

UNDERWRITING IN THESE CHANGING TIMES

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ESTATES AND SELECTED TITLE INSURANCE ISSUES

Alabama Medicaid Estate Recovery Program-Act No. 2019-489

See *UNDERWRITING BULLETIN* dated September 20, 2019

NOTICE TO MEDICAID

Section 1 of the Act requires specific Notice to be provided to Medicaid at the commencement of probate proceedings in the form and manner prescribed.

Once notice is delivered, the Personal Representative shall immediately file with the probate court an affidavit of certified mailing of notice to the Medicaid Agency, along with a copy of the notice sent. **The probate court shall enter the return receipt into the case record.**

Alabama Medicaid Estate Recovery Program-Act No. 2019-489, cont'd

NOTICE TO MEDICAID, cont'd

The Medicaid Agency shall respond to the Notice by sending one of the following documents to be filed in probate court:

A claim

A waiver of claim, or

A statement that no amount is due.

The Medicaid Agency shall send a response as soon as practicable, but not later than 30 days after the date of receipt of the notice. **The claim is waived if the Medicaid Agency has not delivered its response to the probate court within 30 days of receipt of the notice.**

Alabama Medicaid Estate Recovery Program-Act No. 2019-489, cont'd

NOTICE TO MEDICAID, cont'd

Notice requirements of Act apply only to cases initiated on or after the effective date of the act which is September 1, 2019.

Act bars payment of claims in the sixth order of preference (as set out in Ala. Code § 43-2-371 and on next slide), as well as summary distributions, until proof of notice has been filed and Medicaid has had the opportunity to timely respond.

Notice requirement applies even if the decedent never filed for or received any Medicaid benefits.

Alabama Medicaid Estate Recovery Program-Act No. 2019-489, cont'd

NOTICE TO MEDICAID, cont'd

Section 43-2-371

Order of preference.

The debts against the estates of decedents are to be paid in the following order:

- (1) The funeral expenses.
- (2) The fees and charges of administration.
- (3) Expenses of the last sickness.
- (4) Taxes assessed on the estate of the decedent previous to his death.
- (5) Debts due to employees, as such, for services rendered the year of the death of the decedent.
- (6) **The other debts of the decedent.** (Only 1-5 may be paid prior to Medicaid's opportunity to timely respond within 30 days after receipt of proper notice required by the Act)

Alabama Medicaid Estate Recovery Program-Act No. 2019-489, cont'd

COMMENCEMENT OF PROBATE PROCEEDINGS BY MEDICAID

Section 2 authorizes Medicaid to open a probate estate of a Medicaid recipient by filing a petition to appoint a third-party administrator and issue letters of administration, pursuant to the timing limitations of Ala. Code § 43-2-43. *I have been informed by a person who assisted with the drafting of this new law that this means that if persons entitled to open the probate estate have not done so within 40 days after the death of the intestate is known, Medicaid can file a petition to open an estate.*

The probate court is not allowed to appoint a Medicaid employee to serve as an administrator of the estate of a Medicaid recipient.

Alabama Medicaid Estate Recovery Program-Act No. 2019-489, cont'd

COMMENCEMENT OF PROBATE PROCEEDINGS BY MEDICAID, cont'd

Section 3 applies prospectively and authorizes Medicaid to file claims against the estates of Medicaid recipients.

Under this Act in conjunction with the limitations of Ala. Code § 6-2-41 , Medicaid would now appear to have the same rights in general as any other creditor where a deceased Medicaid recipient has been dead for less than two years and no probate case has been filed, to-wit: to proceed to have an estate opened, or to file claims against the estate of the deceased for a period of two years from his or her date of death. (claims must be filed within the 2 year period to be operative against the rights of mortgagees or purchasers for value of real property of the estate)

Jurisdiction

The jurisdiction of the probate court is limited to matters conferred by statute.

The probate court has original and general jurisdiction over matters set forth in Ala. Code § 12-13-1 such as the probate of wills, the granting, repeal or revocation of letters testamentary and letters of administration and resolution of all controversies relative to the personal representative and settlement of the personal representative's accounts. It has jurisdiction over the sale and disposition of real property belonging to intestate estates in accordance with applicable statutes, and over distribution of intestate estates. Probate courts also have the power to partition lands.

However, except as applies in Mobile, Jefferson, Shelby and Pickens Counties, the jurisdiction of the probate court is limited. Probate Courts in all other counties, for example, do not have the power to reform provisions of a will. It is, therefore, often necessary to remove the administration of an estate to the circuit court pursuant to Ala. Code § 12-11-41.

Intestate Estates

HEIRSHIP AFFIDAVITS

If there is no probated will, the laws of descent and distribution in Alabama set out who will take property of the deceased. As of 1982, Ala. Code § 43-8-41 sets out the share of the surviving spouse, § 43-8-42 sets out the shares of heirs other than the surviving spouse, and § 43-8-44 provides that the estate passes to the State of Alabama when there are no takers under these provisions of the Article on Intestate Succession.

Unadministered Estates- use of heirship affidavits to establish of record the heirship and intestacy of the estate of the deceased.

Administered Estates- use of heirship affidavits to substantiate the heirs listed in the administration proceeding. When is this necessary?

Intestate Estates, cont'd

TIME FRAME TO PROBATE A WILL

Wills are not effective under Ala. Code §43-8-161 unless filed for probate within 5 years of the date of death.

This 5 year limitation does not apply to an ancillary probate in Alabama of a will that was admitted within 5 years in another state (territory or country) in which the testator resided at the time of his or her death.

A will must be probated within 1 year from the date of death to be operative against a bona fide purchaser or mortgagee who takes title to property of the deceased prior to the will being filed for probate in Alabama and without actual notice of such will.

Intestate Estates, cont'd

DEVOLUTION OF ESTATE AT DEATH

Real property devolves to those named in the will or if the decedent died intestate, it devolves to the decedent's heirs. This means real property vests in the devisees or heirs at the moment of death. Ala. Code § 43-2-830. Because property vests at the time of death, a judgment or tax lien against a devisee or heir would generally attach to the real property.

Remember to run heirs or devisees for judgments and tax liens.

Intestate Estates, cont'd

CLAIMS AGAINST THE ESTATE

Unadministered Intestate Estates

Claimants have 2 years to file claims from the date of death under Ala. Code § 6-2-41. Applies to mortgagees and bona fide purchasers for value.

Administered Intestate Estates (*Applies to Probate of Will Administrations as well*)

Ala. Code § 43-2-350 reduces the claims period to 6 months from the date Letters of Administration or Letters Testamentary are granted subject to § 43-2-61, which requires 30 days actual notice to creditors who are known or reasonably ascertainable. This 30 day requirement can extend the period for filing claims to 7 months from the grant of letters for creditors receiving actual notice on the last day of the 6 month period.

The period for filing claims against an estate is extended to 2 years from the date of death for creditors who are known or reasonably ascertainable and not actually notified.

Intestate Estates, cont'd

CLAIMS AGAINST THE ESTATE, cont'd

Presumption of Settlement

Under Ala. Code §43-2-660, it is presumed that all debts of an estate have been paid when the administration of an estate is still pending, 20 years or more have elapsed since 6 months after Letters of Administration or Letters Testamentary were issued and no further action has been taken.

Intestate Estates, cont'd

INSURING TITLE OF UNADMINISTERED INTESTATE ESTATES (OUTSIDE COURT ADMINISTRATION)

*SEE Alabama Underwriting Practices Manual, ARTICLE III UNDERWRITING TOPICS, Estates
Heirship Affidavits*

On those occasions when you are asked to insure a title which is involved in an **unadministered estate**, you may issue a policy on title established by **Heirship Affidavits** if the following conditions are met:

- (a) Affidavits are obtained from at least two (2) disinterested and credible persons.
- (b) The affiant knew the deceased during his entire adult life (or is otherwise sufficiently familiar with the deceased and his or her family history).
- (c) The affidavits are legally sufficient to establish the heirship and intestacy of the estate of the deceased.
- (d) The affidavits are recorded in the Probate Office of the county in which the real property to be insured is located.

Intestate Estates, cont'd

INSURING TITLE OF UNADMINISTERED ESTATES (OUTSIDE COURT ADMINISTRATION), cont'd

Insuring over claims

If less than 2 years have expired from the date of the death of the deceased property owner, potential claims against the estate should be handled by one of the following: (1) an exception in the policy; (2) escrow and indemnification, or (3) an acceptable bond.

If you are requested to insure without exception for potential claims based on indemnification alone (without escrow or a bond) contact Underwriting Counsel for guidance and approval.

Intestate Estates, cont'd

INSURING TITLE OF ADMINISTERED INTESTATE ESTATES

SEE Alabama Underwriting Practices Manual, ARTICLE III UNDERWRITING TOPICS, Estates

Sale of Real Property by Heirs at Law

When a court order authorizing the sale is Not required, you may issue a policy on title from the heirs at law as established by the Petition for Administration filed in court and by heirship affidavits obtained and recorded to substantiate the heirs listed in the Administration. Refer to immediate prior slide for required criteria for Heirship Affidavits.

Intestate Estates, cont'd

INSURING TITLE OF ADMINISTERED INTESTATE ESTATES, cont'd

Sale of Real Property by Personal Representative

A personal representative under Letters of Administration is not authorized to convey real property without prior court approval.

Unless expressly authorized by a probated will, Ala. Code § 43-2-844 requires prior court approval for a personal representative to sell, mortgage or lease real property of the estate.

Intestate Estates, cont'd

INSURING TITLE OF ADMINISTERED INTESTATE ESTATES, cont'd

Sale of Real Property by Personal Representative, cont'd

Section 43-2-441 authorizes the sale of real property for the payment of debts where the will does not give the personal representative authority to sell land to pay debts. The same authority is given by § 43-2-442 in cases of intestacy.

Section 43-2-443 authorizes a sale when the land cannot be equitably divided among the heirs or devisees. One adult heir or devisee must consent in writing to the sell.

Sections 43-2-444 through 467 set out the procedure for the sale of lands for the payment of debts and for division, which requirements include an order confirming the sale and an order to convey. Certified copies of these orders should be obtained and recorded in the probate office along with the deed from the personal representative pursuant to the orders.

Conveyances by Personal Representative Pursuant to Executory Contracts of Decedent

Pursuant to the following code sections, property of a deceased person may be sold free of creditor's claims and administration if the deceased person entered into a valid sales contract prior to his death and the contract survives the death of the decedent.

§ 35-4-320. Personal representative authorized to make conveyance. In all cases of written agreements or contracts for the conveyance of lands in this state, where the person executing the same dies before the execution of the conveyance, the personal representative of such person may execute conveyance of real estate to the person to whom such agreement or contract was made, his heirs or assigns.

§ 35-4-321. Application to compel conveyance. If the personal representative refuses to execute the conveyance in the case provided for in section 35-4-320, he may be compelled so to do by application to the judge of probate of the county in which letters testamentary or of administration were granted.

Will Probated

EFFECT OF AN UNPROBATED WILL

A will has no effect until it is admitted to probate. An unprobated will is ineffective to pass title. Merely giving a will to a probate court for recordation in the will book does not constitute probating a will. For insurability purposes, an application to prove the will and admit it to probate must be filed and proper notice provided pursuant to Ala. Code § 43-8-164.

LETTERS TESTAMENTARY

The powers of a personal representative may be limited or enlarged by endorsement to the letters under Ala. Code § 43-2-842.

Will Probated, cont'd

CLAIMS PERIOD

Refer to *CLAIMS AGAINST THE ESTATE* for Administered Intestate Estates on previous slide.

CONTEST PERIOD

Wills may be contested in probate court or circuit court. In probate court, the contest must be filed before the will is admitted to probate. § 43-8-190. Either party to the contest may demand that the contest be transferred to circuit court. § 43-8-198.

If the will has been admitted to probate, any interested party who has not already contested the will in probate court may contest the will by filing a complaint in the circuit court in the county in which the will was probated. **This contest must be filed within 6 months after the admission of the will to probate.**

Will Probated, cont'd

OBTAINING COVERAGE OVER THE CLAIMS AND CONTEST PERIODS

- Indemnification, and either
- Holding the Net Proceeds in Escrow, or
- Open Estate Bond

When will we consider waiving the escrow of net proceeds or a bond?

Ala. Code § 43-2-842 affords protection for a bona fide purchaser

- Will properly admitted and Letters granted
- Notice to Creditors provided pursuant to § 43-2-61
- Personal Representative has the Power to Sale and is the Grantor
- No restrictions on Personal Representative powers endorsed on the Letters
- Proceeds check payable to the Personal Representative
- No apparent estate tax consequences-Why does this matter?
- Lack of Red Flags

Will Probated, cont'd

SEE Alabama Underwriting Practices Manual, ARTICLE III UNDERWRITING TOPICS, Estates

SALE OF REAL PROPERTY BY PERSONAL REPRESENTATIVE UNDER POWER OF SALE IN WILL AND/OR DEED FROM DEVISEES

It has been our typical underwriting practice to insure deeds out of personal representatives under powers of sale in wills only when 1) there is no known controversy regarding the proposed sale (ask pertinent questions and review the probate case files for waivers and for any adverse motions and orders) , 2) the power to sell real property is clearly granted to the PR by the terms of the will, and 3) the devise of real property is general in nature, i.e., a devise of all real property or when the real property is part of the residual estate. If the real property is specifically devised and the personal representative plans to sell it to a third party, it is a better and safer practice to require the devisee(s) to join in the conveyance to the third party or to give quit claim deeds. Or in the alternative, to require the personal representative to obtain an order from the probate court authorizing the sale after notice to the devisees.

Will Probated, cont'd

SEE Alabama Underwriting Practices Manual, ARTICLE III UNDERWRITING TOPICS, Estates

SALE OF REAL PROPERTY UNDER COURT ORDER

When is a court order authorizing the sale required?

- No will to be probated (intestate estate)
- No power of sale in the will
- Time limit on power to sell or limitations endorsed on Letters Testamentary
- Controversy regarding execution or meaning of will (lack of jurisdiction of probate court except for those with equitable jurisdiction may come into play; removal to appropriate circuit court)
- Sales to pay debts of the estate § 43-2-442
- Property that cannot be equitably divided § 43-2-443
- Payment of pecuniary legacies § 43-2-480
- Exercise of rights involving creditor claims, administrative expenses, allowances, exempt property and the elective share of the surviving spouse in general

Will Probated, cont'd

FOREIGN WILLS

Effect of a foreign will not admitted to probate in Alabama

An ancillary administration is where the estate is primarily being or has been administered in another state because that is where the decedent died. A foreign will not admitted to probate in Alabama is ineffective to devise real property in Alabama.

What procedures are available to admit foreign wills to probate in Alabama? Is it sufficient to vest title in the devisees only, or is it necessary to authorize the personal representative to convey?

Will Probated, cont'd

FOREIGN WILLS, cont'd

Admitting a Foreign Will under § 43-8-175

A will properly proved in another state or territory of the United States may be admitted to probate in Alabama pursuant to the procedure set out in Ala. Code § 43-80-175. A copy of the will and the probate thereof, certified and authenticated as provided in 28 U.S.C.A., §1738, must be presented to the proper Alabama probate court as part of a petition to admit the will for probate in Alabama. The probate judge must, without notice, or further proceedings, enter a decree admitting the foreign will to probate.

If the will clearly devises the real property and there is no need for further court action regarding the real property or appointment of a fiduciary in Alabama to administer the real property, an order admitting the will to probate in Alabama by the proper probate judge pursuant to § 43-80-175 may be all that is needed to clear the title to the Alabama property. In that case, an administration of the estate in Alabama is not needed if the estate has been fully administered elsewhere.

You should require a recitation in the conveyance to be insured referencing the probate case number and county in which the foreign will has been admitted to probate in Alabama.

Will Probated, cont'd

FOREIGN WILLS, cont'd

Nonresidents as Personal Representatives

Sections 43-2-190 through 200 of the Code of Alabama address the means of appointment and authority of non-resident personal representatives. Section 43-2-190 requires an application for letters testamentary or letters of administration to include the name and post office address of the non-resident applicant. Section 43-2-192 requires the filing of a copy of the will, a certificate that the will was proved and admitted in the other state and that letters testamentary were issued, and a certified copy of the foreign letters. Unless the will expressly exempted the applicant from filing a bond, the non-resident applicant must provide a bond to the Alabama probate judge.

Ala. Code § 43-2-194 provides that once appointed, non-resident personal representatives must administer the Alabama assets and make settlement in the same manner as if letters were granted to an Alabama resident.

SERIES LLCs UPDATE

In General

A Series LLC is a unique type of LLC which, when legally created, allows a master limited liability company to provide for segregation of its assets and liabilities into one or more “series”, all operating under the umbrella of a master limited liability company. Series LLCs are created by statute and, without sufficient enabling legislation, cannot hold an interest in real property.

Identifying A Series LLC

A Series LLC may be difficult to recognize by its name alone. The term “Series” or “Series LLC” is not always included in the name for a Series LLC. LLCs are often formed with the same name and distinguished by a sequential numbering system. Series LLCs are typically numbered the same way. An LLC with a number or Roman numeral (or a sequence of alphabetical letters) in its name should, in particular, prompt further inquiry into its status as a Series.

- Review of the Certificate of Formation and Operating Agreement

Domestic Series LLCs

The Alabama Uniform LLC statute authorizes domestic Series LLCs if they are provided for in the Certificate of Formation of the master LLC, and otherwise comply with Ala. Code § 10A-5A-11.02(b). **Section 10A-5A-1.04 provides that Series LLCs formed under this chapter can hold title to real property in Alabama.**

Ala. Code § 10A-5A-11.01(a) provides that if a limited liability company complies with Ala. Code § 10A-5A-11.02, a limited liability company agreement may establish or provide for the establishment of one or more designated series of assets.

Ala. Code § 10A-5A-11.02(a) protects the assets of the master LLC, or any other Series thereof, from enforcement of the debts, liabilities, obligations and expenses of a Series, and protects the assets of a Series from enforcement of the debts, liabilities, obligations and expenses of the master LLC, or any other Series thereof, **provided the requirements in Subsection (b) are met.**

Ala. Code § 10A-5A-11.02(b) states that Subsection (a) applies only if:

The records maintained for that series account for the assets of that series separately from the other assets of the limited liability company or any other series;

The limited liability company agreement contains a statement of the effect of the limitations provided in subsection (a); and

The limited liability company's certificate of formation contains a statement that the limited liability company may have one or more series of assets subject to the limitations provided in subsection (a).

Domestic Series LLCs, cont'd

Some Underwriting Considerations:

- Contact Underwriting Counsel
- Review of the Certificate of Formation. Does it provide for Series LLCs?
- Review of the Written Company Agreement. Does it include the required statement?
- Proof of maintenance of separate records for assets of the Series LLC.
- Has title been conveyed by recorded Deed into a valid & identifiable Series LLC?
- Any recorded liens against the master LLC or other Series LLCs of the master LLC?

Foreign Series LLCs (Implied)

Ala. Code § 10A-5A-1.05(a) provides the Governing law for domestic LLCs, or Series thereof, and subsection (b) for foreign LLCs, or Series thereof. **Subsection (b) specifies that the organization and internal affairs of a foreign limited liability company, or a Series thereof, are governed by the laws of its jurisdiction of formation.** This section specifically provides that the internal liability shields in a series limited liability company are governed by the laws of the jurisdiction of the master limited liability company's formation.

Some Underwriting Considerations:

- **Contact Underwriting for review and prior approval**
- Review of the pertinent laws of the jurisdiction of the master LLC's formation
- Was the Series LLC properly formed?
- Is a properly formed Series LLC specifically authorized by statute to hold title to real property?
- Obtain for review all formation and operational documents for the master LLC and for the Series LLC
- Reserve the right to make further requirements and exceptions in title commitment

IT'S ALL ABOUT THE DATA

Alabama Insurance Data Security Law

IN GENERAL

- **Imposes a comprehensive set of data security requirements on persons and entities licensed by the Alabama Department of Insurance.**
- **Largely adopts the National Association of Insurance Commissioners' Insurance Data Security Model Law.**
- **The Law became effective when the governor signed it on May 1, 2019. However, the deadline for implementation of certain requirements of the law is delayed. Licensees have two years from its effective date to implement requirements regarding vendor management, and one year for the remaining security program requirements in Section 4. Some certification obligations may be required as of February 15, 2020.**
- **The law can apply to insurance producers and insurance companies.**
- **Contains size and revenue-related exemptions, and other exemptions.**

Alabama Insurance Data Security Law, cont'd

SECTION 4: INFORMATION SECURITY PROGRAM

Requires non-exempt licensees to implement a Written Information Security Program.

1. The size and complexity of the licensee, along with other factors, used as measures for determining what is “reasonable”.
2. Contains a lengthy list of components to include in an information security program and what actions licensees are required to undertake.
3. Licensees must consider insuring against cybersecurity events.
4. Requires licensees to exercise due diligence in selecting service providers and to require certain information security precautions from their third-party service providers.
5. Requires certain actions of executive management (directors and corporate officers), and written certification of compliance with the Law from licensees domiciled in Alabama.
6. Requires written data incident response plans which must include, among other things, the process for incident response, defined roles and responsibilities, and requirements for remediation, reporting, documentation of the incident and the response of the licensee.

Alabama Insurance Data Security Law, cont'd

SECTION 9: EXCEPTIONS

- Exempts a licensee from Section 4 of the Act (Information Security Program- obligations to have written policies and procedures) if the licensee has fewer than 25 employees, less than \$5 million in gross annual revenue or less than \$10 million in year-end total assets. A licensee is exempt from Section 4 if any of the above criteria apply to the licensee. Other sections of the Act can still apply.
- A licensee subject to and in compliance with the Health Insurance Portability and Accountability Act is considered to meet the requirements of this Act provided the licensee submits a written statement certifying its compliance with Pub. L. 104-191.
- Employees, agents, representatives or designees of a licensee who are also licensees are exempt from this Act and not required to develop their own information security programs to the extent they are covered by the information security program of the other licensee.

Alabama Insurance Data Security Law, cont'd

SECTION 6: NOTIFICATION OF A CYBERSECURITY EVENT

- If triggered, the Law's data breach notification requirements add to the requirements of The Alabama Data Breach Notification Act of 2018.
- Requires notice to the Alabama Commissioner of Insurance when certain specified data breaches occur.
- Notice to the Commissioner must occur within three business days of when a licensee determines that a cybersecurity event involving nonpublic information in the possession of the licensee that requires notice has occurred.
- Sets forth what specific items of information regarding a cybersecurity incident must be included in the notice to the Commissioner.
- If a licensee is aware of a cybersecurity event in a system maintained by one of its third-party service providers, the licensee must notify the Commissioner unless the required notice is provided by the third-party service provider.

**ALTA 32/33 SERIES OF
ENDORSEMENTS-What they do
and don't do**

ALTA 32 Series

- Specifically designed to be used only in situations in which there is a known loss of priority
- Three Endorsements in the Series
 - Only two of which are designed to be used by an agent.
 - All require the continued involvement of the Company or the Agent in the disbursement process.
 - All have corresponding coverage and exception language.

ALTA 32 Series, cont'd

LANGUAGE UNIFORM TO ALL THREE ENDORSEMENTS

1. Covered Risk 11(a) of this policy is deleted.
2. The insurance for Construction Loan Advances added by Section 3 of this endorsement is subject to the exclusions in Section 4 of this endorsement and the Exclusions from Coverage in the Policy, the provisions of the Conditions, and the exceptions contained in Schedule B.

For the purposes of this endorsement and each subsequent Disbursement Endorsement:

- a. “Date of Coverage,” is unless the Company sets a different Date of Coverage by an ALTA 33-06 Disbursement Endorsement issued at the discretion of the Company.
- b. “Construction Loan Advance,” shall mean an advance that constitutes Indebtedness made on or before Date of Coverage for the purpose of financing in whole or in part the construction of improvements on the Land.
- c. “Mechanic’s Lien,” shall mean any statutory lien or claim of lien, affecting the Title, that arises from services provided, labor performed, or materials or equipment furnished.

ALTA 32 Series, cont'd

LANGUAGE UNIFORM TO ALL THREE ENDORSEMENTS, cont'd

3. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. The invalidity or unenforceability of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage;
 - b. The lack of priority of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage, over any lien or encumbrance on the Title recorded in the Public Records and not shown in Schedule B;

ALTA 32-06

COVERAGE LANGUAGE

- c. The lack of priority of the lien of the Insured Mortgage, as security for each Construction Loan Advance made on or before the Date of Coverage over any Mechanic's Lien, if notice of the Mechanic's Lien is not filed or recorded in the Public Records, but only to the extent that the **charges** for the services, labor, materials or equipment for which the Mechanic's Lien is claimed were **designated for payment in the documents supporting a Construction Loan Advance** disbursed by or on behalf of the Insured on or before Date of Coverage.

ALTA 32-06, cont'd

CORRESPONDING EXCEPTION LANGUAGE

4. This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) by reason of any Mechanic's Lien arising from services, labor, material or equipment:
 - a. furnished after Date of Coverage; or
 - b. **not designated for payment** in the documents supporting a Construction Loan Advance disbursed by or on behalf of the Insured on or before Date of Coverage.

ALTA 32.1-06

COVERAGE LANGUAGE

- c. The lack of priority of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage over any Mechanic's Lien if notice of the Mechanic's Lien is not filed or recorded in the Public Records, but only to the extent that **direct payment** to the **Mechanic's Lien claimant** for the charges for the services, labor, materials or equipment for which the **Mechanic's Lien is claimed** has been made by the **Company** or by the Insured with the Company's written approval.

ALTA 32.1-06, cont'd

CORRESPONDING EXCEPTION LANGUAGE

4. This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) by reason of any Mechanic's Lien arising from services, labor, material or equipment:
 - a. furnished after Date of Coverage; or
 - b. to the extent that the **Mechanic's Lien claimant was not directly paid by the Company** or by the Insured with the Company's written approval.

ALTA 32.2-06

COVERAGE LANGUAGE

- c. The lack of priority of the lien of the Insured Mortgage, as security for each Construction Loan Advance made on or before the Date of Coverage over any Mechanic's Lien, if notice of the Mechanic's Lien is not filed or recorded in the Public Records, but only to the extent that **direct payment to the Mechanic's Lien claimant** for the charges for the services, labor, materials or equipment **for which the Mechanic's Lien is claimed has been made by the Insured** or on the Insured's behalf on or before Date of Coverage.

ALTA 32.2-06, cont'd

CORRESPONDING EXCEPTION LANGUAGE

4. This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) by reason of any Mechanic's Lien arising from services, labor, materials or equipment:
 - a. Furnished after Date of Coverage; or
 - b. To the extent that the Mechanic's Lien claimant was **not directly paid** by the **Insured** or on the Insured's behalf.

Policy Defenses

3. Defects, liens, encumbrances, adverse claims, or other matters
 - a. created, suffered, assumed, or agreed to by the Insured Claimant;
 - b. not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy.

See, *BB Syndication Services, Inc. v. First American Title Ins. Co.*, 780 F.3d 825 (7th Cir. 2015).

ALTA 33-06: Disbursement Endorsement

This endorsement provides for a change to the Date of Coverage as defined in the ALTA 32 Series, but does not change the Date of Policy or any other Endorsements issued in connection with the policy. It also requires the insertion of any additional exceptions resulting from the title search done in connection with the issuance of the Endorsements.

This Endorsement may only be issued in conjunction with the ALTA 32 series of Endorsements.