold owner and lender. If you represent tenants with long-term leases who typically make improvements on the property, then it may be worthwhile to discuss this type of extra title insurance coverage with them. If you have any questions as to leasehold coverage and the availability of the leasehold endorsement for your transaction, contact an Investors Title attorney for assistance.

NC Fun Facts

The **Fontana Dam** is a hydroelectric dam on the Little Tennessee River in Swain and Graham counties, North Carolina. The dam is operated by the Tennessee Valley Authority, which built the dam in the early 1940s to accommodate the skyrocketing electricity demands in the Tennessee Valley at the height of World War II. At 480 feet (150 m) high, Fontana is the tallest dam in the Eastern United States, and at the time of its construction, was the fourth tallest dam in the world.¹ The dam impounds the 10,230-acre (41.4 km²) Fontana Lake, which spreads across a scenic stretch of the Little Tennessee along the southwestern boundary of the Great Smoky Mountains National Park. The Appalachian Trail crosses the top of the dam. Fontana is named for the now-inundated town of Fontana, a lumber and copper-mining hub once located at the mouth of Eagle Creek.² The town's name was derived from the Italian word for "fountain."

¹Tennessee Valley Authority, *The Fontana Project: A Comprehensive Report on the Planning, Design, Construction, and Initial Operations of the Fontana Project*, Technical Report No. 12 (Washington, D.C.: U.S. Government Printing Office, 1950), pp. 1-13, 43-45, 453.

²Duane Oliver, *Hazel Creek From Then Till Now* (Maryville, Tenn.: Stinnett Printing, 1989), p. 69.



Updated 04/02/2010

RESPA Rule FAQs

The Department of Housing and Urban Development offers a "frequently asked questions" resource regarding the RESPA Rule and the new GFE/HUD documents. The resource may be accessed by clicking this graphic or by visiting www.hud.gov/respa. Be sure to revisit the link often as new Q&As are added frequently.

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Statutes of Limitations and Summary Judgments

According to the North Carolina Court of Appeals, granting summary judgment in favor of an attorney is proper when a remedy would be barred by the statute of limitations. The case arose only after another case was decided in 2004 involving the same parties. That earlier decision involved a dispute over who owned real estate, known as the Birdie Lane property, which Coleman and Frances Self purchased in March 1995 as tenants by the entirety. Simultaneously with that purchase, the defendant in this case, attorney Robert Yelton, prepared "a standard statutory form power of attorney" (POA) for Frances that named Coleman as her attorney-in-fact. The POA did not permit Coleman to make gifts to himself. Nevertheless, four years later, Coleman used the POA in an attempt to give his wife's interest to him, although he used a different attorney to prepare the necessary deeds. After Coleman's death in 2000, his Will, which had been prepared by the defendant, was probated. Under that document, Frances was to receive a life interest in all of Coleman's real

estate, with the remainder interest passing to his two children. But Frances filed suit to quiet title, and after that suit was decided largely in her favor, Coleman's children filed this suit against Yelton alleging, inter alia, professional negligence and constructive fraud. The trial court issued summary judgment in the attorney's favor, and Coleman's children appealed. The Appeals Court affirmed, ruling that the attorney's actions were not the proximate cause of the children's alleged injuries. Besides, said the Court, all of the children's claims were barred by various statutes of limitations—and summary judgment was accordingly proper. --Self v. Yelton, No. COA09-207, N.C. Ct. App. 1/5/10

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**When To File
a Claim**

**Contacting the
Claims
Department**

**Frequently
Asked
Questions**

File a Claim

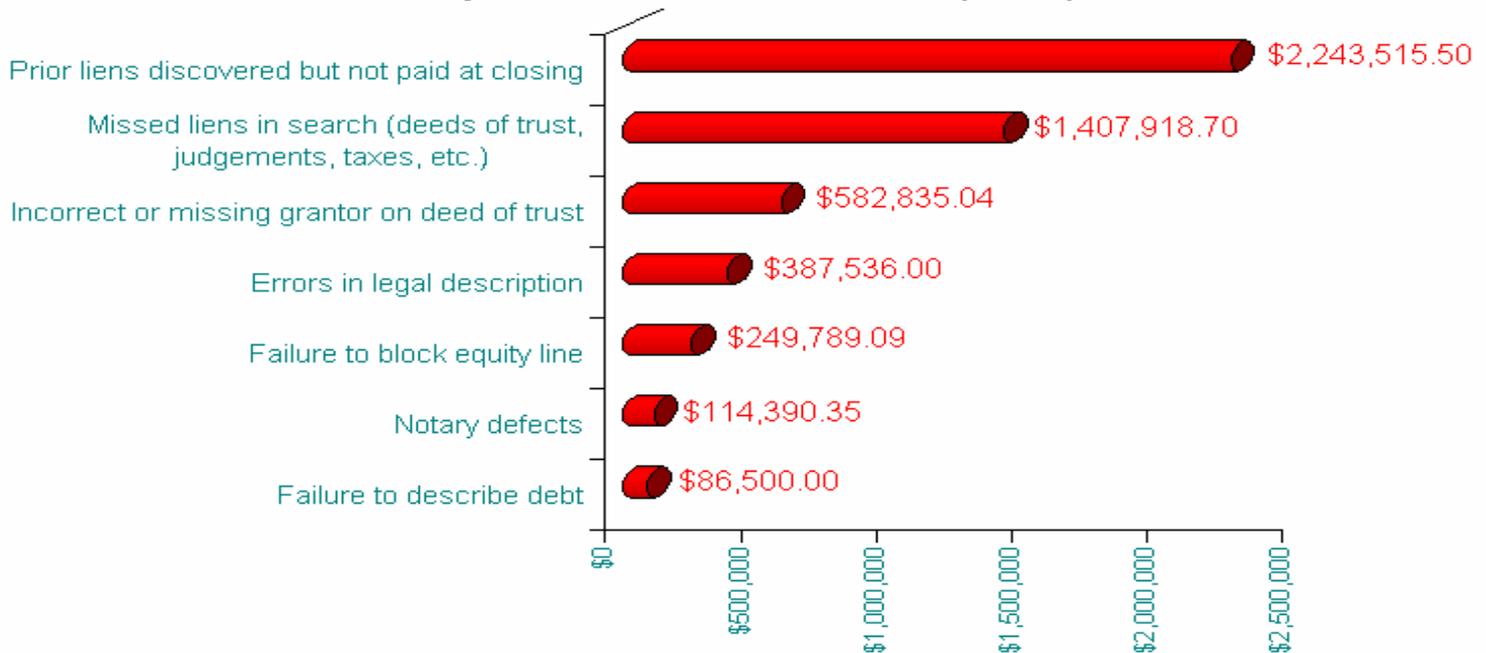
Preventable Losses

Title insurance risk mitigation involves the process of identifying and eliminating known risks. This practice is essential for maintaining stability in the market and the solvency of the title company.

Although many title claims are unforeseeable due to their "hidden" nature, there are certain claims that are avoidable. It is important to

be aware of common errors in order to avoid unnecessary claim situations that cause complications for all involved. These errors not only have the potential to result in monetary losses (as indicated below), they also demand time and additional resources from all parties to the transaction and may put a strain on key relationships. No matter how efficiently a claim is resolved, the fact a claim has occurred at all can be unpleasant for the insured. The best practice is to be proactive and eliminate unnecessary risks before they evolve into actual losses.

Top 5 Preventable Losses (2009)



ALTA 3.1-06 ENDORSEMENT

Under Paragraph 1 of the Exclusions From Coverage in the ALTA Owner's and Loan policies, the policy expressly excludes from coverage any loss or damage resulting from the violation of any zoning ordinances. Thus, the purpose of an ALTA Form 3.1-06 Endorsement, applicable only to improved property, is to provide the insured with protection against loss or damage resulting from the contemplated or existing use of the property being in violation of the zoning ordinance.

The zoning endorsements set forth the zoning classification of the insured property. Additionally, the endorsements specify which uses are permitted under the applicable zoning classification. The language contained in the zoning endorsement specifically insures the insured against "loss or damage in the event that, at Date of Policy ... according to applicable zoning ordinances and amendments thereto, the land is not classified Zone ____."

- For either the Lender or Owner
- For improved property
- Requires certification as to zoning ordinances and permitted uses