

**DIFFERENCES IN THE 2021 AND 2006 FORMS**

**AND OTHER CHANGES**

Some of the differences in the 2021 ALTA Owner’s and Loan Policies and the 2006 ALTA Owner’s and Loan Policies include:

* policy authentication (ALTA 39) coverage in the 2021 ALTA Policies;
* insurance in the 2021 ALTA Policies against defect in title or insured mortgage because of remote online notarization;
* insurance in the 2021 ALTA Policies against defect in title or mortgage because of repudiation of electronic signature;
* clarification in the 2021 ALTA Loan Policy of priority of mortgage as security for components of indebtedness;
* update in the 2021 ALTA Policies of creditors’ rights covered risk and exclusion to refer to UVTA and to clarify timely recording;
* expansion in the 2021 ALTA Policies of governmental exclusion to include forfeiture if no recorded enforcement notice;
* new PACA-PSA exclusion in the 2021 ALTA Policies if no recorded notice of enforcement notice;
* broadening in the 2021 ALTA Loan Policy of consumer credit protection exclusion to include defined Consumer Protection Laws;
* new discrepancies in area exclusion in the 2021 ALTA Policies;
* revised tax and assessments exclusion in the 2021 ALTA Owner’s Policy for taxes and assessments imposed or collected by a governmental authority due and payable after Date of Policy;
* new Transaction Identification Data in the 2021 ALTA Policies for the insured’s benefit (but which does not insure accuracy);
* new Schedule B exception in the 2021 ALTA Policies to terms of insured leases and easements;
* new Schedule B Part II exception in the 2021 ALTA Loan Policy to terms of any subordination listed;
* the 2021 ALTA Loan Policy Conditions broadens the definition of Indebtedness;
* the 2021 ALTA Loan Policy broadens the definition of Insured;
* the 2021 ALTA Owner’s Policy broadens the definition of Insured;
* the 2021 ALTA Policies narrow the definition of Public Records (applicable to several Exclusions and special exceptions) and makes the request for the 8.1 and 8.2 endorsements more essential;
* the 2021 ALTA Policies amend Section 9.a to require the title insurer to take action “in a reasonable manner” instead of “a reasonably diligent manner” (presumably this change does not impose the same high burden on the title insurer, although it could be construed as requiring that the action be accomplished within a reasonable time);
* the preamble of Condition 8 of the 2021 ALTA Policies contains a new disclaimer for tort or abstract liability (consistent with statutory or case law in many but not all states);
* revised Condition 8.b and 8.c of the 2021 ALTA Owner’s Policy provides that loss is calculated using the date of discovery unless title is void at Date of Policy, in which case the insured may select the Date of Policy (which clarifies but also restricts the choices available to the insured);
* revised Condition 8 of the 2021 ALTA Loan Policy provides that loss is calculated using the date the insured acquires the title, or the date the insured mortgage is extinguished or rendered unenforceable;
* revised Condition 8 of the 2021 ALTA Policies change the increase in the amount of insurance from 10% to 15% if the title insurer is unsuccessful in taking action;
* New Condition 18 of the 2021 ALTA Owner’s Policy and Condition 17 of the 2021 ALTA Loan add a new prohibition on class actions.

**ADVANTAGES TO THE CUSTOMER OF THE 2021 FORMS**

**AND OTHER CHANGES**

Advantages to the customer of the 2021 ALTA Owner’s and Loan Policies and other significant changes to be cognizant of:

**ADVANTAGES OF THE 2021 ALTA LOAN POLICY**

* Automatically includes coverage of ALTA 39[-06] Policy Authentication Endorsement.
* Insures against a defect in Title caused by improper remote online notarization.
* Insures against a defect in title because of failure to perform those acts necessary to create a document by electronic signature.
* Insures against repudiation of an electronic signature on a document because the electronic signature was not valid.
* Insures against invalidity or unenforceability of the lien of the Insured Mortgage caused by repudiation of an electronic signature.
* Insures against lack of priority of the lien of the Insured Mortgage over any other lien or encumbrance for listed components of the Indebtedness, including principal disbursed at the Date of Policy and real estate taxes and assessments and regular periodic assessments by a property owners’ association.
* Insures against avoidance of a transfer of Title occurring prior to the transaction creating the lien of the Insured Mortgage because the prior transfer was a voidable transfer under the Uniform Voidable Transactions Act.
* Insures against avoidance of a transfer of Title occurring prior to the transaction creating the lien of the Insured Mortgage because the prior transfer was a fraudulent transfer, fraudulent conveyance, or voidable preference
* Insures against the effect of a court order providing an alternative remedy (such as monetary judgment) for a voidable transfer, fraudulent conveyance, fraudulent transfer, or voidable preference occurring prior to the transaction creating the lien of the Insured Mortgage.
* Expansion of governmental exclusion to include forfeiture, regulatory, or national security power.
* Revision of Exclusion 3.e. to apply only if the Insured failed to pay consideration sufficient to qualify the Insured as a bona fide purchaser or encumbrancer.
* Exclusion for any claim of a PACA-PSA Trust.
* Exclusion for any discrepancy in the quantity of the area, square footage, or acreage of the Land or of any improvement.
* Added (Optional) Transaction Identification Data that identifies the transaction, the Issuing Agent and its ALTA® Registry ID, and the Property. The policy does not insure the Transaction Identification Data.
* Provides clear notice, if Discriminatory Covenants exist in a document, that those Discriminatory Covenants are redacted, repudiated, removed, and not republished or recirculated, and an acknowledgment that only the remaining provisions of the document are excepted from coverage.
* Expansion of the definition of the Insured to include a grantee under a deed, delivered with or without valuable consideration, if the grantee is an Affiliate.
* Expansion of the definition of the Insured to include an Affiliate of the Insured that acquires the Title through foreclosure or deed-in-lieu of foreclosure.
* Revision of the definition of Knowledge to include both actual knowledge and actual notice.
* Revision of the definition of Public Records to state that such records do not include other recording systems such as zoning, planning, or permitting.
* Each 2021 ALTA Policy clearly states that it is not an abstract of the Title, report of the condition of the Title, legal opinion, opinion of the Title, or other representation of the status of the Title. Further, the title insurer is not liable for a claim of negligence or negligent misrepresentation.
* The extent of liability for loss or damage is the difference between the fair market value of the Title as insured and the fair market value subject to the matter insured against. Formerly the valuation was based on value, but not fair market value.
* The fair market value is calculated using the date the Insured acquires the Title as a result of the foreclosure or deed-in-lieu of foreclosure of the Insured Mortgage, or the date the lien of the Insured Mortgage or any assignment set forth in item 4 of Schedule A is extinguished or rendered unenforceable by reason of a matter insured against. This provision is new and is generous in two ways: it provides a date for calculating values, which the 2006 ALTA Policies and prior policies did not, and it allows the Insured to have a second choice of dates if these terms apply.
* If the Company institutes or prosecutes any action or proceeding or does any act to establish the Title or lien of the Insured Mortgage as insured or to prevent or reduce loss to the Insured, and is unsuccessful, then the Amount of Insurance is increased by 15% and the Insured Claimant may elect as an alternative to the other dates for valuation the additional date that the settlement or action is concluded or the date the notice of claim is received by the Company as the date for calculating the fair market value of the Title. This improves the coverage for the lender as the increase is changed to 15% from 10% as it was under the 2006 ALTA Policy.
* Each 2021 ALTA Policy requires that any claim or dispute must be brought in an individual capacity and no person may serve as a class member or participant in a class action.
* Each 2021 ALTA Policy includes an optional arbitration clause, which can be deleted. Some 2021 ALTA Policies provide that “The Company will pay all AAA filing, administration, and arbitrator fees of the consumer when the arbitration seeks relief $100,000 or less.”

**ADVANTAGES OF THE 2021 ALTA OWNER’S POLICY**

* Automatically includes coverage of ALTA 39[-06] Policy Authentication Endorsement.
* Insures against a defect in Title caused by improper remote online notarization.
* Insures against a defect in title because of failure to perform those acts necessary to create a document by electronic signature.
* Insures against repudiation of an electronic signature on a document because the electronic signature was not valid.
* Insures against avoidance of a transfer of Title occurring prior to the transaction vesting Title because the prior transfer was a voidable transfer under the Uniform Voidable Transactions Act.
* Insures against avoidance of a transfer of Title occurring prior to the transaction vesting Title because the prior transfer was a fraudulent transfer, fraudulent conveyance, or voidable preference
* Insures against the effect of a court order providing an alternative remedy (such as monetary judgment) for a voidable transfer, fraudulent conveyance, fraudulent transfer, or voidable preference occurring prior to the transaction vesting Title.
* Expansion of governmental exclusion to include forfeiture, regulatory, or national security power.
* Revision of Exclusion 3.e. to apply only if the Insured failed to pay consideration sufficient to qualify as a bona fide purchaser.
* Exclusion for any claim of a PACA-PSA Trust.
* Exclusion for any discrepancy in the quantity of the area, square footage, or acreage of the Land or of any improvement
* Added (Optional) Transaction Identification Data that identifies the transaction, the Issuing Agent and its ALTA® Registry ID, and the Property. The policy does not insure the Transaction Identification Data.
* Provides clear notice, if Discriminatory Covenants exist in a document, that those Discriminatory Covenants are redacted, repudiated, removed, and not republished or recirculated, and an acknowledgment that only the remaining provisions of the document are excepted from coverage.
* Expansion of the definition of the Insured to include a grantee under a deed, delivered with or without valuable consideration, if the grantee is an Affiliate.
* Expansion of the definition of the Insured to include a spouse who receives the Title because of a dissolution of marriage.
* Expansion of the definition of the Insured to include a transferee by a transfer effective on the death of the Insured as authorized by law.
* Expansion of the definition of the Insured to include another Insured named in item 1 of Schedule A.
* Revision of the definition of Knowledge to include both actual knowledge and actual notice.
* Revision of the definition of Public Records to state that such records do not include other recording systems such as zoning, planning, or permitting.
* Each 2021 ALTA Policy clearly states that it is not an abstract of the Title, report of the condition of the Title, legal opinion, opinion of the Title, or other representation of the status of the Title. Further, the title insurer is not liable for a claim of negligence or negligent misrepresentation.
* The extent of liability for loss or damage is the difference between the fair market value of the Title as insured and the fair market value subject to the matter insured against. Formerly the valuation was based on value, but not fair market value.
* The fair market value is calculated using the date the Insured discovers the matter insured against. However, if the Title to all of the Land is void by reason of a matter insured against, then the Insured Claimant may elect to use the Date of Policy for calculating the fair market value of the Title. This provision is new and generous in two ways: it provides a date for calculating values, which the 2006 ALTA Policies and prior policies did not; and it allows the Insured to have a second choice of dates if these terms apply.
* If the Company institutes or prosecutes any action or proceeding or does any act to establish the Title as insured or to prevent or reduce loss to the Insured, and is unsuccessful, then the Amount of Insurance is increased by 15% and the Insured Claimant may elect as an alternative to the other dates for valuation the additional date that the settlement or action is concluded or the date the notice of claim is received by the Company as the date for calculating the fair market value of the Title. This improves the coverage for the lender as the increase is changed to 15% from 10% as it was under the 2006 ALTA Policy.
* Each 2021 ALTA Policy requires that any claim or dispute must be brought in an individual capacity and no person may serve as a class member or participant in a class action.
* Each 2021 ALTA Policy includes an optional arbitration clause, which can be deleted. Some 2021 ALTA Policies provide that “The Company will pay all AAA filing, administration, and arbitrator fees of the consumer when the arbitration seeks relief $100,000 or less.”

**WHAT YOU SHOULD CONSIDER IN PREPARING 2021 ALTA OWNER’S AND LOAN POLICIES**

* You may issue the endorsements that were prepared for the 2006 ALTA Policy (the -06 version) or the new endorsements that were modified for the 2021 ALTA Policy. We prefer to use the new endorsements and the other unchanged ALTA endorsements for the 2021 ALTA Policy.
* You may issue the 2016 ALTA Commitment or the 2021 ALTA Commitment for the 2006 ALTA Policy or the 2021 ALTA Policy. We prefer to issue the 2021 ALTA Commitment in all cases if it is available in your state.
* The transaction documents, such as the deed or mortgage, may be prepared and executed electronically if allowed by our Bulletins and if eligible for recording in your county and state.
* Remote online notarization may be used if allowed by our Bulletins and if eligible for recording in your county and state.
* Both the 2006 ALTA Policy and 2021 ALTA Policy insure against real estate taxes or assessments due or payable, but unpaid. You may continue to use your customary real estate tax and assessment lien exception.
* Both the 2006 ALTA Policy and the 2021 ALTA Policy insure against matters affecting the Title that would be disclosed by an accurate and complete land title survey. You may continue to provide survey coverage in the 2021 ALTA Policy as has been authorized by bulletin in your state. If you retain your customary survey exception (such as Standard Exception STAX03 or other exception you customarily use), we prefer, but do not require, that you also add at the end of the exception “Covered Risk 2.c is hereby deleted.”
* The Covered Risk for right of access has not changed. If you except to lack of right of access, we prefer, but do not require, that you also add at the end of the exception “Covered Risk 4 is hereby deleted.”
* Covered Risk 9 of the Owner’s Policy and Covered Risk 13 of the Loan Policy insure against creditors’ rights claims in the back chain of title. A separate creditors’ rights Exclusion relates to creditors’ rights issues arising out of the current transaction, and that includes certain voidable preference claims because of delay in recording. However, if there is a delay of more than 30 days from the execution of the vesting deed or Insured Mortgage when delivered to you until recording, consult with a Stewart Underwriter for a possible Schedule B exception.
* Covered Risk 10 of the Owner’s Policy and Covered Risk 14 of the Loan Policy provide gap coverage. You should try to update the commitment and reduce the gap, if any. In some states, a Gap Indemnity is often secured and is included in the Owner’s (Title) Affidavit, such as in paragraph 15.B of the Stewart Title Affidavit.
* Exclusion 7 of the 2021 ALTA Loan Policy and Exclusion 5 of the 2021 ALTA Owner’s Policy exclude any claim of a PACA-PSA Trust.
* Exclusion 8 of the 2021 ALTA Loan Policy excludes any lien on the Title for real estate taxes or assessments, imposed by a governmental authority and created or attaching between the Date of Policy and the date of recording of the Insured Mortgage in the Public Records.
* Exclusion 6 of the 2021 ALTA Owner’s Policy excludes any lien on the Title for real estate taxes or assessments, imposed or collected by a governmental authority that becomes due and payable after the Date of Policy.
* The 2021 ALTA Owner’s Policy and the 2021 ALTA Loan Policy exclude any discrepancy in the quantity of the area, square footage, or acreage of the Land or of any improvement to the Land. If you have been excepting to shortages in area acreage, this exclusion will now address that issue.
* Added (Optional) Transaction Identification Data (TID) that identifies the transaction, the Issuing Agent, and its ALTA® Registry ID. Your customers will value this TID.
* The beginning of Schedule B of the 2021 ALTA Policies excepts to Discriminatory Covenants. This replaces the customary disclaimer that has previously been asserted with each Covenant, Condition, and Restriction exception. Cautious companies have also deleted the discriminatory provision in a document before providing a copy of the document to a customer.
* The preamble of Schedule B of the 2021 ALTA Policies includes an exception to the terms and conditions of any lease or easement identified in Schedule A. We also should specifically except in Schedule B to the terms and conditions of any lease or easement that we insure.
* The standard exceptions you use would remain the same.
* The special exceptions you use would remain the same.
* We prefer to use the phrase “Public Records” instead of “public records” in any special exception or any standard exception that you use. “Public Records” is a defined term in the 2006 ALTA Policies and in the 2021 ALTA Policies.
* We prefer to use the term “Land” instead of “land” in any special exception or any standard exception that you use. “Land” is a defined term in the 2006 ALTA Policies and in the 2021 ALTA Policies.
* The term “State” is a defined term in the 2021 ALTA Policies, but we do not require use of “State” in lieu of “state” in any special exception or any standard exception that you use.
* Condition 19 of the 2021 ALTA Owner’s Policy is the optional arbitration clause. You may delete it upon request by deleting Condition 19. Note, the Arbitration Clause in the ALTA 2006 Owner’s Policy is a different number.
* Condition 18 of the 2021 ALTA Loan Policy is the optional arbitration clause. You may delete it upon request by deleting Condition 18. Note, the Arbitration Clause in the ALTA 2006 Loan Policy is a different number.
* The requirements to issue the existing ALTA Endorsements and the modified 2021 ALTA Endorsements are not changing. For example, the requirements to issue a Zoning Endorsement (ALTA 3 Series), Non-Imputation Endorsement, or Future Advance Endorsement (ALTA 14 Series) are not changing. The endorsements being modified in 2021 or newly adopted include the ALTA 6 Series (Variable Rate), ALTA 10 Series (Assignment), ALTA 11 Series (Modification), ALTA 12 Series (Aggregation), ALTA 14 Series (Future Advance), ALTA 30 Series (Shared Appreciation; Commercial Participation), New ALTA 34.1 (Identified Exception & Identified Risk), and New ALTA 47 Series (Operative Law Endorsements for 2006 ALTA Policies).