



NUTS AND BOLTS TITLE INFORMATION FOR THE BUSY PRACTITIONER

MAY 1, 2007 TITLE INSURANCE POLICY CHANGES

Effective May 1, 2007, the New York Insurance Department has authorized the use of the new ALTA 2006 forms of Owners and Loan Policy. Title Insurers in New York State, through the Title Insurance Rate Service Association (TIRSA) have also revised forms of NY Standard Endorsements. TIRSA has also eliminated three endorsements the coverage of which is now included within the forms of the 2006 ALTA policy itself.

The two most significant endorsements eliminated are the Survey Endorsement in Loan Policies and the Fairway Endorsement.

Good-bye Survey Endorsement. But, lenders and lender's counsel need not despair. All that will disappear is the loan policy premium for a survey endorsement since the survey protection afforded lenders by the old endorsement for 1 to 4 family residences is now included in the new policy itself. The 2006 ALTA Loan Policy includes a Coverage Risk affording survey coverage as limited by a New York standard endorsement to vacant land and land improved by a one to four family dwelling. **When there is no survey reading or a survey exception raised in the Policy, this Covered Risk eliminates the need to purchase a TIRSA survey endorsement (Loan Policy) (1-4 Family), and that endorsement will therefore not be issued with the 2006 ALTA Loan Policy.** The Covered Risk affording survey coverage in the 2006 ALTA Owners Policy has been deleted by a New York standard endorsement.

Title Insurance for Mezzanine Financing just got easier. While astute lender's counsel may still want to consider a TIRSA Mezzanine Endorsement to cover issues like "non-imputation" (insurer will not deny liability to the insured by reason of knowledge imputed to it through a partner, shareholder, or member by operation of law), the traditional "Fairway Endorsement" (assuring that the post-policy transfer of an interest in an insured partnership will not terminate policy coverage) will no longer be offered due to a change in the definition of "Insured" in the Owner's 2006 ALTA Policy.

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2006 ALTA Owner's Policy: "Insured":

The insured named in Schedule A. (i) The term 'Insured' also includes (A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heir, devisees, survivors, personal representatives, or next of kin; (B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization; (C) successors to an insured by its conversion to another kind of Entity; (D) a grantee of an Insured under an deed delivered without payment of actual valuable consideration conveying the Title (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named insured, (2) if the grantee wholly owns the named Insured, (3) if the grantee is wholly-owned by an affiliated Entity of the named insured, provided the affiliated Entity and the named Insured are wholly owned by the same person or Entity, or (4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes. (ii) With regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor interest.

IN NEW YORK, THE TIRSA LIMITED LIABILITY COMPANY AND LIMITED LIABILITY PARTNERSHIP ENDORSEMENT WILL NOT BE ISSUED WITH THE 2006 ALTA OWNER'S POLICY. The Coverage of that Endorsement is within the definition of "Insured" in the 2006 ALTA Owner's Policy.

FOR FURTHER INFORMATION

If you have any questions about the implementation of the new 2006 ALTA policy, we invite you to contact Dan Tartaglia or Eric Swarthout at ELS.

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