



*Title Insurance
Seminar
2013*



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COMMON ENDORSEMENTS
AND
RESPA REFORM

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ENDORSEMENTS

RECENT CHANGES TO ENDORSEMENT FORMS

Since 2010 ALTA has revised a number of the Endorsement Forms, as well as added new Endorsements Forms, and withdrawn several.

- Revised Endorsements
 - ALTA 3.1-06 Zoning – Completed Structure
 - ALTA 3.2-06 Zoning – Land Under Development

 - ALTA 4-06 Condominium

 - ALTA 5-06 Planned Unit Development

 - ALTA 9-06 Restrictions, Encroachments, Minerals – Loan Policy
 - ALTA 9.1-06 Covenants, Conditions and Restrictions – Unimproved Land – Owner’s Policy
 - ALTA 9.2-06 Covenants, Conditions and Restrictions – Improved Land – Owner’s Policy
 - ALTA 9.3-06 Covenants, Conditions and Restrictions – Loan Policy

 - ALTA 10-06 Assignment
 - ALTA 10.1-06 Assignment And Date Down

 - ALTA 13-06 Leasehold – Owner’s
 - ALTA 13.1-06 Leasehold – Loan

 - ALTA 14-06 Future Advance - Priority
 - ALTA 14.1-06 Future Advance - Knowledge
 - ALTA 14.2-06 Future Advance - Letter of Credit
 - ALTA 14.3-06 Future Advance - Reverse Mortgage

 - ALTA 28-06 Easement - Damage or Enforced Removal

- New Endorsements
 - ALTA 9.6-06 Private Rights – Loan Policy
 - ALTA 9.7-06 Restrictions, Encroachments, Minerals – Land Under Development – Loan Policy
 - ALTA 9.8-06 Covenants Conditions and Restrictions – Land Under Development – Owner’s Policy

 - ALTA 11.1-06 Mortgage Modification with Subordination

- ALTA 28.1-06 Encroachments – Boundaries and Easements
- ALTA 29-06 Interest Rate Swap Endorsement - Direct Obligation
ALTA 29.1-06 Interest Rate Swap - Additional Interest
ALTA 29.2-06 Interest Rate Swap Endorsement - Direct Obligation -
Defined Amount
ALTA 29.3-06 Interest Rate Swap Endorsement - Additional Interest -
Defined Amount
- ALTA 30-06 Shared Appreciation Mortgage
ALTA 31-06 Severable Improvements Endorsement
- ALTA 32-06 Construction Loan Pending Disbursement
ALTA 32.1-06 Construction Loan Pending Disbursement
- ALTA 33-06 Disbursement Endorsement
- ALTA 34-06 Identified Risk Coverage
- ALTA 35-06 Minerals and Other Subsurface Substances – Buildings
ALTA 35.1-06 Minerals and Other Subsurface Substances – Improvements
ALTA 35.2-06 Minerals and Other Subsurface Substances – Described
Improvements
ALTA 35.3-06 Minerals and Other Subsurface Substances – Land Under
Development
- ALTA 36-06 Energy Project – Leasehold/Easement – Owner’s
ALTA 36.1-06 Energy Project – Leasehold/Easement – Loan
ALTA 36.2-06 Energy Project – Leasehold – Owner’s
ALTA 36.3-06 Energy Project – Leasehold – Loan
ALTA 36.4-06 Energy Project – Covenants, Conditions and Restrictions –
Land Under Development – Owner’s
ALTA 36.5-06 Energy Project – Covenants, Conditions and Restrictions –
Land Under Development – Loan
ALTA 36.6-06 Energy Project – Encroachments
- Withdrawn Endorsements
 - ALTA 9.4-06 Restrictions, Encroachments, Minerals Endorsement -
Owner's Policy - Unimproved Land
ALTA 9.5-06 Restrictions, Encroachments, Minerals Endorsement -
Owner's Policy - Improved Land
 - ALTA 21-06 Creditors' Rights Endorsement

ENVIRONMENTAL PROTECTION LIEN ENDORSEMENT (ALTA 8.1-06 and 8.2-06)

- Introduction
 - Exclusion 1 of the Loan Policy and Owner's Policy excludes the effect on title of any laws, ordinances, or regulations relating to environmental protection.
 - But Covered Risk 5(d) does provide coverage against loss if a notice of the violation of those environmental protection laws is recorded in the Public Records.
 - Condition 1 defines "Public Records" for Covered Risk 5(d) to include environmental protection liens filed with the clerk of the US District Court.
 - * Some of the federal environmental protection laws provide for a lien to be filed in the United States district court unless the State has provided otherwise.
 - + Tennessee: Recorded in the office of the Register of Deeds of the county in which the property is located. Tenn. Code Ann. § 66-21-201
 - + Mississippi: Recorded in the office of the Chancery Clerk of the county in which the property is located. Miss. Code Ann. §85-8-1 et seq. (Uniform Federal Lien Registration Act).
 - + Therefore, it is not necessary to check the District Court records.
 - Much of the coverage which is provided in the ALTA 8 Series is already provided by the 2006 version of the ALTA policies.
 - The ALTA 8.1-06 is used for Lender's Policies which are insuring Deeds of Trust secured by residential property.
 - The ALTA 8.2-06 is used for Lender's or Owner's Policies and is not limited to residential property.

- **ALTA 8.1-06: Environmental Protection Lien**

- Availability:

- May be issued with a Lender's Policy only.
- May only be issued when the insured Deed of Trust secures residential property.

- Coverage: Insures a Lender against loss of priority of the insured Deed of Trust resulting from:

- An environmental protection lien which is not excepted in Schedule B-I.
 - This is essentially the same protection provided by Covered Risk 5(d).
- An environmental protection lien provided by state statute, except for those statutes specifically listed in the endorsement.
 - There are no statutes in Tennessee or Mississippi which give an environmental lien priority over a previously filed deed of trust.

* Tenn. Code Ann. § 68-212-209

- Underwriting Guidelines:

- If the title search discloses a recorded environmental protection lien or notice of a violation of any environmental protection laws, ordinances, or regulations, insert it as an exception in Schedule B-I.

ENDORSEMENT
ALTA 8.1 - 06

ENVIRONMENTAL PROTECTION LIEN

To be attached to and become a part of Policy No. _____ **[Insert Policy Number]** of Mississippi Valley Title Insurance Company/Old Republic National Title Insurance Company.

The insurance afforded by this endorsement is only effective if the Land is used or is to be used primarily for residential purposes.

The Company insures against loss or damage sustained by the Insured by reason of lack of priority of the lien of the Insured Mortgage over:

- (a) any environmental protection lien that, at Date of Policy, is recorded in those records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge, or is filed in the records of the clerk of the United States district court for the district in which the Land is located, except as set forth in Schedule B; or
- (b) any environmental protection lien provided by any state statute in effect at Date of Policy, except environmental protection liens provided by the following state statutes:

NONE

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: _____ **[Insert Date of Endorsement]**

Countersigned:

MISSISSIPPI VALLEY TITLE INSURANCE COMPANY
Mark B. Higdon President
W. Parrish Fortenberry Secretary
OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
Mark A. Bilbrey President
Daniel M. Wold Secretary

Authorized Officer or Agent

- **ALTA 8.2-06: Commercial Environmental Protection Lien**
 - Availability:
 - May be issued with a Lender's Policy or Owner's Policy.
 - May be issued on any type of property (residential or non-residential).
 - Coverage:
 - Provides the same coverage as the ALTA 8.1-06 regarding recorded liens or notices.
 - Does not insure against the existence of statutes providing for environmental protection liens.
 - Underwriting Guidelines:
 - Follow the same underwriting guidelines as the ALTA 8.1-06.

ENDORSEMENT
ALTA 8.2 - 06

COMMERCIAL ENVIRONMENTAL PROTECTION LIEN

To be attached to and become a part of Policy No. _____ **[Insert Policy Number]** of Mississippi Valley Title Insurance Company/Old Republic National Title Insurance Company.

The Company insures against loss or damage sustained by the Insured by reason of an environmental protection lien that, at Date of Policy, is recorded in the Public Records or filed in the records of the clerk of the United States district court for the district in which the Land is located, unless the environmental protection lien is set forth as an exception in Schedule B.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: _____ **[Insert Date of Endorsement]**

Countersigned:

MISSISSIPPI VALLEY TITLE INSURANCE COMPANY
Mark B. Higdon President
W. Parrish Fortenberry Secretary
OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
Mark A. Bilbrey President
Daniel M. Wold Secretary

Authorized Officer or Agent

**RESTRICTIONS, ENCROACHMENTS, AND MINERALS /
COVENANTS, CONDITIONS AND RESTRICTIONS ENDORSEMENT
(ALTA 9-06, 9.1-06, 9.2-06, 9.3-06, 9.6-06, 9.7-06, and 9.8-06)**

- Introduction
 - The ALTA 9 Series endorsements were completely reworked by ALTA in 2011 and 2012 as a result of the Nationwide case.
 - The previous ALTA 9 Series endorsements provide coverage on 3 topics: (1) Covenants, Conditions, and Restrictions, (2) Encroachments, and (3) Minerals.
 - The ALTA 9-06 and 9.7-06 continue to provide Lender's with combined coverage for (1) Covenants, Conditions, and Restrictions, (2) Encroachments, and (3) Minerals.
 - However, the other ALTA 9 Series endorsements are limited to providing coverage for Covenants, Conditions and Restrictions.
 - Coverage for Encroachments and for Minerals was made available by ALTA through other Endorsement forms:
 - * The ALTA 28.1-06 provides coverage for Encroachments.
 - * The ALTA 35 Series provides coverage for Minerals.
 - Endorsement to Loan Policies:
 - ALTA 9-06: Restrictions, Encroachments, Minerals - Loan Policy
 - The basic endorsement requested by Lenders. It provides the broadest coverage.
 - ALTA 9.7-06: Restrictions, Encroachments, Minerals - Land Under Development - Loan Policy
 - Provides the same coverage as the ALTA 9-06, but extends coverage to include certain future improvements.
 - ALTA 9.6-06: Private Rights - Loan Policy
 - Provides coverage which is not included in any of the other ALTA 9 Series endorsements. It provides coverage against charges or assessment; options to purchase; rights of first refusal; or rights of prior approval of a future purchaser or occupant.

- ALTA 9.3-06: Covenants, Conditions and Restrictions - Loan Policy
 - Provides the same coverage as the ALTA 9-06 for covenants, conditions, and restrictions only. It does not provide the coverage of the ALTA 9-06 with respect to encroachments or minerals.
- Endorsements to Owner's Policies:
 - ALTA 9.1-06: Covenants, Conditions and Restrictions - Unimproved Land - Owner's Policy
 - Provides coverage for covenants, conditions, and restrictions.
 - ALTA 9.2-06: Covenants, Conditions and Restrictions - Improved Land - Owner's Policy
 - Provides the same coverage as the ALTA 9.1-06, but extends coverage for matters relating to an existing improvement.
 - ALTA 9.8-06: Covenants, Conditions and Restrictions - Land Under Development - Owner's Policy
 - Provides the same coverage at the ALTA 9.2-06, but includes both existing and certain future improvements.

- **ALTA 9-06: Restrictions, Encroachments, Minerals - Loan Policy**

- Availability:

- May be issued with a Lender's Policy only.

- Coverage: Insures a Lender against loss resulting from:

- *Covenants, Conditions and Restriction*

- A violation of a Covenant that divests, extinguishes or subordinates the lien of the insured Deed of Trust, renders the lien of an insured Deed of Trust unenforceable, or causes a loss of an insured lender's title after foreclosure (Item 3.a.).
- A violation of a Covenant, unless the violation is specifically excepted in Schedule B (Item 3.b.).
- Forced removal of an "Improvement" as a result of a violation of a building setback line shown on a recorded plat, unless the violation is specifically excepted in Schedule B (Item 3.c.).
- A notice of violation of a Covenant relating to environmental protection, but only if notice of the violation is recorded in the public records and the notice is not specifically excepted in Schedule B (Item 3.d.).

- *Encroachments*

- An encroachment of an existing "Improvement" on the insured property onto either (a) adjoining property or (b) an easement crossing the insured property; unless the encroachment is specifically identified in Schedule B (Item 4.a.i.).
- An encroachment by an existing "Improvement" on adjoining land that encroaches onto the insured property; unless the encroachment is specifically identified in Schedule B (Item 4.a.ii.).
- Forced removal from the adjoining land of an encroachment identified in Schedule B (Item 4.b.).
- * NOTE: Even if an exception for an encroachment onto a neighbors property is included in Schedule B-I, this Endorsement provides coverage if a court orders removal of that encroachment.

- Damage to an existing "Improvement" which is located on, or encroaches onto, an easement where the damage is due to maintenance of the easement (Item 4.c.i.).

- *Minerals*

- Damage to an existing "Improvement" resulting from the use of the surface for development or extraction of minerals or other subsurface substances excepted in Schedule B (Item 4.c.ii.).

* Note: Even if an exception for mineral interests is included in Schedule B-I, this Endorsement provides coverage for damage to a building resulting from the mineral owner's development of the minerals.

○ Underwriting Guidelines

- *Covenants, Conditions and Restriction:*

- Confirm that the Covenants do not contain any provisions that would extinguish or subordinate the insured Deed of Trust upon a violation of the Covenants.

- Confirm that there are no violations of the covenants.

* In order to give this coverage, it is necessary to know what the covenants provide, the details of the transaction, and how the property is being used.

* Examples of Covenant violations:

+ The covenants provide that only one house may be built on each lot; however, a lot has been subdivided and two houses built.

+ The covenants in a commercial development prohibit use as a pharmacy; however, the property being insured is used as a drug store.

- Confirm that no improvements violate building set back lines.

- Confirm that there are no recorded notices of any violation of covenant relating to environmental protection.

- *Encroachments:*

- Confirm that no building on the subject property encroaches onto a neighbors property or onto an easement that crosses the subject property.
 - * For non-residential property, a survey is usually required.
 - * Remember: Even if an exception for an encroachment onto a neighbors property is included in Schedule B-I, the Endorsement provides coverage if a court orders removal of that encroachment.
- Confirm that no building on a neighboring property encroaches onto the subject property.
 - * For non-residential property, a survey is usually required.

- *Minerals*

- Confirm that there are governmental restrictions that would limit or prevent mineral or other subsurface development.
- Confirm that there is no ongoing or anticipated mineral or other subsurface development in the area.

ENDORSEMENT
ALTA 9-06

RESTRICTIONS, ENCROACHMENTS, MINERALS - LOAN POLICY

To be attached to and become a part of Policy No. _____ **[Insert Policy Number]** of Mississippi Valley Title Insurance Company/Old Republic National Title Insurance Company.

1. The insurance provided by this endorsement is subject to the exclusions in Section 5 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For the purposes of this endorsement only:
 - a. "Covenant" means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.
 - b. "Improvement" means an improvement, including any lawn, shrubbery, or trees, affixed to either the Land or adjoining land at Date of Policy that by law constitutes real property.
3. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. A violation of a Covenant that:
 - i. divests, subordinates, or extinguishes the lien of the Insured Mortgage,
 - ii. results in the invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage, or
 - iii. causes a loss of the Insured's Title acquired in satisfaction or partial satisfaction of the Indebtedness;
 - b. A violation on the Land at Date of Policy of an enforceable Covenant, unless an exception in Schedule B of the policy identifies the violation;
 - c. Enforced removal of an Improvement located on the Land as a result of a violation, at Date of Policy, of a building setback line shown on a plat of subdivision recorded or filed in the Public Records, unless an exception in Schedule B of the policy identifies the violation; or
 - d. A notice of a violation, recorded in the Public Records at Date of Policy, of an enforceable Covenant relating to environmental protection describing any part of the Land and referring to that Covenant, but only to the extent of the violation of the Covenant referred to in that notice, unless an exception in Schedule B of the policy identifies the notice of the violation.
4. The Company insures against loss or damage sustained by reason of:
 - a. An encroachment of:
 - i. an Improvement located on the Land, at Date of Policy, onto adjoining land or onto that portion of the Land subject to an easement; or
 - ii. an Improvement located on adjoining land onto the Land at Date of Policy unless an exception in Schedule B of the policy identifies the encroachment otherwise insured against in Sections 4.a.i. or 4.a.ii.;
 - b. A final court order or judgment requiring the removal from any land adjoining the Land of an encroachment identified in Schedule B; or
 - c. Damage to an Improvement located on the Land, at Date of Policy:
 - i. that is located on or encroaches onto that portion of the Land subject to an easement excepted in Schedule B, which damage results from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved; or
 - ii. resulting from the future exercise of a right to use the surface of the Land for the extraction or development of minerals or any other subsurface substances excepted from the description of the Land or excepted in Schedule B.

5. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
- a. any Covenant contained in an instrument creating a lease;
 - b. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land;
 - c. except as provided in Section 3.d, any Covenant relating to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances;
 - d. contamination, explosion, fire, fracturing, vibration, earthquake or subsidence; or
 - e. negligence by a person or an Entity exercising a right to extract or develop minerals or other subsurface substances.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: _____ ***[Insert Date of Endorsement]***

Countersigned:

MISSISSIPPI VALLEY TITLE INSURANCE COMPANY
Mark B. Higdon President
W. Parrish Fortenberry Secretary
OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
Mark A. Bilbrey President
Daniel M. Wold Secretary

Authorized Officer or Agent

- **ALTA 9.7-06: Restrictions, Encroachments, Minerals - Land Under Development - Loan Policy**
 - Availability:
 - May be issued with a Lender's Policy only.
 - May only be issued when the construction of an improvement is imminent and detailed plans and specifications for the improvement have been prepared.
 - Contact Underwriting Counsel if you are asked to issue this Endorsement
 - Coverage:
 - Provides a Lender the same coverage as the ALTA 9-06, but adds coverage for "Future Improvements".
 - "Future Improvement" means a building, structure, road, walkway, driveway, curb, lawn, shrubbery or trees to be constructed on or affixed to the Land in the locations according to the "Plans" and that by law will constitute real property
 - "Plans" means the survey, site and elevation plans or other depictions or drawings which are identified in the Endorsement.
 - Underwriting Guidelines:
 - Follow the same underwriting guidelines as the ALTA 9-06.
 - Obtain and review the Plans for the improvement.
 - The Plans must be sufficiently detailed so that the coverages provided by the Endorsement can be safely given.
 - Complete the Endorsement as described on the attached sample.

ENDORSEMENT
ALTA 9.7-06

RESTRICTIONS, ENCROACHMENTS, MINERALS -
LAND UNDER DEVELOPMENT - LOAN POLICY

To be attached to and become a part of Policy No. _____ **[Insert Policy Number]** of Mississippi Valley Title Insurance Company/Old Republic National Title Insurance Company.

1. The insurance provided by this endorsement is subject to the exclusions in Section 5 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only:
 - a. "Covenant" means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.
 - b. "Future Improvement" means a building, structure, road, walkway, driveway, curb, lawn, shrubbery or trees to be constructed on or affixed to the Land in the locations according to the Plans and that by law will constitute real property.
 - c. "Improvement" means an improvement, including any lawn, shrubbery, or trees, affixed to either the Land or adjoining land at Date of Policy that by law constitutes real property.
 - d. "Plans" means the survey, site and elevation plans or other depictions or drawings prepared by _____ **[Insert name of architect or engineer]** dated _____ **[Insert Date of Plans]**, last revised _____ **[Insert Date of Latest Revision]**, designated as _____ **[Insert name of project]** consisting of _____ **[Insert number of pages]** sheets.
3. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. A violation of a Covenant that:
 - i. divests, subordinates, or extinguishes the lien of the Insured Mortgage,
 - ii. results in the invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage, or
 - iii. causes a loss of the Insured's Title acquired in satisfaction or partial satisfaction of the Indebtedness;
 - b. A violation of an enforceable Covenant by an Improvement on the Land at Date of Policy or by a Future Improvement, unless an exception in Schedule B of the policy identifies the violation;
 - c. Enforced removal of an Improvement located on the Land or of a Future Improvement as a result of a violation of a building setback line shown on a plat of subdivision recorded or filed in the Public Records at Date of Policy, unless an exception in Schedule B of the policy identifies the violation; or
 - d. A notice of a violation, recorded in the Public Records at Date of Policy, of an enforceable Covenant relating to environmental protection describing any part of the Land and referring to that Covenant, but only to the extent of the violation of the Covenant referred to in that notice, unless an exception in Schedule B of the policy identifies the notice of the violation.

4. The Company insures against loss or damage sustained by reason of:
- a. An encroachment of:
 - i. an Improvement located on the Land at Date of Policy or a Future Improvement, onto adjoining land or onto that portion of the Land subject to an easement; or
 - ii. an Improvement located on adjoining land onto the Land at Date of Policy, unless an exception in Schedule B of the policy identifies the encroachment otherwise insured against in Sections 4.a.i. or 4.a.ii.;
 - b. Damage to an Improvement located on the Land at Date of Policy or a Future Improvement:
 - i. that encroaches onto that portion of the Land subject to an easement excepted in Schedule B, which damage results from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved; or
 - ii. resulting from the future exercise of a right to use the surface of the Land for the extraction or development of minerals or any other subsurface substances excepted from the description of the Land or excepted in Schedule B.
5. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
- a. any Covenant contained in an instrument creating a lease;
 - b. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land;
 - c. except as provided in Section 3.d, any Covenant relating to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances;
 - d. contamination, explosion, fire, vibration, fracturing, earthquake or subsidence; or
 - e. negligence by a person or an Entity exercising a right to extract or develop minerals or other subsurface substances

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: _____ ***[Insert Date of Endorsement]***

Countersigned:

MISSISSIPPI VALLEY TITLE INSURANCE COMPANY
 Mark B. Higdon President
 W. Parrish Fortenberry Secretary
 OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
 Mark A. Bilbrey President
 Daniel M. Wold Secretary

 Authorized Officer or Agent

- **ALTA 9.6-06: Private Rights - Loan Policy**
 - Availability:
 - May be issued with a Lender's Policy only.
 - Coverage:
 - Insures a Lender against loss resulting from enforcement of a "Private Right" in a covenant that:
 - Results in invalidity, unenforceability, or lack of priority of the insured Deed of Trust (Item 3.a.).
 - Causes a loss of an insured lender's title after foreclosure (Item 3.b.).
 - "Private Right" is defined as:
 - A private charge or assessment;
 - An option to purchase;
 - A right of first refusal; or
 - A right of prior approval of a future purchaser or occupant.
 - NOTE: The coverage provided by this endorsement is not included in the other ALTA 9 Series endorsements.
 - As a result, a lender may request both the ALTA 9.6-06 and one of the other ALTA 9 Series endorsements.
 - Underwriting Guidelines
 - **Read the covenants** and determine if a "Private Right" exists.
 - If so, specifically except in Schedule B-I the "Private Rights" which are contained in the covenants.
 - Examples of exceptions:

Item __. Assessments of Main Street Homeowner's Association, as set forth in Section 3.2 of the Declaration of Covenants, Conditions, and Restrictions, dated January 30, 2012, and recorded in Book 123 at Page 456.

Item __. Option to Purchase contained in Section 5.1 of the Declaration of Covenants, Conditions, and Restrictions, dated January 30, 2012, and recorded in Book 123 at Page 456.

ENDORSEMENT
ALTA 9.6-06

PRIVATE RIGHTS - LOAN POLICY

To be attached to and become a part of Policy No. _____ **[Insert Policy Number]** of Mississippi Valley Title Insurance Company/Old Republic National Title Insurance Company.

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only:
 - a. "Covenant" means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.
 - b. "Private Right" means (i) a private charge or assessment; (ii) an option to purchase; (iii) a right of first refusal; or (iv) a right of prior approval of a future purchaser or occupant.
3. The Company insures against loss or damage sustained by the Insured under this Loan Policy if enforcement of a Private Right in a Covenant affecting the Title at Date of Policy (a) results in the invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage, or (b) causes a loss of the Insured's Title acquired in satisfaction or partial satisfaction of the Indebtedness.
4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from any covenant, condition, limitation or restriction:
 - a. contained in an instrument creating a lease;
 - b. relating to obligations of any type to perform maintenance, repair, or remediation on the Land; or
 - c. relating to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: _____ **[Insert Date of Endorsement]**

Countersigned:

MISSISSIPPI VALLEY TITLE INSURANCE COMPANY
Mark B. Higdon President
W. Parrish Fortenberry Secretary
OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
Mark A. Bilbrey President
Daniel M. Wold Secretary

Authorized Officer or Agent

- **ALTA 9.3-06: Covenants, Conditions and Restrictions - Loan Policy**
 - Availability:
 - May be issued with a Lender's Policy only.
 - Coverage:
 - Provides identical coverage regarding Covenants, Conditions, and Restrictions as the ALTA 9-06.
 - However, the ALTA 9.3-06 does not include the coverage for Encroachments and Minerals provided by the ALTA 9-06.
 - Underwriting Guidelines:
 - Follow the same underwriting guidelines as for the Covenants, Conditions, and Restrictions coverages of the ALTA 9-06.
 - NOTE: The ALTA 9.3-06 is useful where the Encroachments and/or Minerals coverage provided by the ALTA 9-06 can not be issued, but the Covenants, Conditions, and Restrictions coverage can.
 - Collectively, the ALTA 9.3-06 (Covenants, Conditions, and Restrictions), 28.1-06 (Encroachments), and 35-06 (Minerals) provide a lender with basically the same protection as provided in the ALTA 9-06.

ENDORSEMENT
ALTA 9.3-06

COVENANTS, CONDITIONS AND RESTRICTIONS - LOAN POLICY

To be attached to and become a part of Policy No. _____ **[Insert Policy Number]** of Mississippi Valley Title Insurance Company/Old Republic National Title Insurance Company.

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For the purposes of this endorsement only:
 - a. "Covenant" means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.
 - b. "Improvement" means an improvement, including any lawn, shrubbery, or trees, affixed to the Land at Date of Policy that by law constitutes real property.
3. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. A violation of a Covenant that:
 - i. divests, subordinates, or extinguishes the lien of the Insured Mortgage,
 - ii. results in the invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage, or
 - iii. causes a loss of the Insured's Title acquired in satisfaction or partial satisfaction of the Indebtedness;
 - b. A violation on the Land at Date of Policy of an enforceable Covenant, unless an exception in Schedule B of the policy identifies the violation;
 - c. Enforced removal of an Improvement as a result of a violation, at Date of Policy, of a building setback line shown on a plat of subdivision recorded or filed in the Public Records, unless an exception in Schedule B of the policy identifies the violation; or
 - d. A notice of a violation, recorded in the Public Records at Date of Policy, of an enforceable Covenant relating to environmental protection describing any part of the Land and referring to that Covenant, but only to the extent of the violation of the Covenant referred to in that notice, unless an exception in Schedule B of the policy identifies the notice of the violation.
4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
 - a. any Covenant contained in an instrument creating a lease;
 - b. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land; or
 - c. except as provided in Section 3.d, any Covenant pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: _____ ***[Insert Date of Endorsement]***

Countersigned:

MISSISSIPPI VALLEY TITLE INSURANCE COMPANY
Mark B. Higdon President
W. Parrish Fortenberry Secretary
OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
Mark A. Bilbrey President
Daniel M. Wold Secretary

Authorized Officer or Agent

- **ALTA 9.1-06: Covenants, Conditions and Restrictions - Unimproved Land - Owner's Policy**
 - Availability:
 - May be issued with an Owner's Policy only.
 - May be issued where the property to be insured is improved or unimproved.
 - Coverage: The ALTA 9.1-06 indemnifies an Owner against loss resulting from:
 - A violation of a Covenant, unless the violation is specifically excepted in Schedule B (Item 3.a.).
 - A notice of violation of a Covenant relating to environmental protection, but only if notice of the violation is recorded in the public records and the notice is not specifically excepted in Schedule B (Item 3.b.)
 - Underwriting Guidelines
 - Confirm that there are no violations of the covenants.
 - Confirm that there are no recorded notices of any violation of covenant relating to environmental protection.

ENDORSEMENT
ALTA 9.1-06

COVENANTS, CONDITIONS AND RESTRICTIONS -
OWNER'S POLICY - UNIMPROVED LAND

To be attached to and become a part of Policy No. _____ **[Insert Policy Number]** of Mississippi Valley Title Insurance Company/Old Republic National Title Insurance Company.

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For the purposes of this endorsement only, "Covenant" means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.
3. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. A violation on the Land at Date of Policy of an enforceable Covenant, unless an exception in Schedule B of the policy identifies the violation; or
 - b. A notice of a violation, recorded in the Public Records at Date of Policy, of an enforceable Covenant relating to environmental protection describing any part of the Land and referring to that Covenant, but only to the extent of the violation of the Covenant referred to in that notice, unless an exception in Schedule B of the policy identifies the notice of the violation.
4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
 - a. any Covenant contained in an instrument creating a lease;
 - b. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land; or
 - c. except as provided in Section 3.b, any Covenant relating to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: _____ **[Insert Date of Endorsement]**

Countersigned:

MISSISSIPPI VALLEY TITLE INSURANCE COMPANY
Mark B. Higdon President
W. Parrish Fortenberry Secretary
OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
Mark A. Bilbrey President
Daniel M. Wold Secretary

Authorized Officer or Agent

- **ALTA 9.2-06: Covenants, Conditions and Restrictions - Improved Land - Owner's Policy**
 - Availability:
 - May be issued with an Owner's Policy only.
 - May only be issued where the property to be insured is improved.
 - Coverage:
 - Provides the same coverage as the ALTA 9.1-06.
 - Adds indemnification against loss resulting from forced removal of an "Improvement" as a result of a violation of a building setback line shown on a recorded plat, unless the violation is specifically excepted in Schedule B.
 - Underwriting Guidelines:
 - Follow the same underwriting guidelines as the ALTA 9.1-06.
 - Confirm that no improvements violate building set back lines.
 - For non-residential property, a survey is usually required.

ENDORSEMENT
ALTA 9.2-06

COVENANTS, CONDITIONS AND RESTRICTIONS -
OWNER'S POLICY - IMPROVED LAND

To be attached to and become a part of Policy No. _____ **[Insert Policy Number]** of Mississippi Valley Title Insurance Company/Old Republic National Title Insurance Company.

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For the purposes of this endorsement only,
 - a. "Covenant" means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.
 - b. "Improvement" means a building, structure located on the surface of the Land, road, walkway, driveway, or curb, affixed to the Land at Date of Policy and that by law constitutes real property, but excluding any crops, landscaping, lawn, shrubbery, or trees.
3. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. A violation on the Land at Date of Policy of an enforceable Covenant, unless an exception in Schedule B of the policy identifies the violation;
 - b. Enforced removal of an Improvement as a result of a violation, at Date of Policy, of a building setback line shown on a plat of subdivision recorded or filed in the Public Records, unless an exception in Schedule B of the policy identifies the violation; or
 - c. A notice of a violation, recorded in the Public Records at Date of Policy, of an enforceable Covenant relating to environmental protection describing any part of the Land and referring to that Covenant, but only to the extent of the violation of the Covenant referred to in that notice, unless an exception in Schedule B of the policy identifies the notice of the violation.
4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
 - a. any Covenant contained in an instrument creating a lease;
 - b. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land; or
 - c. except as provided in Section 3.c., any Covenant relating to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: _____ **[Insert Date of Endorsement]**

Countersigned:

MISSISSIPPI VALLEY TITLE INSURANCE COMPANY
Mark B. Higdon President
W. Parrish Fortenberry Secretary
OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
Mark A. Bilbrey President
Daniel M. Wold Secretary

Authorized Officer or Agent

- **ALTA 9.8-06: Covenants, Conditions and Restrictions - Land Under Development - Owner's Policy**
 - Availability:
 - May be issued with an Owner's Policy only.
 - May only be issued when the construction of an improvement is imminent and detailed plans and specifications for the improvement have been prepared.
 - Contact Underwriting Counsel if you are asked to issue this Endorsement
 - Coverage:
 - Provides the same coverage as the ALTA 9.2-06.
 - Adds coverage for certain "Future Improvements".
 - Underwriting Guidelines:
 - Follow the same underwriting guidelines as for the ALTA 9.2-06.
 - Obtain and review the Plans for the improvement and determine that the coverages can be safely given.
 - The Plans must be sufficiently detailed so that the determinations can be made.
 - Complete the Endorsement as described on the attached sample.

ENDORSEMENT
ALTA 9.8-06

COVENANTS, CONDITIONS AND RESTRICTIONS -
LAND UNDER DEVELOPMENT - OWNER'S POLICY

To be attached to and become a part of Policy No. _____ **[Insert Policy Number]** of Mississippi Valley Title Insurance Company/Old Republic National Title Insurance Company.

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only:
 - a. "Covenant" means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.
 - b. "Future Improvement" means a building, structure, road, walkway, driveway, curb to be constructed on or affixed to the Land in the locations according to the Plans and that by law will constitute real property, but excluding any crops, landscaping, lawn, shrubbery, or trees.
 - c. "Improvement" means a building, structure located on the surface of the Land, road, walkway, driveway, or curb, affixed to the Land at Date of Policy and that by law constitutes real property, but excluding any crops, landscaping, lawn, shrubbery, or trees.
 - d. "Plans" means the survey, site and elevation plans or other depictions or drawings prepared by _____ **[Insert name of architect or engineer]** dated _____ **[Insert Date of Plans]**, last revised _____ **[Insert Date of Latest Revision]**, designated as _____ **[Insert name of project]** consisting of _____ **[Insert number of pages]** sheets.
3. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. A violation of an enforceable Covenant by an Improvement on the Land at Date of Policy or by a Future Improvement, unless an exception in Schedule B of the policy identifies the violation;
 - b. Enforced removal of an Improvement located on the Land or of a Future Improvement as a result of a violation of a building setback line shown on a plat of subdivision recorded or filed in the Public Records at Date of Policy, unless an exception in Schedule B of the policy identifies the violation; or
 - c. A notice of a violation, recorded in the Public Records at Date of Policy, of an enforceable Covenant relating to environmental protection describing any part of the Land and referring to that Covenant, but only to the extent of the violation of the Covenant referred to in that notice, unless an exception in Schedule B of the policy identifies the notice of the violation.
4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
 - a. any Covenant contained in an instrument creating a lease;

- b. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land;
- c. except as provided in Section 3.c, any Covenant relating to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances; or
- d. contamination, explosion, fire, vibration, fracturing, earthquake or subsidence.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: _____ ***[Insert Date of Endorsement]***

Countersigned:

MISSISSIPPI VALLEY TITLE INSURANCE COMPANY
Mark B. Higdon President
W. Parrish Fortenberry Secretary
OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
Mark A. Bilbrey President
Daniel M. Wold Secretary

Authorized Officer or Agent

ZONING ENDORSEMENT (ALTA 3-06, 3.1-06, and 3.2-06)

- Introduction
 - Exclusion 1 of the Owner's Policy and Loan Policy excludes zoning matters from coverage.
 - The ALTA 3 Series provides coverage for certain zoning matters that would otherwise be excluded by Exclusion 1.
 - The ALTA 3-06 may be issued where the property is either improved or unimproved.
 - The ALTA 3.1-06 provides the same coverage as the ALTA 3-06, but adds additional coverages related to the improvements.
 - It may be issued on improved property only, and it may NOT be issued on unimproved property.
 - The ALTA 3.2-06 provides the same coverage as the ALTA 3.1-06, but includes coverage for certain future improvements.

- **ALTA 3-06: Zoning - Unimproved Land**
 - Availability:
 - May be issued with a Lender's Policy or an Owner's Policy.
 - May be issued where the property is either improved or unimproved.
 - Coverage: Insures a Lender or Owner against loss if:
 - The Land is not classified as stated (Item 1.a.)
 - The uses listed in the Endorsement are not allowed under that classification (Item 1.b.)
 - Underwriting Guidelines:
 - Obtain and review a copy of the applicable zoning ordinances.
 - Obtain and review a written certification from the applicable zoning department or agency.
 - The certification should state the zoning classification and authorized use of the property.
 - Complete the Endorsement as described on the attached sample.

ENDORSEMENT
ALTA 3 - 06

ZONING - UNIMPROVED LAND

To be attached to and become a part of Policy No. _____ **[Insert Policy Number]** of Mississippi Valley Title Insurance Company/Old Republic National Title Insurance Company.

1. The Company insures against loss or damage sustained by the Insured in the event that, at Date of Policy,
 - a. According to applicable zoning ordinances and amendments, the Land is not classified Zone: _____ **[Insert Zoning Classification of the Subject Property]**
 - b. The following use or uses are not allowed under that classification: _____
[Insert Uses allowed by that Zoning Classification. Either quote from the applicable ordinance, or state "See Exhibit A" and attach a copy of the applicable zoning ordinance as Exhibit A]

2. There shall be no liability under this endorsement based on:
 - a. Lack of compliance with any conditions, restrictions, or requirements contained in the zoning ordinances and amendments, including but not limited to the failure to secure necessary consents or authorizations as a prerequisite to the use or uses. This paragraph 2.a. does not modify or limit the coverage provided in Covered Risk 5.
 - b. The invalidity of the zoning ordinances and amendments until after a final decree of a court of competent jurisdiction adjudicating the invalidity, the effect of which is to prohibit the use or uses.
 - c. The refusal of any person to purchase, lease or lend money on the Title covered by this Policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: _____ **[Insert Date of Endorsement]**

Countersigned:

MISSISSIPPI VALLEY TITLE INSURANCE COMPANY
Mark B. Higdon President
W. Parrish Fortenberry Secretary
OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
Mark A. Bilbrey President
Daniel M. Wold Secretary

Authorized Officer or Agent

- **ALTA 3.1-06: Zoning - Completed Structure**
 - Availability:
 - May be issued with a Lender's Policy or an Owner's Policy.
 - May only be issued where the property is improved.
 - Coverage: Insures a Lender or Owner against loss if:
 - The Land is not classified as stated (Item 1.a.)
 - The uses listed in the Endorsement are not allowed under that classification (Item 1.b.)
 - A court orders removal or alteration of an existing structure due to a violation of the zoning ordinances related to:
 - area, width or depth of the land as a building site,
 - floor area space of the structure,
 - setback of the structure,
 - height of the structure, and
 - number of parking spaces. (Item 2).
 - Underwriting Guidelines:
 - Obtain and review a copy of the applicable zoning ordinance.
 - Obtain and review a written certification from the applicable zoning department or agency.
 - The certification should state the zoning classification and authorized use of the property.
 - In addition, it should also state that the existing improvements comply with (a) area, width or depth of the land as a building site, (b) floor area space of the structure, (c) setback of the structure, (d) height of the structure, and (e) number of parking spaces.

- Obtain and review a survey of the property to determine that the existing improvements comply with (a) area, width or depth of the land as a building site, (b) floor area space of the structure, (c) setback of the structure, (d) height of the structure, and (e) number of parking spaces.
 - It is preferable for the survey to state on its face the zoning classification, the number of parking spaces on the property, and that the improvement complies with the various matters listed in Item 2 of the Endorsement.

- Complete the Endorsement as described on the attached sample.

ENDORSEMENT
ALTA 3.1 - 06

ZONING - COMPLETED STRUCTURE

To be attached to and become a part of Policy No. _____ **[Insert Policy Number]** of Mississippi Valley Title Insurance Company/Old Republic National Title Insurance Company.

1. The Company insures against loss or damage sustained by the Insured in the event that, at Date of Policy,
 - a. according to applicable zoning ordinances and amendments, the Land is not classified Zone _____ **[Insert Zoning Classification of the Subject Property]**;
 - b. the following use or uses are not allowed under that classification: _____
[Insert Uses allowed by that Zoning Classification. Either quote from the applicable ordinance, or state "See Exhibit A" and attach a copy of the applicable zoning ordinance as Exhibit A]
 - c. There shall be no liability under paragraph 1.b. if the use or uses are not allowed as the result of any lack of compliance with any conditions, restrictions, or requirements contained in the zoning ordinances and amendments, including but not limited to the failure to secure necessary consents or authorizations as a prerequisite to the use or uses. This paragraph 1.c. does not modify or limit the coverage provided in Covered Risk 5.

2. The Company further insures against loss or damage sustained by the Insured by reason of a final decree of a court of competent jurisdiction either prohibiting the use of the Land, with any existing structure, as specified in paragraph 1.b. or requiring the removal or alteration of the structure, because, at Date of Policy, the zoning ordinances and amendments have been violated with respect to any of the following matters:
 - a. Area, width, or depth of the Land as a building site for the structure
 - b. Floor space area of the structure
 - c. Setback of the structure from the property lines of the Land
 - d. Height of the structure, or
 - e. Number of parking spaces.

3. There shall be no liability under this endorsement based on:
 - a. the invalidity of the zoning ordinances and amendments until after a final decree of a court of competent jurisdiction adjudicating the invalidity, the effect of which is to prohibit the use or uses;
 - b. the refusal of any person to purchase, lease or lend money on the Title covered by this policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: _____ ***[Insert Date of Endorsement]***

Countersigned:

MISSISSIPPI VALLEY TITLE INSURANCE COMPANY
Mark B. Higdon President
W. Parrish Fortenberry Secretary
OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
Mark A. Bilbrey President
Daniel M. Wold Secretary

Authorized Officer or Agent

- **ALTA 3.2-06: Zoning - Land Under Development**
 - Availability:
 - May be issued with a Lender's Policy or an Owner's Policy.
 - May only be issued when the construction of an improvement is imminent and detailed plans and specifications for the improvement have been prepared.
 - Contact Underwriting Counsel if you receive a request to issue this Endorsement.
 - Coverage:
 - Provides the same coverage as the ALTA 3.1-06, but includes within the definition of "Improvements" future buildings built according to the specified plans.
 - Underwriting Guidelines:
 - Follow the same underwriting guidelines as for the ALTA 3.1-06.
 - Obtain and review the Plans and confirm that the planned future improvements comply with zoning regarding (a) area, width or depth of the land as a building site, (b) floor area space of the structure, (c) setback of the structure, (d) height of the structure, and (e) number of parking spaces.
 - The Plans must be sufficiently detailed so that the determinations can be made.
 - Complete the Endorsement as described on the attached sample.

ENDORSEMENT
ALTA 3.2-06

ZONING - LAND UNDER DEVELOPMENT

To be attached to and become a part of Policy No. _____ **[Insert Policy Number]** of Mississippi Valley Title Insurance Company/Old Republic National Title Insurance Company.

1. For purposes of this endorsement:
 - a. "Improvement" means a building, structure, road, walkway, driveway, curb, subsurface utility or water well existing at Date of Policy or to be built or constructed according to the Plans that is or will be located on the Land, but excluding crops, landscaping, lawns, shrubbery, or trees.
 - b. "Plans" means those site and elevation plans made by _____ **[Insert name of architect or engineer]** dated _____ **[Insert Date of Plans]**, last revised _____ **[Insert Date of Latest Revision]**, designated as _____ **[Insert name of project]** consisting of sheets.
2. The Company insures against loss or damage sustained by the Insured in the event that, at Date of Policy
 - a. according to applicable zoning ordinances and amendments, the Land is not classified Zone _____ **[Insert Zoning Classification of the Subject Property]**;
 - b. the following use or uses are not allowed under that classification: _____ **[Insert Uses allowed by that Zoning Classification. Either quote from the applicable ordinance, or state "See Exhibit A" and attach a copy of the applicable zoning ordinance as Exhibit A]**
 - c. There shall be no liability under paragraph 2.b. if the use or uses are not allowed as the result of any lack of compliance with any condition, restriction, or requirement contained in the zoning ordinances and amendments, including but not limited to the failure to secure necessary consents or authorizations as a prerequisite to the use or uses. This paragraph 2.c. does not modify or limit the coverage provided in Covered Risk 5.
3. The Company further insures against loss or damage sustained by the Insured by reason of a final decree of a court of competent jurisdiction either prohibiting the use of the Land, with any existing Improvement, as specified in paragraph 2.b. or requiring the removal or alteration of the Improvement, because, at Date of Policy, the zoning ordinances and amendments have been violated with respect to any of the following matters:
 - a. Area, width, or depth of the Land as a building site for the Improvement
 - b. Floor space area of the Improvement
 - c. Setback of the Improvement from the property lines of the Land
 - d. Height of the Improvement, or
 - e. Number of parking spaces.

4. There shall be no liability under this endorsement based on:
- a. the invalidity of the zoning ordinances and amendments until after a final decree of a court of competent jurisdiction adjudicating the invalidity, the effect of which is to prohibit the use or uses;
 - b. the refusal of any person to purchase, lease or lend money on the Title covered by this policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: _____ ***[Insert Date of Endorsement]***

Countersigned:

MISSISSIPPI VALLEY TITLE INSURANCE COMPANY
Mark B. Higdon President
W. Parrish Fortenberry Secretary
OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
Mark A. Bilbrey President
Daniel M. Wold Secretary

Authorized Officer or Agent

CONDOMINIUM ENDORSEMENT (ALTA 4-06 and 4.1-06)

- Introduction
 - The ALTA 4 Series provides coverage not otherwise included in the Policy or which would be excluded by the exceptions for the various condominium documents.
 - When requested, issue the ALTA 4.1-06 and NOT the ALTA 4-06.
 - The ALTA 4-06 and the ALTA 4.1-06 provide the same coverage, except:
 - The ALTA 4-06 insures against loss if the insured Deed of Trust does not have priority over any lien for charges and assessments provided by the condominium statute or documents.
 - The ALTA 4.1-06 only insures against loss if those charges and assessments are due and unpaid at Date of Policy.

- **ALTA 4.1-06: Condominium Endorsement**
 - Availability:
 - May be issued with a Lender's Policy or an Owner's Policy.
 - Coverage: Insures a Lender or Owner against loss if:
 - The insured unit and its common elements are not part of a condominium under the applicable condominium statutes (Item 1).
 - The condominium documents do not comply with the statutory requirements to the extent that the failures affect title to the unit or its common elements (Item 2).
 - Existing violations of restrictive covenants that restrict the use of the unit and its common elements, or a forfeiture or reversion of title due to any provision contained in the restrictive covenants (Item 3).
 - If any charges and assessments provided in the condominium documents are due and unpaid at Date of Policy (Item 4).
 - The unit and its common elements are not entitled to be assessed for real property taxes as a separate parcel (Item 5).

- There is an obligation to remove any improvements due to any encroachments (Item 6).
- The failure of title due a right of first refusal to purchase the Unit that was exercised or could have been exercised (Item 7).
- Underwriting Guidelines:
 - Obtain and review the documents which established the condominium and the restrictive covenants.
 - Confirm that the property to be insured is a Unit in a Condominium established under state law and that the condominium documents comply with the statutory requirements (Tenn. Code Ann. § 66-27-201 et seq., Miss. Code Ann. § 89-9-1 et seq.).
 - Confirm that there are no violations of the covenants.
 - * Example: A commercial condominium unit is being used for a purpose which is not allowed by the restrictive covenants.
 - Confirm that the condominium documents do not contain any forfeiture or reversionary provisions.
 - Confirm that no covenants or any other instruments of record contain any rights of first refusal.
 - Confirm that all charges and assessments have been paid.
 - Payment status and amounts should be confirmed with the Owner's Association.
 - Any amounts due and unpaid must be collected and paid at closing.
 - Confirm that the condominium unit is being taxed as a separate parcel.
 - Confirm that there are no encroachments.
 - For non-residential property, a survey is usually required.

ENDORSEMENT
ALTA 4.1-06

CONDOMINIUM

To be attached to and become a part of Policy No. _____ **[Insert Policy Number]** of Mississippi Valley Title Insurance Company/Old Republic National Title Insurance Company.

1. The failure of the unit identified in Schedule A and its common elements to be part of a condominium within the meaning of the condominium statutes of the jurisdiction in which the unit and its common elements are located.
2. The failure of the documents required by the condominium statutes to comply with the requirements of the statutes to the extent that such failure affects the Title to the unit and its common elements.
3. Present violations of any restrictive covenants that restrict the use of the unit and its common elements and that are contained in the condominium documents or the forfeiture or reversion of Title by reason of any provision contained in the restrictive covenants. As used in this paragraph 3, the words "restrictive covenants" do not refer to or include any covenant, condition, or restriction (a) relating to obligations of any type to perform maintenance, repair, or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy and is not excepted in Schedule B.
4. Any charges or assessments provided for in the condominium statutes and condominium documents due and unpaid at Date of Policy.
5. The failure of the unit and its common elements to be entitled by law to be assessed for real property taxes as a separate parcel.
6. Any obligation to remove any improvements that exist at Date of Policy because of any present encroachments or because of any future unintentional encroachment of the common elements upon any unit or of any unit upon the common elements or another unit.
7. The failure of the Title by reason of a right of first refusal to purchase the unit and its common elements which was exercised or could have been exercised at Date of Policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: _____ **[Insert Date of Endorsement]**

Countersigned:

MISSISSIPPI VALLEY TITLE INSURANCE COMPANY
Mark B. Higdon President
W. Parrish Fortenberry Secretary
OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
Mark A. Bilbrey President
Daniel M. Wold Secretary

Authorized Officer or Agent

PLANNED UNIT DEVELOPMENT ENDORSEMENT (ALTA 5-06 and 5.1-06)

- Introduction
 - The ALTA 5 Series provides coverage which would be excluded by the exceptions for the various restrictive covenant documents.
 - When requested, issue the ALTA 5.1-06 and NOT the ALTA 5-06.
 - The ALTA 5-06 and 5.1-06 provide the same coverage, except:
 - The ALTA 5-06 insures against loss if the insured Deed of Trust does not have priority over any lien for charges and assessments provided by any document listed in Schedule B.
 - The ALTA 5.1-06 only insures against loss if those charges and assessments are due and unpaid at Date of Policy.

- **ALTA 5.1-06: Planned Unit Development Endorsement**
 - Availability:
 - May be issued with a Lender's Policy or an Owner's Policy.
 - It is not necessary that the insured property be located in a platted subdivision.
 - Coverage: Insures a Lender or Owner against loss resulting from:
 - Existing violations of restrictive covenants that restrict the use of the land, or a forfeiture or reversion of title due to any provision contained in the restrictive covenants (Item 1).
 - Any charges or assessments in favor of the homeowners' association which are due and unpaid at Date of Policy (Item 2).
 - Forced removal of an existing structure on the Land because it encroaches onto adjoining land or onto any easements (Item 3).
 - The failure of title due a right of first refusal to purchase the Land that was exercised or could have been exercised (Item 4).

- Underwriting Guidelines:
 - Obtain and review the restrictive covenants:
 - Confirm that there are no existing violations of the restrictive covenants.
 - * Example: The covenants provide for one house per lot; however, the property to be insured has been subdivided and two houses are located on the lot.
 - Confirm that the restrictive covenants do not provide for the forfeiture or reversion of title.
 - Confirm that no covenant or any other instrument of record contains any rights of first refusal.
 - Confirm that all homeowner's association dues have been paid.
 - Payment status and amounts should be confirmed with the Owner's Association.
 - Any amounts due and unpaid must be collected and paid at closing.
 - Confirm that no existing structure (other than a boundary wall or fence) encroaches onto a neighbors property or onto an easement running across the property.
 - For non-residential property, a survey is usually required.

ENDORSEMENT
ALTA 5.1 - 06

PLANNED UNIT DEVELOPMENT

To be attached to and become a part of Policy No. _____ **[Insert Policy Number]** of Mississippi Valley Title Insurance Company/Old Republic National Title Insurance Company.

The Company insures against loss or damage sustained by the Insured by reason of:

1. Present violations of any restrictive covenants referred to in Schedule B that restrict the use of the Land or the forfeiture or reversion of Title by reason of any provision contained in the restrictive covenants. As used in this paragraph 1, the words "restrictive covenants" do not refer to or include any covenant, condition, or restriction (a) relating to obligations of any type to perform maintenance, repair, or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy and is not excepted in Schedule B.
2. Any charges or assessments in favor of any association of homeowners, that are provided for in any document referred to in Schedule B, due and unpaid at Date of Policy.
3. The enforced removal of any existing structure on the Land (other than a boundary wall or fence) because it encroaches onto adjoining land or onto any easements.
4. The failure of the Title by reason of a right of first refusal to purchase the Land that was exercised or could have been exercised at Date of Policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements to it.

Dated: _____ **[Insert Date of Endorsement]**

Countersigned:

MISSISSIPPI VALLEY TITLE INSURANCE COMPANY
Mark B. Higdon President
W. Parrish Fortenberry Secretary
OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
Mark A. Bilbrey President
Daniel M. Wold Secretary

Authorized Officer or Agent

ACCESS ENDORSEMENT (ALTA 17-06 and 17.1-06)

- Introduction
 - Covered Risk 4 of the Loan Policy and Owner's Policy insures against loss if there is no right of access to and from the Land.
 - This provision only insures that the Insured has a legal right of access.
 - The ALTA 17 Series expands the access coverage provided by the Policy.
 - The ALTA 17-06 is used where the property to be insured abuts a public road.
 - The ALTA 17.1-06 is used where the property to be insured does not actually abut a public road, but is connected to a public road by an easement.

- **ALTA 17-06: Access and Entry**

- Availability:

- May be issued with a Lender's Policy or an Owner's Policy.
- Only available where the insured property abuts a public road.

- Coverage: Insures a Lender or Owner against loss if:

- The Land does not abut and have both actual vehicular and pedestrian access to the street specified. (Item (i)).
- The specified street is not physically open and publicly maintained. (Item (ii)).
- The Insured has no right to use existing curb cuts along that portion of the street abutting the Land. (Item (iii)).

- Underwriting Guidelines:

- Confirm that the land to be insured can actually be accessed by vehicles and pedestrian.
 - A survey and/or an inspection of the property may be necessary.
- Confirm with the appropriate governmental authority that the specified street is a public road which is physically open and is publicly maintained.
- Confirm that the specified street is not a limited access road and that there are no other governmental restrictions on curb cuts.
 - If the specified street has limited access, confirm that the existing curb cuts are allowed.
- Complete the Endorsement as described on the attached sample.

ENDORSEMENT
ALTA 17 - 06

ACCESS AND ENTRY

To be attached to and become a part of Policy No. _____ **[Insert Policy Number]** of Mississippi Valley Title Insurance Company/Old Republic National Title Insurance Company.

The Company insures against loss or damage sustained by the Insured if, at Date of Policy (I) the Land does not abut and have both actual vehicular and pedestrian access to and from _____ **[Insert Name of Street used to Access Property]** (the "Street"), (ii) the Street is not physically open and publicly maintained, or (iii) the Insured has no right to use existing curb cuts or entries along that portion of the Street abutting the Land.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (I) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements to it.

Dated: _____ **[Insert Date of Endorsement]**

Countersigned:

MISSISSIPPI VALLEY TITLE INSURANCE COMPANY
Mark B. Higdon President
W. Parrish Fortenberry Secretary
OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
Mark A. Bilbrey President
Daniel M. Wold Secretary

Authorized Officer or Agent

- **ALTA 17.1-06: Indirect Access and Entry**

- Availability:

- May be issued with a Lender's Policy or an Owner's Policy.
- Only available where the property to be insured is connected to a public road by an easement.

- Coverage: Insures a Lender or Owner against loss if:

- The easement identified in Schedule A does not provide the Land both actual vehicular and pedestrian access to the street specified (Item (i)).
- The specified street is not physically open and publicly maintained (Item (ii)).
- The Insured has no right to use existing curb cuts along that portion of the street abutting the Easement (Item (iii)).

- Underwriting Guidelines:

- Confirm that the terms of the easement allow for vehicular and pedestrian access.
- Confirm that the land to be insured can actually be accessed by vehicles and pedestrian.
 - A survey and/or an inspection of the property may be necessary.
- Confirm with the appropriate governmental authority that the specified street to which the easement connects is a public road which is physically open and is publicly maintained.
- Confirm that the specified street is not a limited access road and that there are no other governmental restrictions on curb cuts.
 - If the specified street has limited access, confirm that the existing curb cuts are allowed.

- Complete the Endorsement as described on the attached sample.
 - NOTE: The Endorsement references the Easement described in Schedule A. Therefore, the description of the property, including the Easement must be inserted into Item 5 of Schedule A
 - * Be sure to designate which description is the easement.
- REMINDER: When access is provided by an easement, whether the ALTA 17.1-06 is issued or not:
 - Confirm that the Owner/Borrower has a vested property right in the easement and that no liens or encumbrances on the servient estate can terminate the easement.
 - A title search of the servient estate is necessary.
 - Include a description of the easement in the Deed and/or Deed of Trust.
 - Include an exception in Schedule B of the Policy for any terms and conditions contained in the Easement.

ENDORSEMENT
ALTA 17.1 - 06

INDIRECT ACCESS AND ENTRY

To be attached to and become a part of Policy No. _____ **[Insert Policy Number]** of Mississippi Valley Title Insurance Company/Old Republic National Title Insurance Company.

The Company insures against loss or damage sustained by the Insured if, at Date of Policy (I) the easement identified in Schedule A (the "Easement") does not provide that portion of the Land identified in Schedule A both actual vehicular and pedestrian access to and from _____ **[Insert Street Name]** (ii) the Street is not physically open and publicly maintained, or (iii) the Insured has no right to use existing curb cuts or entries along that portion of the Street abutting the Easement.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (I) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: **[Insert Date of Endorsement]**

Countersigned:

MISSISSIPPI VALLEY TITLE INSURANCE COMPANY
Mark B. Higdon President
W. Parrish Fortenberry Secretary
OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
Mark A. Bilbrey President
Daniel M. Wold Secretary

Authorized Officer or Agent

TAX PARCEL ENDORSEMENT (ALTA 18-06 and 18.1-06)

- Introduction
 - The ALTA 18 Series provides coverage not otherwise provided by the Policy.
 - The ALTA 18-06 is used when the insured property is assessed with only one tax parcel number.
 - The ALTA 18.1-06 is used when the insured property is assessed with two or more tax parcel numbers.

- **ALTA 18-06: Single Tax Parcel**
 - Availability:
 - May be issued with a Lender's Policy or an Owner's Policy.
 - Coverage: Insures a Lender or Owner against loss if:
 - The Land is taxed as part of a larger parcel of land.
 - The Land does not constitute a separate tax parcel for real estate taxes.
 - Underwriting Guidelines:
 - Review the Tax Assessors records and confirm that the tax parcel contains no more and no less property than the property being insured.
 - If the subject property is being carved out of a larger tract and the Tax Assessor has not yet revised the Tax Map to give the property its own Tax Parcel Number, this Endorsement can not be issued.

ENDORSEMENT
ALTA 18 - 06

SINGLE TAX PARCEL

To be attached to and become a part of Policy No. _____ **[Insert Policy Number]** of Mississippi Valley Title Insurance Company/Old Republic National Title Insurance Company.

The Company insures against loss or damage sustained by the Insured by reason of the Land being taxed as part of a larger parcel of land or failing to constitute a separate tax parcel for real estate taxes.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (I) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements to it.

Dated: _____ **[Insert Date of Endorsement]**

Countersigned:

MISSISSIPPI VALLEY TITLE INSURANCE COMPANY
Mark B. Higdon President
W. Parrish Fortenberry Secretary
OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
Mark A. Bilbrey President
Daniel M. Wold Secretary

Authorized Officer or Agent

- **ALTA 18.1-06: Multiple Tax Parcel**

- Availability:

- May be issued with a Lender's Policy or an Owner's Policy.

- Coverage: Insures a Lender or Owner against loss if:

- The land to be insured is not maintained on the real estate tax rolls with the tax parcel numbers listed in the Endorsement (Item 1).
- The listed tax parcels contain more property than the insured property (Item 1).
- The easements, if any, described in Schedule A of the Policy can be cut off by non-payment of real estate taxes or assessments against the servient estate (Item 2).

- Underwriting Guidelines:

- Review the Tax Assessors records and determine the Tax Parcel Numbers for the property to be insured.
- Review the Tax Assessors records and confirm that the tax parcels contain no more and no less property than that being insured.
- If an easement is included in the property being insured, confirm that the easement can not be extinguished by a tax sale of the property encumbered by the easement.
- Complete the Endorsement as described on the attached sample.

ENDORSEMENT
ALTA 18.1 - 06

MULTIPLE TAX PARCEL

To be attached to and become a part of Policy No. _____ **[Insert Policy Number]** of Mississippi Valley Title Insurance Company/Old Republic National Title Insurance Company.

The Company insures against loss or damage sustained by the Insured by reason of:

1. those portions of the Land identified below not being assessed for real estate taxes under the listed tax identification numbers or those tax identification numbers including any additional land:

Parcel

Tax Identification Numbers

**[Insert the tract number(s)
or other reference given in
the Policy]**

**[Insert the corresponding Tax Parcel
Number(s)]**

2. the easements, if any, described in Schedule A being cut off or disturbed by the nonpayment of real estate taxes, assessments or other charges assessed against the servient estate.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements to it.

Dated: _____ **[Insert Date of Endorsement]**

Countersigned:

MISSISSIPPI VALLEY TITLE INSURANCE COMPANY
Mark B. Higdon President
W. Parrish Fortenberry Secretary
OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
Mark A. Bilbrey President
Daniel M. Wold Secretary

Authorized Officer or Agent

CREDITORS' RIGHTS ENDORSEMENT (ALTA 21-06)

- Exclusion 6 of the Lender's Policy and Exclusion 4 of the Owner's Policy exclude from Coverage claims that the insured transaction is:
 - A fraudulent transfer or conveyance under (1) §548 of the Bankruptcy Code; or (2) state fraudulent conveyance law.
 - A Preferential Transfer under §547 of the Bankruptcy Code.
 - However, the Creditors' Rights Exclusion does not exclude coverage for a Preferential Transfer if the basis of the preference is either:
 - the failure to timely record the transfer instrument, or
 - the recording fails to impart constructive notice of its contents to a purchaser for value or a judgment or lien creditor.
- Formerly, the ALTA 21-06 Endorsement provided coverage for creditors' rights matters which would have otherwise been excluded by the Exclusions.
 - **The ALTA 21-06 has been withdrawn and is no longer available.**
 - See Underwriting Bulletin "Creditors' Rights Coverage Eliminated" dated September 27, 2011.
- For New Policies:
 - The ALTA 21-06 Endorsement may **NOT** be issued.
 - No Endorsement deleting Exclusion 6 of the Lender's Policy or Exclusion 4 of the Owner's Policy may be issued.
- For Existing Policies which include an ALTA 21-06 or otherwise provided Creditors' Rights Coverage:
 - If asked to insure an Assignment or Modification:
 - If insuring the Assignment using the ALTA 10-06 or 10.1-06 or insuring the Modification using the ALTA 11-06 or ALTA 11.1-06, these endorsements contain appropriate wording and no additional exception is necessary.

- For any other form of Endorsement to insure the Assignment or Modification it **MUST** include the following exception:

*This endorsement does not insure against and the Company will not pay any loss, cost, expenses or attorneys' fees by reason of any claim that the _____ **[Assignment/Modification]** constitutes a preferential transfer or fraudulent conveyance under federal bankruptcy, state insolvency or similar creditors' rights laws. This exception shall not apply if the claim of preferential transfer results from the failure of the recording of the Assignment: (a) to be timely; or (b) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.*

- If asked to issue any other Endorsement which Down Dates the Policy, the Endorsement **MUST** include the following exception:

This endorsement does not insure against and the Company will not pay any loss, cost, expenses or attorneys' fees by reason of any claim seeking the avoidance, in whole or in part, of the interest insured in Schedule A, because of the occurrence, after Date of Policy as stated in the Policy prior to issuance of this endorsement and prior to Date of Policy as stated in this endorsement, of a preferential transfer or fraudulent conveyance under federal bankruptcy, state insolvency or similar creditors' rights laws.

LOCATION ENDORSEMENT (ALTA 22-06 AND 22.1-06)

- Introduction
 - The ALTA 22 Series provides coverage not otherwise provided by the Policy.
 - The ALTA 22-06 is used when no map of the property is attached to the Policy.
 - The ALTA 22.1-06 is used when a map of the property is attached to the Policy.
 - Similar to the CLTA 116.

- **ALTA 22-06: Location**
 - Availability:
 - May be issued with a Lender's Policy or an Owner's Policy.
 - May only be issued where the property is improved.
 - Coverage: Insures a Lender against loss if the insured property does not contain a designated improvement located at the specified street address.
 - Underwriting Guidelines:
 - Determine the type of improvement located on the subject property.
 - Confirm that the improvement is actually located on the subject property.
 - A survey and/or inspection of the property may be necessary.
 - Confirm the street address of the subject property.
 - Complete the Endorsement as described on the attached sample.

ENDORSEMENT
ALTA 22 - 06

LOCATION

To be attached to and become a part of Policy No. _____ **[Insert Policy Number]** of Mississippi Valley Title Insurance Company/Old Republic National Title Insurance Company.

The Company insures against loss or damage sustained by the Insured by reason of the failure of a _____ **[Insert a general description of the improvement, such as "Residence" or "Office Building" or "Apartment Building"]** known as _____ **[Insert Property Address]** to be located on the Land at Date of Policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (I) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: _____ **[Insert Date of Endorsement]**

Countersigned:

MISSISSIPPI VALLEY TITLE INSURANCE COMPANY
Mark B. Higdon President
W. Parrish Fortenberry Secretary
OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
Mark A. Bilbrey President
Daniel M. Wold Secretary

Authorized Officer or Agent

- **ALTA 22.1-06: Location and Map**

- Availability:

- May be issued with a Lender's Policy or an Owner's Policy.
- May only be issued where the property is improved.

- Coverage:

- Provides the same coverage as the ALTA 22-06.
- Also provides coverage against loss if a map attached to the policy does not correctly show the location and dimensions of the insured property.

- Underwriting Guidelines:

- Follow the same underwriting guidelines as for the ALTA 22-06.
- Obtain a satisfactory survey and attach it to the Policy.
- Complete the Endorsement as described on the attached sample.

ENDORSEMENT
ALTA 22.1 - 06

LOCATION AND MAP

To be attached to and become a part of Policy No. _____ **[Insert Policy Number]** of Mississippi Valley Title Insurance Company/Old Republic National Title Insurance Company.

The Company insures against loss or damage sustained by the Insured by reason of the failure of (I) a _____ **[Insert a general description of the improvement, such as "Residence" or "Office Building" or "Apartment Building"]**, known as _____ **[Insert Property Address]**, to be located on the Land at Date of Policy, or (ii) the map, if any, attached to this policy to correctly show the location and dimensions of the Land according to the Public Records.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (I) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: _____ **[Insert Date of Endorsement]**

Countersigned:

MISSISSIPPI VALLEY TITLE INSURANCE COMPANY
Mark B. Higdon President
W. Parrish Fortenberry Secretary
OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
Mark A. Bilbrey President
Daniel M. Wold Secretary

Authorized Officer or Agent

SAME AS SURVEY ENDORSEMENT (ALTA 25-06 and 25.1-06)

- Introduction
 - The ALTA 25 Series provides coverage not otherwise provided by the Policy.
 - The ALTA 25-06 is used when the property to be insured is the only parcel shown on the survey.
 - The ALTA 25.1-06 is used when multiple parcels are shown on the survey, but not all of the parcels shown are being insured.
 - Similar to the CLTA 116.1.

- **ALTA 25-06: Same As Survey Endorsement**
 - Availability:
 - May be issued with a Lender's Policy or an Owner's Policy.
 - Coverage: Insures a Lender or Owner against loss if the land described in the policy is not the same as that shown on the identified survey.
 - Underwriting Guidelines:
 - Obtain a suitable survey of the subject property.
 - Compare the recorded description with the survey and confirm that the property is the same.
 - Complete the Endorsement as described on the attached sample.

ENDORSEMENT
ALTA 25 - 06

SAME AS SURVEY

To be attached to and become a part of Policy No. _____ **[Insert Policy Number]** of Mississippi Valley Title Insurance Company/Old Republic National Title Insurance Company.

The Company insures against loss or damage sustained by the Insured by reason of the failure of the Land as described in Schedule A to be the same as that identified on the survey made by _____ **[Insert Name of Surveyor]** dated _____ **[Insert Date of Survey]**, and designated Job No. _____ **[Insert Survey Job Number]**.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: _____ **[Insert Date of Endorsement]**

Countersigned:

MISSISSIPPI VALLEY TITLE INSURANCE COMPANY
Mark B. Higdon President
W. Parrish Fortenberry Secretary
OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
Mark A. Bilbrey President
Daniel M. Wold Secretary

Authorized Officer or Agent

- **ALTA 25.1-06: Same As Portion of Survey Endorsement**
 - Availability:
 - May be issued with a Lender's Policy or an Owner's Policy.
 - Coverage: Insures a Lender or Owner against loss if the land described in the policy is not the same as a designated parcel that is shown on the identified survey.
 - Underwriting Guidelines:
 - Obtain a suitable survey of the subject property.
 - Compare the recorded description with the survey, determine which parcel on the survey is the property being insured, and confirm that the property is the same.
 - Complete the Endorsement as described on the attached sample.

ENDORSEMENT
ALTA 25.1 - 06

SAME AS PORTION OF SURVEY

To be attached to and become a part of Policy No. _____ **[Insert Policy Number]** of Mississippi Valley Title Insurance Company/Old Republic National Title Insurance Company.

The Company insures against loss or damage sustained by the Insured by reason of the failure of the Land as described in Schedule A to be the same as that identified as _____ **[Insert Parcel or Tract Number]** on the survey made by _____ **[Insert Name of Surveyor]** dated _____ **[Insert Date of Survey]**, and designated Job No. _____ **[Insert Survey Job Number]**.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: _____ **[Insert Date of Endorsement]**

Countersigned:

MISSISSIPPI VALLEY TITLE INSURANCE COMPANY
Mark B. Higdon President
W. Parrish Fortenberry Secretary
OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
Mark A. Bilbrey President
Daniel M. Wold Secretary

Authorized Officer or Agent

DELETION OF ARBITRATION ENDORSEMENT

- Introduction
 - Section 13 of the Loan Policy provides for Arbitration:
 - Policy Amount of \$2 million or less: arbitration may be unilaterally invoked by either Insured or Underwriter.
 - Policy Amount of over \$2 million: both parties must agree to arbitration.
 - Lenders on Commercial Transactions occasionally request the Arbitration provision of the Loan Policy to be deleted.
 - This is not an ALTA Endorsement. It is simply the appropriate wording inserted into a blank Endorsement. A sample is attached.
- Availability
 - If the Policy Amount of the Policy to be issued is \$2 million or less: contact Underwriting Counsel.
 - If the Policy Amount of the Policy to be issued is more than \$2 million or more: it may be issued if requested by the lender.

ENDORSEMENT

DELETION OF ARBITRATION PROVISION FROM LENDER'S POLICY

To be attached to and become a part of Policy No. _____ **[Insert Policy Number]** of Mississippi Valley Title Insurance Company/Old Republic National Title Insurance Company.

Section 13 of the Conditions, relating to arbitration, is hereby deleted in its entirety.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: _____ **[Insert Date of Endorsement]**

Countersigned:

MISSISSIPPI VALLEY TITLE INSURANCE COMPANY
Mark B. Higdon President
W. Parrish Fortenberry Secretary
OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
Mark A. Bilbrey President
Daniel M. Wold Secretary

Authorized Officer or Agent

ASSIGNMENT ENDORSEMENT (ALTA 10-06 and 10.1-06)

- Introduction
 - A Loan Policy insures through the Date of Policy, which is stated in Schedule A.
 - Under the terms of the Policy, a subsequent Assignment of the Deed of Trust is not insured and an Assignee would have no claim for matters occurring after the Policy Date.
 - For example: If the Assigning Lender (or a previous Assigning Lender) fully or partially released the Deed of Trust, or if the Assigning Lender was not the holder of the Deed of Trust. The new Assignee Lender would have no claim under the Policy.
 - Some lenders request an Endorsement to insure the Assignment in order to limit or eliminate this risk.
 - Assignments can be insured on the ALTA 10-06 and 10.1-06, or on a blank endorsement with the proper wording.
 - The ALTA 10-06 and 10.1-06 provide the same coverage, except as follows:
 - The ALTA 10-06 does not cover matters recorded after the Policy Date, except to insure that no modifications or releases have been recorded.
 - The ALTA 10.1-06 adds coverage against loss for intervening liens between the original Policy Date and the date of the assignment.

- **ALTA 10-06: Assignment**

- Availability:

- May be issued with a Lender's Policy.

- Coverage: Insures the assignee of a Deed of Trust against loss resulting from:

- Failure of the assignment to vest title of the Deed of Trust in the assignee.
- Any modification or release of the lien of the insured Deed of Trust except for those modifications or releases listed in the Endorsement.

- Underwriting Guidelines:

- Confirm that the Assignor is the owner and holder of record of the Deed of Trust at the time the assignment is executed.
- Confirm that the Assignment is sufficient to vest title in the Assignee.
- Determine if any modifications or partial or full releases of the Deed of Trust have occurred.
- Complete the Endorsement as described on the attached sample.

ENDORSEMENT
ALTA 10-06

ASSIGNMENT

To be attached to and become a part of Policy No. _____ **[Insert Policy Number]** of Mississippi Valley Title Insurance Company/Old Republic National Title Insurance Company.

1. The name of the Insured at Date of Endorsement and referred to in this endorsement as the "Assignee" is amended to read: _____ **[Insert Lender being Assigned the insured Deed of Trust]**.
2. The Company insures against loss or damage sustained by the Assignee by reason of:
 - a. The failure of the following assignment to vest title to the Insured Mortgage in the Assignee: _____ **[Insert a description, including the recording information, of the Assignment being insured]**;
 - b. Any modification, partial or full reconveyance, release, or discharge of the lien of the Insured Mortgage recorded on or prior to Date of Endorsement in the Public Records other than those shown in the policy or a prior endorsement, except: _____ **[Insert a description, including recording information, of each modification or release of the insured Deed of Trust between the Policy Date and Date of the Endorsement. If none, insert "NONE"]**;

This endorsement does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses, by reason of any claim that arises out of the transaction creating the assignment by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws that is based on:

1. the assignment being deemed a fraudulent conveyance or fraudulent transfer; or
2. the assignment being deemed a preferential transfer.

This endorsement shall be effective provided that, at Date of Endorsement, (1) the note or notes secured by the lien of the Insured Mortgage have been properly endorsed and delivered to the Assignee, or (2) if the note or notes are transferable records, the Assignee has "control" of the single authoritative copy of each "transferable record" as these terms are defined by applicable electronic transactions laws.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: _____ **[Insert Date of Endorsement]**

Countersigned:

MISSISSIPPI VALLEY TITLE INSURANCE COMPANY
Mark B. Higdon President
W. Parrish Fortenberry Secretary
OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
Mark A. Bilbrey President
Daniel M. Wold Secretary

Authorized Officer or Agent

- **ALTA 10.1-06: Assignment and Date Down**
 - Availability:
 - May be issued with a Lender's Policy.
 - Coverage: The ALTA 10.1-06 provides the same coverage as the ALTA 10-06, but adds coverage against loss for intervening liens between the original Policy Date and the date of the assignment ("Date Down").
 - Underwriting Guidelines:
 - Follow the same underwriting guidelines as for the ALTA 10-06.
 - Determine if there are intervening matters.
 - Complete the Endorsement as described on the attached sample.

ENDORSEMENT
ALTA 10.1-06

ASSIGNMENT AND DATE DOWN

To be attached to and become a part of Policy No. _____ ***[Insert Policy Number]*** of Mississippi Valley Title Insurance Company/Old Republic National Title Insurance Company.

1. The name of the Insured at Date of Endorsement and referred to in this endorsement as the "Assignee" is amended to read: _____ ***[Insert Lender being Assigned the insured Deed of Trust]***.
2. The Company insures against loss or damage sustained by the Assignee by reason of:
 - a. The failure of the following assignment to vest title to the Insured Mortgage in the Assignee: _____ ***[Insert a description, including the recording information, of the Assignment being insured]***;
 - b. Any liens for taxes or assessments that are due and payable on Date of Endorsement, except: _____ ***[Insert any taxes and assessments which are due and payable. If none, insert "NONE"]***;
 - c. Lack of priority of the lien of the Insured Mortgage over defects, liens, or encumbrances other than those shown in the policy or a prior endorsement, except: _____ ***[Insert any intervening matters, other than those already listed in 2.b., 2.c, and 2e., between the Date of Policy and Date of the Endorsement. If none, insert "NONE"]***;
 - d. Notices of federal tax liens or notices of pending bankruptcy proceedings affecting the Title and recorded subsequent to Date of Policy in the Public Records and on or prior to Date of Endorsement, except: _____ ***[Insert the recording information for any recorded Notices of Federal Tax Liens or Bankruptcy between Date of Policy and Date of the Endorsement. If none, insert "NONE"]***;
 - e. Any modification, partial or full reconveyance, release or discharge of the lien of the Insured Mortgage recorded on or prior to Date of Endorsement in the Public Records other than those shown in the policy or a prior endorsement, except: _____ ***[Insert a description, including recording information, of each modification or release of the insured Deed of Trust between the Policy Date and Date of the Endorsement. If none, insert "NONE"]***.

This endorsement does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses, by reason of any claim that arises out of the transaction creating the assignment by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws that is based on:

1. the assignment being deemed a fraudulent conveyance or fraudulent transfer; or
2. the assignment being deemed a preferential transfer.

This endorsement shall be effective provided that, at Date of Endorsement, (1) the note or notes secured by the lien of the Insured Mortgage have been properly endorsed and delivered to the Assignee, or, (2) if the note or notes are transferable records, the Assignee has "control" of the single authoritative copy of each "transferable record" as these terms are defined by applicable electronic transaction laws.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: _____ ***[Insert Date of Endorsement]***

Countersigned:

MISSISSIPPI VALLEY TITLE INSURANCE COMPANY
Mark B. Higdon President
W. Parrish Fortenberry Secretary
OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
Mark A. Bilbrey President
Daniel M. Wold Secretary

Authorized Officer or Agent

MORTGAGE MODIFICATION ENDORSEMENT (ALTA 11-06 and 11.1-06)

- Introduction
 - A Loan Policy insures through the Date of Policy, which is stated in Schedule A.
 - Under the terms of the Policy, a subsequent Modification of the insured Deed of Trust is not insured and the Lender would have no claim for matters occurring after the Policy Date.
 - For example: If the Modification was ineffective and the statute of limitations on the original Deed of Trust ran, or the Modification resulted in a loss of priority to an intervening lien, the Lender would have no claim under the Policy.
 - Some lenders request an Endorsement to insure the Modification in order to limit or eliminate this risk.
 - Modifications can be insured on the ALTA 11-06 and 11.1-06, or on a blank endorsement with the proper wording.
 - The ALTA 11.1-06 provides the same coverage as the ALTA 11-06, but is used where an intervening lien exists and was subordinated to the modification.

- **ALTA 11-06: Mortgage Modification**

- Availability:

- May be issued with a Lender's Policy.

- Coverage:

- Insures a Lender against loss due to invalidity or unenforceability of the Deed of Trust as a result of the terms of the modification agreement.
- Insures that priority of the Deed of Trust, as modified, continues over any defects, liens and encumbrances on the title, other than those listed as exceptions in either the Policy or the Endorsement.

- Underwriting Guidelines:

- Determine if any intervening matters have been recorded between the Policy Date and the date of the Modification.
 - All intervening matters must be listed as exceptions unless subordinated or released.
- Complete the Endorsement as described on the attached sample.

ENDORSEMENT
ALTA 11-06

MORTGAGE MODIFICATIONS

To be attached to and become a part of Policy No. _____ ***[Insert Policy Number]*** of Mississippi Valley Title Insurance Company/Old Republic National Title Insurance Company.

The Company insures against loss or damage sustained by the Insured by reason of:

1. The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title at Date of Endorsement as a result of the agreement dated _____ ***[Insert date of Modification Agreement]***, recorded _____ ***[Insert the recording information of the Modification Agreement]*** ("Modification"); and
2. The lack of priority of the lien of the Insured Mortgage, at Date of Endorsement, over defects in or liens or encumbrances on the Title, except for those shown in the policy or any prior endorsement and except: _____ ***[Insert any intervening matters between the Date of Policy and Date of the Endorsement. If none, insert "NONE"]***.

This endorsement does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses, by reason of any claim that arises out of the transaction creating the Modification by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws that is based on:

1. the Modification being deemed a fraudulent conveyance or fraudulent transfer; or
2. the Modification being deemed a preferential transfer except where the preferential transfer results from the failure:
 - a. to timely record the instrument of transfer; or
 - b. of such recordation to impart notice to a purchaser for value or to a judgment or lien creditor.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: _____ ***[Insert Date of Endorsement]***

Countersigned:

MISSISSIPPI VALLEY TITLE INSURANCE COMPANY
Mark B. Higdon President
W. Parrish Fortenberry Secretary
OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
Mark A. Bilbrey President
Daniel M. Wold Secretary

Authorized Officer or Agent

- **ALTA 11.1-06: Mortgage Modification with Subordination**
 - Availability:
 - May be issued with a Lender's Policy.
 - Coverage: The ALTA 11.1-06 provides the same coverage as the ALTA 11-06, but is used where an intervening lien exists and was subordinated to the modification.
 - Underwriting Guidelines:
 - Follow the same underwriting guidelines as for the ALTA 11-06.
 - Complete the Endorsement as described on the attached sample.
 - All subordinated intervening matters must be listed in the Endorsement.

ENDORSEMENT
ALTA 11.1-06

MORTGAGE MODIFICATION WITH SUBORDINATION

To be attached to and become a part of Policy No. _____ **[Insert Policy Number]** of Mississippi Valley Title Insurance Company/Old Republic National Title Insurance Company.

The Company insures against loss or damage sustained by the Insured by reason of:

1. The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title at Date of Endorsement as a result of the agreement dated _____ **[Insert date of Modification Agreement]**, recorded _____ **[Insert the recording information of the Modification Agreement]** ("Modification"); and
2. The lack of priority of the lien of the Insured Mortgage, at Date of Endorsement, over defects in or liens or encumbrances on the Title, except for those shown in the policy or any prior endorsement and except: _____ **[Insert any intervening matters between the Date of Policy and Date of the Endorsement. If none, insert "NONE"]**;
3. The following matters not being subordinate to the lien of the Insured Mortgage: _____ **[Insert any intervening matters which are subordinate to the insured Deed of Trust as modified by the Insured Modification]**;

This endorsement does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses, by reason of any claim that arises out of the transaction creating the Modification by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws that is based on:

1. the Modification being deemed a fraudulent conveyance or fraudulent transfer; or
2. the Modification being deemed a preferential transfer except where the preferential transfer results from the failure
 - a. to timely record the instrument of transfer; or
 - b. of such recordation to impart notice to a purchaser for value or to a judgment or lien creditor.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: _____ **[Insert Date of Endorsement]**

Countersigned:

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ENDORSEMENTS WHICH DOWN DATE THE POLICY

- An Endorsement to an existing Policy which advances the Policy Date is sometimes referred to as a Down Date or Date Down.
 - This is common in Construction Disbursement Endorsements, as well as some Endorsements insuring Assignments and Modifications of Deeds of Trust.
- Changing the Date of Policy by Endorsement also updates the coverages provided by all Endorsements to that Policy.
 - Each Endorsement must be re-underwritten to determine that it is safe to advance the Date of Policy.
 - If not, appropriate exceptions must be made.
 - Be very careful if the original Policy contains:
 - Survey Coverage or a survey related endorsement
 - ALTA 3 Series (Zoning)
 - ALTA 9 Series (Restrictions, Encroachments, and Minerals)
 - ALTA 21-06 (Creditors' Rights Coverage)

RESPA REFORM

Introduction

- The Dodd-Frank Wall Street Reform and Consumer Protection Act was enacted July 21, 2010 (the "Dodd-Frank Act").
 - The Act established the Consumer Financial Protection Bureau (the "CFPB") within the Federal Reserve.
 - The Act placed sixteen different federal laws, including RESPA and Truth in Lending, under the jurisdiction of the CFPB.
 - The Act required the CFPB (within one year of operation) to propose rules and model disclosure forms that combine the disclosures required under the Truth in Lending Act and RESPA.

Proposed Rule

- On July 9, 2012, the CFPB issued the Proposed Rule titled "Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z)". Docket No. CFPB-2012-0028; RIN 3170-AA19.
- Mortgages Subject to the Proposed Rule:
 - Applies to most consumer mortgages.
 - Exceptions:
 - Home-equity lines of credit;
 - Reverse Mortgages;
 - Mortgages secured by Mobile Homes or other dwelling not attached to the land.
- Forms
 - Creates two new forms:
 - Loan Estimate Form
 - Closing Disclosure Form

- Loan Estimate Form
 - Designed to disclose key features, costs, and risks of the mortgage for which the consumer is applying.
 - Replaces the Good Faith Estimate (the "GFE") and the "early" Truth in Lending form.

- Closing Disclosure Form
 - Designed to disclose the costs of the transaction to the consumer.
 - Replaces the HUD-1 and the revised Truth in Lending form.
 - Makes a number of changes in format and substance compared to the current HUD-1.
 - Timing:
 - The Closing Disclosure Form must be provided at least 3 business days prior to the closing.
 - If changes occur after the Closing Disclosure Form is issued, a revised Closing Disclosure Form must be provided and an additional three business days given to review before closing.
 - * Exceptions
 - + Changes resulting from negotiations between the buyer and seller and minor changes which result in less than \$100 increased costs will not require the additional 3 day review period to be provided.
 - Delivery of the Closing Disclosure Form
 - The Proposed Rule has two alternatives:
 - * The Lender would be responsible for delivering the Closing Disclosure Form to the consumer; OR
 - * The Lender may rely on the settlement agent to provide the form, but would remain responsible for accuracy of the form.
 - The CFPB is asking for comments on the preferable alternative.

- Limits on Closing Cost Increases
 - The Proposed Rule includes similar rules to the existing rules which restrict the circumstances in which the consumer can be required to pay more for settlement services.

- Timeline:
 - Comments to the Proposed Rule were due by November 6, 2012.
 - In the Proposed Rule, the Bureau expressed its desire to make the Rule effective as soon as possible and sought comments on how long it would take to revise software and retrain staff.
 - CFPB expected to issue the final Regulations in the 2nd half of 2013.

- Additional Information: www.alta.org/cfpb/



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A Review of Select Tennessee Real Property Cases from the Last Decade



R. Bradford Jones is Vice President, Claims Counsel for Mississippi Valley Title Insurance Company, a member of the Old Republic Title Insurance Group. Mr. Jones has received an AV Preeminent Rating from Martindale-Hubbell. He received his Bachelor of Accountancy (1996), Master of Taxation (1997), and Juris Doctorate (2000) degrees from The University of Mississippi and his Master of Laws in Taxation from New York University (2001). Mr. Jones received the Mississippi Society of Certified Public Accountants Bronze Medal for the third highest score on the May 1997 CPA Exam. He is also a Certified Fraud Examiner. Prior to joining Mississippi Valley Title Insurance Company, he worked for two large law firms in Jackson, Mississippi.

A Review of Select Tennessee Real Property Cases from the Last Decade

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Statutory Update

I. Repeal of 60-Day Notice of Right to Foreclose

Effective January 1, 2013, The Tennessee Legislature repealed Tenn. Code Ann. § 35-5-117, which imposed a 60-day notice requirement on the mortgage holder prior to the date of first publication for owner-occupied residences. Public Chapter No. 122 of 2011.

II. Instrument Preparer No Longer Required to be Noted on First Page of the Instrument

Effective April 11, 2012, Tenn. Code Ann. § 66-24-115 was amended to require that the name and address of the person preparing the instrument be listed anywhere within the instrument rather than just on “the face of the first page” of the instrument as previously required. Public Chapter 707 of 2012.

- The receiving for record, or filing, of any such instrument by the county register without complying with the provisions of this section shall not prevent the instrument from becoming notice as now provided by law.

III. Misdemeanor to Prepare or File Fraudulent Liens

Effective, June 6, 2011, it is a Class A misdemeanor for any person, including any individual or entity, to knowingly prepare, sign, or file any lien or other document with the intent to encumber any real or personal property when such person has no reasonable basis or any legal cause to place such lien or encumbrance on such real or personal property. Tenn. Code Ann. § 66-3-104. Public Chapter 399 of 2011.

- Exception for any licensed attorney who, in good faith, prepares such a transfer document in the course of representation of a client.

IV. Misdemeanor to Prepare or File Fraudulent Conveyances

Effective June 6, 2011, it is a Class A misdemeanor for any person who transfers or applies for recordation of any transfer of land by execution of either a general warranty deed or quitclaim deed, or any other devise, with knowledge that the transferor or grantor has no legal nor equitable interest to convey such land. Tenn. Code Ann. § 39-17-116. Public Chapter 399 of 2011.

Case Law Update

Priority of Mortgages and Liens

V. Priority of Line of Credit Deed of Trust Paid Off But Not Canceled of Record

Washington Mutual Bank, F.A. v. ORNL Federal Credit Union, 300 S.W.3d 665 (Court of Appeals 2009).

Facts: A credit union held a deed of trust securing a line of credit. Subsequently, the borrower refinanced the line of credit with a loan from a bank. At closing, the settlement agent requested a payoff amount for the LOC deed of trust and recorded a deed of trust securing the refinance loan by the bank. The settlement agent issued a check to pay off the LOC deed of trust, but never requested a release of the LOC deed of trust. As a result the line of credit remained open and available to the borrowers. The borrowers took advantage of this source of funding and drew the full principal balance on the line of credit.

The credit union (holding the LOC deed of trust) had adopted a business practice of advising any party requesting a line of credit payoff as to what, if any, additional action would be required before the deed of trust would be released. The evidence presented showed that the credit union failed to adhere to its standard of practice for this closing. However, the LOC deed of trust had a provision that explicitly required the borrowers to specifically request the line of credit be canceled before the credit union would release the LOC deed of trust.

Issue: Whether the credit union is equitably estopped from asserting that its LOC deed of trust has superior priority to the banks deed of trust. In other words, whether LOC deed of trust should be subordinate to the refinance deed of trust because the credit union accepted a payoff of its deed of trust and because it failed comply with its own company standard (which required it to notify the settlement agent of the additional action required to release the LOC deed of trust).

Holding: The credit union's LOC deed of trust is entitled to its first priority lien position. The bank's refinance deed of trust is in a second lien position.

Reasoning: The credit unions registration of its deed of trust with its release provision constituted notice to the world as to what would be required for release. The court reasoned that given this notice in the deed of trust, it cannot be said that the credit union induced any party to believe that it would claim no lien on the subject property as a result of the payoff alone. The conditions for a release were not met and the credit union's deed of trust retains its first lien priority.

Note: This fact pattern represents a common claim received by Mississippi Valley Title Insurance Company. The following steps should be taken to mitigate the risk of this type of claim.

1. The attorney should review every open deed of trust encumbering the subject property to determine if it secures a line of credit. The attorney should not rely on an abstractor to note that the deed of trust secures a line of credit.
2. When paying off a line of credit, the attorney should obtain a signed statement from the borrower directing that the line of credit be closed. The forms supplied by the lender should be used to direct that the equity line be closed. If the lender does not supply forms, the attorney should prepare a statement to this effect and get it signed by the borrower at closing.
3. Some forms supplied by the lender require that a box be checked to close the line of credit. They typically include a statement that if no box is checked, the line of credit will remain open. Make sure the appropriate box is checked.
4. The payoff check and the direction to cancel the line of credit should be sent to the lender in a manner where delivery and receipt can be proven (i.e. registered mail or FedEx). A copy of the delivery confirmation should be kept in the closing file together with a copy of the correspondence sent to the lender directing that the line of credit be closed.
5. Post-closing follow-up procedures should be in place to confirm that the deed of trust securing the line of credit is canceled of record.

VI. Effect of Legal Description Error on Priority of Deeds of Trust

ABN AMRO Mortgage Group, Inc. v. Southern Security Federal Credit Union, 372 S.W.3d 121 (Court of Appeals 2011).

Facts: The first deed of trust contained a scrivener's error that incorrectly referenced the property as being Lot 16 of a subdivision when it should have referenced Lot 10. The legal description in the second deed of trust correctly referenced Lot 10. The second lien holder claimed to have priority over the first deed of trust because of the error in the legal description.

Issue: Whether the fact that the description in the first deed of trust incorrectly described the lot number of the property should negate the lender's status as a first priority lien holder.

Holding: The Court of Appeals in affirming the trial court’s decision found that the first deed of trust had priority over the second deed of trust despite the error in referencing the incorrect lot number.

Reasoning: While the legal description referenced the incorrect lot number, it did reference the correct street address, parcel number and included a derivation clause that referenced a deed with the correct legal description. Based on the totality of the circumstances, the court found that the first deed of trust designated the property “with reasonable certainty” as required by Tennessee law. Moreover, the second lender was not prejudiced because it undisputedly took its lien, and fully accepted its status, as a second lienholder on the property. Indeed, the second lender’s title search revealed the first deed of trust.

Law: Tennessee law recognizes inquiry notice as a form of actual notice. *Blevins v. Johnson County*, 746 S.W.2d 678, 683 (Tenn. 1988). Inquiry notice is “knowledge of facts and circumstances sufficiently pertinent in character to enable a reasonably cautious and prudent persons to investigate and ascertain as to ultimate facts. *Id.* (quoting *Texas Co. v. Aycock*, 190 Tenn. 16, 227 S.W.2d 41, 46 (Tenn. 1950)). A good faith failure to seek out the ultimate facts constitutes no defense, and a party asserting this argument is still chargeable with the undiscovered facts so long as a reasonably diligent inquiry would have uncovered them. *See id.*

Note: Each year Mississippi Valley Title Insurance Company receives a number of claims where there is a scrivener’s error referencing an incorrect lot number. While the lender holding the first lien ultimately prevailed in the subject case, the cost of litigation can be substantial.

Note: Under the right set of facts this could result in a complete failure of title for the insured deed of trust. Query what would have happened if the borrower had filed for bankruptcy protection and the bankruptcy trustee contested the priority of the first deed of trust.

VIII. Priority of Judgment Lien Where Prior Deed of Trust Was Mistakenly Released

Holiday Hospitality Franchising, Inc. v. State Resources, Inc., 232 S.W.3d 41 (Court of Appeals 2006).

Facts: This case involves a priority dispute between a lender that mistakenly released its deed of trust and a junior judgment lienholder. The lender mistakenly released its deed of trust prior to time the judgment lien was filed. The timeline for this case is as follows.

- April, 2000 – The subject deed of trust is recorded.
- September, 2001 – The lender mistakenly files a release of the subject deed of trust.
- January, 2005 – The judgment creditor perfects its judgment lien.
- May, 2005 – The lender attempts to cancel the release of the subject deed of trust.
- June, 2005 – Litigation starts over the priority of the two liens.

Issue: Whether the judgment lien has priority over the subject deed of trust because of the mistaken cancellation of the subject deed of trust.

Holding: The trial court found that the judgment lien had priority over the subject deed of trust. The Court of Appeals reversed the decision of the trial court and found that the subject deed of trust had priority over the judgment lien.

Reasoning: The Court of Appeals reasoned that the correct way to analyze this case is as a cancellation of the mistaken release. The court also found that under Tennessee law an equitable lien arose in favor of the lender that mistakenly canceled the deed of trust. A court of equity will restore a lien where the parties intended that it should not be extinguished, so long as the intervening rights of third parties do not prevent the reinstatement. When a third party has acquired an interest in the property and acted to its prejudice in reliance on the release, its rights will generally preclude cancellation of the release and restoration of the deed of trust to its priority position. If, however, reinstatement would place the third party in no worse position than before the release, its rights cannot serve as a barrier to this equitable remedy.

The Court of Appeals also found that the intervening rights of the judgment lien creditor did not prevent reinstatement of the mistakenly canceled deed of trust. The court reasoned that generally, where the release or satisfaction of the mortgage is the result of accident or mistake, it will not inure to the benefit of a person acquiring an interest in the property, who did not rely on or advance anything in reliance on the cancellation. Because a judgment lien creditor has no duty to inspect title records and advances nothing in reliance on record notice, its intervening rights will ordinarily not preclude relief for the holder of the mistakenly canceled deed of trust.

Note: Had the judgment debtor filed for bankruptcy protection prior to the mortgagor filing an action to establish its equitable lien, the bankruptcy trustee would likely prevail over the mistakenly canceled deed of trust. *In re: Tate*, 2000 WL 33912550 (Bankr.E.D. Tenn. 2000); *In re: Muller*, 185 B.R. 552 (Bankr.M.D.Tenn. 1995); and *In re: Anderson*, 30 B.R. 995 (Bankr.M.D. Tenn. 1983).

TennCare Liens

IX. The One-Year Statute of Limitations in Tenn. Code Ann § 30-2-310(b) Does Not Apply to TennCare Claims for Decedents Who Died Prior to January 1, 2007.

In re: Estate of Tanner, 295 S.W.3d 610 (Tennessee Supreme Court, 2009).

Facts: The decedent died intestate in 2004 while a resident of a nursing facility. During the last eleven years of her life, the decedent received medical benefits from TennCare. Nineteen months after her death, TennCare filed a Complaint in Chancery Court seeking the appointment of an administrator of her estate. Tenn Care then filed a complaint seeking recovery of “medical assistance correctly paid” on

behalf of the decedent. The administrator of the estate never sought a release from TennCare as required by Tenn. Code Ann. § 71-5-116.

Issue: Whether TennCare’s claim is barred by the one year statute of limitations in Tenn. Code Ann. § 30-2-310. Alternatively, can TennCare pursue its claim beyond the one-year statute of limitations since the administrator of the estate did not obtain a release from TennCare.

Law: Tenn. Code Ann. § 30-2-310(b) creates a general one-year statute of limitations on state claims against an estate, except claims for taxes. Tenn. Code Ann. § 71-5-116(c), however, imposes a duty on the representative of an estate to actively seek a release or waiver of any “medical assistance correctly paid,” under the TennCare program.

Holding and Reasoning: The Tennessee Supreme held that although Tenn. Code Ann. § 30-2-310(b) creates a general one-year statute of limitations on state claims (except for taxes), the administrator has a duty under Tenn. Code Ann. 71-5-116(c) to “actively seek a release or waiver of any medical assistance correctly paid.” Therefore, because the administrator did not actively seek a TennCare release and no waiver or release was issued, TennCare “was empowered under the terms of the applicable statute, as then written, to file a claim beyond the one-year period of limitations.” The Supreme Court added: “[a]t least until the first day of January 2007, when the most recent amendment took effect, claims by [TennCare] were not subject to the one year statute of limitations.”

Note: The amendment that took effect on January 1, 2007, provides “[p]ersonal representatives of decedents shall provide the notice to creditors specified in § 30-2-206 to the bureau of TennCare, if the decedent was a Tenn Care recipient. If a notice to creditors is provided to the bureau, the bureau shall file a claim for recovery in accordance with the requirements of title 30, chapter 2, part 3.”

Note: Following *Tanner*, many attorneys believed that the one-year statute of limitations would apply to decedents dying after January 1, 2007. Based on this belief, attorneys would often recommend waiting more than a year after the date of death to probate the estate so that the claims of TennCare would be barred.

X. Surprise, The One-Year Statute of Limitations in Tenn. Code Ann. § 30-2-310(b) Still Does Not Apply to TennCare Claims for Decedents Who Died After January 1, 2007.

In re: Estate of Gregory, 2012 WL 2499502 (Court of Appeals 2012).

Facts: The executor of the estate of the decedent waited approximately 14 months after her death before seeking to open her estate. TennCare filed a claim approximately four months later, shortly after receiving the executor’s notice of the death and opening of the estate. The executor filed an objection to TennCare’s claim asking that it be dismissed as barred by the one-year statute of limitations found in Tenn. Code Ann. § 30-2-310. TennCare filed a response that its claim should be treated under *Tanner*, and argued that the personal representative’s failure to actively pursue a release or waiver from

TennCare prevents the statute of limitations from running against a claim for reimbursement of TennCare benefits.

Issue: Whether the personal representative's failure to actively pursue a release or waiver from TennCare prevents the statute of limitations from running against a claim for reimbursement of TennCare benefits for decedents dying after January 1, 2007.

Holding: The Court of Appeals held that the January 1, 2007 amendment to Tenn. Code Ann. § 71-5-116 does not change the applicability of *Tanner*. The executor, having waited more than a year from the death of the decedent to open an estate and give notice of death, cannot now invoke the notice and claim requirements of Tenn. Code Ann. § 71-5-116(d)(1)D) as a reason for strictly holding TennCare to the statute of limitations. The executor's failure to obtain a waiver of release from the Bureau prevented the statute of limitations found in Tenn. Code Ann. § 30-2-310 from running.

Reasoning: The *Gregory* court held that the waiver and release provisions of Tenn. Code Ann. § 71-5-116, which requires the executor to obtain a waiver or release of claim from TennCare overrides the statute of limitations because:

1. An interpretation that favors TennCare's ability to recover medical benefits more faithfully advances the serious policy considerations that motivated the General Assembly to enact the waiver and release provisions of Tenn. Code Ann. § 71-5-116.
2. When there is an ambiguity as to whether a claim by the state has been made subject to a statute of limitations, the relevant statutes must be construed in a manner to favor recovery.
3. The legislative history and context of the statute support the interpretation that the waiver and release provisions were intended to assure recovery in the event TennCare did not actively pursue the claim.

Note: If the decedent was a TennCare recipient, or if you are unsure, you should obtain a waiver and release from TennCare before insuring property owned by the decedent. TennCare's lien is automatic and does not require filing in the Register's Office.

XI. Assets Held in Revocable Trust Are Subject to Claims of TennCare

In Re: Estate of Stidham, 2012 WL 3612386 (Court of Appeals 2012).

Fact: The decedent passed away in 2008. Prior to his death, the decedent resided in a nursing home and received benefits from TennCare. Prior to his death, the decedent and his wife (who predeceased him) owned real property that had been transferred to a revocable trust. Following his death, the heirs did not attempt to administer his estate because, absent the property held in the trust, the estate was insolvent. TennCare filed a petition to administer the estate, alleging the decedent received TennCare services and that it was entitled to reimbursement from the estate for those services.

Issue: Whether the real property held in the revocable trust could be brought into the estate for the purpose of paying TennCare’s claim.

Holding and Reasoning: The Court of Appeals found that the real property could be brought back into the estate for purposes of paying TennCare’s claim. The court reasoned that under Tennessee law, creditors may recover property held in a revocable trust when assets held in the estate are inadequate. Tenn. Code Ann. § 35-15-505(a)(5) providing “the property of a trust that was revocable immediately preceding the settlor’s death is subject to claims of the settlor’s creditors, costs of administration of the settlor’s estate and the expenses of the settlor’s funeral and disposal of remains.”

Jointly Titled Property

XI. What Interest is Conveyed When Only One Spouse Conveys Property Held as Tenants by The Entirety?

Allen v. Branch Banking & Trust Company, 2010 WL 987154 (Court of Appeals 2010).

Facts: This case involves a married couple that owned real property as tenants by the entirety. The husband, at a time when he was still married, went to the bank and executed a deed of trust, which described him as an “unmarried individual.” The wife did not execute (or consent to) the deed of trust. Later, the husband executed another deed of trust to the same bank. On the second deed of trust, the husband forged the wife’s signature. The property later went into foreclosure and the wife brought the subject action seeking a declaratory judgment and injunctive relief. The wife requested that if the property was sold, that the proceeds be directly deposited into escrow with the Clerk of the court. The property was sold and the parties were fighting over the money held in escrow. The parties divorced prior to the sale of the property and the husband executed a quitclaim deed to the wife.

Issue: What is the effect of one spouse’s attempt to transfer an interest in an estate by the entirety without the consent of the other spouse. What interest, if any, did the husband transfer to the bank by virtue of executing the deeds of trust, without the consent of his wife.

Law: The court described a tenancy by the entirety as follows.

- An estate by the entirety is one limited to the lifetime of the husband and wife; indeed, it is one limited to the continuance of the relationship of husband and wife.
- Each spouse has a right of survivorship; when one spouse dies, the other spouse takes the whole estate.
- It is an estate which can be ended by the joint conveyance of husband and wife.
- It is like a joint estate, in that each is entitled to an equal interest and to take the whole upon the death of the other.

- It is unlike a joint estate, in that neither can separate his interest from the other except by joint action of both or by operation of law.

Holding and Reasoning: The Court of Appeals found that one spouse's attempt to transfer or encumber a tenancy by the entirety without the consent of the other does not affect the interest of the non-consenting spouse. A spouse cannot sell or encumber anything but [his or her] own interest in an estate owned by the entireties. Therefore, a spouse's transfer or encumbrance of property owned by tenancy by the entirety without the consent of the other spouse transfers or encumbers only the first spouse's right of survivorship. The case was remanded to the trial court.

Recording Promptly

XII. Bankruptcy Trustee Avoids Mortgage Recorded 14 Days After Closing

In re: Patterson, 330 B.R. 631 (Bankr.E.D. Tenn. 2005).

Facts: The pertinent facts are as follows.

- November 9, 2004 – the debtors refinanced the mortgage on their residence with a loan from the defendant. To secure the note, the debtors, on the same day, executed a deed of trust in favor of the defendant.
- November 23, 2004 – the deed of trust was recorded with the Register of Deeds (14 day delay in recording).
- December 1, 2004 – the debtors filed a voluntary petition for Chapter 7 bankruptcy.

The bankruptcy trustee filed an adversary proceeding alleging that the bank's recording of the deed of trust constituted an avoidable preference under section 547 of the bankruptcy code.

Law: Under section 547, a bankruptcy trustee may set aside certain transfers made within ninety (90) days (and in some cases one (1) year) prior to the filing of the bankruptcy. The execution of a deed of trust falls within section 547(b) and can be avoided. Under the law at the time of this case, there was a safe harbor for a deed of trust recorded within 10 days for refinance transactions (20 days for purchase money deeds of trust).

Holding: The bankruptcy court avoided the bank's mortgage because it was recorded more than 10 days after closing.

Note: This case emphasizes the importance of timely recording deeds of trust after closing. Deeds of trust should be recorded as soon as possible after closing to prevent intervening rights from taking priority over the insured deed of trust.

Note: The safe harbor in section 547 has since been extended to 30 days for bankruptcies filed after October 17, 2005. Deeds of trust recorded outside the 30 day safe harbor, even if by only a few days, constitute a preference under section 547(b) and can be avoided.

XIII. Deed of Trust Recorded Two Business Days After Closing Loses Priority to a Deed of Trust Recorded After The Closing of the Second Deed of Trust.

Equity Mortgage Funding, Inc. v. Haynes, 2012 WL 982958 (Tenn.Ct.App. 2012).

Facts: The following are the pertinent facts.

- August 7, 2008 - Seller conveys property to borrower and takes back a deed of trust to secure part of the purchase price (hereafter "DOT A"). The closing agent neglected to record DOT A.
- November 26, 2008 – The borrower closed on another loan with a lender and executed a deed of trust on the subject property in favor of the lender (hereafter "DOT B"). The borrowers represented to the lender that they owned the subject property free and clear of any liens.
- December 1, 2008 – The next business day following the closing of the second transaction, the title company sent DOT B by Federal Express to the register's office for recording.
- December 1, 2008 – DOT A was finally recorded with the Register.
- December 2, 2008 – The Register's office received and recorded DOT B.

In short, DOT A closed first and was recorded first. DOT B was sent for recording one business day after closing and was recorded two business days after closing. In making loan B, the lender reviewed the settlement statement signed by the Seller which provided that none of the funds used to purchase the property were borrowed funds and had a title search performed.

The lender holding DOT B filed an action to establish its deed of trust as a first priority lien over DOT A. Lender B argued that the Seller should be equitably estopped from claiming a first lien on the property because he signed the settlement statement which reflected that no funds used to purchase the property were borrowed funds. Lender B cites Tenn. Code Ann. § 66-26-103, which provides "[a]ny instruments not so registered, or noted for registration, shall be null and void as to existing or subsequent creditors of, or bona fide purchasers from, the makers without notice."

Issue: Whether the lender holding DOT B should be in a first priority lien position because it conducted a title search and promptly recorded its deed of trust without notice of DOT A?

Holding and Reasoning: The Court of Appeals found that the seller holding DOT A had priority over DOT B. The court noted that prior cases interpreting Tennessee’s recording statutes have held that one does not become a bona fide purchaser until he or she registers the instrument. The cases relied on by the Court of Appeals held that “whoever should first obtain legal registration, would under our registration laws obtain precedence.” Those cases cited the predecessor to what is now Tenn. Code Ann. § 66-26-102, which provides: “[a]ll of the instruments registered pursuant to §66-24-101 shall be notice to all the world from the time they are noted for registration, as prescribed in § 8-3-108; and shall take effect from such time.”



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Observations, Audits and Agent Reminders

SETTLEMENT AGENT VETTING

1. The Dodd-Frank Wall Street Reform and Consumer Protection Act was enacted July 21, 2010 (the "Dodd-Frank Act"). The Dodd-Frank Act established the Consumer Financial Protection Bureau (the "CFPB") within the Federal Reserve and placed sixteen different federal laws, including RESPA and Truth in Lending, under the jurisdiction of the CFPB. One particular area of interest that has evolved relating to the settlement industry is a focus on Settlement Agent Vetting.

2. The Consumer Financial Protection Bureau (the "CFPB") issued a Bulletin on April 13, 2012, regarding expectations for Service Providers (CFPB Bulletin 2012-03).
 - a. Expects all supervised businesses (i.e. banks and other lenders) to oversee their business relationships with third party service providers (i.e. title insurance underwriters and settlement agents) to ensure compliance with Federal consumer financial law and to protect the interests of consumers.

 - b. Each supervised business should have an effective process for managing the risks of service provider relationships and should take steps to prevent unwarranted risks to consumers.

 - c. Identified a number of steps which should be performed in this process, including:
 - i. Conducting thorough due diligence to verify the service provider understands and is capable of complying with Federal consumer financial law;

 - ii. Requesting and reviewing the service provider's policies, procedures, internal controls and training manuals to ensure that the service provider conducts appropriate training and oversight of employees or agents that have consumer contact or compliance responsibilities;

 - iii. Including in the contract with the service provider clear expectations about compliance, as well as appropriate and enforceable consequences for violating any compliance-related responsibilities, including engaging in unfair, deceptive, or abusive acts or practices;

 - iv. Establishing internal controls and on-going monitoring to determine whether the service provider is complying with Federal consumer financial law; and,

 - v. Taking prompt action to address fully any problems identified through the monitoring process, including terminating the relationship where appropriate.

- d. The Bulletin did not include a deadline in which to implement this process. Lenders have been working to develop procedures to address the Bulletin.
 - e. Some lenders have chosen to limit the number of settlement agents with which they deal in order to reduce the burden and risks presented by the Bulletin.
 - f. Other lenders have entered into agreements with Third Party Vetting Companies to handle the vetting of settlement agents.
3. While this area continues to develop, it appears that settlement agents will be under a great deal more scrutiny from lenders.
- a. This increased scrutiny will likely result in greater burdens on settlement agents and increased costs to operate.
 - b. Focus seems to be on the development and memorializing in writing of practices aimed at meeting lender concerns.
4. Our parent company, Old Republic National Title Insurance Company, is working with lenders to address their concerns, while minimizing the impact on our Title Insurance Agents.
5. Entities such as American Land Title Association (ALTA) are working with lenders and underwriters to develop practices aimed at addressing the Bulletin, such as voluntary best practices.



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THREE-WAY ESCROW ACCOUNT RECONCILIATION

A three-way reconciliation is an accounting concept that is unique to the land title industry. Accordingly, many accountants and bookkeepers are not familiar with the concept of how to prepare a three-way escrow account reconciliation. This memorandum will explain the concept of a three-way escrow account reconciliation and how to prepare a three-way reconciliation.

TRADITIONAL TWO-WAY BANK RECONCILIATION

A traditional two-way bank reconciliation reconciles your bank balance to your book (or check register) balance. To perform a traditional two-way bank reconciliation you start with your ending bank statement balance and add any outstanding deposits¹ and subtract any outstanding checks². You may also have to make adjustments for items like interest and bank charges that have not been recorded in your check register. Your reconciled bank balance should match your book (or check register) balance. The following is an example of a traditional two-way bank reconciliation.

Example 1

Traditional Two-Way Reconciliation for Month End June 25, 2009

Bank Balance	11,063.23
Less: Outstanding Checks	(15,046.23)
Plus Outstanding Deposits	13,661.85
Book Balance / Reconciled Bank Balance	9,678.85

¹ Outstanding deposits are deposits that have been recorded in the check register, but that have not yet cleared the bank. Outstanding deposits should clear the bank within three business days. Any deposit outstanding for longer than 3 days should be immediately investigated. One deposit slip should be used per file. A three-way reconciliation will be much easier to perform if each deposited item that is booked in the accounting system can be matched to a particular escrow file.

² Outstanding checks are checks that have been recorded in the check register, but that have not yet cleared the bank. Prompt investigation should be made of any outstanding checks. An outstanding check to the recorder's office often indicates that a deed of trust or some other instrument has not been recorded.

ESCROW TRIAL BALANCE

The critical third component of a three-way escrow account reconciliation is known as an escrow trial balance. The escrow trial balance is sometimes referred to as a liability listing. The funds you hold in your escrow account are held in a fiduciary capacity and are liabilities of your firm. At any point in time, you should be able to identify which of your clients own the money in your escrow account. Preparing an escrow trial balance will enable you to identify which clients own the money in your escrow account.

If you are not using computer software to maintain your escrow account records, you will need to create an accounting ledger that has a page for each escrow file. This page will be similar to the disbursement worksheet that most attorneys use to prepare disbursement checks for a closing. The main difference is that the disbursement worksheet is prepared in advance of closing. The escrow trial balance is created as checks are written and deposits are made. Each time a check is written or a deposit is made, that item would be posted both to the check register and to the trial balance ledger for the particular file. The following is an example of a ledger sheet for File 164251 for the John and Jane Doe closing.

Example 2 File 164251 - John and Jane Doe

Date	Payer / Payee	Deposits	Disbursements	Balance
2/8/2004	John Doe	263.46		263.46
2/8/2004	First National Lender	121,000.00		121,263.46
2/8/2004	First National Lender		1,809.53	119,453.93
2/8/2004	Allan A. Attorney		570.00	118,883.93
2/8/2004	Mississippi Valley Title Insurance Company		558.00	118,325.93
2/8/2004	Prior Mortgage Company		118,308.93	17.00

A ledger sheet similar to the above should be prepared for each escrow file. As you can see, the column on the right is a running balance for the particular file. Thus, at any point in time you know how much money in the escrow account is associated with each particular escrow file.

At the end of each month you should prepare an escrow trial balance report. An escrow trial balance report is a listing of all escrow files with a balance. At a minimum, the listing should include the file number, date the file was opened and the balance in each file. The following is an example of an escrow trial balance report for the month ending June 25, 2009.

Example 3
Escrow Trial Balance Report for Month End June 25, 2009

File Number	Date	Balance
164251	2/08/2004	17.00
164288	6/20/2009	5,000.00
164348	6/25/2009	(34,200.00)
164355	6/18/2009	8,250.00
164358	6/15/2009	20,611.85
164360	6/17/2009	10,000.00
Total		9,678.85

The escrow trial balance report should be critically reviewed by the attorney each month. Notice that File 164251 for the John and Jane Doe Closing is carried forward from Example 2 and included as the first line of the Escrow Trial Balance Report for Month End June 25, 2009 (Example 3). Every file with either a positive or negative balance is included on the Escrow Trial Balance Report. The total of the escrow trial balances for all open files should equal the book (or check register) balance.

OBSERVATIONS

Each month the attorney should critically review all escrow files with balances to determine what needs to be done to close out the file. The following are some observations from a critical review of the above examples.

- The total of the Escrow Trial Balance Report (Example 3) equals the Book Balance and the Reconciled Bank Balance (Example 1). These three numbers should match on each report.
- File 164251 from Examples 2 and 3 shows a positive balance of \$17.00. Files with a positive balance should be reviewed to ascertain why the file has not been closed. In this case, the recording fee to the county recorder's office was not paid and the insured mortgage did not get recorded.
- File 164348 from Example 3 reflects a negative balance of 34,200.00. All files with a negative balance should be reviewed immediately to ascertain why the file has a negative balance. The shortage should be immediately funded from the operating account.
 - ▶ The negative balance of \$34,200.00 occurred because a client's check for \$38,000.00 was incorrectly recorded on the deposit slip and in the check register for \$3,800.00.
 - ▶ Notice from Example 1 that this account reconciled perfectly to a positive balance on the traditional two-way reconciliation despite the fact that File 164348 was short

\$34,200.00. The only way to catch errors of this sort is to perform a three-way escrow account reconciliation.

- ▶ This simple clerical error cost a closing attorney \$34,200.00. The error was caught too late for the bank to fix the mistake.

COMPUTER SOFTWARE

Computer software makes the job of preparing a three-way escrow account reconciliation much easier. The one key thing to remember when using computer software to maintain your escrow account records is that the data entered into the computer must be accurate and every entry into the software must contain a file number. Failing to include the correct file number with each entry into the computer will result in reports that don't accurately reflect the status of the account. The old adage "garbage in, garbage out" applies when making accounting entries in a computer software program.

Various vendors sell software that can be used to maintain your escrow accounting records. Mississippi Valley Title Insurance Company does not endorse any particular vendor. However, we will note that if you do not currently use a computer software package and cost is an important factor in your consideration in selecting a computer software package, you might consider purchasing Quickbooks.

Quickbooks can be purchased in any office supply store for approximately two hundred dollars. For thirty dollars, you can purchase the book *Trust Accounting Using Quickbooks* by Lynette Benton. This book can be purchased on the internet at www.attorneystechnology.com. This website also offers online training as well.

Attorneys with a larger volume of closings should consider a software package that is tailored to the real estate closing business. SoftPro, Landtech, RamQuest, Title Express and DisplaySoft are examples of software packages that are tailored to the real estate closing business.

THIRD PARTY RECONCILIATION COMPANY

If you don't have the time or inclination to prepare a monthly three-way escrow account reconciliation, you should consider hiring a company to do the work for you. Escrow PROS is a company that specializes in preparing three-way reconciliations of its clients escrow accounts. Escrow PROS employs former title insurance auditors and has significant experience in preparing three-way reconciliations that meet or exceed the standards of all title insurance underwriters. For a complete description of the services offered by Escrow PROS, please visit their website at www.escrowproslc.com.

Even if the attorney hires a third party reconciliation company to prepare the three-way escrow account reconciliation, the attorney should still critically review the escrow trial balance report each month to investigate files with either a positive or negative balance. The attorney should also review the outstanding check list and the outstanding deposit list. The careful review of these items each month is the key to quality control for a real estate closing business.

AUDIT PREPARATION

To comply with Mississippi Valley Title Insurance Company's guidelines, a three-way reconciliation of the escrow account should be prepared monthly and a paper copy should be maintained and available for our auditors to review.

COMMENTS OR QUESTIONS

For comments or questions, please feel free to contact Brad Jones at 601-969-0222 or 1-800-647-2124 or Alden Cranford at 601-906-1255 in our Madison, Mississippi office or Judy Maxwell at 205-682-2770 or 1-800-843-1688 in our Birmingham, Alabama office.