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The Basics of Title Insurance: A Critical Review for 2014

By

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January 30, 2014

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Title Insurance and Escrows: Transactions, Claims and Litigation

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January 30, 2014

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I. INTRODUCTION

One of the most important aspects of a secured loan is the security. This outline will provide a guide for lenders (and owners) as to how they can use an escrow and title insurance in the creation and protection of their property. There are numerous unique aspects to any loan. Therefore, this paper merely provides a general overview of recommended measures for the creation and protection of security for a loan. The author¹ recommends that counsel be retained by the lender to review the proposed loan transaction before it is consummated.

II. THE DOCUMENTATION PHASE OF THE LOAN

A. Introduction

The loan documentation phase of the loan is, from the lender's perspective, the most important phase of the loan. It is at this point that the lender obtains the Deed of Trust and other enhancements which will provide the collateral for the loan. While it is commonplace for lenders to use standard forms of loan documents, it must be realized that each loan and each borrower are unique and the loan documents must be appropriately modified to conform with the unique aspects of the particular loan.

B. Identification of the Parties (i.e. Borrower, Guarantor)

A key issue in the loan process is the correct identification of the borrower, guarantor and others who will participate in the loan. An error by the lender at this phase of the loan can prove to be very damaging, because the lender may find that it does not have an enforceable obligation, nor does it have an enforceable lien. Similarly, the lender's failure to properly identify the parties may result in loss of escrow protection title insurance coverage for the loan transaction.

¹ John L. Hosack is the author of one of the first books published on title insurance, California Title Insurance Practice (California Continuing Education of the Bar, First Edition). Mr. Hosack was the Chair of the Title Insurance Litigation Committee of the American Bar Association for the period 2001-2002. In more than 30 years of practice, Mr. Hosack has represented numerous insureds and insurers and served as an expert witness in the Courts of the States of California and Hawaii and in Federal Court. Mr. Hosack practices law in California with the firm of Buchalter Nemer and may be reached at jhosack@buchalter.com.



C. Type of Borrower

1. Individual

(a) Married

(b) Single

2. Corporation

(a) Domestic

(b) Foreign

3. Partnership

(a) General Partnership

(b) Limited Partnership

4. Limited Liability Company

5. Trust

6. Other Borrowers

D. Identification of the Security for the Loan

1. Introduction

Another critical factor at the document phase of the loan is the correct identification of the security for the loan. In general, the principal security for the loan will be real property. In many instances (particularly in loans on businesses such as hotels) the personal property will also be critical to the lender receiving meaningful security. Title insurance companies offer policies of insurance which will allow the lender to insure the validity and enforceability of its lien on both the real property and the personal property which is provided as security for the loan.

2. Real Property Security

It is commonplace to identify real property security by a street address (i.e. One Thousand Wilshire Boulevard, Los Angeles, California). However, street addresses provide inexact descriptions of real property because they may have been assigned by the postal service or are selected by the borrower.

In much of the United States, it is commonplace to obtain a survey of the proposed real property security. However, the surveys are not frequently used in California, especially in urban areas. Even if a survey were to be obtained, it is important to know that the surveyor is competent, acceptable to the proposed title insurer, has adequate errors and omissions insurance and is familiar with the Minimum Standard Detail Requirements of the ALTA/ACSM Land Title Survey.

If a survey is obtained, the policy of title insurance should be appropriately endorsed (i.e. a CLTA Form 116.1 endorsement) to reflect that the property described in the survey is the same property as is described in the policy of title insurance.

In addition to the identification of the basic real property security, there may be additional real property rights (i.e. easements) which are necessary or useful to the lender for the utilization of the real property security. The title insurer can assist the lender in this regard by insuring that the lender has a lien on the easement.

3. Personal Property Security

With the exception of a loan, which is secured by raw land, most real property security has personal property which is located on the property and may be necessary or useful to the lender for the utilization of the real property security. One of the better examples of the necessity of personal property security is found where a loan is made based upon the security of property which is used as a hotel. The furniture and equipment utilized in the hotel will be essential to the meaningful ability of the lender to realize upon the real property security. Historically, title insurance was not available on personal property. However, recently title insurers have started to provide insurance which insures the lender against loss or damage of its security in personal property. If a lender is considering making a loan where personal property is an integral aspect of the security, consideration should be made to obtaining a policy of insurance which insures the lender against loss or damage with respect to its security in the personal property.

III. THE SPECIFIC LOAN DOCUMENTS

A. Introduction

It is at the document phase of the loan that the lender obtains the security and creates the other rights

which are required as collateral for the loan. Since each loan is unique, the appropriate loan documentation will vary depending upon the specifics of the loan. However, there are certain techniques by which the lender may enhance its rights at this phase of the loan.

B. The Loan Agreement

Depending upon the size and the complexity of the loan, a loan agreement may be a necessity or might merely be an additional document which is desirable, but is not required. However, no matter how well drafted the loan agreement might be, it will be of limited value if it is not appropriately executed by the borrower. While many lenders prefer to have the loan agreement and other loan documents executed by the borrower at the lender's office, this procedure can create a risk for the lender if there are issues with regard to the identity, authority, capacity, etc. of the borrower. Therefore, the lender should consider having the borrower execute all of the loan documents at the office of the settlement agent (i.e. escrow agent). In addition, documents such as the deed of trust, which must be acknowledged, should be acknowledged by a notary public who is employed or selected by the settlement agent, not by the lender. Otherwise, the lender may find itself in a situation where a valid security interest was not created and the title insurer and the settlement agent attempt to avoid liability on the grounds that the problem was created by the lender.

C. The Promissory Note

The above comments applicable to the loan agreement are equally applicable to the borrower's promissory note.

D. The Deed of Trust

The above comments applicable to the loan agreement are equally applicable to the borrower's deed of trust.

In view of the ready availability of title insurance, a lender should not make a loan without the lien on the real property collateral being insured by a policy of title insurance. While there are limits to the protection which will be provided by a policy of title insurance to a lender, in general the policy provides a substantial enhancement to the lender's security.

E. The Financing Statement

When personal property may have a significant role in the lender's ability to realize upon the real property collateral, a financing statement should be obtained and filed on the personal property collateral. In addition, depending upon the importance of the personal property security, a policy of insurance should be obtained which insures the lender's lien on the personal property security.

F. Loan Guaranties

Loan guaranties present issues similar to the execution and delivery of other loan documents. In addition to the proper authority, capacity, identification, etc. of the guarantor to execute the guaranty, the lender should give appropriate attention to whether the guarantor received consideration for executing the loan guaranty. If the guarantor is to provide security to support the loan guaranty, the lender should obtain policies of title insurance on any real or personal property security.

**IV.
THE SELECTION AND THE DUTIES OF THE SETTLEMENT AGENT**

A. Introduction

A lender, through the selection of an appropriate settlement agent and the delegation to the settlement agent of critical functions in the loan documentation phase, can materially enhance its security for the loan.

While many lenders prefer to conduct their own settlements, including obtaining signatures on loan documents and disbursing funds, it must be recognized that the lender, by undertaking to perform these functions, unnecessarily assumes risks which could be appropriately delegated to financially responsible third parties with the attendant enhancement of the security for the loan.

B. Types of Settlement Agents

The lender has a number of choices of people who can act as settlement agents. In California, it is commonplace for the settlement agent to be an independent escrow company, an underwritten title company or a title insurance company. Outside of California, it is common for lawyers to act as settlement agents.

While there are a variety of factors which may influence the lender's selection of the settlement agent, one of the most critical factors is the financial responsibility of the settlement agent in the event that the settlement agent has liability to the lender. Other factors for the lender to consider in the selection of a settlement

agent include the competency and the accessibility of the settlement agent.

While highly competent people may be employed by an independent escrow company or an underwritten title company, neither of those potential settlement agents has the financial strength of any of the major title insurance companies. Therefore, it is the author's opinion, that whenever possible the lender should select a major title insurance company as the settlement agent.

C. Techniques to Minimize the Risk of Loss Caused by the Settlement Agent

If the lender should select a settlement agent which is not a title insurer, there are several ways that the lender can enhance its position with the settlement agent:

First, the loan proceeds should not be provided to a settlement agent which is not a major title insurer. Rather, the lender should escrow the loan funds with the title insurer and the title insurer should disburse the loan funds in accordance with the instructions of the lender; and,

Second, the lender should obtain a closing protection letter from the title insurer with respect to the actions of the settlement agent. There are three common varieties of closing protection letters. First, the American Land Title Association has promulgated a standard form of closing protection letter. Second, most major title insurance companies have promulgated their own form of standard closing protection letters. Third, a lender can prepare its own form of closing protection letter and request that the title insurer utilized that form. Since the title insurer, in executing a closing protection letter, is taking on substantial liability for the conduct of the settlement agent, the lender should anticipate that it may not be able to have a title insurer accept its form of closing protection letter unless it does a very substantial amount of business with that title insurer. As an alternative to the closing protection letter prepared by the lender, the lender should give consideration to the modification of the closing protection letter proposed by the title insurer.

D. Duties Commonly Performed by the Settlement Agent

Functions which can be performed by the settlement agent include the correct identification of the borrower (guarantor, etc.) the due execution of the loan documents, the disclosure to the parties of facts which might affect their decisions, the strict compliance with the parties escrow instructions, the acknowledgement of the deed of trust and other security instruments and the recordation and/or filing of the security interests. If the

settlement agent is the title insurer, it may well be disbursing the lender's funds. However, as noted above, if the settlement agent is not the title insurer, those loan funds should have been escrowed with the title insurer, not with the settlement agent, and disbursed by the title insurer in accordance with the lender's instructions.

While the settlement agent may order the policy of title insurance, the author recommends that the lender directly order the policy from the title insurer to avoid any problems with the settlement agent making a mistake in ordering the policy of title insurance.

V.

REDUCING THE RISK TO THE LENDER OF FUND DIVERSION

A. Introduction

The risks of loss caused by fraud, forgery and/or fund diversion have always been present in mortgage lending. However, those risks materially increase when there is a "down turn" in the real estate market. The current "down turn" in the real estate market has resulted in a number of mortgage lenders discovering that they have made loans which involved fraud, forgery and/or fund diversion.

The examples of fraud, forgery and fund diversion, described in this paper, are the ones which the author has personally encountered in representing mortgage lenders. In many of these instances, the problems could have been avoided if the lender had been more alert to the risks of fraud, forgery and fund diversion and had taken the appropriate measures to transfer those risks to its settlement agent and/or title insurer.

B. Common Examples of Fraud, Forgery and Fund Diversion of which the Lender Should be Aware

1. Introduction.

There are a number of risks from fraud, forgery and fund diversion which can beset the mortgage lender. The examples cited in this paper are only a few of those potential risks faced by the mortgage lender. The following risks are certain of the more common risks which the mortgage lender should be aware of and take the appropriate measures to minimize these risks.

2. The Borrower, Trustor and/or Guarantor are not the Person(s) They Claim to Be.

If your loan is not made to a borrower with whom you have an established "track record" and whom you personally know, you run the risk that the person(s) who executes the loan documents, including, but not limited

to the Promissory Note, Deed Of Trust, Loan Guaranty, etc., may not be the person(s) that they claim to be. False identification, including birth certificates, driver's licenses and social security cards, are all readily obtainable. Accordingly, you have a very limited ability to determine whether the person with whom you are dealing is in fact the person whom they claim to be. Whether described as impersonation, forgery, identity theft or a similar description, the net result is the same -- the person with whom you dealt and who signed your loan documents is not the person that they claimed to be -- and your loan documents may be void and not covered by your policy of title insurance. While this is one of the more common risks faced by the mortgage lender, it is a risk which can readily be transferred to your settlement agent and/or title insurer.

3. Lack of Capacity to Execute Loan Documents.

Even if the persons, with whom you are dealing, are in fact the persons who they claim to be, there are a variety of reasons why they may lack the required capacity to execute the loan documents, including, but not limited to, the following:

- (a) a married person;
- (b) an incompetent person;
- (c) a person under the age of majority;
- (d) lack of authority to execute documents on behalf of a corporation;
- (e) lack of authority to execute documents on behalf of a general partnership;
- (f) lack of authority to execute documents on behalf of a limited partnership;
- (g) lack of authority to execute documents on behalf of a limited liability company;

and,

- (h) lack of authority to execute documents on behalf of a trust.

While you may receive a "certified" copy of a purported corporate resolution relative to the purported authority of the president of the corporation (partnership, limited liability company, etc.) to encumber the corporation's real property, the president of the corporation may have fraudulently forged the documents which purport to authorize him to encumber the corporation's real property. While lack of capacity is one of the more common risks faced by the mortgage lender, it is a risk which can readily be transferred to your settlement agent

and/or title insurer.

4. Forged Documents.

There is no limit to the types of documents which can and will be forged to enable a person to obtain the loan funds which they are not entitled to receive. By way of example, a person can forge a grant deed (i.e. the “vesting deed”) in their favor so it appears they are the owner of the property which is proposed to be security for the loan. In addition, a person can forge a Power of Attorney so that it appears that they have the authority to enter into a loan transaction on behalf of another person. While forged documents are some of the more common risks faced by the mortgage lender, it is a risk which can readily be transferred to your settlement agent and/or title insurer.

5. Wrong Property Received as Security.

(a) Introduction.

A mortgage lender may receive the wrong property as the security for a real estate loan because of several reasons. First, the property which is to be encumbered may not be the property which was intended by the lender to be encumbered. Similarly, the property which is to be encumbered may not have the improvements which the lender thought existed on that property. While these are two of the more common risks faced by the mortgage lender, they are risks which, in large part, can readily be transferred to the settlement agent and/or title insurer.

(b) The Wrong Property is Encumbered.

In California it is not common to obtain an ALTA survey of the property to be encumbered. Rather, it is more typical to describe the property by a street address, order a preliminary report and prepare the Deed of Trust based upon that street address. However, there is no guarantee that there is any correlation between the street address and the property proposed to be encumbered. While this risk can be eliminated by a complete and accurate survey of the property and an appropriate endorsement to the loan policy of title insurance (i.e., CLTA Form 116.1), due to the time and expense involved in obtaining a survey, most lenders do not obtain a survey. However, a CLTA Form 116 endorsement to the loan policy of title insurance can be obtained which will insure the mortgage lender against loss or damage if the property, which is described by a street address, is not the same

property as is described in the title policy.

(c) Lack of Improvements on the Property.

There can be a material difference in value whether the property to be encumbered is vacant land or whether it is improved by a forty story office building. However, unless the mortgage lender obtains a complete and accurate survey of the property and the improvements, there is no guaranty that the property which is proposed to be security for the loan has the improvements which were believed to exist. As noted above, it is not common practice in California for lenders to obtain a survey of the property to be encumbered. However, this risk can be reduced, though not eliminated, by the mortgage lender obtaining a CLTA Form 116 endorsement to the loan policy of title insurance, which adequately describes the improvements (i.e. "a forty story office building commonly known as 123 Wilshire Boulevard, Los Angeles, California").

6. Fund Diversion.

(a) Introduction.

In the event that the loan funds are not disbursed to the appropriate persons, the mortgage lender can anticipate that an attack will be made by the borrower upon the mortgage and in addition that the mortgage lender's title insurer will deny coverage. Accordingly, it is very important that the mortgage lender take the necessary measures to see that its loan funds are disbursed to the appropriate persons. While many lenders prefer to directly fund their loans to the borrowers and the other persons who are entitled to receive the loan proceeds, it must be recognized that this practice involves a high degree of risk to the mortgage lender and results in little, if any, financial benefit to the mortgage lender.

(b) Fund Diversion by the Borrower.

If the mortgage lender directly funds the loan to the purported borrower, the lender needlessly incurs a risk that the appropriate recipient of the loan funds will not receive them. It is a simple matter for a dishonest person to open a bank account in the name of the purported borrower, to forge an endorsement on a disbursement check, to provide inaccurate wire transfer information, etc. These risks are nearly impossible for the mortgage lender to detect. However, the mortgage lender, by having the title insurer disburse the loan funds to the borrower and other persons authorized to receive the loan funds, can transfer this risk to the settlement agent

and/or title insurer.

(c) Fund Diversion by the Settlement Agent.

In the event that the loan funds have been deposited with a settlement agent, the mortgage lender incurs the risk that the settlement agent may embezzle the loan funds or otherwise fail to properly disburse those loan funds to the appropriate persons. While the vast majority of the employees of settlement agents are honest, there are always a few exceptions.

There have been several recent news reports of employees of settlement agents embezzling millions of dollars of customers escrow deposits. In addition, at least one large underwritten title company has “closed its doors.” In the event that the mortgage lender has deposited the loan funds with a major title insurer, there is a substantial probability that the title insurer will be financially able to reimburse the mortgage lender in the event of embezzlement or other fund diversion by an employee of the title insurer. However, should the mortgage lender deposit the loan funds with a settlement agent, which is not a major title insurer, and there is an embezzlement or other fund diversion, it is questionable as to whether any recovery can be obtained from the settlement agent. The risk of loan funds not being properly disbursed can be reduced, but not eliminated, when the funds are deposited with an underwritten title company by obtaining a closing protection letter from the underwriter. However, closing protection letters are not “bullet proof” and the mortgage lender is always better protected by dealing directly with the title insurer as the settlement agent.

7. Non-Existent Down Payments.

In a purchase loan transaction, it is common for the mortgage lender to require that the borrower-buyer make a substantial down payment for the purchase of the property to be encumbered. However, in the event of a real estate fraud, it is a simple matter for the borrower or the settlement agent to falsify a receipt which reflects that a down payment was received by the settlement agent from the borrower-buyer, when in fact no down payment (or a smaller down payment) was received. In the alternative, a purported down payment can be received by the settlement agent, but those funds can immediately be returned to the borrower-buyer.

Typically, the non-existent down payment arises in a context where the borrower-buyer invests no personal funds into the purchase of the property. The borrower’s down payment may be non-existent because

the purchase price has been overstated and the lender is financing 100% (or more) of the purchase price. In the alternative, the down payment can be obtained from third party sources, including, but not limited to, junior liens on the property which were not authorized by the mortgage lender.

If the mortgage lender requires that the borrower make a down payment, from the borrower's funds, to purchase the property, the mortgage lender should give a written instruction to the settlement agent that it must provide a written representation to the mortgage lender, before the close of escrow, that the borrower has made a down payment from its own funds and that the funds were not acquired by junior liens on the property, will not be returned to the borrower and will be used by the borrower to purchase the property.

8. False Appraisals.

(a) Introduction.

Most mortgage lenders heavily rely upon the value of the borrower's property. Accordingly, to a mortgage lender the value of the real property collateral has a very high degree of importance.

There is no way to eliminate the risk of a false appraisal. However, there are measures by which the risks of the false appraisal can be reduced, but not eliminated.

(b) Do you have any personal knowledge of the proposed real property collateral?

If the proposed real property collateral is located in the immediate vicinity of your office, there is a good probability that you are familiar with the area, if not the specific property. Accordingly, that should enable you to have personal knowledge as to the market trend in the area and the general values of properties in the area.

(c) What is your prior experience, if any, with the appraiser?

Excluding the risk of a fraudulent appraisal, the issue still remains as to how competent and honest the appraiser is. Obviously, if you have had substantial experience with the appraiser over a prolonged period of time, you have had an opportunity to form opinions relative to the appraiser's competency and honesty. However, if the appraiser is unknown to you, you have no basis for forming an opinion relative to competency or honesty of the appraiser. Accordingly, an appraiser who has not been used successfully by you before on a number of occasions over the years must be viewed with skepticism. While it is possible that the appraiser is competent and honest, it is equally probably that the appraiser is incompetent and/or dishonest.

(d) Did you personally inspect the property?

Reliance upon purported photographs of the property is an easy way to be defrauded by a dishonest appraiser. The mere inclusion of photographs in an appraisal does not necessarily mean that the property (and/or improvements) depicted in those photographs is the property which will be the security for your loan. Accordingly, the author recommends that you personally inspect the interior and the exterior of the property before agreeing to accept the property as collateral for the loan.

(e) Is the appraiser's office located near the property?

If the appraiser's office is located in the same city as the property, the appraiser should be familiar with the general area, if not the specific property, which is the subject of the appraisal. However, an appraisal which is done by an appraiser whose office is a substantial distance from the property (if not located in another state) should be viewed with a high degree of skepticism. While there may be a legitimate reason that the appraisal was done by an appraiser whose office was not located in the immediate vicinity of the property, the lack of the appraiser having an office in the immediate vicinity of the property should be a "red flag" to the mortgage lender.

(f) Did you personally discuss the appraisal with the appraiser?

Even an accurately and honestly prepared appraisal can be modified through forgery. Accordingly, the author recommends that you directly contact the appraiser through a reliable and verifiable means of contact, and discuss with the appraiser the appraisal, including the ultimate opinion of value. Thereafter, the information should be confirmed in writing.

(g) When in doubt obtain a second appraisal.

If there is the slightest question about the value of the property, a second appraisal may be warranted. At a minimum, a broker's price opinion can serve as a second opinion of value.

(h) Conclusion.

The author has seen a mortgage lender accept an appraisal from an out-of-state appraiser where the appraiser was not licensed to conduct an appraisal in the state where the property was located and the appraiser heavily relied upon the purported sale price for the property. However, allegedly unknown to the appraiser, the purported sale price was overstated by approximately a million dollars. Accordingly, the appraiser overvalued the

property by approximately a million dollars.

9. Fraudulent Service Providers.

Most mortgage lenders rely upon a number of service providers in making a real estate loan (i.e. an appraiser, escrow agent, notary public, underwritten title company, title insurer, etc.). All of these service providers are subject to being impersonated by persons who are intent on obtaining your loan funds by fraud. There is no loan document (i.e. appraisal, escrow instructions, employment verification, preliminary report, title insurance policy, etc.) which can not be forged. Depending upon the quality of the forgery, even a trained questioned documents examiner may not detect the forgery. Accordingly, it is quite important that you only deal with known service providers and verify that they are who they are. By way of example, information about title insurers can be obtained from the California Department of Insurance.

It is a simple matter for a fraudulent borrower to fabricate an escrow agent through the use of a “mail drop,” email address and a telephone number. Indeed, even a visit to the purported office of the escrow agent is no guarantee that it is what it appears to be. In one of the more blatant examples of a fraudulent escrow agent, the purported “escrow agent” rented office space, hired purported “employees” and, when visitors were present, purported to go about the day to day business of closing escrows. However, the purported “escrow agent” was a complete fraud. It had even defrauded the California Department of Corporations into issuing an escrow license to it. No legitimate escrow activity was being conducted. Finally, when there were sufficient escrow funds on hand, the “employees” of the purported “escrow agent” walked (to avoid a security camera’s detection of an automobile license plate number) into the “escrow agent’s” bank and departed with all of the escrow funds in twenty dollar bills in suitcases.

10. Common Mistakes to Avoid

(a) Reliance on Notarized Documents.

While a document which has purportedly been notarized may have a superficial appearance of authenticity, it is nearly impossible for the mortgage lender to know if the notarization is accurate unless both the notary and the signatory are known personally to the lender and the lender was present and observed the document being signed and notarized. Notary stamps are readily available and a lender should give no weight to a

document merely because it is notarized.

If the lender has a document, such as a Deed of Trust, which must be notarized, that notarization should only be done by a Notary Public who has been selected by the settlement agent and/or title insurer. It is a very high risk for a lender to have a Notary Public selected by the mortgage lender perform the notarization because the Notary Public's stamp is subject to being stolen or otherwise misused and it should be anticipated that the title insurer will deny the mortgage lender's claim. While there may be business reasons to have a notary employed by the mortgage lender, the notary's stamp and notary book should be kept in a secure, locked location which has limited access. In addition, there should be adequate insurance to cover in appropriate notarizations.

(b) Reliance on Powers of Attorneys.

While we can put a man on the moon, there is still a willingness on the part of some mortgage lenders to accept documents which have been executed based upon a power of attorney. Between overnight delivery and the numerous branches of major title insurers, the author is not aware of any reason that a prudent mortgage lender should rely upon a power of attorney. If there is an instance where it is necessary that one or more loan documents be executed based upon a power of attorney, the person who wants to execute the loan documents utilizing the power of attorney should be sent to the title insurer's office and the title insurer should be instructed in writing by the mortgage lender that whether or not the power of attorney is accepted is solely the decision of the title insurer and that the lender does not express any opinion as to whether it should be accepted, but is relying solely upon the settlement agent and/or title insurer.

11. Measures to be Taken by the Mortgage Lender Before and After the Close of the Loan to Reduce the Risk of Loss Due to Fraud, Forgery and Fund Diversion

(a) Most real estate prices, especially residential properties, have materially decreased during the last year. Accordingly, even an honest appraisal, which will be based on historic data, may be of limited value to the mortgage lender. In addition, it is quite easy for a purported "borrower" to "inflate" the apparent value of property by "flipping" the property at successively higher "purchase" prices. Therefore, at a minimum, you should require that your title insurer inform you in the preliminary report of all transfers or conveyances of the property within the last two years. However, in view of insurance code Sections 12340.10 and

12340.11 consideration should be given to obtaining a chain of title guarantee.

(b) Have all loan documents executed by the borrower, guarantor and/or trustor at the office of the title insurer utilizing a Notary Public selected by the title insurer.

(c) All loan funds to be disbursed should be paid directly to the title insurer (not the underwritten title company or an escrow agent) with written instructions as to how they are to be disbursed. The lender should never directly disburse any loan funds to anyone other than the title insurer.

(d) Select the correct policy of title insurance.

(e) Disclose to the title insurer in writing, before the close of escrow, any and all matters which you find curious, unusual, or suspicious about the loan. By way of example, if you observe that signatures appear to have been made by persons other than the purported signatory, promptly advise the title insurer in writing and inform the title insurer that you will require its written authorization before you proceed to close the loan. If you make a claim on your title policy the title insurer will immediately request to see all of your files relative to the loan to determine if there are grounds to deny your claim. However, if you have made a written disclosure to the title insurer of the matter which gave rise to the claim before the loan closed, the title insurer should not be able to use that matter to deny your claim.

12. Obtain and review the original policy of title insurance within two weeks after the loan closed to determine if it is in conformance with your instructions

(a) Managing the Claim on your Escrow and/or Title Policy

(1) In the event you have any reason to suspect that you may have a claim on your escrow and/or title policy immediately (i.e., within twenty four (24) hours) give written notice of the claim by Federal Express to your settlement agent and/or title insurer. There is nothing to be gained (and much to be lost) by you attempting to conduct an investigation or to resolve any problem which you have identified.

(2) Immediately retain a lawyer who is experienced in dealing with settlement agents and title insurers. Your claim will be handled by claims agents of the settlement agent and/or title insurer who spend all of their time in dealing with title insurance claims. You will be at a severe disadvantage if your attorney does not have an equal amount of knowledge about escrow and title insurance claims as the claims

agent with whom they are dealing on behalf of the title insurer. Title insurance claims involve a unique “mixture” of real property and insurance law. If your lawyer is not an expert in title insurance claims, you may find yourself “hoodwinked” by the claims agents of the title insurer.

(3) Examples of “hoodwinking” by the title insurer can include the following:

(i) Assigning you a lawyer, who you believe is to represent you, but who has an undisclosed conflict of interest because the lawyer was formerly employed by a title insurer, derives the majority of his or her income from the title industry or currently represents the title insurer on other matters.

(ii) Needless purported “investigations” of your claim which are protracted, unnecessary and accomplish nothing but delay payment of your claim.

(iii) Filing of litigation in your name which is not for your benefit and which may result in your being sued.

(iv) Modification of your loan documents without appropriately explaining the need for the modification and appropriately endorsing your policy to cover the new additional risks which you are encountering.

(b) Conclusion

There’s no way that a mortgage lender can avoid the risks of fraud, forgery and fund diversion. However, there are a number of practical and cost effective methods to reduce the risks of loss from fraud, forgery and fund diversion and to increase the probability of obtaining a recovery from your settlement agent and/or title insurer.

VI. THE SELECTION OF THE TITLE INSURER

A. Introduction

The lender’s selection of the title insurer is a key consideration in documentation phase of the loan. There are more than 100 title insurers in the United States. However, most of those title insurers are small regional title insurers. The title insurance industry is dominated by four major title insurance companies and their affiliates which are as follows:

1. First American Title Insurance Company and Affiliates;
2. “The Fidelity Family” of Title Insurers
 - (a) Fidelity National Title Insurance Company
 - (b) Chicago Title Insurance Company
 - (c) Ticor Title Insurance Company
 - (d) Security Union Title Insurance Company
 - (e) Alamo Title Insurance Company
 - (f) Lawyer’s Title Insurance Corporation
 - (g) Commonwealth Land Title Insurance Corporation
 - (h) Transnation Title Insurance Company
3. Stewart Title Guaranty Company and Affiliates
4. Old Republic National Title Insurance Company and Affiliates
5. The other insurance companies

B. The Distinction Between Title Agents and Title Insurers

Title insurance companies have historically distributed title insurance through a combination of direct operations and through independently owned title agents. Traditionally, in California, title agents have operated on an exclusive basis for a single title insurance company. Outside of California, it is not uncommon to find that a title agent issues the policies of more than one title insurance company.

Several years ago most major title insurance companies established “captive” title agents which they owned and operated utilizing names which were substantially the same as the title insurer. By way of example, Fidelity National Title Insurance Company is affiliated with Fidelity Title Company. While these “captive” title agents have names similar to their title insurer “parent” the lender should not assume that the “captive” title agent and the “parent” title insurer will admit that they are identical. One of the factors which led to the formation of the “captive” title agent was the desire by the title insurers to avoid or reduce liability to the insureds. The presence of a “captive” title agent between the insurer and the insured provides a degree of protection for the insurer against the claims of the insured because the title insurer can take the position that the responsibility, if

any, for the claim of the insured is that of the “captive” title agent and not of the “parent” title insurer. Accordingly, the author is of the opinion that a lender is well-advised to deal directly with the title insurer and not with a “captive” title agent or any other type of agent. The author recognizes that there are many title agents, including both “captive” title agents and “independent” title agents, which are well capitalized and quite competent to serve as a title agent in a loan transaction. However, should the lender decide to deal with a title agent, as opposed to a title insurer, the lender should remember that it is dealing with an agent and take appropriate measures to reduce or eliminate the problems which are attendant in dealing with an agent as opposed to dealing directly with the title insurer.

VII. THE INITIAL TITLE PRODUCT

In California, the initial title product, which is typically obtained by a lender is a preliminary report. It is important to remember that the preliminary report does not purport to represent the current state of title to the property described in the preliminary report. Similarly, the policy of title insurance does not purport to represent the current state of the title to the property described in the policy of title insurance. The preliminary report is only an offer to issue a policy of title insurance subject to specific exclusions and exceptions.

For a number of years the California courts held that a title company which issued a preliminary report had “abstractor’s liability” based on that preliminary report. However, in 1981 Sections 12340.10 and 12340.11 were added to the California Insurance Code.

Insurance Code § 12340.10 provides as follows:

“Abstract of title” is a written representation, provided pursuant to a contract, whether written or oral, intended to be relied upon by the person who has contracted for the receipt of such representation, listing all recorded conveyances, instruments or documents which, under the laws of this State, impart constructive notice with respect to the chain of title to the real property described therein. An abstract of title is not a title policy as defined in Section 12340.2. (emphasis added)

Insurance Code § 12340.11 provides as follows:

“Preliminary report”, “commitment”, or “binder” are reports furnished in connection with an application for title insurance and are offers to issue a title policy subject to the stated exceptions set forth in the reports and such other matters as may be incorporated by reference therein. The reports are not abstracts of title, nor are any of the rights, duties or responsibilities applicable to the preparation and issuance of an abstract of title applicable to the issuance of any report. *Any such report shall not be construed as, nor constitute, a representation as to the condition of title to real property*, but shall constitute a statement of the terms and conditions upon which the issuer is willing to issue its title policy, if such offer is accepted. (emphasis added)

The preliminary report may not disclose all matters which may affect title to the real property described in a preliminary report for a variety of reasons. First, the “title search” may have failed to identify a recorded document which affects title. Second, a recorded document which affects title that was identified may have erroneously been omitted from the preliminary report. Third, if the preliminary report is for a standard coverage

policy, as opposed to an extended coverage policy, a recorded document may not be shown. Fourth, a recorded document which affects title may be covered by an indemnity agreement and may not be reflected. Fifth, the policy of title insurance may not provide any protection for a type of risk (i.e. building code violations) and a recorded item may not be reflected in a preliminary report. The preliminary report is a useful document to the lender in making decisions with respect to proposed real property collateral. However, the preliminary report does have substantial limitations and should be approached with caution.

Easements can be critical to the economic value of property. In the case of an easement for ingress and egress, it may be the difference between substantial economic value and no economic value. However, since California law does not permit the insured to rely upon the preliminary report, the prospective insured should request that the title insurance company employee plot all easements before the transaction is closed.

When the lender orders the preliminary report copies of all of the recorded instruments, which are reflected as exceptions in the preliminary report, should also be obtained at the same time from the title company and reviewed before instructions are provided. Frequently, exceptions in preliminary reports will reference documents without a thorough explanation of the effect of the document upon the condition of title and it is necessary for the lender to review the referenced document to determine if it is willing to have its title insurance coverage be subject to that exception.

VIII. OTHER TITLE PRODUCTS

In addition to preliminary reports, there are other title products which may be provided to the lender before the loan is made. A Lot Book Guaranty is one example of a title product which may be provided to the lender. Some lenders who are making second trust deed loans who want some title information about the property, but who do not want to pay for a title policy may order a Lot Book Guaranty. However, the Lot Book Guaranty provides little protection to the lender and the author does not recommend utilizing a Lot Book Guaranty as a basis for making a secured loan.

Similarly, a Trustee's Sale Guaranty may appear to provide information with regard to the condition of the title to the property described in the guaranty, but that guaranty is intended by the title company to only provide

information for the foreclosure of a deed of trust, not the making of a loan to be secured by a deed of trust. Therefore, the author does not recommend that a lender utilize a Trustee's Sale Guaranty as the basis for making a loan to be secured by a lien on real property.

There are other title products known as "property profiles" and "farms" which title companies issue to provide limited information with respect to real property. Principally, these title products are used by real estate brokers who want to have some basic information about a property, but do not want to incur the expense (and the protection) of a policy of title insurance. Accordingly, the author does not recommend that a lender make a loan secured by real property based on a "property profile" or a "farm".

In the case of home equity loans secured by second deeds of trust on a borrower's home, limited coverage policies of title insurance have become very popular because of the limited cost. However, the limited coverage policy title insurance provides very little protection to the lender. Accordingly, the author does not recommend that a lender utilize a limited coverage policy of title insurance as the basis for making a loan secured by real property.

IX. SELECTION OF A POLICY OF TITLE INSURANCE

A. Introduction

A prudent lender which is making a loan to be secured by real property will generally require that it obtain an [formerly] ALTA Loan Policy Form B - 1970 (Amended 10/17/70) of title insurance to insure that it has received a valid and enforceable lien with the appropriate priority upon the real property security. However, there is a reluctance of the title industry to issue this policy.

B. Available Forms of Policies Which May Be Used by Lenders

A lender in California which intends to receive real property security as collateral for its loan has four principal policies among which it may select. First, is the California Land Title Association Standard Coverage Policy (1990). The CLTA Standard Coverage Policy is intended to cover only "record title" matters and does not insure against matters which involve "off-record" title risks, such as boundary problems, easements, encroachments and matters which could be ascertained by an inspection of the property. While the CLTA Standard Coverage Policy

does ensure the validity and enforceability of the lien of the insured Deed of Trust, together with the priority of that lien, it does not, in the author's opinion, provide the appropriate coverage for a loan to be secured by real property.

The American Land Title Association promulgated three forms of loan policies which may be selected by a lender. The current version of the loan policy was promulgated in 2006 by the ALTA. The ALTA Loan 1970, 1992 and 2006 Policy are intended to provide protection to the lender for certain "off-record" risks, whereby the title insurer assumes the risks of matters which would be ascertained from an inspection or a survey of the property. All of these ALTA loan policies provide substantially more coverage than the CLTA Standard Coverage Policy. However, there are several differences between the 1970 and the 2006 forms of the ALTA loan policies.

One principal difference is that the 1992 ALTA Loan Policy includes a creditor's rights exclusion which is not in the 1970 loan policy. Many lenders are of the opinion that the absence of the creditor's rights exclusion in the 1970 ALTA Loan Policy provides coverage for creditor's claims. However, it is the position of the title insurance industry that the 1970 ALTA Loan Policy does not provide coverage against creditor's claims and that the creditor's rights exclusion was added to the 1992 and 2006 ALTA Loan Policy to make explicit the fact that no coverage was provided for creditor's claims. The coverage in the 2006 policy does provide creditors' rights coverage for transactions before the insured transaction.

A second principal difference between the 1970 and the 1992 (and 2006) ALTA loan policies is the fact that the 1992 policy has a provision for arbitration, at the option of the insurer or the insured, if the amount of the insurance is under \$1,000,000.00. If the amount of the insurance is more than \$1,000,000.00, arbitration will require the consent of both the insurer and the insured. Since many lenders objected to the inclusion of the arbitration clause in the 1992 ALTA Loan Policy, the arbitration clause may be removed by an appropriate endorsement.

A third principal difference is that the 1992 (and 2006) ALTA Loan Policy contains a specific reference to environmental protection liens as a part of the governmental regulation exclusion from policy coverage. It is the position of the title insurance industry that the 1970 ALTA Loan Policy, which does not have an environmental regulation exclusion, does not provide any coverage for environmental risks and that the environmental regulation

exclusion, which is contained in the 1992 policy, only makes explicit the fact that the policy does not provide coverage for environmental regulation. There are other differences between the 1970 and 1992 ALTA Loan Policies and the ALTA makes available a chart which compares the two policies.

The ALTA also offers for lenders on one-to-four family residential properties a 2006 ALTA Residential Loan Policy. The ALTA 2006 Residential Loan Policy contains a number of coverages which are not available in the ALTA 1970 and 1992 Loan Policies. However, it is the author's opinion that those additional coverages will, in general, be of limited value to the lender and the 1970 ALTA Loan Policy will, in general, provide better protection to the lender.

While the ALTA has formally withdrawn the 1970 ALTA Loan Policy, that policy remains popular among lenders. However, when ordering this policy it may be necessary to describe it as the "[formerly] ALTA 1970 Loan Policy" because it has been withdrawn as a policy promulgated by the ALTA. In addition, it should be anticipated that the insurer will refuse to issue the policy.

X.

AN INTRODUCTION TO ENDORSEMENTS TO TITLE POLICIES

A. Introduction

A preliminary report does not reflect the condition of title for real property because of the enactment of Insurance Code Sections 12340.10 and 12340.11, which were operative January 1, 1982. Accordingly, a prudent lender will recognize that the preliminary report is, by statute, only an offer to sell insurance and there are a number of risks which are not covered by the standard forms of loan policies of title insurance. A few examples of risks which are not covered is as follows:

1. Recorded Notice of Substandard Housing. A recorded notice of substandard housing may entitle the government to demolish the structure and to impose a lien on the property for the cost of demolishing the structure, both of which could have material adverse consequences to a secured lender. However, these risks are not covered by the provisions of standard loan policies of title insurance.

2. Recorded Environmental Liens. While an environmentally contaminated property can have a substantially diminished value, due to the costs to remediate the property, this risk even if reflected in a

recorded lien is not covered by the provisions of the standard loan policies on the grounds that it relates to the physical condition of the property, not the condition of the title to the property.

3. Lack of Compliance With Subdivision Map Act. The standard loan policies do not provide coverage for the fact that the property is not a legal lot.

Most policies of title insurance were not intended to be used unless there were appropriate endorsements attached. Once the lender understands what the title insurer intends the preliminary report to be, and the limitations on what is contained in the preliminary report, the lender can begin to craft its insurance coverage by the addition of appropriate endorsements to the loan policy of title insurance to address certain risks.

B. Types of Endorsements

1. Introduction. In California a lender can avail itself of a vast number of endorsements which are promulgated by the American Land Title Association (“ALTA”), The California Land Title Association (“CLTA”), the title insurer or the lender.

Depending upon the endorsement and the title insurer, the endorsement may be issued without charge or it may cost nearly as much as the policy. Title insurers in California file their rates for the California Department of Insurance (“DOI”) and are obligated to charge their customers the rates which they filed with the DOI. However, in California a title insurer is also free to draft a unique endorsement, which is not filed with the DOI, and can impose any charge agreed upon by the insurer and the insured.

2. ALTA Forms of Endorsements. The ALTA issues more than 20 endorsements, most of which can be used in a loan policy.

3. CLTA Forms of Endorsements. The CLTA issues more than 100 endorsements, many of which can be used in a loan policy. Frequently, there are several endorsements which address similar risks. Accordingly, in deciding which endorsement is most appropriate for your policy of title insurance, you may need to consult your counsel or the title insurer’s underwriter to determine the appropriate endorsement to cover the risk in issue.

4. Title Insurer Forms of Endorsements. Most major title insurers have their own proprietary forms of endorsements which they have developed for use by their customers. Frequently, these

endorsements are developed in conjunction with their customers to cover unique risks which those customers foresee in their transactions.

5. Borrower's Endorsements. It is not uncommon for major lenders to develop their own forms of proprietary endorsements. Frequently, these are modifications of existing ALTA and CLTA forms of endorsements.

6. Special Endorsements. In California, as noted above, the insurer and the insured are free to draft any endorsement which they wish to address unique risks in a particular transaction.

C. Zoning Endorsements (ALTA Forms 3 [Zoning-Unimproved Land] And 3.1 [Zoning-Improved Land]) [Exhibits "1" And "2"]

An insured lender should have insurance against loss or damage in the event it is determined that the use of the property is not permitted by the applicable zoning ordinances. These endorsements reflect the applicable zoning classifications and the uses permitted under these classifications.

D. Environmental Protection Lien Endorsement (ALTA Form 8.1) [Exhibit "3"]

A recorded environmental lien may not be reflected in a preliminary report and covered by a loan policy of title insurance on the ground that it relates to the condition of the real property, not the condition of the title to the real property. However, a recorded environmental lien can be a serious threat to a lender's real property security. Accordingly, this endorsement provides protection against any existing environmental protection liens which were either recorded in the County Recorder's Office or filed with the Clerk of the United States District Court.

E. "Comprehensive" endorsements (ALTA forms 9, 9.1 and 9.2) [exhibits "4," "5" and "6"]

Most title insurers prefer the term "REM" (i.e., "Restrictions, Encroachments & Minerals") and avoid the use of the word "comprehensive" to describe these endorsements. However, this is the term frequently used by most insureds. The endorsements protect the lender against loss or damage which is the result of violations of existing covenants, conditions and restrictions.

F. Access Endorsements (CLTA Forms 103.4 And 103.7) [Exhibits "7" And "8"]

The standard form of loan policy does not provide coverage for loss or damage as the result of a practical

and usable means of access to the property. Rather, it provides insurance for loss or damage sustained where there is a lack of a legal right of access to the property. Access endorsements provide coverage: (1) with respect to there being a right of access to a specifically identified physically open street or (2) the land abuts upon a physically open street.

G. Tie-In/Aggregation Endorsement (ALTA Form 12) [Exhibit "9"]

When a lender makes a loan to a borrower, secured by mortgages on multiple parcels of real property, there typically are values assigned to each of the policies on the various parcels. This endorsement enables the lender to aggregate coverage so that the cumulative total of all of the policies of title insurance are available to any one of the properties for a loss. This coverage is particularly important where is the potential for an increase in the value of one or more of the parcels of property.

H. Designation Of Improvements And Street Address Endorsement (CLTA Form 116) [Exhibit "10"]

It is not common in California to obtain a survey for a loan transaction. Frequently, the proposed real property collateral is identified by a street address. However, in the absence of this endorsement, there is no coverage in the policy of title insurance if it develops that the presumed collateral and the improvements thereon (i.e., a 16 unit apartment house), which were identified by street address, are in a location which is different than that described in the policy.

I. Survey Endorsement (CLTA Form 116.1) [Exhibit "11"]

Where a survey is obtained of the property, a survey endorsement should be obtained, so that the insurer will provide the lender with insurance protection that the land delineated in the survey is the same as the land which is described in the policy of title insurance.

J. Contiguity Endorsement (CLTA Forms 116.4 [Two Parcels] And 116.4.1 [Multiple Parcels]) [Exhibits "12" And "13"]

Where the lender's security consists of two or more lots, which are adjacent to one another, a contiguity endorsement should be obtained to provide coverage against loss or damage which might be sustained in the event that it were determined that there were any "gaps, strips or gores" between the boundaries to the parcels of real property.

K. Encroachment Protection Endorsements (CLTA Forms 103.1, 103.3 Or 103.6) [Exhibits “14,” “15” And “16”]

Where easements in favor of third parties have been identified, the lender faces the risk that certain of the improvements, which comprise the lender’s security, may encroach upon the easements and may impair the value of the security. Accordingly, the lender should consider obtaining CLTA Forms 103.1, 103.3 or 103.6 to provide coverage against this risk.

L. Subdivision Map Act Compliance Endorsement (CLTA Form 116.7) [Exhibit “17”]

The standard loan policies do not insure against loss or damage suffered by the insured lender where the property is not in compliance with the Subdivision Map Act. The CLTA Form 116.7 provides the insured lender with coverage against this risk.

M. Future Advance Endorsements (CLTA Forms 111.10, 111.14 And 111.14.1) [Exhibits “18,” “19” And “20”]

While most deeds of trust allow the lender to make advances under the terms of the deed of trust and further provide that the advances will be secured by the deed of trust, the issue arises as to whether or not those advances will in fact enjoy the same priority as the original lien of the deed of trust. Typically, this will involve issues of whether the advance is found to have been “obligatory” or “optional”. In addition, the issue of priority may be determined by whether the lender was on notice of the existence of a lien which was recorded after the date of recordation of the lender’s original deed of trust. There are a number of advance endorsements found in the CLTA 111 series. Specifically, the CLTA Form 111.10 is for an optional advance, and the CLTA Form 111.14.1 (Future Advance-Knowledge).

N. Usury Endorsement [Exhibits “21” And “22”]

The standard loan policy excludes loss caused by reason of usury. Accordingly, it is prudent for the lender to obtain an endorsement which insures against loss or damage because of the invalidity or unenforceability of the lien of the insured mortgage by reason of the violation of usury laws. Neither the ALTA nor the CLTA have promulgated a usury endorsement. However, most major title insurers have proprietary forms of usury endorsements. By way of example, it is First American Title Insurance Company’s Form numbers 57 and 57.1.

O. Tax Parcels Endorsements (ALTA Forms 18 And 18.1) [Exhibits “23” And “24”]

A lender does not want to risk the loss of its security, whether in whole or in part, because the property, including appurtenant easements, are taxed as separate parcels. The ALTA Form 18 (single tax parcel) provides coverage with respect to the land being separate tax parcel. The ALTA Form 18.1 (multiple tax parcels) provides similar coverage with respect to multiple parcels and the loss of an appurtenant easement through a tax sale.

P. First Loss Endorsement (ALTA Form 20) [Exhibit "25"]

Where a lender has multiple parcels of property as security, it should obtain a First Loss Endorsement to provide coverage for a loss, without first having to foreclose on all of the parcels of property which are security for the loan. From the insurer's perspective, a title defect must exist which results in a claim under the policy, the borrower must be in default on the loan and the value of the property, as diminished by the title defect, must be less than the outstanding balance due on the loan.

Q. Leasehold Loan Endorsement (ALTA Form 13.1) [Exhibit "26"]

When a loan is to be secured by real property which is leased by the borrower, the standard form of the loan policy should be modified by a Leasehold Loan Endorsement.

R. Variable Rate Endorsement (ALTA Form 6) [Exhibit "27"]

If the loan provides for changes in the rate of interest, then the lender should obtain an ALTA Form 6 to provide coverage against loss or damage due to the change in interest rate provisions.

S. Creditor's Rights Exclusion Deletion

The 1970 Loan Policy does not contain an express Creditor's Right Exclusion. However, most of the subsequent loan policies do. Therefore, the lender should obtain an endorsement to delete the Creditor's Rights Exclusion, if any, in the policy.

T. Creditor's RIGHTS Endorsement (ALTA FORM 21) [EXHIBIT "28"]

In addition to the deletion of the "Creditor's Rights Exclusion", if any, in the loan policy, the lender should also obtain a ALTA Form 21 to provide affirmative coverage with respect to the subject loan transaction.

U. "Seattle" Endorsement for Construction Loans [EXHIBIT "29"]

If the loan is a construction loan, then the lender should obtain a "Seattle" Endorsement to the loan policy to provide coverage for the issues presented by undisbursed loan proceeds and the insufficiency of the proceeds

to complete construction. Typically, a construction lender will have advanced less money to the borrower than the borrower has spent on construction. In general, this is the result of the lender making its loan advances only after certain stages of construction have been completed. While this practice provides the lender with a “cushion” in the event of default, it also raises the issue of whether the lender has been unjustly enriched, should it foreclose on the improved property. The “true” “Seattle” endorsement provides that the title insurer will not raise the defense that the lender has not disbursed all of its construction funds, provided that the lender has complied with its loan documents. However, lenders are advised to be aware that there is a “phony” “Seattle” endorsement which provides that the title insurer will not raise the issue of the construction lender’s undisbursed loan funds provided that the construction lender pays those funds to the title insurer.

V. Arbitration Provision Deletion

The 1970 Loan Policy does not contain a provision for the arbitration of disputes between the insured and the insurer. However, most of the policies issued thereafter do contain an arbitration provision. Professor Barlow Burke, in his book on title insurance, expressed the opinion that title insurers included the arbitration provision in the policy in an effort to reduce their liability to their insureds. Accordingly, in the event that the policy proposed to be issued contains an arbitration provision, the lender should obtain an endorsement which deletes that provision.

W. Truth-In-Lending Endorsement (ALTA Form 2) [EXHIBIT “30”]

Any lender which makes a loan, which is subject to the Federal Truth-In-Lending Act, faces the risk that the borrower may challenge the lien of the insured mortgage based upon the rights conferred on the borrower by the Federal Truth-In-Lending Act. Accordingly, a lender making a loan of this type should obtain an ALTA Form 2 to provide coverage against this risk.

X. MODIFICATION Endorsement (CLTA Form 110.5) [EXHIBIT “31”]

It is common for a loan to be modified. However, any modification of the loan terms raises the issue of whether the modification has jeopardized insurance coverage. If there is a claim where the loan terms have been modified, the lender should anticipate that the insurer will treat the modification as a “post policy” risk and deny coverage. Accordingly, if a lender wants to make a modification to the terms of its loan, it should obtain a CLTA

Form 110.5 to provide coverage of the lien, as modified.

Y. Conclusion

The foregoing is a brief review of certain of the available endorsements to the loan policy of title insurance which the lender should consider when crafting the title insurance coverage. This summary of certain endorsements is not exhaustive and additional endorsements may be necessary to provide the lender with the desired coverage.

**XI.
UNIQUE ISSUES FOR CONSTRUCTION LOANS**

Most construction loans do not have priority over mechanics liens because there has already been a “visible-to-the-eye” commencement of the work of improvement. This can create an issue for the lender where the lender has knowledge of the commencement of the work of improvement. Therefore, the lender and its standard form of instructions to the title insurer should include the following:

“Construction may have been commenced upon the site to be encumbered by the Bank’s deed of trust. Do not record the Bank’s deed of trust, disburse the Bank’s loan funds or issue the Bank’s policy of title insurance unless you are willing to do so with complete knowledge that the Bank is relying upon the policy of title insurance for protection against the claims of mechanics and material men to the same extent that the Bank would rely if work had not commenced upon the site. In addition, any endorsements issued to the policy, including upon the Bank’s assignment of the loan, must not have any exceptions for mechanic’s or material men’s liens.”

Generally a portion of the construction loan funds are retained by the lender until after construction is completed, the time for filing mechanic’s liens has expired and a certificate of occupancy has been issued. A lender faced with mechanic’s lien litigation may find that title insurance coverage is denied if the lender has not disbursed sufficient funds to pay for all the labor and materials which were furnished to the project (even if the borrower was in default and the loan documents authorized the lender to cease funding when the borrower was in default). Several Federal courts have considered this issue and two of them have held that the title insurer does not have a duty to the insured lender to defend or discharge mechanic’s liens which were filed as a result of the lender’s failure to disburse sufficient funds to pay for all of the labor and material furnished to the project. *Brown v. St. Paul Title Insurance Corporation* (8th Cir. 1980) 634 F.2d 1103 and *Bankers Trust Company v. Transamerica Title*

Insurance Company (10th Cir. 1979) 594 F.2d 231. However, in *American Savings and Loan Association v. Lawyers Title Insurance Corporation* (6th Cir. 1986) 793 F.2d 780, the Court of Appeal distinguished *Brown* and *Bankers Trust* and held that the lender was entitled to insurance coverage.

The “Seattle” endorsement to a loan policy provides that in the event there are mechanic’s liens, the title insurer will not raise as a defense the fact that the lender has not disbursed sufficient funds to pay for all of the labor and materials furnished to the project. Therefore, a knowledgeable construction lender should obtain the “Seattle” endorsement to the loan policy.

When a construction lender is holding undisbursed loan proceeds and mechanics liens arise, if the lender did not obtain a “Seattle” endorsement to the loan policy, the title insurer may take the position that it has no liability for the mechanic’s liens until those loan proceeds have been disbursed. The only California case which the author has found which deals with this issue is *Rosen v. Nations Title Insurance Company* (1997) 56 Cal.App.4th 1989. However, there are several cases and at least one article which deal with this issue, which are as follows:

1. “Mechanics Lien Title Insurance Coverage for Construction Projects,” 16 Real Estate Law Journal 291 (1988)
2. *Bankers Trust Co. v. Transamerica Title Ins. Co.* (10th Cir. 1979) 594 F.2d 231
3. *Brown v. St. Paul Title Ins. Corp.* (8th Cir. 1980) 634 F.2d 1103
4. *American SAV. & Loan Assn. v. Lawyers Title Ins. Corp.* (6th Cir. 1986) 793 F.2d 780
5. *Mid-South Title Ins. Corp. v. Resolution Trust Corp.* (W.D. Tenn. 1993) 840 F.Supp. 522

XII. THE “PRO FORMA” POLICY

If a lender is making a large loan or if the loan is particularly complex, the lender should consider requiring having a “pro forma” policy issued before the loan is closed. A “pro forma” policy is a draft of what the proposed policy will look like when it is issued. Obviously, the “pro forma” policy will not contain the recording information which can only be obtained after the loan has closed. Otherwise, the “pro forma” policy will reflect the coverages, including the endorsements, which have been requested by the lender. The lender should not expect that the title company will be willing to issue a “pro forma” policy on a small loan or on one which is not complex. However,

since a “pro forma” policy is issued without cost, it can be a valuable way of the lender reducing the likelihood of a mistake in a large or complex transaction.

XIII. CO-INSURANCE AND RE-INSURANCE

A. Introduction

In the event that the lender contemplates making a loan in excess of \$10,000,000 and it is dealing with one of the “Big 4” title insurers, it should give consideration to obtaining coinsurance and a direct right of access against any re-insurer. If the lender is dealing with a smaller title insurance company, co-insurance and re-insurance issues may arise with loans as small as \$500,000.

B. Co-Insurance

Co-insurance is a way by which the insured lender can look to more than one title insurer in the event that it has made a large loan and it encounters a loss. In a co-insurance situation, more than one insurer is liable for the identical risk. This can be accomplished through the issuance of more than one policy or by having the names of both insurers appear on the same policy. Since co-insurance involves a division of the title insurance premium among the various title insurers, it should be anticipated that initially the title insurer will want to have as a coinsurer another member of its “family” of title insurers. However, this would mean that the insured is looking at the same “pool” of money in the event of a claim. To be meaningful, if a lender has a situation which warrants obtaining co-insurance, the various title insurers who are co-insuring the loan should not be members of the same “family” of title insurers. The most common form of co-insurance is where two or more title insurers are both liable beginning with the “first dollar” of the insured’s loss and the insured is entitled to look to both co-insurers for the “first dollar” of the insured’s loss.

C. Re-Insurance

An alternative to co-insurance is re-insurance. Re-insurance can either be done on an automatic basis by the title insurer where it routinely transfers a portion of its liability to another title insurer. This type of re-insurance is referred to as “treaty” re-insurance because the reinsurance is automatically transferred to the other insurer based upon the agreement between the insurers.

An alternative to “treaty” re-insurance is facultative re-insurance where an agreement specific to a particular loan transaction is entered into whereby other insurers agree to bear a portion of the primary insurer’s loss. In general, an insured has no interest in the re-insurance contract and does not have direct access to the re-insurer in the event of a loss. However, the 1994 ALTA Facultative Re-Insurance Agreement contains a direct access provision which enables the insured lender to sue the re-insurer.

XIV.
“ACCOMMODATION” RECORDINGS

It is not uncommon for lenders to request that a title insurance company record one or more documents as an “accommodation” to the lender. Typically this will mean that the title insurer has not examined the document for insurability nor has a policy of title insurance been issued to the lender. While an “accommodation” recording can, in some instances, be of benefit to the title insurer, the lender should keep in mind that it will be the position of the title insurer that it has no liability to the lender for an “accommodation” recording.

**XV.
ESCROW INSTRUCTIONS**

One of the most important documents which would be originated by the lender is the escrow instructions to the settlement agent. In general, the lender's escrow instructions should include the following: "Do not disburse loan funds, record documents or close escrow unless you can record the Deed of Trust as a ...[first/second/third]... priority lien on the property and obtain an ALTA Loan Policy - 1970 (Amended 10/17/70) which insures the lender against loss or damage if the Deed of Trust is not a ...[first/second/third]... lien on the property." While oral escrow instructions are enforceable, it is better practice for the lender to provide comprehensive written escrow instructions to the settlement agent. If the settlement agent is not the title insurer, a copy of the escrow instructions should also be sent by the lender directly to the title insurer so that the title insurer will have actual knowledge of the lender's escrow instructions.

The lender's instructions, among other things, should have a place for the settlement agent to sign and to agree that it has received and reviewed the lender's instructions and will not close the escrow except in strict compliance with those instructions.

Many title insurance claims arise as a consequence of the breach by the settlement agent of the lender's escrow instructions. Therefore, in the event of a problem with a secured loan, the lender may have claims against the settlement agent and in addition may have claims against the title insurer based upon the identical issue. A well drafted set of lender's escrow instructions which are sent both to the settlement agent and to the title insurer (assuming that the title insurer is different than the settlement agent) will materially enhance the lender's ability to recover in the event that there is a problem with the loan.

**XVI.
POST-CLOSING ACTIVITIES BY THE LENDER**

A. Introduction

After the loan has closed and the loan proceeds have been disbursed, the lender still faces two significant risks:

First, were the security instruments recorded or filed in the right offices?

Second, does the policy of title insurance conform to the lender's instructions?

B. After the Loan Closes the Lender Should Review the Recorded and/or Filed Loan Documents

Generally loan documents are recorded and/or filed in the correct offices. However, from time to time this does not occur. Accordingly, the author recommends that when the lender receives copies of the loan documents after they have been recorded and/or filed, the lender should review those documents to confirm that they were recorded and/or filed in the correct offices.

C. Review of Policy of Title Insurance

A lender may not receive the policy of title insurance for a few days to several months after the loan has closed. Therefore, the author recommends that the lender have a “tickler” system to make sure that the policy of title insurance is received within a reasonable period of time after the loan is closed. Once the policy of title insurance is received by the lender, it should be reviewed to determine if it were issued in strict compliance with the lender’s instructions. If the title insurer failed to issue the policy in strict compliance with the lender’s instructions, the lender should anticipate that the title insurer will claim that the lender should have promptly reviewed the policy and have gotten it corrected and any failure to promptly review and correct the policy will excuse the title insurer from any loss occasioned by the fact that the policy fails to conform with the lender’s instructions.

XVII.

THE LOAN MODIFICATION/WORKOUT PHASE OF THE LOAN

A. Introduction

While many loans will perform in strict accordance with the provisions of the loan documents, it is not uncommon for the loan documents to be modified after the loan has been made. Modification of the loan documents can be the result of a variety of factors. The borrower may want to borrow more money. In the alternative, the borrower may not be able to make the payments due under the provisions of the original loan documents and a loan workout will be necessary. It is important for the lender to remember that the settlement agent and the title insurer should be participants in the loan modification/workout phase of the loan. The printed forms of most policies of title insurance contain numerous provisions which restrict the ability of the lender to modify the loan documents without the written consent of the title insurer. By way of example, paragraph 9(c) of

the Conditions of the 2006 Loan Policy provides that the insurer “. . . shall not be liable for loss or damage to the insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the ... [insurer.]” Similarly, paragraph 3 of the Exclusions From Coverage excludes losses or damages which were “. . . created, suffered, assumed or agreed to by the Insured...” Paragraph 3(d) of the Conditions excludes liability “... attaching or created Subsequent to Date of Policy...”

B. The “Protocol” Agreement

In order to avoid potential claims by the borrower that the lender has agreed to a modification of the loan documents, many lenders will require, as a condition of engaging in negotiations for the proposed modification of the loan documents, that the borrower (and any interested party, such as guarantors, etc.) execute a “protocol” agreement, which provides that the parties are only discussing the potential of a proposed modification of the loan, and nothing will be effective unless and until the modified loan documents are signed.

While some modifications of the loan documents may be minor in nature (i.e. a brief extension of the maturity date of the loan) others may be more significant (i.e. a partial reconveyance of the lien of the deed of trust). The author recommends that the lender promptly advise the settlement agent and the title insurer that the loan has entered the modification/ workout phase because if there is to be modification of the loan documents the title insurer’s written consent must be obtained or the lender will face a claim by the title insurer that the title insurer has been released from coverage by reason of the post-policy modification of the loan documents.

C. Waiver and Release of All Claims By the Borrower

When a lender is entering into a loan modification with a borrower, it should give consideration to requesting that the borrower, as partial consideration for the loan modification, agree to waive and release all claims, if any, which it might have against the lender. These waivers and releases can include such releases as claims for lender liability as well as the waiver of the borrower’s right to anti-deficiency protection.

D. Obtain a Modification Endorsement

If the lender and the borrower agree upon a modification of the loan documents, all interested parties (i.e. guarantors, title insurer, etc.) should consent in writing to the modification. In addition, the title insurer should issue, as a condition of the loan modification a CLTA 110.5 Endorsement to insure the continued validity and

priority of the lien of the deed of trust as modified.

XVIII.

THE USE OF TITLE INSURANCE TO PROVIDE PROTECTION DURING THE DEFAULT AND FORECLOSURE PHASE

A. Introduction

While most loans will not go into foreclosure, the lender should be aware of the measures which can be taken to utilize title insurance to maximize the lender's protection during the foreclosure process.

A secured lender may pursue both a judicial foreclosure and a non judicial foreclosure. However, since the vast majority of foreclosures in California are non-judicial foreclosures, this paper will be limited to discussing certain of the issues which arise in a non judicial foreclosure.

B. A Secured Lender Which Enters a Credit Bid at a Foreclosure Sale Should Make the Lowest Reasonable Credit Bid Possible

It is commonplace for secured lenders to acquire by a credit bid property at a foreclosure sale. However, the lender should keep in mind that the policy of title insurance may be reduced by the amount of the credit bid (just as a the amount of the policy of title insurance was reduced by payments received by the lender). Accordingly, the lender should give due consideration to entering the lowest possible credit bid which is reasonable under the circumstances.

Before the foreclosure sale, the lender should obtain a valuation of the property. While an MAI appraisal would be best, this is not always necessary. This valuation will assist the lender in determining the amount of the credit bid which is appropriate. In the event of a title insurance claim, the valuation will provide a basis for proving the amount of the insured's loss.

While there is no precise amount which a lender should "credit bid" at a foreclosure sale, the lender should keep in mind that every dollar which is "credit bid" at the foreclosure sale may reduce the amount of coverage under the policy of title insurance.

The lender should personally attend the foreclosure sale rather than relying upon a third party to act on its behalf. While most foreclosure sales are routinely conducted, from time to time issues arise where prompt decisions by the lender are required.

C. The Continuation of the Lender's Policy of Title Insurance After the Foreclosure Sale

If the lender acquires title to the property, which was the security for its loan, at the foreclosure sale, the loan policy continues in effect in favor of the lender. However, the amount of coverage under the policy will be reduced by the amount of the lender's credit bid and the lender will only be insured to its extent as a lender in the property.

D. If the Lender Acquires Title to the Encumbered Property at its Foreclosure Sale it Should Consider the Purchase of an Owner's Policy of Title Insurance or a Commitment to Issue a Policy of Title Insurance

Since the lender which acquires title to the encumbered property at a foreclosure sale will only be insured as a lender under its loan policy, the lender should give consideration to purchasing an owner's policy of title insurance or a commitment to issue a policy of title insurance. While many lenders do not want to incur the cost of a policy of title insurance after they have acquired title to the encumbered property at a foreclosure sale, due consideration should be given, at a minimum, to purchasing a commitment to issue a policy of title insurance. While a commitment is slightly more expensive than a policy of title insurance, in the event that the lender does not have grounds for making a claim on its policy of title insurance before the property is sold, it will be able to have the policy of title insurance provided for in the commitment issued to the new buyer and recoup most, though not all, of the cost of the commitment. Of course, there is always the risk to the lender that the buyer will insist that the policy of title insurance be issued by a title insurer other than the title insurer which issued the commitment.

**XIX.
INSURING DEEDS IN LIEU OF FORECLOSURE**

It is not uncommon for a borrower who is in foreclosure to offer a deed in lieu of foreclosure to the lender to avoid a foreclosure sale. Frequently, this offer of a deed in lieu of foreclosure is done in conjunction with a request by the borrower that the borrower be relieved from any personal liability on the loan. It is not uncommon

for lenders to conclude that a deed in lieu of foreclosure may be advantageous because it will avoid the time necessary for a foreclosure sale. However, there are several considerations which the lender should consider before it agrees to accept a deed in lieu of foreclosure:

A. If a transaction is structured as a true deed in lieu of foreclosure, it may well result the elimination of all title insurance coverage because the lender has accepted the deed in satisfaction of the borrower's obligation. If this is to be the case, the lender should, as a condition of accepting the deed in lieu of foreclosure, obtain an owner's policy of title insurance insuring it as the owner of the property subject, to only those exceptions to coverage which was willing to accept as a lender.

B. It is not uncommon for there to be junior liens upon the property owned by the borrower. If this were to be the situation, the lender would not want to accept a deed in lieu of foreclosure (without appropriate title insurance coverage which would probably not be available) because the lender would acquire title to the property subject to the liens. In this situation, consideration should be given by the lender to having the borrower convey the property to a special purpose entity designated by the lender to terminate the borrower's ownership of the property, and then continue with the non judicial foreclosure sale so that the lender can acquire title to the property and eliminate the junior liens.

XX.

THE LENDER'S USE OF ITS TITLE INSURER AS THE FORECLOSURE TRUSTEE

While there are a number of businesses which specialize in conducting foreclosure sales, the lender must recognize that if a foreclosure sale is conducted by a person other than the title insurer that involvement of an additional party will provide the title insurer with an opportunity to seek to avoid liability and to claim that the loss or damage was caused by the foreclosure trustee. Therefore, the lender should give due consideration to having its title insurer serve as the foreclosure trustee.

XXI.

THE CLAIM AND/OR LITIGATION PHASE OF THE LOAN

A. Introduction

While the vast majority of policies of title insurance do not have claims made upon them, there is always a risk to the insured lender that there will be a basis for making a claim on the policy. All standard forms of policies

of title insurance contain a provision which obligates the insured to promptly notify the insurer in writing of any claim or litigation which is known to the insured and provides that in the event that the insured fails to provide such notice, that the insurers liability will terminate with regard to matters where prompt notice was required. Most policies and case law holds that the insured's failure to give prompt notice to the insurer will only terminate the insured's coverage where the insurer has been prejudiced by the failure to provide prompt notice and then only to the extent of the prejudice. However, the insured has nothing to gain in delaying providing written notice to the insurer in the event that any issues which arise which may impact title insurance coverage.

B. Tender of Claims by the Insured Lender to the Title Insurer

In the event that the lender determines that there may be a colorable basis for making a claim to the title insurer (or the settlement agent if the settlement agent is different than the title insurer) then prompt written notice should be sent to the title insurer. It is the author's recommendation that the written notice be sent by Federal Express and by regular mail, both to the title insurer at the address shown on the policy of title insurance and to the settlement agent and/or the title insurer at the office where the loan was closed.

The California Fair Claims Settlement Practices Regulations sets forth the time periods within which the California Department of Insurance requires the title insurer to respond to claims by its insureds. The author recommends that the day after a claim has been submitted by Federal Express to a title insurer that a representative of the lender telephone the title insurer to confirm the title insurer's receipt of the claim and to ascertain the name of the person who will handle the claim. Depending upon the nature of the claim (i.e. a lawsuit by an adjacent property owner who claims an easement over the subject property) the claim may require very prompt attention by the insurer. If this is the situation, the letter tendering the claim to the title insurer should provide the relevant dates (i.e. a response is due to the complaint on or before a certain date).

C. The Title Insurer's Response to the Claim

1. Introduction

Depending upon the nature of the claim, the title insurer has a variety of options. First, the title insurer may deny the claim. Second, the title insurer may accept the claim with a reservation of rights. Third, the title insurer may accept the claim without a reservation of rights. Depending upon the nature of the claim and the

response of the title insurer to the claim, additional action may be required by the insured.

If the insurer rejects the claim, the insured may file suit (or start an arbitration) against the insurer. In the alternative, the insured may obtain a tolling agreement from the insurer while it seeks to deal with the claim without the insurer's participation. However, if the insured feels that the insurer has inappropriately rejected the claim, but does not intend to file suit (or start an arbitration) against the insurer at that time, a tolling agreement should be obtained from the title insurer and the settlement agent and copies of correspondence, pleadings and other relevant documents should be to the title insurer and the settlement agent as the insured seeks to deal with the claim.

If the insurer accepts the claim without a reservation of rights, the insured should anticipate that the insurer will select counsel to address the claim. Most policies of title insurance provide that the insurer has the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured with respect to a claim. It is not uncommon for title insurers to have a group of lawyers to whom they routinely refer their claims. Accordingly, the lender should determine whether the lawyer selected by the title insurer is a person who is routinely retained by the title insurer and who may have an economic bias in favor of the title insurer.

2. The Selection of Counsel to Represent the Insured Can be a Very Significant Factor in a Claim

Merely because the title insurer accepts the insured's claim (whether with or without a reservation of rights) the insured lender should remain vigilant to make certain that the claim is being properly handled and that the insured's rights are not being lost or compromised.

The lender may have claims against persons other than the title insurer (i.e. the settlement agent, a loan broker, an appraiser, a surveyor, etc.). Merely because the title insurer has accepted the insured's claim does not conclude the claim process, because since the lender will wish to pursue its rights against all potential sources of recovery. Frequently, the lawyer selected by the title insurer will not pursue claims against third parties. Accordingly, the insured lender may need to retain its own counsel to pursue those claims against third parties.

D. The Insurer's Duty to Eliminate the Claim

Frequently, the title insurer elects to attempt to make title as insured when it has accepted the tender of a claim (whether with or without a reservation of rights). While the insurer's right, under the policy of title insurance, to make title as insured is highly beneficial to the insurer, it is very detrimental to the insured because it forces the insured to engage in litigation and delays the payment of the insured's claim. If the insurer has elected to seek to make title as insured, the insured should remember that more than 90% of all cases filed in the Superior Court never go to trial and there is a high probability that the case will be settled at some point. Accordingly, the insured should request that the title insurer, among other things, engage in an early mediation to see if the claim can be resolved.

XXII. CONCLUSION

Title insurance is an invaluable aspect of any secured loan transaction which is properly closed. While title insurance claims do not occur on a frequent basis, they can result in the insured's loss of the whole of its security for the loan. Therefore, it is highly recommended that a policy of title insurance be obtained to insure each secured loan transaction. Thereafter, during the modification/workout and the foreclosure phases of the loan, title insurance and the title insurer continue to perform valuable roles in the preservation of the lender's security for its loan. Similarly, well drafted escrow instructions can materially enhance the secured lender's ability to recover from a financially responsible party in the event of a claim. Taken together, well crafted title insurance coverage and well drafted escrow instructions will materially enhance a lender's loan security.



EXHIBIT 2

ALTA Form 3 Zoning - Unimproved Land**ENDORSEMENT**

Attached to Policy No. _____

Issued By

First American Title Insurance Company

The Company insures the Insured against loss or damage sustained by reason of any incorrectness in the assurance that, at Date of Policy:

1. According to applicable zoning ordinances and amendments thereto, the land is classified Zone _____.
2. The following use or uses are allowed under that classification subject to compliance with any conditions, restrictions, or requirements contained in the zoning ordinances and amendments thereto, including but not limited to the securing of necessary consents or authorizations as a prerequisite to the use or uses:

There shall be no liability under this endorsement based on the invalidity of the ordinances and amendments thereto 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.

Loss or damage as to the matters insured against by this endorsement shall not include loss or damages sustained or incurred by reason of the refusal of any person to purchase, lease or lend money on the estate or interest 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.

[Witness clause optional]

Date: _____

First American Title Insurance Company

By: _____

Authorized Signatory

CLTA Form 123.1

ALTA Form 3 (Zoning)

(revised 9/27/86, effective 6/1/87)

ALTA Form 3.1 Zoning - Improved Land**ENDORSEMENT****Attached to Policy No. _____****Issued By*****First American Title Insurance Company***

1. The Company insures the Insured against loss or damage sustained by reason of any incorrectness in the assurance that, at Date of Policy:
 - a. According to applicable zoning ordinances and amendments thereto, the land is classified Zone _____.
 - b. The following use or uses are allowed under that classification subject to compliance with any conditions, restrictions, or requirements contained in the zoning ordinances and amendments thereto, including but not limited to the securing of necessary consents or authorizations as a prerequisite to the use or uses:
2. The Company further insures against loss or damage arising from a final decree of a court of competent jurisdiction
 - a. prohibiting the use of the land, with any structure presently located thereon, as specified in paragraph 1(b); or
 - b. requiring the removal or alteration of the structure on the basis that, at Date of Policy, the ordinances and amendments thereto have been violated with respect to any of the following matters:
 - i. Area, width or depth of the land as a building site for the structure;
 - ii. Floor space area of the structure;
 - iii. Setback of the structure from the property lines of the land; or
 - iv. Height of the structure.

There shall be no liability under this endorsement based on the invalidity of the ordinances and amendments thereto 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.

Loss or damage as to the matters insured against by this endorsement shall not include loss or damage sustained or incurred by reason of the refusal of any person to purchase, lease or lend

money on the estate or interest 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.

[Witness clause optional]

Date: _____

First American Title Insurance Company

By: _____

Authorized Signatory

CLTA Form 123.2

ALTA Form 3.1

(Zoning-completed structure)

ALTA Form 8.1 Environmental Liens

ENDORSEMENT

Attached to Policy No. _____

Issued By

First American 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 the insured against loss or damage sustained by reason of lack of priority of the lien of the insured mortgage over:

- a. Any environmental protection lien which, 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 matter relating to real property to purchasers for value and without knowledge, or 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 for by any state statute in effect at Date of Policy, except environmental protection liens provided for by the following state statutes:

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.

[Witness clause optional]

Date: _____

First American Title Insurance Company

By: _____

Authorized Signatory

CLTA Form 110.9

ALTA Form 8.1 (Environmental Protection Lien)

ALTA Form 9 Restrictions, Encroachments & Minerals**ENDORSEMENT**

Attached to Policy No. _____

Issued By

First American Title Insurance Company

The Company insures the owner of the indebtedness secured by the insured mortgage against loss or damage sustained by reason of:

1. Any incorrectness in the assurance that, at Date of Policy:
 - a. There are no covenants, conditions or restrictions under which the lien of the mortgage referred to in Schedule A can be divested, subordinated or extinguished, or its validity, priority or enforceability impaired.
 - b. Unless expressly excepted in Schedule B:
 1. There are no present violations on the land of any enforceable covenants, conditions or restrictions, nor do any existing improvements on the land violate any building setback lines shown on a plat of subdivision recorded or filed in the public records.
 2. Any instrument referred to in Schedule B as containing covenants, conditions or restrictions on the land does not, in addition, (i) establish an easement on the land; (ii) provide a lien for liquidated damages; (iii) provide for a private charge or assessment; (iv) provide for an option to purchase, a right of first refusal or the prior approval of a future purchaser or occupant.
 3. There is no encroachment of existing improvements located on the land onto adjoining land, nor any encroachment onto the land of existing improvements located on adjoining land.
 4. There is no encroachment of existing improvements located on the land onto that portion of the land subject to any easement excepted in Schedule B.
 5. There are no notices of violation of covenants, conditions and restrictions relating to environmental protection recorded or filed in the public records.
2. Any future violation on the land of any existing covenants, conditions or restrictions occurring prior to the acquisition of title to the estate or interest in the land by the Insured, provided the violation results in:

- a. Invalidity, loss of priority, or unenforceability of the lien of the insured mortgage; or
 - b. loss of title to the estate or interest in the land if the Insured shall acquire title in satisfaction of the indebtedness secured by the insured mortgage.
3. Damage to existing improvements, including lawns, shrubbery or trees:
- a. which are located on or encroach upon that portion of the land subject to any 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;
 - b. resulting from the future exercise of any right to use the surface of the land for the extraction or development of minerals excepted from the description of the land or excepted in Schedule B.
4. Any final court order or judgment requiring the removal from any land adjoining the land of any encroachment excepted in Schedule B.
5. Any final court order or judgment denying the right to maintain any existing improvements on the land because of any violation of covenants, conditions or restrictions or building setback lines shown on a plat of subdivision recorded or filed in the public records.

Wherever in this endorsement the words "covenants, conditions or restrictions" appear, they shall not be deemed to refer to or include the terms, covenants, conditions or limitations contained in an instrument creating a lease.

As used in paragraphs 1(b)(1) and 5, the words "covenants, conditions or restrictions" shall not be deemed to refer to or include any covenants, conditions or restrictions relating to environmental protection.

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.

[Witness clause optional]

Date: _____

First American Title Insurance Company

By: _____

Authorized Signatory

F.A. Form 42

CLTA Form 100.2 (Rev. 3/27/92)

ALTA Form 9 (Restrictions, Encroachments, Minerals)

ALTA Form 9.1 Restrictions, Encroachments & Minerals - Unimproved Property**ENDORSEMENT**

Attached to Policy No. _____

Issued By

First American Title Insurance Company

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

1. The existence, at Date of Policy, of any of the following unless expressly excepted in Schedule B:
 - a. Present violations on the land of any enforceable covenants, conditions or restrictions.
 - b. Any instrument referred to in Schedule B as containing covenants, conditions or restrictions on the land which, in addition, (i) establishes an easement on the land; (ii) provides for an option to purchase, a right of first refusal or the prior approval of a future purchaser or occupant; or (iii) provides a right of reentry, possibility of reverter or right of forfeiture because of violations on the land of any enforceable covenants, conditions or restrictions.
 - c. Any encroachment onto the land of existing improvements located on adjoining land.
 - d. Any notices of violation of covenants, conditions and restrictions relating to environmental protection recorded or filed in the public records.
2. Damage to existing buildings constructed on the land after Date of Policy resulting from the future exercise of any right existing at Date of Policy to use the surface of the land for the extraction or development of minerals excepted from the description of the land or excepted in Schedule B.

Wherever in this endorsement the words "covenants, conditions or restrictions" appear, they shall not be deemed to refer to or include the terms, covenants, conditions or limitations contained in an instrument creating a lease.

As used in paragraph 1(a), the words "covenants, conditions or restrictions" shall not be deemed to refer to or include any covenants, conditions or restrictions relating to environmental protection.

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.

[Witness clause optional]

Date of Endorsement: _____

Date: _____

First American Title Insurance Company

By: _____

Authorized Signatory

ALTA Form 9 .2 Restrictions, Encroachments & Minerals - Improved Land**ENDORSEMENT**

Attached to Policy No. _____

Issued By

First American Title Insurance Company

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

1. The existence, at Date of Policy, of any of the following unless expressly excepted in Schedule B:
 - a. Present violations on the land of any enforceable covenants, conditions or restrictions, or any existing improvements on the land which violate any building setback lines shown on a plat of subdivision recorded or filed in the public records.
 - b. Any instrument referred to in Schedule B as containing covenants, conditions or restrictions on the land which, in addition, (i) establishes an easement on the land; (ii) provides for an option to purchase, a right of first refusal or the prior approval of a future purchaser or occupant; or (iii) provides a right of reentry, possibility of reverter or right of forfeiture because of violations on the land of any enforceable covenants, conditions or restrictions.
 - c. Any encroachment of existing improvements located on the land onto adjoining land, or any encroachment onto the land of existing improvements located on adjoining land.
 - d. Any encroachment of existing improvements located on the land onto that portion of the land subject to any easement excepted in Schedule B.
 - e. Any notices of violation of covenants, conditions and restrictions relating to environmental protection recorded or filed in the public records.
2. Damage to existing buildings:
 - a. Which are located on or encroach upon that portion of the land subject to any 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;
 - b. Resulting from the future exercise of any right existing at Date of Policy to use the surface of the land for the extraction or development of minerals excepted from the description of the land or excepted in Schedule B.
3. Any final court order or judgment requiring the removal from any land adjoining the land

of any encroachment, other than fences, landscaping or driveways, excepted in Schedule B.

- 4. Any final court order or judgment denying the right to maintain any existing building on the land because of any violation of covenants, conditions or restrictions or building setback lines shown on a plat of subdivision recorded or filed in the public records.

Wherever in this endorsement the words "covenants, conditions or restrictions" appear, they shall not be deemed to refer to or include the terms, covenants, conditions or limitations contained in an instrument creating a lease.

As used in paragraphs 1(a) and 4, the words "covenants, conditions or restrictions" shall not be deemed to refer to or include any covenants, conditions or restrictions relating to environmental protection.

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.

[Witness clause optional]

Date of Endorsement: _____

Date: _____

First American Title Insurance Company

By: _____

Authorized Signatory

CLTA Form 103.4 Easement, Access to Public Street

ENDORSEMENT

Attached to Policy No. _____

Issued By

First American Title Insurance Company

The Company hereby insures the insured against loss or damage which the insured shall sustain by reason of the failure of the easement described as Parcel _____ in Schedule _____ to provide the owner of the estate or interest referred to in Schedule A with ingress and egress to and from a public street known as (insert name of street).

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Date: _____

First American Title Insurance Company

By: _____

Authorized Signatory

CLTA Form 103.4 (Rev. 6-14-96)

ALTA or CLTA - Owner or Lender

CLTA Form 103.7 Land Abuts Street

ENDORSEMENT

Attached to Policy No. _____

Issued By

First American Title Insurance Company

The Company hereby insures the insured against loss or damage which the insured shall sustain by reason of the failure of the land to abut upon a physically open street known as (insert name of street)

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Date: _____

First American Title Insurance Company

By: _____

Authorized Signatory

CLTA Form 103.7 (Rev. 6-14-96)

ALTA or CLTA - Owner or Lender

ALTA Form 12 Aggregation/Tie-In - Lender

ENDORSEMENT

Attached to Policy No. _____

Issued By

First American Title Insurance Company

The following policies are issued in conjunction with one another:

Policy Number: County: State: Amount:

Notwithstanding the provisions of Section 7(a)(i) of the Conditions and Stipulations of this policy, the Amount of Insurance available to cover the Company's liability for loss or damage under this policy at the time of Payment of Loss hereunder shall be the aggregate of the Amount of Insurance under this policy and the other policies identified above. At no time shall the Amount of Insurance under this policy and the other policies identified above exceed in the aggregate \$_____. Subject to the provisions of Section 9(a) of the Conditions and Stipulations of the policies, all payments made by the Company under this policy or any of the other policies identified above, except the payments made for costs, attorney's fees and expenses, shall reduce the aggregate Amount of Insurance pro tanto.

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.

[Witness clause optional]

Date: _____

First American Title Insurance Company

By: _____

Authorized Signatory

ALTA Form 12

CLTA Form 116 Designation of Improvements, Address

ENDORSEMENT

Attached to Policy No. _____

Issued By

First American Title Insurance Company

The Company hereby insures the owner of the indebtedness secured by the insured mortgage against loss or damage which the insured shall sustain by reason of the failure of (i) a (description of improvement e.g. "a single residence") known as (street address) , to be located on the land at Date of Policy, or (ii) the map attached to this policy to correctly show the location and dimensions of the land according to the public records.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Date: _____

First American Title Insurance Company

By: _____

Authorized Signatory

CLTA Form 116 (Rev. 6-14-96)

ALTA - Lender

CLTA Form 116.1 Survey

ENDORSEMENT

Attached to Policy No. _____

Issued By

First American Title Insurance Company

The Company hereby insures the insured against loss or damage which the insured shall sustain by reason of the failure of the land to be the same as that delineated on the plat of a survey made by _____ on _____, designated Job No. _____, a copy of which is attached hereto and made a part hereof.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Date: _____

First American Title Insurance Company

By: _____

Authorized Signatory

CLTA Form 116.1 (Rev. 6-14-96)

ALTA or CLTA - Owner

CLTA Form 116.4 Contiguity of Parcels

ENDORSEMENT

Attached to Policy No. _____

Issued By

First American Title Insurance Company

The Company hereby insures the insured against loss or damage which the insured shall sustain by reason of the failure of the land described in Schedule _____ to be contiguous to *

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Date: _____

First American Title Insurance Company

By: _____

Authorized Signatory

* Describe land contiguous to subject land by legal description or by reference to a recorded instrument.

CLTA Form 116.4 (Rev. 6-14-96)

Alta or Clta-Owner or Lender

CLTA Form 116.4.1 Contiguity-Multiple Parcel

[For use when multiple separate parcels make up the "land" as defined in the policy]

ENDORSEMENT

Attached to Policy No. _____

Issued By

FIRST AMERICAN TITLE INSURANCE COMPANY

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

1. the failure [of the _____ boundary line of Parcel A] of the land to be contiguous to [the _____ boundary line of Parcel B] [for more than two parcels, continue as follows: "; of [the _____ boundary line of Parcel B] of the land to be contiguous to [the _____ boundary line of Parcel C] and so on until all contiguous parcels described in the policy have been accounted for]; or
2. the presence of any gaps, strips or gores separating any of the contiguous boundary lines described above.

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.

[Witness clause optional]

First American Title Insurance Company

By: _____

Authorized Signatory

CLTA Form 116.4.1 Contiguity-Multiple Parcel (Issuing Guideline)

CLTA Form 103.1 Easement, Damage - Use or Maintenance

ENDORSEMENT

Attached to Policy No. _____

Issued By

First American Title Insurance Company

The Company hereby insures the owner of the indebtedness secured by the mortgage referred to in paragraph _____ of Schedule _____ against loss which the insured shall sustain as a result of any exercise of the right of use or maintenance of the easement referred to in paragraph _____ of Schedule B over or through the land.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Date: _____

First American Title Insurance Company

By: _____

Authorized Signatory

CLTA Form 103.1 (Rev. 9-10-93)

ALTA or CLTA - Lender

CLTA Form 103.3 Easement, Existing Encroachment

ENDORSEMENT

Attached to Policy No. _____

Issued By

First American Title Insurance Company

The Company hereby insures the owner of the indebtedness secured by the mortgage referred to in paragraph _____ of Schedule _____ against loss which the insured shall sustain in the event that the owner of the easement referred to in paragraph _____ of Schedule B shall, for the purpose of * _____ compel the removal of any portion of the improvements on the land which encroach upon said easement.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Date: _____

First American Title Insurance Company

By: _____

Authorized Signatory

CLTA Form 103.3 (Rev. 9-10-93)

ALTA or CLTA - Lender

* insert use against which insurance is to be given, e.g.,

1. Insurance limited to loss by reason of maintenance and repair of specific existing structure: "maintaining and repairing the existing storm drain structure within said easement."
2. Insurance same as (1) plus enlarging or replacing existing structure: "maintaining,

repairing, enlarging or replacing the existing storm drain within said easement.:

3. Insurance unlimited: "exercising the right of use or maintenance of said easement."

CLTA Form 103.6 Encroachments, None Exist

ENDORSEMENT

Attached to Policy No. _____

Issued By

First American Title Insurance Company

The Company hereby insures the owner of the indebtedness secured by the insured mortgage against loss or damage which the insured shall sustain by reason of the improvements located on the land encroaching onto the easement shown in paragraph _____ of Schedule B.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Date: _____

First American Title Insurance Company

By: _____

Authorized Signatory

CLTA Form 103.6 (Rev. 6-14-96)

ALTA - Lender

CLTA Form 116.7 Subdivision Map Act Compliance

ENDORSEMENT

Attached to Policy No. _____

Issued By

First American Title Insurance Company

The Company hereby insures the insured against loss or damage which the insured shall sustain by reason of the failure of the land described as Parcel _____ in Schedule _____ to constitute a lawfully created parcel according to the Subdivision Map Act (Section 66410, et seq., of the California Government Code) and local ordinances adopted pursuant thereto.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Date: _____

First American Title Insurance Company

By: _____

Authorized Signatory

CLTA Form 116.7 (Rev. 6-14-96)

Subdivision Map Act Endorsement

CLTA Form 111.10 Rev. Credit Loan, Optional Advance**ENDORSEMENT****Attached to Policy No. _____****Issued By*****First American Title Insurance Company***

1. The Company hereby assures the owner of the indebtedness secured by the insured mortgage that advances made subsequent to the Date of Policy pursuant to the terms of the _____ ("Agreement"), which are secured by the insured mortgage, shall be included within the coverage of policy not to exceed the face amount of the policy, provided that the vestee is the owner of the estate or interest covered by the policy at the date any such advances are made and subject to the limitations hereinafter set forth.
2. The Company hereby insures the insured against loss or damage which the insured shall sustain due to the failure of subsequent advances to have the same priority over liens, encumbrances and other matters disclosed by the public records as do advances secured by the insured mortgage as of the Date of Policy, except for the following matters, if any, occurring subsequent to the Date of Policy:
 - a. Federal tax liens.
 - b. Liens, encumbrances or other matters, the existence of which are actually known to the insured prior to date of the advances.
 - c. Bankruptcies affecting the estate or interest of the vestee prior to date of the advances.
 - d. Taxes or assessments of any taxing authority that levies taxes or assessments on real property.
3. Provided the Agreement secured by the insured mortgage contains provisions providing for changes in the rate of interest, the Company further insures the insured against loss or damage which the insured shall sustain by reason of:
 - a. The invalidity or unenforceability of the lien of the insured mortgage resulting from the provisions of the Agreement which provide for changes in the rate of interest.
 - b. Loss of priority of the lien of the insured mortgage as security for the unpaid principal balance of the loan evidenced by the Agreement, together with interest as changed in accordance with the provisions of the Agreement, which loss of priority

is caused by said changes in the rate of interest.

"Changes in the rate of interest", as used in this endorsement shall mean only those changes in the rate of interest calculated pursuant to the formula provided in the Agreement.

This endorsement does not insure against loss or damage based upon

- a. usury, or
- b. any consumer credit protection or truth-in-lending law, or
- c. environmental protection laws.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Date: _____

First American Title Insurance Company

By: _____

Authorized Signatory

CLTA Form 111.10 (Rev. 6-14-96)

ALTA or CLTA - Lender (Optional Advance)

CLTA Form 111.14 Future Advance - Priority**ENDORSEMENT**

Attached to Policy No. _____

Issued By

FIRST AMERICAN TITLE INSURANCE COMPANY

1. The insurance for Advances added by Sections 2 and 3 of this endorsement is subject to: the exclusions in Section 4 of this endorsement and the Exclusions from Coverage in the Policy, except Exclusion 3(d); the provisions of the Conditions and Stipulations, except Section 9(b); and the Exceptions contained in Schedule B.
 - a. "Agreement", as used in this endorsement, shall mean the note or loan agreement secured by the insured mortgage or the insured mortgage.
 - b. "Advances", as used in this endorsement, shall mean only those advances of principal indebtedness made after the Date of Policy as provided in the Agreement, including expenses of foreclosure, amounts advanced pursuant to the insured mortgage to pay taxes and insurance, assure compliance with laws or to protect the lien of the insured mortgage before the time of acquisition of the estate or interest in the land and reasonable amounts expended to prevent deterioration of improvements, together with interest on those advances.
2. The Company insures against loss or damage to the insured as a result of:
 - a. The invalidity or unenforceability of the lien of the insured mortgage as security for each Advance.
 - b. The lack of priority of the lien of the insured mortgage as security for each Advance over any lien or encumbrance on the title.
 - c. The invalidity or unenforceability or loss of priority of the lien of the insured mortgage as security for the unpaid indebtedness and Advances resulting from: (i) re-Advances and repayments of indebtedness; (ii) lack of outstanding indebtedness before an Advance; or (iii) failure to comply with the requirements of state law to secure Advances.
3. The Company also insures against loss or damage to the insured as a result of:
 - a. The invalidity or unenforceability of the lien of the insured mortgage resulting from any provisions of the Agreement that provide for: (i) interest on interest; (ii) changes in the rate of interest; or (iii) the addition of unpaid interest to the

principal indebtedness.

- b. Loss of priority of the lien of the insured mortgage as security for the principal indebtedness, including any unpaid interest which was added to principal in accordance with any provisions of the Agreement, interest on interest, or interest as changed in accordance with the provisions of the insured mortgage, which loss of priority is caused by (i) changes in the rate of interest; (ii) interest on interest; or (iii) increases in the unpaid principal indebtedness resulting from the addition of unpaid interest.

"Changes in the rate of interest", as used in this endorsement, shall mean only those changes in the rate of interest calculated pursuant to a formula provided in the insured mortgage at Date of Policy.

4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) resulting from:
 - a. Advances made after a Petition for Relief under the Bankruptcy Code (11 U.S.C.) has been filed by or on behalf of the mortgagor.
 - b. The loss of priority of Advances to real estate taxes or assessments imposed on the land by governmental authority arising after the Date of Policy.
 - c. The loss of priority to a federal tax lien of any Advance made more than forty-five days after a notice of federal tax lien has been filed in the public records.
 - d. The loss of priority of Advances to any federal or state environmental protection lien.
 - e. Usury, or any consumer credit protection or truth-in-lending law.
 - f. [The loss of priority of an Advance to a mechanic's or materialmen's lien.]
5. The Amount of Insurance defined in Section 2(c)(ii) of the Conditions and Stipulations shall include Advances.
6. Section 8(d) of the Conditions and Stipulations shall not apply to Advances.

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.

[Witness clause optional]

Date: _____

First American Title Insurance Company

By: _____

Authorized Signatory

5/15/2004 12:59PM

CLTA Form 111.14 Future Advance - Priority (Issuing Guideline)

CLTA Form 111.14.1 Future Advance - Knowledge**ENDORSEMENT**

Attached to Policy No. _____

Issued By

FIRST AMERICAN TITLE INSURANCE COMPANY

1. The insurance for Advances added by Sections 2 and 3 of this endorsement is subject to; the exclusions in Section 4 of this endorsement and the Exclusions from Coverage in the Policy, except Exclusion 3(d); the provisions of the Conditions and Stipulations, except Section 9(b); and the Exceptions contained in Schedule B.
 - a. "Agreement", as used in this endorsement, shall mean the note or loan agreement secured by the insured mortgage or the insured mortgage.
 - b. "Advances", as used in this endorsement, shall mean only those advances of principal indebtedness made after the Date of Policy as provided in the Agreement, including expenses of foreclosure, amounts advanced pursuant to the insured mortgage to pay taxes and insurance, assure compliance with laws or to protect the lien of the insured mortgage before the time of acquisition of the estate or interest in the land and reasonable amounts expended to prevent deterioration of improvements, together with interest on those advances.
2. The Company insures against loss or damage to the insured as a result of:
 - a. The invalidity or unenforceability of the lien of the insured mortgage as security for each Advance.
 - b. The lack of priority of the lien of the insured mortgage as security for each Advance over any lien or encumbrance on the title.
 - c. The invalidity or unenforceability or loss of priority of the lien of the insured mortgage as security for the unpaid indebtedness and Advances resulting from: (i) re-Advances and repayments of indebtedness; (ii) lack of outstanding indebtedness before an Advance; or (iii) failure to comply with the requirements of state law to secure Advances.
3. The Company also insures against loss or damage to the insured as a result of:
 - a. The invalidity or unenforceability of the lien of the insured mortgage resulting from any provisions of the Agreement that provide for: (i) interest on interest; (ii) changes in the rate of interest; or (iii) the addition of unpaid interest to the

principal indebtedness.

- b. Loss of priority of the lien of the insured mortgage as security for the principal indebtedness, including any unpaid interest which was added to principal in accordance with any provisions of the Agreement, interest on interest, or interest as changed in accordance with the provisions of the insured mortgage, which loss of priority is caused by (i) changes in the rate of interest; (ii) interest on interest; or (iii) increases in the unpaid principal indebtedness resulting from the addition of unpaid interest.

"Changes in the rate of interest", as used in this endorsement, shall mean only those changes in the rate of interest calculated pursuant to a formula provided in the insured mortgage at Date of Policy.

4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys fees or expenses) resulting from:
 - a. Advances made after a Petition for Relief under the Bankruptcy Code (11 U.S.C.) has been filed by or on behalf of the mortgagor.
 - b. The loss of priority of Advances to real estate taxes or assessments imposed on the land by governmental authority arising after the Date of Policy.
 - c. The loss of priority to a federal tax lien of any Advance made more than forty-five days after a notice of federal tax lien has been filed in the public records.
 - d. The loss of priority of any Advance made after the insured has knowledge of the existence of liens, encumbrances or other matters affecting the land intervening between the Date of Policy and the Advance, as to the intervening lien, encumbrance or other matter.
 - e. The loss of priority of Advances to any federal or state environmental protection lien.
 - f. Usury, or any consumer credit protection or truth-in-lending law.
 - g. [The loss of priority of an Advance to a mechanic's or materialmen's lien.]
5. The Amount of Insurance defined in Section 2(c)(ii) of the Conditions and Stipulations shall include Advances.
6. Section 8(d) of the Conditions and Stipulations shall not apply to Advances.

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.

[Witness clause optional]

Date: _____

First American Title Insurance Company

By: _____

Authorized Signatory

CLTA Form 111.14.1 Future Advance - Knowledge (Issuing Guideline)

F.A. Form 57 Usury I

ENDORSEMENT

Attached to Policy No. _____

Issued By

First American Title Insurance Company

The Company hereby insures the insured against loss or damage including attorneys' fees and costs of litigation which the insured shall sustain by reason of the entry of any court order or judgment which constitutes a final determination and adjudges:

That the lien of the mortgage referred to in Schedule A is invalid or unenforceable as to the principal and interest due on the note or notes secured thereby, said interest being computed in accordance with the provisions of such mortgage, on the grounds that the loan evidenced by the note or notes secured thereby is usurious under the laws of the State of _____.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Date: _____

First American Title Insurance Company

By: _____

Authorized Signatory

F.A. Form 57

Usury Endorsement I

F.A. Form 57.1 Usury II

ENDORSEMENT

Attached to Policy No. _____

Issued By

First American Title Insurance Company

The Company hereby insures the insured against loss or damage including attorneys' fees and costs of litigation which the insured shall sustain by reason of the entry of any court order or judgment which constitutes a final determination and adjudges

- a. That the lien of the mortgage referred to in Schedule A is invalid or unenforceable as to the principal and interest due on the note or notes secured thereby, said interest being computed in accordance with the provisions of such mortgage, on the ground that the loan evidenced by the note or notes secured thereby is usurious under the laws of the State of _____;
- b. That any part of the principal and interest, said interest having been computed in accordance with the provisions of such mortgage and the note or notes secured thereby, which has been paid to the insured cannot be collected, must be repaid or that a penalty for usury must be paid to the person claiming the same on the ground that the amount of interest so paid violated the usury laws of the State of _____.

The insurance against usury risks afforded by this endorsement and its effect on the title insurance under the policy to which it is attached, shall survive the satisfaction of the mortgage or trust deed, the lien of which is thus insured.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Date: _____

First American Title Insurance Company

By: _____

Authorized Signatory

ALTA Form 18 Single Tax Parcel

ENDORSEMENT

Attached to Policy No. _____

Issued By

FIRST AMERICAN 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 tax purposes.

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.

[Witness clause optional]

First American Title Insurance Company

By: _____

Authorized Signatory

ALTA Form 18 Single Tax Parcel (Issuing Guideline)

ALTA Form 18.1 Multiple Tax Parcel

ENDORSEMENT

Attached to Policy No. _____

Issued By

FIRST AMERICAN 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 tax purposes under the listed tax identification numbers or those tax identification numbers including any additional land:

Parcel:

Tax Identification Numbers:

- 2. the easements, if any, described in Schedule A being cut off or disturbed by the non-payment of real estate taxes or assessments imposed on the servient estate by a governmental authority.

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.

[Witness clause optional]

First American Title Insurance Company

By: _____

Authorized Signatory

CLTA Form 129.1 Multiple Tax Parcel

ALTA Form 18.1 Multiple Tax Parcel (Issuing Guideline)

ALTA Form 20 First Loss-Multiple Parcel Transactions**ENDORSEMENT****Attached to Policy No.****Issued By*****First American Title Insurance Company***

This endorsement is effective only if the Collateral includes at least two parcels of real property.

1. For the purposes of this endorsement:
 - a. "Indebtedness" means all monetary obligations evidenced by the loan documents at Date of Policy as secured by the insured mortgage, but limited to the balance outstanding at the time the claim is made.
 - b. "Collateral" means all property, including the land, given as security for the Indebtedness.
 - c. "Material Impairment Amount" means the amount by which any matter covered by this policy for which a claim is made diminishes the value of the Collateral below the Indebtedness.
2. Subject to the provisions of Section 8 of the Conditions and Stipulations, in the event of a claim resulting from a matter insured against by this policy, the Company agrees to pay that portion of the Material Impairment Amount that does not exceed the limits of liability imposed by Sections 2 and 7 of the Conditions and Stipulations without requiring:
 - a. maturity of the Indebtedness by acceleration or otherwise;
 - b. pursuit by the insured of its remedies against the Collateral;
 - c. pursuit by the insured of its remedies under any guaranty, bond or other insurance policy.
3. Nothing in this endorsement shall impair the Company's right of subrogation. However, the Company agrees that its right of subrogation shall be subordinate to the rights and remedies of the insured. The Company's right of subrogation shall include the right to recover the amount paid to the insured pursuant to paragraph 2 from any debtor or guarantor of the Indebtedness, after payment or other satisfaction of the remainder of the Indebtedness and other obligations secured by the lien of the insured mortgage. The Company shall have the right to recoup from the insured claimant any amount received by it in excess of the Indebtedness up to the amount of the payment under paragraph 2.

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.

[Witness clause optional]

First American Title Insurance Company

By: _____

ALTA Form 20 First Loss-Multiple Parcel Transactions

CLTA Form 130 First Loss-Multiple Parcel Transactions

ALTA Form 13.1 Leasehold Loan**ENDORSEMENT**

Attached to Policy No. _____

Issued By

First American Title Insurance Company

1. As used in this endorsement, the following terms shall mean:
 - a. "Evicted" or "Eviction": (a) the lawful deprivation, in whole or in part, of the right of possession insured by this policy, contrary to the terms of the Lease or (b) the lawful prevention of the use of the land or the Tenant Leasehold Improvements for the purposes permitted by the Lease, in either case, as a result of a matter covered by this policy.
 - b. "Lease": the lease agreement described in Schedule A.
 - c. "Leasehold Estate": the right of possession for the Lease Term.
 - d. "Lease Term": the duration of the Leasehold Estate, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.
 - e. "Personal Property": chattels located on the land and property which, because of their character and manner of affixation to the land, can be severed from the land without causing appreciable damage to themselves or to the land to which they are affixed.
 - f. "Remaining Lease Term": the portion of the Lease Term remaining after the insured has been Evicted as a result of a matter covered by this policy.
 - g. "Tenant": the tenant under the Lease and, after acquisition of all or any part of the estate or interest in the land described in Schedule A in accordance with the provisions of Section 2(a) of the Conditions and Stipulations of this policy, the insured claimant.
 - h. "Tenant Leasehold Improvements": Those improvements, including landscaping, required or permitted to be built on the land by the Lease that have been built at the insured's expense or in which the insured has an interest greater than the right to possession during the Lease Term.

2. Valuation of Estate or Interest Insured

If, in computing loss or damage, it becomes necessary to value the estates or interests insured by this policy as the result of a covered matter that results in an Eviction of the Tenant, then that value shall consist of the value for the Remaining Lease Term of the Leasehold Estate and any Tenant Leasehold Improvements existing on the date of the Eviction. The insured claimant shall have the right to have the Leasehold Estate and the Tenant Leasehold Improvements valued either as a whole or separately. In either event, this determination of value shall take into account rent no longer required to be paid for the Remaining Lease Term.

3. Additional items of loss covered by this endorsement:

If the insured acquires all or any part of the estate or interest in the land described in Schedule A in accordance with the provisions of Section 2(a) of the Conditions and Stipulations of this policy and thereafter is Evicted, the following items of loss, if applicable, shall be included in computing loss or damage incurred by the insured, but not to the extent that the same are included in the valuation of the estates or interests insured by this policy.

- a. The reasonable cost of removing and relocating any Personal Property that the insured has the right to remove and relocate, situated on the land at the time of Eviction, the cost of transportation of that Personal Property for the initial one hundred miles incurred in connection with the relocation, and the reasonable cost of repairing the Personal Property damaged by reason of the removal and relocation.
- b. Rent or damages for use and occupancy of the land prior to the Eviction which the insured as owner of the Leasehold Estate may be obligated to pay to any person having paramount title to that of the lessor in the Lease.
- c. The amount of rent that, by the terms of the Lease, the insured must continue to pay to the lessor after Eviction with respect to the portion of the Leasehold Estate and Tenant Leasehold Improvements from which the insured has been Evicted.
- d. The fair market value, at the time of the Eviction, of the estate or interest of the insured in any lease or sublease made by Tenant as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements.
- e. Damages that the insured is obligated to pay to lessees or sublessees on account of the breach of any lease or sublease made by the Tenant as lessor of all or part of the Leasehold Estate or the Tenant Leasehold Improvements caused by the Eviction.
- f. Reasonable costs incurred by the insured to secure a replacement leasehold equivalent to the Leasehold Estate.
- g. If Tenant Leasehold Improvements are not substantially completed at the time of Eviction, the actual cost incurred by the insured, less the salvage value, for the

Tenant Leasehold Improvements up to the time of Eviction. Those costs include costs incurred to obtain land use, zoning, building and occupancy permits, architectural and engineering fees, construction management fees, costs of environmental testing and reviews, and landscaping costs.

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.

Date of Endorsement: _____

[Witness clause optional]

Date: _____

First American Title Insurance Company

By: _____ **Authorized Signatory**

ALTA Form 13.1 (Leasehold)

ALTA Lender's Policy 1992

ALTA Form 6 Variable Rate

ENDORSEMENT

Attached to Policy No. _____

Issued By

First American Title Insurance Company

The Company insures the owner of the indebtedness secured by the insured mortgage against loss or damage sustained by reason of:

1. The invalidity or unenforceability of the lien of the insured mortgage resulting from the provisions therein which provide for changes in the rate of interest.
2. Loss of priority of the lien of the insured mortgage as security for the unpaid principal balance of the loan, together with interest as changed in accordance with the provisions of the insured mortgage, which loss of priority is caused by the changes in the rate of interest.

"Changes in the rate of interest", as used in this endorsement, shall mean only those changes in the rate of interest calculated pursuant to the formula provided in the insured mortgage at Date of Policy.

This endorsement does not insure against loss or damage based upon

- a. usury, or
- b. any consumer credit protection or truth in lending law.

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.

[Witness clause optional]

Date: _____

First American Title Insurance Company

By: _____

Authorized Signatory

CLTA Form 111.5

ALTA Form 6

(Variable Rate Mortgage)

ALTA Form 21 Creditor's Rights

ENDORSEMENT

Attached to Policy No.

Issued By

First American Title Insurance Company

The Company insures against loss or damage sustained by the insured by reason of the avoidance in whole or in part, or a court order providing some other remedy, based on the voidability of any estate, interest, or mortgage shown in Schedule A because of the occurrence on or before Date of Policy of a fraudulent transfer or a preference under federal bankruptcy, state insolvency or similar creditors' rights laws.

The coverage provided by this endorsement shall include the payment of costs, attorney's fees and expenses necessary to defend the insured against those counts, and no others, of any litigation seeking a court order which will result in loss or damage against which this endorsement provides insurance to the extent provided in the Conditions and Stipulations.

This endorsement does not insure against loss or damage if the insured: (a) knew when it acquired any estate, interest, or mortgage shown in Schedule A that the transfer, conveyance, or mortgage was intended to hinder, delay, or defraud any creditor; or (b) is found by a court not to be a transferee or purchaser in good faith.

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.

[Witness clause optional]

Date: _____

First American Title Insurance Company

By: _____ **Authorized Signatory**

ALTA Form 21 Creditor's Rights

CLTA Form 131 Creditor's Rights

ENDORSEMENT

Attached to Policy No. _____

Issued By

First American Title Insurance Company

1. The Company hereby insures the insured that, with respect to the coverage afforded by paragraph 7 of the Insuring Provisions on the face page of the policy, the Company will not deny liability based upon paragraph 3(a) of the Exclusions from Coverage by reason of:
 - (a) The insured's failure to disburse the full amount of the loan proceeds (if the failure is permitted under the loan documents and/or applicable law); or
 - (b) The fact that the loan proceeds are not sufficient to complete construction.

2. Notwithstanding the above, the Company shall have the right to deny liability based upon paragraph 3(a) of the Exclusions from Coverage for any of the following:
 - (a) A statutory lien for labor or materials (a "Lien") which has priority over the insured mortgage because of the insured's failure to abide by the provisions of California Civil Code § 3158 through and including 3163;
 - (b) That portion of a Lien arising from an improvement to the land financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which is not paid because the insured defaults in any obligation to disburse loan proceeds; or
 - (c) Loss or damage incurred because the insured caused work of improvements to continue on the land after declaring a default, unless the insured advances money for labor or material for the work done subsequent to a declaration of default.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

First American Title Insurance Company

By: _____
Authorized Signatory

ALTA Form 2 Truth in Lending

ENDORSEMENT

Attached to Policy No. _____

Issued By

First American Title Insurance Company

The Company hereby insures the Insured against loss or damage which the Insured shall sustain by reason of

any final judgment of a court of competent jurisdiction that either the lien of the insured mortgage has been terminated or the title of the Insured who has acquired all or any part of the estate or interest in the land described in Schedule A by foreclosure, trustee's sale, conveyance in lieu of foreclosure, or other legal manner which discharges the lien of the insured mortgage, has been defeated by a valid exercise of the right of rescission conferred by the Federal Truth-in-Lending Act and that the right or rights of rescission existed because neither the credit transaction evidenced by the insured mortgage nor the right of rescission thereof was exempted or excepted by the provisions of Regulation Z (12 CFR 226).

The total liability of the Company under the policy and any endorsements therein shall not exceed, in the aggregate, the face amount of the policy and costs which the Company is obligated under the conditions and stipulations thereof to pay.

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.

[Witness clause optional]

Date: _____

First American Title Insurance Company

By: _____

Authorized Signatory

CLTA Form 110.5 Modification of Mortgage

ENDORSEMENT

Attached to Policy No. _____

Issued By

First American Title Insurance Company

The Company hereby insures the owner of the indebtedness secured by the insured mortgage against loss or damage which the insured shall sustain by reason of:

1. The failure of that certain agreement executed by _____ and recorded _____ to modify the insured mortgage or the obligation secured thereby;
2. The priority of any lien or encumbrance over the lien of the insured mortgage as modified by the above mentioned agreement, except for those matters shown in Schedule B as prior to the insured mortgage, and the following matters:

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Date: _____

First American Title Insurance Company

By: _____

Authorized Signatory

CLTA Form 110.5 (Rev. 6-14-96)

ALTA - Lender



EXHIBIT 3

Endorsements and Some Underwriting Insights

California Mortgage Association
San Diego, California
July 16, 2004

John Hoag
Stewart Title Guaranty Company

ENDORSEMENTS

CLTA FORM 100

Provides "comprehensive" coverage for insured ALTA lender against loss by reason of present or future CC&R violations, the encroachment of improvements, or by reason of surface entry for mineral development.

Endorsement provides assurance that:

1(a) There are no CC&Rs under which the lien of the insured mortgage can be cut off, subordinated or impaired;

1(b) There are no present CC&R violations on the land; and

1(c) Except as shown in Schedule B, there are no encroachments of improvements on the land onto adjoining land, and no encroachments of improvements on adjoining land onto the land.

Endorsement insures against loss by reason of:

2(a) Future violations of CC&Rs which result in loss of the insured mortgage lien or title to the land if the insured lender has acquired same by foreclosure or conveyance in lieu thereof;

2(b) Unmarketability of title by reason of CC&R violations occurring prior to acquisition of title by the insured lender;

3(a) Damage to improvements which encroach on any portion of the land subject to an easement excepted in Schedule B;

3(b) Damage to improvements resulting from the exercise of any right to use the surface of the land for the extraction or development of excepted minerals; and

4. Final court order or judgment requiring removal from any land adjoining the land of any encroachment shown in Schedule B.

CTI FORM 100 (MODIFIED - FOR UNIMPROVED LAND)

Provides limited CLTA Form 100 coverage for an insured owner or lender concerning violations of CC&Rs, the encroachment of improvements and surface entry for mineral development.

Endorsement provides assurance that:

1. There are no CC&Rs containing forfeiture or reversion of title provisions, unless there is also a "saving" or "good faith" clause;

2. There are no present CC&R violations on the land;

3. Except as shown in Schedule B, there are no encroachments onto said land of improvements located on adjoining land; and

4. There is no right to use the surface of the land for mineral extraction or development.

CLTA FORM 100.1

Provides "comprehensive" coverage for insured lender under a CLTA Standard Coverage Policy against loss by reason of present or future CC&R violations, the encroachment of improvements, or by reason of surface entry for mineral development.

CLTA FORM 100.2 (ALTA FORM 9)

Provides "comprehensive" coverage for insured ALTA lender against loss by reason of present or future CC&R violations, the encroachment of improvements, or by reason of surface entry for mineral development.

Endorsement provides assurance that:

1(a) There are no CC&Rs under which the lien of the insured mortgage can be divested, subordinated or extinguished, or its validity, priority or enforceability impaired;

1(b)(1) Except as shown in Schedule B, there are no present violations of CC&Rs or subdivision plat building setback lines;

1(b)(2) Any Schedule B matter referencing a CC&R does not, in addition, contain other matters affecting title unless expressly stated in Schedule B;

1(b)(3) Except as shown in Schedule B, there are no encroachments of improvements on the land onto adjoining land, and no encroachments of improvements on adjoining land onto the land;

1(b)(4) Except as shown in Schedule B, there are no encroachments of improvements located on the land onto that portion thereof subject to any easement shown.

Endorsement insures against loss by reason of:

2(a),(b) Future violations of CC&Rs which result in loss of the insured mortgage lien or title to the land if the insured lender has acquired same by foreclosure or conveyance in lieu thereof;

3(a) Damage to improvements which encroach upon that portion of the land subject to any easement shown in Schedule B;

*An Introduction to Endorsements and
Underwriting*

Presented By:

Michael Choy
Vice President – Underwriter
Stewart Title Guaranty Company – NTS Division

Stewart Title of California, Inc.
Escrow Officer Monthly Training Program for 2004
Glendale, CA.

June 16, 2004

3(b) Damage to improvements resulting from the exercise of any right to use the surface of the land for the extraction or development of excepted minerals;

4. Final court order or judgment requiring removal from any land adjoining the land of any improvement shown in Schedule B.

5. Final court order or judgment requiring removal of existing improvements because of violation of CC&Rs or subdivision plat building lines.

CLTA FORM 100.4

Provides insured lender with coverage against loss by reason of a present violation of a particular provision of CC&Rs.

CLTA FORM 100.5

Provides insured owner with coverage against loss by reason of a present violation of CC&Rs.

CLTA FORM 100.6

Provides insured owner with coverage against loss by reason of present or future violations of CC&Rs.

CLTA FORM 100.7

Provides insured owner with coverage against loss by reason of a present violation of a particular provision of CC&Rs.

CLTA FORM 100.8

Provides insured owner with coverage against loss by reason of present or future violation of a particular provision of CC&Rs.

CLTA FORM 100.12

Provides insured lender with assurance concerning the enforceability of reverter rights found in CC&Rs.

CLTA FORM 100.13

Provides insured ALTA lender with assurance concerning the priority of a mortgage lien over maintenance or upkeep assessment liens.

CLTA FORM 100.17

Provides insured owner or lender with assurance that CC&Rs have been properly modified.

CLTA FORM 100.18

Provides insured lender or owner with coverage against loss by reason of the exercise or attempted exercise of reverter rights found in the CC&Rs.

CLTA FORM 100.19

Provides insured owner or lender with assurance that there are no present violations of CC&Rs.

CLTA FORM 100.20

Provides insured owner or lender with coverage against loss by reason of the enforcement or attempted enforcement of CC&Rs which enforcement is based on a present violation of the CC&Rs prior to the effective date of the policy.

CLTA FORM 100.21

Provides insured lender with assurance concerning approval of construction plans and specifications as required by CC&Rs.

CLTA FORM 100.23

Provides insured ALTA lender with coverage against loss by reason of the exercise of surface rights for the extraction or development of minerals leased under an oil and gas lease.

CLTA FORM 100.24

Provides insured ALTA lender with assurance that lessee under mineral lease does not have any right to enter on or use the surface of the land.

CLTA FORM 100.25

Provides insured ALTA lender with coverage against loss by reason of a violation of CC&Rs occasioned by subsurface oil drilling operations.

CLTA FORM 100.26

Provides insured with coverage against loss by reason of damage to proposed or completed improvements under an FHA project, resulting from the exercise of surface or subsurface rights for the extraction or development of minerals excepted from the description of the land.

CLTA FORM 100.27

Provides insured ALTA lender with coverage against loss of mortgage lien or title after foreclosure, or unmarketability of title, resulting from any present violation of CC&Rs.

CLTA FORM 100.28

Provides insured owner or lender with coverage against loss by reason of present or future violation of a particular provision of the CC&Rs resulting from the construction of designated improvements.

CLTA FORM 100.29

Provides insured owner or lender with coverage against loss by reason of the exercise of surface rights for the extraction or development of minerals excepted

from the description of the land or shown as a reservation in Schedule B.

CLTA FORM 101

Provides insured CLTA construction lender with coverage against loss by reason of lack of priority of the insured mortgage over statutory liens for services, labor or material, based on the claim that material had been delivered, or work commenced, prior to mortgage recording. This endorsement provides mechanics' lien coverage.

CLTA FORM 101.1

Provides insured owner with coverage against loss by reason of statutory liens for services, labor or material arising out of a work of improvement referred to in a recorded notice of completion.

CLTA FORM 101.1-A

Provides Department of Veterans Affairs of the State of California with coverage against loss by reason of statutory liens for services, labor or material arising out of a work improvement referred to in a recorded notice of completion.

CLTA FORM 101.2

Provides insured construction lender with coverage against loss by reason of a lack of priority of the insured mortgage over statutory liens for services, labor or material arising out of a work of improvement referred to in a recorded notice of completion.

CLTA FORM 101.3

Provides insured lender with coverage against loss by reason of a lack of priority of the insured mortgage over statutory liens for services, labor or material arising out of a work improvement under construction or completed at the date thereof.

CLTA FORM 101.4

Provides insured owner with coverage against loss by reason of any statutory liens for services, labor or material arising out of a work of improvement under construction or completed at the date thereof.

CLTA FORM 101.5

Provides insured lender with assurance as to the regularity of a recorded notice of completion and that, as to the land described in the notice, no statutory liens for services, labor or material have been recorded, except as shown (liability limited to a stated amount). P. 3

CLTA FORM 101.6

Provides insured lender with assurance as to the regularity of a recorded notice of completion and that, as to the land described in the notice, no statutory liens for services, labor or material have been recorded, except as shown (liability limited to face amount of policy).

CLTA FORM 101.8

Provides "off-site" insured CLTA lender with coverage against loss by reason of lack of mortgage priority over statutory liens for services, labor or material arising out of a separate contract for "off-site" work.

CLTA FORM 101.9

Provides insured owner with coverage against loss by reason of statutory liens for services, labor or material arising out of a work of improvement referred to in a recorded notice of completion on a part of the land (liability limited to a stated amount).

CLTA FORM 101.10

Provides insured lender with coverage against loss by reason of lack of priority of the insured mortgage over statutory liens for services, labor or material arising out of a work of improvement referred to in a recorded notice of completion on a part of the land (liability limited to a stated amount).

CLTA FORM 101.11

Provides insured lender with coverage against loss by reason of lack of priority of the insured mortgage over statutory liens for services, labor or material arising out of a work of improvement under construction or completed at the date thereof on a part of the land (liability limited to a stated amount).

CLTA FORM 101.12

Provides insured owner with coverage against loss by reason of statutory liens for services, labor or material arising out of any work of improvement under construction or completed at the date thereof on a part of the land (liability limited to a stated amount).

CLTA FORM 101.13

Provides insured construction lender with coverage against loss by reason of any statutory lien for services, labor or material arising out of a work of improvement referred to in a recorded notice completion.

CLTA FORM 101.14

Provides insured ALTA Construction Loan Policy lender with coverage against loss by reason of lack of

priority of the insured mortgage over statutory liens for services, labor or material arising out of a work of improvement referred to in a recorded notice of completion.

CLTA FORM 101.15

Provides insured ALTA Construction Loan Policy lender with coverage against loss by reason of lack of priority of the insured mortgage over statutory liens for services, labor or material arising out of a work of improvement under construction or completed at the date thereof.

CLTA FORM 101.16

Provides insured ALTA Construction Loan Policy lender with coverage against loss by reason of lack of priority of the insured mortgage over statutory liens for services, labor or material arising out of a work of improvement referred to in a notice of completion on a part of the land (liability limited to a stated amount).

CLTA FORM 101.17

Provides insured ALTA Construction Loan Policy lender with coverage against loss by reason of lack of priority of the insured mortgage over statutory liens for services, labor or material arising out of a work of improvement under construction or completed on a part of the land (liability limited to a stated amount).

CLTA FORM 101.18

Provides insured ALTA Construction Loan Policy lender with coverage against loss by reason of any statutory lien for services, labor or material arising out of a work of improvement referred to in a recorded notice of completion.

CLTA FORM 102.4

Provides insured construction lender with assurance that the foundations of the structure under construction are within the boundaries of the land, and that their location does not violate referenced CC&Rs.

CLTA FORM 102.5

Provides insured construction lender with assurance that the foundations of the structure under construction are within the boundaries of the land, that their location does not violate referenced CC&Rs, and that they do not encroach upon referenced easements. (Broader coverage than CLTA Form 102.4).

CLTA FORM 102.6

Provides insured lender with assurance that the foundations of the structure under construction on a portion of the land are within the boundaries of such P. 4

portion, and that their location does not violate referenced CC&Rs (limited liability). This endorsement is useful if a construction loan mortgage encumbers a tract development and foundations have been completed on part of the land only.

CLTA FORM 102.7

Provides insured construction lender with assurance that the foundations of the structure under construction on a portion of the land are within the boundaries of such portion, that their location does not violate referenced CC&Rs, and that they do not encroach on referenced easements (limited liability).

CLTA FORM 103.1

Provides insured lender with coverage against loss by reason of the exercise of the right of use or maintenance of a particular easement by the easement holder.

CLTA FORM 103.3

Provides insured lender with coverage against loss by reason of the forced removal of improvements which encroach on a particular easement which easement right is presently being exercised.

CLTA FORM 103.4

Provides insured owner or lender with assurance that an insured easement affords ingress and egress to and from a specified public street.

CLTA FORM 103.5

Provides insured extended coverage owner or lender with coverage against loss by reason of the exercise of surface rights for the extraction or development of water excepted from the description or shown as a reservation in Schedule B.

CLTA FORM 103.6

Provides insured ALTA lender with assurance that none of the improvements on the land encroach on a particular easement.

CLTA FORM 103.7

Provides insured owner or lender with assurance that the land described in Schedule A abuts on a specific, physically open public street.

CLTA FORM 103.8

Provides insured ALTA lender with coverage against loss by reason of damage to proposed or completed improvements under FHA project, resulting from the

exercise of surface rights for the extraction or development of water excepted from the description or shown as a reservation in Schedule B.

CLTA FORM 103.9

Provides insured ALTA lender with coverage against loss by reason of forced removal of proposed improvements which encroach into a public street, provided proposed improvements are located and constructed in accordance with designated plans and specifications.

CLTA FORM 103.10

Provides insured owner or lender with coverage against loss by reason of the use of the surface of the land by the owners of land below the surface.

CLTA FORM 104

Provides assignee of the ALTA insured mortgage with assurance concerning (a) validity of the recorded assignment to evidence transfer of the entire beneficial interest to the named assured assignee; (b) subsisting real property tax or assessment liens; (c) matters shown by the public records which affect the validity or priority of the insured mortgage; and (d) federal tax liens or bankruptcy proceedings affecting title to the estate or interest covered by the policy.

CLTA FORM 104A

Provides assignee of the CLTA insured mortgage with assurance concerning (a) validity of the recorded assignment to evidence transfer of the entire beneficial interest to the named assured assignee; (b) subsisting real property tax or assessment liens; (c) matters shown by the public records which affect the validity or priority of the insured mortgage; and (d) federal tax liens or bankruptcy proceedings affecting title to the estate or interest covered by the policy.

CLTA FORM 104.1

Provides assignee of the insured mortgage with assurance concerning (a) validity of the recorded assignment to evidence transfer of the entire beneficial interest to the named assured assignee; and (b) full or partial reconveyances, modification or subordination of the insured mortgage.

CLTA FORM 104.4

Provides collateral assignee of the insured mortgage with assurance concerning (a) validity of the recorded assignment to evidence transfer of the beneficial interest to the named assured assignee as collateral security; and (b) full or partial reconveyance, modification or subordination of the insured mortgage.

CLTA FORM 104.6

Provides insured ALTA lender with coverage against loss by reason of defects in the execution of an assignment of lessor's interest in a lease or leases, or by reason of any prior assignment except as set forth in the endorsement.

CLTA FORM 104.7

Provides insured lender with coverage against loss by reason of any prior recorded assignment of rents.

CLTA FORM 104.8

Provides assignee of the ALTA insured mortgage with assurance concerning (a) validity of the recorded assignment to evidence transfer of the entire beneficial interest to the named assured assignee, with qualifications; (b) subsisting real property tax or assessment liens; (c) matters affecting the validity or priority of the insured mortgage; and (d) federal tax liens or bankruptcy proceedings affecting the estate or interest covered by the policy.

CLTA FORM 104.9

Provides assignee of the CLTA insured mortgage with assurance concerning (a) validity of the recorded assignment to evidence transfer of the entire beneficial interest to the named assured assignee, with qualifications; (b) subsisting real property tax or assessment liens; (c) matters shown by the public records which affect the validity or priority of the insured mortgage; and (d) federal tax liens or bankruptcy proceedings affecting the estate or interest covered by the policy.

CLTA FORM 104.10

Provides assignee of the insured mortgage with assurance concerning (a) validity of the recorded assignment to evidence transfer of the entire beneficial interest to the named assured assignee, with qualifications; and (b) full or partial reconveyance, modification or subordination of the insured mortgage.

CLTA FORM 104.11

Provides collateral assignee of the insured mortgage with assurance concerning (a) validity of the recorded assignment to evidence transfer of the entire beneficial interest to the named assured assignee as collateral security, with qualifications; and (b) full or partial reconveyances, modification or subordination of the insured mortgage.

CLTA FORM 105

Modifies ALTA Loan or Leasehold Loan Policy provisions to accommodate insurance of the liens of two mortgages under a single policy.

CLTA FORM 105.1

Modifies CLTA Standard Coverage Policy provisions to accommodate insurance of the liens of two mortgages under a single policy.

CLTA FORM 106

Provides State of California with assurance concerning the release or relinquishment of access rights, by deed or other voluntary conveyance, with respect to the grantor's remaining land in the event a portion of the land has been conveyed for a freeway or limited access highway.

CLTA FORM 106 C

Provides State of California with assurance concerning the elimination of access rights, by condemnation, with respect to an owner's remaining land in the event a portion of that land has been condemned for a freeway or limited access highway.

CLTA FORM 106.1

Provides State of California with assurance concerning the release or relinquishment of access rights only, by deed or other voluntary conveyance, with respect to land abutting a freeway or limited access highway.

CLTA FORM 106.1C

Provides State of California with assurances concerning the elimination of access rights only, by condemnation, with respect to land abutting a freeway or limited access highway.

CLTA FORM 106.2

Provides State of California with assurance concerning the release or relinquishment of access rights only, by deed or other voluntary conveyance, with respect to the grantor's remaining land if a portion of the land has been conveyed for a freeway or limited access highway, and with respect to other land abutting such freeway or limited access highway.

CLTA FORM 106.2 C

Provides State of California with assurance concerning the elimination of access rights, by condemnation, with respect to an owner's remaining land if a portion of that land has been condemned for a freeway or limited access highway, and with respect to other land abutting such freeway or limited access highway.

CLTA FORM 107.1

Allocates a designated amount of total liability of a policy to each of several lots or parcels described in Schedule A of the policy.

CLTA FORM 107.2

Provides for an increase in the amount of insurance after issuance of the policy. Requires a determination of the reason(s) for the request for an increase in the amount of insurance.

CLTA FORM 107.5

Provides that the value of the lessee's interest in improvements, even though cast as personal property in the insured lease, will be included as an element of loss otherwise insured against under the leasehold policy.

CLTA FORM 107.9

Provides for the naming of an additional insured under an existing policy, with qualification.

CLTA FORM 107.10

Provides for the naming of an additional insured under an existing policy.

CLTA FORM 107.11

Provides insured ALTA lender with coverage against loss by reason of invalidity or unenforceability of the insured mortgage following ostensible merger of the beneficial interest evidenced by the deed of trust with title formerly vested in the trustor named in the deed of trust through insured ALTA lender's acquisition of an interest in the title.

CLTA FORM 108.7

Provides insured CLTA lender with coverage against loss concerning vesting of title, subsistence and priority of insured mortgage lien insofar as same secures an additional (optional) advance, and increases policy liability by the amount of the advance.

CLTA FORM 108.7-M

Provides insured CLTA "revolving" or "line of credit" lender with coverage against loss concerning vesting of title, subsistence and priority of insured mortgage lien insofar as it secures an increase in the revolving credit limit, and increases policy liability by the amount of the increase.

CLTA FORM 108.8

Provides insured ALTA lender with coverage against loss concerning vesting of title, subsistence and priority of insured mortgage lien insofar as same secures an additional (optional) advance, and increases policy liability by the amount of the advance.

CLTA FORM 108.8-M

Provides insured ALTA "revolving" or "line of credit" lender with coverage against loss concerning vesting of title, subsistence and priority of insured mortgage lien insofar as same secures an increase in the revolving credit limit, and increases policy liability by the amount of the increase.

CLTA FORM 108.9

Provides the Department of Veterans Affairs of the state of California with coverage against loss concerning vesting of, and defects in or liens or encumbrances on, title to the estate or interest covered, with respect to an advance made under its purchase agreement with a veteran.

CLTA FORM 108.10

Provides insured line of credit lender with coverage against defined loss connected with (1) vesting of title and (2) continued priority of the insured mortgage insofar as that mortgage secures an increased line of credit. This endorsement also increases the existing lender's policy liability by the amount of the increased credit limit.

CLTA FORM 109

Provides insured CLTA owner or lender with assurance concerning assignments of the lessor's interest under community oil and gas lease.

CLTA FORM 110.1

Amends policy to delete particular Schedule B paragraphs, or to delete a particular general Exception from Coverage.

CLTA FORM 110.3

Provides insured owner or lender with assurance that mineral owner has relinquished right of surface entry.

CLTA FORM 110.4

Provides insured ALTA lender with assurance concerning proper modification of the insured mortgage.

CLTA FORM 110.5

Provides insured ALTA lender with assurance concerning proper modification of the insured mortgage, including express priority coverage.

CLTA FORM 110.6

Provides insured CLTA lender with assurance concerning proper modification of the insured mortgage, including express priority coverage.

CLTA FORM 110.7

Provides insured owner or lender with coverage against loss by reason of the enforcement of a specified lien or encumbrance referenced in Schedule B.

CLTA FORM 110.9

Provides insured ALTA residential lender with coverage against loss by reason of lack of priority over (a) any federal or state environmental protection lien which is recorded in the public records, except as set forth in Schedule B, and (b) any state environmental protection lien provided for by any state statute in effect at Date of Policy, except as provided for by state statutes specified in the endorsement.

CLTA FORM 111

Provides insured lender with coverage against loss by reason of loss of mortgage lien priority on the remaining land occasioned by a partial reconveyance.

CLTA FORM 111.1

Provides insured lender with assurance that policy liability for loss has not been reduced by reason of a partial reconveyance, except to the extent of any consideration received for the partial reconveyance.

CLTA FORM 111.2

Provides insured lender with coverage against loss by reason of any impairment of the lien of the insured mortgage on the land occasioned by a subordination agreement.

CLTA FORM 111.3

Provides insured lender with coverage against loss by reason of (a) any impairment of the lien of the insured mortgage on the remaining land occasioned by a partial reconveyance, and (b) with assurances concerning encroachments and the designation of improvements on the remaining land.

CLTA FORM 111.4

Provides insured ALTA lender and HUD with assurances as to the continued validity and priority of the insured mortgage following the trustor's conveyance of title if, in return for the assumption of the indebtedness by the purchaser, the original trustor is released from liability for payment of the mortgage.

CLTA FORM 111.5 (ALTA FORM 6)

Provides insured ALTA variable rate mortgage lender with coverage against loss by reason of (1) invalidity

or unenforceability of the insured mortgage resulting from terms therein providing for changes in the rate of interest, or (2) loss of priority of the insured mortgage lien caused by the changes in the rate of interest.

CLTA FORM 111.6

Provides insured ALTA variable rate mortgage lender with coverage against loss by reason of (1) invalidity or unenforceability of the insured mortgage resulting from terms therein providing for changes in the rate of interest, or (2) loss of priority of the insured mortgage lien caused by the changes in the rate of interest, which coverage is conditioned on compliance with specified statutes or regulations concerning variable rate mortgages.

CLTA FORM 111.7

Provides insured ALTA variable rate mortgage lender with coverage against loss by reason of (1) invalidity or unenforceability of the insured mortgage resulting from terms therein providing for the renewal of the mortgage or changes in the rate of interest, or (2) loss of priority of the insured mortgage lien caused by the renewal of the mortgage or changes in the rate of interest.

CLTA FORM 111.8 (ALTA FORM 6.2)

Provides insured ALTA variable rate mortgage lender with coverage against changes in the rate of interest, the addition of unpaid interest to principal and/or interest on interest, or (2) loss of priority of the insured mortgage lien caused by the changes in the rate of interest, unpaid interest added to principal and/or interest on interest.

CLTA FORM 111.10 (OPTIONAL ADVANCE)

Provides insured lender with coverage against (1) loss by reason of invalidity or unenforceability of the insured mortgage or of (2) loss of priority of said mortgage for the unpaid balance together with interest caused by changes in the rate of interest in accordance with the terms of a specified loan agreement. Except as to intervening matters of which the insured has actual knowledge. Insures priority of subsequent advances except as noted.

CLTA FORM 111.11 (OBLIGATORY ADVANCE)

Provides insured lender with coverage against (1) loss by reason of invalidity or unenforceability of the insured mortgage or of (2) loss of priority of said mortgage for the unpaid balance together with interest

caused by changes in the rate of interest in accordance with the terms of a specified loan agreement. Insures priority of subsequent advances except as noted.

CLTA FORM 112

Amends CLTA Conditions and Stipulations to provide coverage for bondholders if the insured mortgage is a trust indenture securing bonds.

CLTA FORM 112.1

Amends ALTA Conditions and Stipulations to provide coverage for bondholders if the insured mortgage is a trust indenture securing bonds.

CLTA FORM 112.2

Amends CLTA Conditions and Stipulations to provide coverage for bondholders if the bonds are a lien, not on the title, but on the revenues produced from the land.

CLTA FORM 114

Provides for coinsurance of policy risks, among two or more title insurance companies, with segregated liabilities.

CLTA FORM 114.1

Provides for coinsurance of policy risks, among two or more title insurance companies, with joint and several liabilities.

CLTA FORM 115

Provides insured lender with assurance that the estate or interest covered by the policy is a condominium, in fee, and is entitled to be assessed and taxed as a separate parcel.

CLTA FORM 115.1 (ALTA FORM 4)

Provides coverage for an insured ALTA lender against loss concerning statutory compliance, violations of CC&Rs, homeowners' association charges and assessments, the separate assessment of real property taxes, encroachments and the exercise of a right of first refusal to purchase, all with respect to a condominium unit within a condominium project.

CLTA FORM 115.2 (ALTA FORM 5)

Provides coverage for an insured ALTA lender against loss concerning violations of CC&Rs, homeowners' association charges and assessments, encroachments and the exercise of a right of first refusal to purchase, all with respect to a parcel of land in a planned development.

CLTA FORM 116

Provides insured ALTA lender with assurances concerning the street address of designated improvements on the land; and, with respect to the sufficiency of the policy plat to show the record location and dimensions of that land.

CLTA FORM 116.1

Provides insured lender with assurance that the land described in the policy is the same as that delineated on plat of a survey attached to and made a part of the policy.

CLTA FORM 116.2

Provides insured ALTA lender with assurance concerning the street address of designated separately owned elements comprising part of the insured condominium; and, with respect to the sufficiency of the referenced map or plan to show the exterior boundary of the condominium project as a whole.

CLTA FORM 116.3

Provides insured owner or lender with assurance that the land described in the policy now constitutes all or part of a later subdivision of the land.

CLTA FORM 116.4

Provides insured owner or lender with assurance that the land described in the policy is contiguous to other land.

CLTA FORM 116.5 (ALTA FORM 7)

Provides insured ALTA lender with assurance that the term "land" as defined in the policy includes the manufactured housing unit located on the land at Date of Policy.

CLTA FORM 116.6

Provides insured ALTA lender with assurance that the manufactured housing unit described in the endorsement is included within the term "land" when used in the policy. This endorsement requires that a description of the manufactured housing unit be set forth in the endorsement.

CLTA FORM 116.7

Provides insured with assurance that the land described is a lawfully created parcel according to the California Subdivision Map Act and local ordinances adopted pursuant thereto.

CLTA FORM 119

Provides insured CLTA lender with coverage concerning the due execution and record priority of an extant lease to which the insured mortgage is subject.

CLTA FORM 119.1

Amends CLTA policy by adding other general Exceptions from Coverage with respect to off-record matters which may affect title to the covered leasehold estate.

CLTA FORM 119.2

Provides insured ALTA lender with assurance as to the validity, priority and subsistence of an extant lease to which the insured mortgage is subject.

CLTA FORM 119.3

Provides insured ALTA lender with assurance as to the priority of an extant lease to which the insured mortgage is subject in circuitry of lien situations. (Relative priority among purchase money deed of trust, lease, and permanent financing deed of trust is questionable.)

CLTA FORM 119.4

Provides assurance to bondholders that sublease is valid and will be binding at the commencement of its term, subject to intervening matters.

CLTA FORM 120.2

Provides insured oil and gas lessee with assurance that deed of trust on fee estate executed prior to oil and gas lease has since been subordinated to the oil and gas lease.

CLTA FORM 122

Provides insured ALTA lender with assurance concerning obligatory advance made under the insured mortgage; liability limited to face amount of policy.

CLTA FORM 122.2

Provides insured ALTA lender with assurance concerning obligatory advance made under the insured mortgage; liability increased by amount of advance.

CLTA FORM 122.3

Provides insured ALTA Construction Loan Policy lender with assurance concerning obligatory advance under the insured mortgage; liability limited to face amount of policy.

CLTA FORM 122.4

Provides insured ALTA Construction Loan Policy lender with assurance concerning obligatory advance under the insured mortgage; liability increased by amount of advance.

CLTA FORM 123.1 (ALTA FORM 3)

Provides insured ALTA owner or lender with assurance concerning the zoning classification of the land, and the broad, allowable use or uses under that classification.

CLTA FORM 123.2 (ALTA FORM 3.1)

Provides insured ALTA owner or lender with assurance concerning the zoning classification of the land, the broad allowable use or uses under that classification and, with respect to the existing structure on the land, limited coverage concerning compliance with applicable provisions of the applicable zoning ordinance.

CLTA FORM 124.1

Provides insured owner or lender with assurances concerning affirmative and/or negative covenants contained in a deed or agreement between landowners.

CLTA FORM 124.2

Provides insured owner or lender with assurances concerning affirmative covenants contained in a lease.

CLTA FORM 124.3

Provides insured owner or lender with assurances concerning negative covenants contained in a lease.

CLTA FORM 125

Provides coverage for the insured ALTA lender against loss by reason of a judicial determination that (a) the insured mortgage lien (or the lender's title after foreclosure) has been defeated by a valid exercise of the right of rescission conferred by the federal Truth in Lending Act, and that (b) such right of rescission existed because neither the loan transaction nor the right of rescission thereof was exempted or excepted by the provisions of Regulation Z.

CLTA FORM 126.1

Provides coverage for insured CLTA owner of a one-to-four family residence against defined loss by reason of lack of a right of access, rights to liens for services, labor or material, encroachments, zoning and restrictions violations, and surface entry for mineral development.

CLTA FORM 126.2

Provides coverage for insured CLTA fee owner of a residential condominium against defined loss concerning the separate assessment of taxes, lack of a right of access, rights to liens for services, labor or material, encroachments, zoning and restrictions violations, and surface entry for mineral development.

SUMMARY OF CALIFORNIA ENDORSEMENTS
TO TITLE INSURANCE POLICIES

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Release of access rights for freeway or highway by deed (State of California).	CLTA 106, 106.1, 106.2
Release of access rights for freeway or highway by condemnation (State of California).	CLTA 106C, 106.2C
Owner has right of access to public street (owner).	CLTA 126.1(2a), 126.2(2b1)

ADDITIONAL ADVANCE (OPTIONAL)

Additional advance under trust deed (CLTA lender).	CLTA 108.7, 108.7-M
Additional advance under trust deed (ALTA lender).	CLTA 111.10, 108.8, 108.8-M
Additional advance for construction (owner – California Department of Veterans' Affairs).	CLTA 108.9
Additional advance by means of increasing line of credit (ALTA lender).	CLTA 108.10

ADVANCE (OBLIGATORY)

Advance under trust deed/changes in interest rate (ALTA lender).	CLTA 111.11
Advance under trust deed – liability limited to amount of policy (ALTA lender).	CLTA 122
Advance under trust deed – liability limited to amount of policy (ALTA construction lender).	CLTA 122.3
Advance under trust deed – liability increased by amount of advance (ALTA lender).	CLTA 122.2
Advance under trust deed – liability increased by amount of advance (ALTA construction lender).	CLTA 122.4

ASSIGNMENTS

Assignment of trust deed – broad coverage (ALTA lender).	CLTA 104, 104.8
Assignment of trust deed – broad coverage (CLTA lender).	CLTA 104A, 104.9
Assignment of trust deed – limited coverage (lender).	CLTA 104.1, 104.10
Collateral assignment of trust deed (lender).	CLTA 104.4, 104.11
Assignment of lessor's interest in lease (ALTA lender).	CLTA 104.6
Assignment of rents in trust deed (lender).	CLTA 104.7
Transfers of lessor's interest in community oil and gas lease (owner or lender).	CLTA 109

ASSESSMENTS

Priority of trust deed over maintenance or upkeep assessment liens (ALTA lender).	CLTA 100.13
Priority of trust deed over homeowners' association assessment liens (ALTA lender).	CLTA 115.1, 115.2

BONDS

Modification of policy if trust deed secures bonds (CLTA lender).	CLTA 112
Modification of policy if trust deed secures bonds (ALTA lender).	CLTA 112.1
Modification of policy for holders of revenue bonds (CLTA owner).	CLTA 112.2
Sublease is valid and will be binding at commencement of term (CLTA lessee).	CLTA 119.4

COINSURANCE

Provides for coinsurance under policy – segregated liabilities (owner or lender).	CLTA 114
Provides for coinsurance under policy – joint and several liability (owner or lender).	CLTA 114.1

CONDEMNATION

Release of access rights for freeway or highway by condemnation (State of California).	CLTA 106C, 106.1C, 106.2C
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CONTIGUITY

Land described in policy is contiguous to other land (owner or lender). CLTA 116.4

COVENANTS, CONDITIONS AND RESTRICTIONS (CC&Rs)

CC&Rs do not impair lien of trust deed (ALTA lender).	CLTA 100 (1a), 100.2(1a)
CC&Rs do not provide for reversion unless "good faith" clause included (ALTA owner or lender).	CTI 100 (Mod.) (1)
CC&Rs do not impair lien of trust deed (CLTA lender).	CLTA 100.1(1a)
No present violations (ALTA lender).	CLTA 100 (1b), 100.2(1b1), 100 (Mod.) (2)
No present violations (CLTA lender).	CLTA 100.1 (1b)
Future violations will not impair lien of trust deed (ALTA lender).	CLTA 100.1 (2a), 100.2 (2a)
Future violations will not impair lien of trust deed (CLTA lender).	CLTA 100.1 (2a)
Unmarketability of title – violations (ALTA lender).	CLTA 100 (2b)
Unmarketability of title – violations (CLTA lender).	CLTA 100.1(2b)
Present violation of particular lender CC&Rs.	CLTA 100.4
Present violation of CC&Rs (owner).	CLTA 100.5
Present or future violations (owner).	CLTA 100.6
Present violation of particular CC&Rs (owner).	CLTA 100.7
Present or future violations of particular CC&Rs (owner).	CLTA 100.8
Enforceability of reverter rights (lender).	CLTA 110.12
Priority of trust deed over maintenance or upkeep assessment liens (ALTA lender).	CLTA 100.13
Modification of CC&Rs (owner or lender).	CLTA 100.17
Enforceability of reverter rights (lender).	CLTA 100.18
No present violation of CC&Rs (owner or lender).	CLTA 100.19
Enforcement of present violations (owner or lender).	CLTA 100.20
CC&Rs requiring approval of plans and specifications (lender).	CLTA 100.21

No violation of CC&Rs by subsurface oil drilling (ALTA lender).	CLTA 100.25
Present violation of CC&Rs – loss of lien, unmarketability of title (ALTA lender).	CLTA 100.27
Present or future violation of particular CC&Rs-future construction (owner or lender).	CLTA 100.28
Violation of CC&Rs – enforced removal.	CLTA 100.2(5)
Location of foundation does not violate CC&Rs (lender).	CLTA 102.4, 102.5, 102.6, 102.7
No present violation of CC&Rs, no forfeiture or reverter provisions (owner or lender).	CLTA 115.1, 115.2
Covenants contained in deed or agreement between landowners (owner or lender).	CLTA 124.1
Covenants contained in lease (lessee or lender).	CLTA 124.2, 124.3
Violation of CC&Rs – enforced removal, interference with use as residence (owner).	CLTA 126.1(2b2), 126.2(2c2)

DEPARTMENT OF VETERANS' AFFAIRS (CALIFORNIA)

Construction advance under DVA contract (owner – DVA).	CLTA 108.9
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DESCRIPTIONS

Land abuts on a physically open street (owner or lender).	CLTA 103.7
Policy description – later subdivision (owner or lender).	CLTA 116.3
Land described in policy is contiguous to other land (owner or lender).	CLTA 116.4

EASEMENTS

Improvements do not encroach onto easements (ALTA lender).	CLTA 100 (3a), 100.2(3a), 103.6, 115.2
Improvements do not encroach onto easements (CLTA lender).	CLTA 100.1(3a)
Foundation does not encroach onto easements (lender).	CLTA 102.5, 102.7
Exercise of rights of use or maintenance of easement (owner or lender).	CLTA 103.1

Forced removal of encroaching improvements (lender).	CLTA 103.3
Insured easement affords ingress and egress to street (owner or lender).	CLTA 103.4
Improvements do not encroach onto easements (CLTA owner).	CLTA 126.1(2b1), 126.2(2c1)

ENCROACHMENTS

No existing encroachments (ALTA lender).	CLTA 100 (1c), 100.2(1b3)
No existing encroachments (ALTA owner or lender).	CTI 100 (Mod.) (3)
No existing encroachments (CLTA lender).	CLTA 100.1(1c)
Improvements do not encroach onto easements (ALTA lender).	CLTA 100 (3a), 100.2(3a)
Improvements do not encroach onto easements (CLTA lender).	CLTA 100.1(3a)
Forced removal of encroaching improvements (ALTA lender).	CLTA 100 (4), 100.2(4), 115.1
Forced removal of encroaching improvements (CLTA lender).	CLTA 100.1(4)
Foundation does not encroach (lender).	CLTA 102.4, 102.5, 102.6, 102.7
Forced removal of improvements encroaching onto easements (lender).	CLTA 103.3
Improvements do not encroach onto easement (ALTA lender).	CLTA 103.6
Forced removal of improvements encroaching into street (ALTA lender).	CLTA 103.9
No encroachment after partial reconveyance (lender).	CLTA 111.3
Improvements do not encroach onto easements or onto other land (ALTA lender).	CLTA 115.2
Improvements do not encroach onto easements or onto adjoining land (CLTA owner).	CLTA 126.1(2b1), 126.2(2c1)

ENVIRONMENTAL PROTECTION LIENS

No liens except as shown, priority of trust deed over liens except as provided by state statute (ALTA lender).	CLTA 110.9
Priority of trust deed over recorded 'environmental protection liens' except as shown in Schedule B (commonly referred to as 'CLTA Form 110.9M').	CTI 3147.

EXCEPTIONS

Deletes one or more Schedule B exceptions
(owner or lender). CLTA 110.1

FAIRWAY

Restructure of insured partnership (owner). CTI 3137,

FOREIGN CURRENCY (LENDER)

Invalidity or unenforceability of mortgage caused
by changes in currency exchange rate. CTI 3136,

FOUNDATIONS

Foundation does not violate nor encroach (lender). CLTA 102.4,

IMPROVEMENTS

No existing encroachments (ALTA lender). CLTA 100 (1c),
100.2(1b4)

No existing encroachments (ALTA owner or lender). CTI 100
(Mod.) (3)

No existing encroachments (CLTA lender). CLTA 100.1(1c)

Encroachment onto easements (ALTA lender). CLTA 100 (3a)
100.2(3a)

Encroachment onto easements (CLTA lender). CLTA 100.1(3a)

No damage because of surface mineral development
(ALTA lender). CLTA 100 (3b),
100.2(3b),
100.26, 100.29

No damage by reason of surface mineral development
(CLTA lender). CLTA 100.1(3b)

Forced removal of encroaching improvements
(ALTA lender). CLTA 100 (4),
100.2(4), 115.1

Forced removal of encroaching improvements
(CLTA lender). CLTA 100.1(4)

No damage by reason of surface development under
oil and gas lease (ALTA lender). CLTA 100.23

Violation of CC&Rs - forced removal. CLTA 100.2(5)

Forced removal of improvements encroaching onto
easements (lender). CLTA 103.3

No damage by reason of surface water development
(owner or lender). CLTA 103.5

Improvements do not encroach onto easement
(ALTA lender). CLTA 103.6

No damage by reason of surface water development
(lender). CLTA 103.8

Forced removal of improvements encroaching into street (ALTA lender).	CLTA 103.9
Leasehold improvements included as element of loss (lessee or lender).	CLTA 107.5
No encroachments after partial reconveyance, designation of improvements on remaining land (lender).	CLTA 111.3
Improvements do not encroach onto easements or onto adjoining land (ALTA lender).	CLTA 115.2
Designation of improvements, street address (ALTA lender).	CLTA 116
Designation of improvements, street address – condominium (owner or lender).	CLTA 116.2
“Land” as defined in policy includes manufactured housing unit (ALTA lender).	CLTA 116.5
Manufactured housing unit described in endorsement is included in the “land” as the term ‘land’ is defined in policy (ALTA lender).	CLTA 116.6
Improvements do not encroach onto easements or onto other land (CLTA owner).	CLTA 126.1(2b1), 126.2(2c1)

INFLATION PROTECTION

Accommodates upward adjustments of maximum amount of insurance (CLTA owner).	CTI 2697, 2701;
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LEASES

No surface entry under oil and gas lease (ALTA lender).	CLTA 100.23
No surface entry under mineral lease (ALTA lender).	CLTA 100.24
Assignment of lessor’s interest in lease (ALTA lender).	CLTA 104.6
Assignment of rents in trust deed (lender).	CLTA 104.7
Leasehold improvements included as element of loss (lessee or lender).	CLTA 107.5
Transfers of lessor’s interest under community oil and gas lease (owner or lender).	CLTA 109
Execution and priority of lease (CLTA lender).	CLTA 119
Adds general leasehold exceptions (lessee or lender).	CLTA 119.1
Validity, priority and subsistence of lease (ALTA lender).	CLTA 119.2

Excludes liability if trust deed priority over lease doubtful – circuity of liens situations (ALTA lender).	CLTA 119.3
Sublease is valid and will be binding at commencement of term (CLTA lessee).	CLTA 119.4
Trust deed has been subordinated to oil and gas lease (oil lessee).	CLTA 120.2
Covenants contained in lease (lessee or lender).	CLTA 124.2, 124.3

LAST DOLLAR

Loan partially secured by real property.	CTI 3137, SUTIC 12561
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MECHANICS' LIENS

Priority of trust deed – commencement of work (CLTA lender).	CLTA 101
Work of improvement disclosed by notice of completion (owner).	CLTA 101.1, 101.1A, 101.9
Priority of trust deed – work of improvement disclosed by notice of completion (lender).	CLTA 101.2, 101.10, 101.14, 101.16
Priority of trust deed – no notice of completion (owner).	CLTA 101.3, 101.11, 101.15, 101.17
Work of improvement – no notice of completion (owner).	CLTA 101.4, 101.12
Mechanics' liens – valid notice of completion – limited liability (lender).	CLTA 101.5
Mechanics' liens – valid notice of completion – liability same as policy (lender).	CLTA 101.6
Priority of trust deed – 'offsite' loan (CLTA lender).	CLTA 101.8
Work of improvement disclosed by notice of completion (lender).	CLTA 101.13, 101.18
Priority of additional, optional advance (lender).	CLTA 108.7, 108.7-M, 108.8, 108.8-M, 108.10
Priority of obligatory advance (ALTA lender).	CLTA 122, 122.2, 122.3, 122.4
Work of improvement – in progress or completed.	CLTA 126.1(2a2), 126.2(2b2)

MINERALS

Surface entry damage (ALTA lender).	CLTA 100 (3b), 100.2(3b)
Surface entry damage (CLTA lender).	CLTA 100.1(3b)
Surface entry damage – oil and gas lease (ALTA lender).	CLTA 100.23
No right of surface entry (ALTA owner lender).	CTI 100 (Mod.) (4)
No right of surface entry under mineral lease (ALTA lender).	CLTA 100.24
FHA project – exercise above 500 feet below surface (ALTA lender).	CLTA 100.26
No damage by reason of surface mineral develop- ment (owner or lender).	CLTA 100.29
Mineral owner has relinquished surface rights (owner or lender).	CLTA 110.3
Surface entry damage (CLTA owner).	CLTA 126.1(2c), 126.2(2d)

MOBILEHOMES AND MANUFACTURED HOUSING UNITS

“Land” as defined in policy includes manufactured housing unit (ALTA lender).	CLTA 116.5
Manufactured housing unit described in endorsement includes “land” defined in policy (ALTA lender).	CLTA 116.6
Assures that value of mobilehome located on the land will be included as element of loss; reconciles CLTA 100 coverage to include mobilehome (ALTA lender).	CTI 3122;

MODIFICATION

CC&Rs have been properly modified (owner or lender).	CLTA 100.17
Valid modification of trust deed (ALTA lender).	CLTA 110.4
Valid modification of trust deed – priority coverage (ALTA lender).	CLTA 110.5
Valid modification of trust deed (priority coverage) if maturity date extended [commonly referred to as CLTA Form 110.5E].	CTI 3191,
Valid modification of trust deed (priority coverage) if maturity date extended and other matters [commonly referred to as CLTA Form 110.5EL].	CTI 3498,
Valid modification of trust deed – priority coverage (CLTA lender).	CLTA 110.6

OIL

Surface entry damage (ALTA lender).	CLTA 100 (3b), 100.2(3b)
Surface entry damage (CLTA lender).	CLTA 100.1(3b)
Surface entry damage – oil and gas lease (ALTA lender).	CLTA 100.23
No surface rights (ALTA owner or lender).	CTI 100 (Mod.) (4)
No surface rights under oil and gas lease (ALTA lender).	CLTA 100.24
No violation of CC&Rs by subsurface oil develop- ment (ALTA lender).	CLTA 100.25
FHA project – exercise above 500 feet below surface (ALTA lender).	CLTA 100.26
Surface entry damage – existing improvements (owner or lender).	CLTA 100.29
No assignment of lessor's interest under community oil and gas lease (owner or lender).	CLTA 109
Mineral owner has relinquished surface rights (owner or lender).	CLTA 110.3
Trust deed subordinated to oil lease (oil and gas lessee).	CLTA 120.2
Surface entry damage – existing improvements (CLTA owner).	CLTA 126.1, 126.2

OPTIONS

Validity, enforceability and priority of option (CLTA or ALTA owner).	CTI 3123;
Partnership Fairway Endorsement.	CTI 3032;

POLICIES - LIABILITIES

Insurance of two trust deeds in favor of same lender (ALTA lender).	CLTA 105
Insurance of two trust deeds in favor of same lender (CLTA lender).	CLTA 105.1
Allocation of liability between two or more parcels (owner or lender).	CLTA 107.1
Increase of liability (owner or lender).	CLTA 107.2
Leasehold improvements included as element of loss (lessee or lender).	CLTA 107.5

Naming additional insured – with qualifications (owner or lender).	CLTA 107.9
Naming additional insured (owner or lender).	CLTA 107.10
Unenforceability of trust deed following ostensible merger (ALTA lender).	CLTA 107.11
Deletes Schedule B exceptions (owner or lender).	CLTA 110.1
Loss by reason of enforcement of lien or encumbrance shown in Schedule B (owner or lender).	CLTA 110.7
Coinsurance – segregated liabilities (owner or lender).	CLTA 114
Coinsurance – joint and several liability (owner or lender).	CLTA 114.1
Adds general exceptions regarding off-record matters affecting leasehold (CLTA lessee or lender).	CLTA 119.1
Date-down of record title (lender).	CTI 2842
Partnership – No policy termination on change of insureds internal structure (Fairway) (owner).	CTI 3032:
Non-imputation of knowledge (owner or lender).	CTI 3127;
Foreign currency (lender).	CTI 3136;
Last Dollar – Loan partially secured by real property.	CTI 3137;
“Tie-in” Endorsement (ALTA lender).	CTI 3307;

RECONVEYANCES

No impairment of lien after partial reconveyance (lender).	CLTA 111, 111.1
No impairment of lien after partial reconveyance – designation of improvements on remaining land – no encroachments (lender).	CLTA 111.3

RENTS

No assignments of lessor's interest in lease (ALTA lender).	CLTA 104.6
No assignments of rents (lender).	CLTA 104.7

RIGHTS OF FIRST REFUSAL

Exercise of rights of first refusal (ALTA lender).	CLTA 115.1, 115.2
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STATE OF CALIFORNIA

Release of access rights to freeway or highway by deed (owner – State of California).	CLTA 106, 106.1 106.2
Release of access rights to freeway or highway by condemnation (owner – State of California).	CLTA 106C, 106.1C

STREETS

Insured easement provides access to street (owner or lender).	CLTA 103.4
Land abuts on physically open street or highway (owner or lender).	CLTA 103.7
Owner has right of access to public street or highway (CLTA owner).	CLTA 126.1(2a1), 126.2(2b1)

SUBDIVISION/SUBDIVISION MAP ACT

No violation of Subdivision Map Act.	CLTA 116.7
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SUBORDINATION

No impairment of lien after subordination (lender).	CLTA 111.2
Excepts liability if priority doubtful – circuitry of lien situations (ALTA lender).	CLTA 119.3
Trust deed has been subordinated to oil and gas lease (oil and gas lessee).	CLTA 120.2

SURFACE

Use of surface by subsurface owner (owner or lender).	CLTA 103.10
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SURFACE ENTRY

By owner of minerals (ALTA lender).	CLTA 100(3b), CLTA 100.2(3b)
By owner of minerals (ALTA owner or lender).	CTI 100 (Mod.) (4)
By owner of minerals (CLTA lender).	CLTA 100.1 (3b)
By oil and gas lessee (ALTA lender).	CLTA 100.23
No surface rights under mineral lease (ALTA lender).	CLTA 100.24
By owner of minerals – FHA project (ALTA lender).	CLTA 100.26
By owner of minerals – existing improvements (owner or lender).	CLTA 100.29
By owner of water (owner or lender).	CLTA 103.5
By owner of water – FHA project P. 22 ---TA lender).	CLTA 103.8

Mineral owner has relinquished surface rights (owner or lender).	CLTA 110.3
By owner of minerals – existing improvements (CLTA owner).	CLTA 126.1(2c), 126.2(2d); CTI 2695 (2d), 2696(2c)

SURVEY-MAP-PLAT

Policy plat shows correct location and dimensions of land (ALTA lender).	CLTA 116
Land described in policy same as that shown on survey (owner or lender).	CLTA 116.1
Condominium project correctly shown on recorded map (owner or lender).	CLTA 116.2
Land described in policy may be described by reference to later subdivision map (owner or lender).	CLTA 116.3

TAXES

Estate or interest is a condominium and entitled to be assessed and taxed as a separate parcel (lender).	CLTA 115, 115.1
Estate or interest is a condominium and entitled to be assessed and taxed as a separate parcel (CLTA owner).	CLTA 126.2(2a)
Amends Schedule B general reference to supplemental taxes (ALTA owner or lender).	CTI 3124;

TRUST DEEDS

Assignment of beneficial interest (lender).	CLTA 104, 104.A, 104.1, 104.8, 104.9, 104.10
Collateral assignment of beneficial interest (lender).	CLTA 104.4, 104.11
No assignment of lessor's interest in lease (ALTA lender).	CLTA 104.6
No assignments of rents (lender).	CLTA 104.7
Two trust deeds in favor of same lender (lender).	CLTA 105, 105.1
Unenforceability of lien following ostensible merger (ALTA lender).	CLTA 107.11
Optional advance under trust deed (lender).	CLTA 108.7, 108.7-M, 108.8, 108.8-M, 111.10

Modification (lender).	CLTA 110.4, 110.5, 110.6
Priority over environmental protection liens (ALTA lender).	CLTA 110.9;
No impairment of lien after partial reconveyance (lender).	CLTA 111, 111.1, 111.3
No impairment of lien after subordination (lender).	CLTA 111.2
No impairment of lien after conveyance by, and release of, original trustor (ALTA lender).	CLTA 111.4
Variable or renegotiable rate – validity, enforceability, priority after interest adjustments (ALTA lender).	CLTA 111.5, 111.6, 111.7, 111.8
Securing bonds (lender).	CLTA 112, 112.1
If priority is doubtful – circuitry of lien situations (ALTA lender).	CLTA 119.3
Subordinated trust deed to oil and gas lease (oil and gas lessee).	CLTA 120.2
Obligatory advance under trust deed (ALTA lender).	CLTA 111.11, 122, 122.2, 122.3, 122.4
Right of rescission – Truth in Lending Act (ALTA lender).	CLTA 125
Revolving loan or line of credit – priority of advance (lender)/increase in line of credit.	CLTA 108.10; 111.10; 111.11
Advance after violation of loan agreement (lender).	SUTIC 4
Enforcement of lien – “doing business”.	CLTA 3109,
Shared Appreciation Mortgage (ALTA lender).	CTI 3111,
Loan Recharacterization (ALTA lender).	CTI 3113,

UNMARKETABILITY

CC&R violations (ALTA lender).	CLTA 100 (2b)
CC&R violations (CLTA lender)	CLTA 100.1(2b)

Reverter provision in CC&Rs (ALTA lender). CLTA 100.18

Present violation of CC&Rs (ALTA or CLTA lender). 100.27

USURY

Mortgage lien not usurious under laws of particular state or states (ALTA lender). CTI 3305

WATER

Use of the surface to extract water (owner or lender). CLTA 103.5

Use of the surface to extract water (lender). CLTA 103.8

ZONING

Compliance with zoning ordinance – vacant land (owner or lender). CLTA 123.1

Compliance with zoning ordinance – improved land (owner or lender). CLTA 123.2

Violation of zoning ordinance – forced removal, interference with use as residence (owner). CLTA 126.1(2b3), 126.2(2c3)

CLTA Restrictions, Easements, Minerals Endorsement (10/17/98) 100.2

ENDORSEMENT
Attached to No. _____
Issued By
STEWART TITLE
GUARANTY COMPANY

The Company insures the owner of the indebtedness secured by the insured mortgage against loss or damage sustained by reason of:

1. The existence at Date of Policy of any of the following:

(a) Covenants, conditions or restrictions under which the lien of the mortgage referred to in Schedule A can be divested, subordinated or extinguished, or its validity, priority or enforceability impaired.

(b) Unless expressly excepted in Schedule B:

(1) Present violations on the land of any enforceable covenants, conditions or restrictions, and any existing improvements on the land which violate any building setback lines shown on a plat of subdivision recorded or filed in the public records.

(2) Any instrument referred to in Schedule B as containing covenants, conditions or restrictions on the land which, in addition, (i) establishes an easement on the land; (ii) provides a lien for liquidated damages; (iii) provides for a private charge or assessment; (iv) provides for an option to purchase, a right of first refusal or the prior approval of a future purchaser or occupant.

(3) Any encroachment of existing improvements located on the land onto adjoining land, or any encroachment onto the land of existing improvements located on adjoining land.

(4) Any encroachment of existing improvements located on the land onto that portion of the land subject to any easement excepted in Schedule B.

(5) Any notices of violation of covenants, conditions and restrictions relating to environmental protection recorded or filed in the public records.

2. Any future violation on the land of any existing covenants, conditions or restrictions occurring prior to the acquisition of title to the estate or interest in the land by the Insured, provided the violation results in:

(a) Invalidity, loss of priority, or unenforceability of the lien of the insured mortgage; or

(b) loss of title to the estate or interest in the land if the Insured shall acquire title in satisfaction of the indebtedness secured by the insured mortgage.

3. Damage to existing improvements, including lawns, shrubbery or trees:

(a) which are located on or encroach upon that portion of the land subject to any 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;

(b) resulting from the future exercise of any right to use the surface of the land for the extraction or development of minerals excepted from the description of the land or excepted in Schedule B.

4. Any final court order or judgment requiring the removal from any land adjoining the land of any encroachment excepted in Schedule B.

5. Any final court order or judgment denying the right to maintain any existing improvements on the land because of any violation of covenants, conditions or restrictions or building setback lines shown on a plat of subdivision recorded or filed in the public records.

Wherever in this endorsement the words "covenants, conditions or restrictions" appear, they shall not be deemed to refer to or include the terms, covenants, conditions or limitations contained in an instrument creating a lease.

As used in paragraphs 1(b)(1) and 5, the words "covenants, conditions or restrictions" shall not be deemed to refer to or include any covenants, conditions or restrictions relating to environmental protection.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Signed under seal for the Company, but this endorsement is to be valid only when it bears an authorized countersignature.

CLTA Enforceability of Reverter Rights in CC&R Endorsement 100.12

ENDORSEMENT

Attached to Policy No.

Issued by

**STEWART TITLE
GUARANTY COMPANY
HEREIN CALLED THE COMPANY**

The Company hereby insures the insured against loss or damage which the insured shall sustain by reason of the enforcement or attempted enforcement of any reverter, right of re-entry or right or power of termination of the estate or interest referred to in Schedule A upon a breach of the covenants, conditions and restrictions referred to in Schedule B.

For purposes of this endorsement, the words "covenants," "conditions" or "restrictions" shall not be deemed to refer to or include any "covenants", "conditions" or "restrictions" relating to environmental protection, 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.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

CLTA Exercise of Surface Rights Endorsement 100.23

ENDORSEMENT

Attached to Policy No.

Issued by

**STEWART TITLE
GUARANTY COMPANY
HEREIN CALLED THE COMPANY**

The Company hereby insures the owner of the indebtedness secured by the mortgage referred to in Schedule A against loss which the insured shall sustain by reason of damage to existing improvements, including lawns, shrubbery or trees resulting from the exercise of any right to use the surface of the land for the extraction or development of the minerals leased under the oil and gas lease shown in paragraph _____ of Schedule B.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

CLTA Removal of Improvements from Easement Endorsement 103.3

ENDORSEMENT

Attached to Policy No.

Issued by

**STEWART TITLE
GUARANTY COMPANY
HEREIN CALLED THE COMPANY**

The Company hereby insures the owner of the indebtedness secured by the mortgage referred to in paragraph _____ of Schedule _____ against loss which the insured shall sustain in the event that the owner of the easement referred to paragraph _____ of Schedule B shall, for the purpose of * _____ compel the removal of any portion of the improvements on the land which encroach upon said easement.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

** insert use against which insurance is to be given, e.g.,*

(1) Insurance limited to loss by reason of maintenance and repair of specific existing structure: "maintaining and repairing the existing storm drain structure within said easement."

(2) Insurance same as (1) plus enlarging or replacing existing structure: "maintaining, repairing, enlarging or replacing the existing storm drain within said easement."

(3) Insurance unlimited: "exercising the right of use or maintenance of said easement."

CLTA Easements Providing Ingress & Egress Endorsement 103.4

ENDORSEMENT

Attached to Policy No.

Issued by

**STEWART TITLE
GUARANTY COMPANY
HEREIN CALLED THE COMPANY**

The Company hereby insures the insured against loss which the insured shall sustain by reason of the failure of the easement described as Parcel _____ in Schedule _____ to provide the owner of the estate or interest referred to in Schedule A with ingress and egress to and from a public street known as (insert name of street).

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

CLTA Physically Open Street Endorsement 103.7

ENDORSEMENT

Attached to Policy No.

Issued by

**STEWART TITLE
GUARANTY COMPANY
HEREIN CALLED THE COMPANY**

The Company hereby insures the insured against loss or damage which the insured shall sustain by reason of the failure of the land to abut upon a physically open street known as (insert name of street).

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

CLTA Additional Advance Endorsement 108.8

ENDORSEMENT
Attached to Policy No.
Issued by

STEWART TITLE
GUARANTY COMPANY
HEREIN CALLED THE COMPANY

Upon the representation and assurance by the insured that the insured has made an additional advance to _____ in the sum of \$ _____, evidenced by a promissory note for that amount, executed by said party or parties, dated _____, and secured by the mortgage referred to in Schedule A, the Company hereby insures the insured against loss which the insured shall sustain by reason of

- (1) Title to the estate or interest referred to in Schedule A being vested at the date of this endorsement, in other than the maker or makers of the promissory note evidencing said additional advance, except as affected by the following matters:
- (2) Priority over said mortgage, insofar as the same secures said additional advance of any lien or encumbrance existing at the date of this endorsement which is not shown or referred to in Schedule B as prior to the insured mortgage nor excluded from coverage in the Conditions and Stipulations or Schedule of Exclusions From Coverage, except as affected by the following matters:
- (3) Any reconveyance, full or partial, or modification or subordination of the insured mortgage shown by the public records at the date of this endorsement, except for the following instruments:

**THIS ENDORSEMENT MAY NOT BE ISSUED WITHOUT APPROVAL FROM
STEWART TITLE GUARANTY UNDERWRITING PERSONNEL.**

The total liability of the Company under the policy and any endorsements therein shall not exceed, in the aggregate, the face amount of the policy, plus the amount of said additional advance, and costs which the Company is obligated under the Conditions and Stipulations thereof to pay.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly

Reprinted from Forms and Guidelines

stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements.

Reprinted from Forms and Guidelines

CLTA Deletion of Exception Endorsement 110.1

ENDORSEMENT
Attached to Policy No.
Issued by

STEWART TITLE
GUARANTY COMPANY
HEREIN CALLED THE COMPANY

The Policy is hereby amended by deleting paragraph _____ of Schedule B.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Reprinted from Forms and Guidelines

CLTA Modification Endorsement 110.5

ENDORSEMENT
Attached to Policy No.
Issued by

STEWART TITLE
GUARANTY COMPANY
HEREIN CALLED THE COMPANY

The Company hereby insures the owner of the indebtedness secured by the insured mortgage against loss or damage which the insured shall sustain by reason of:

1. The failure of that certain agreement executed by _____ and recorded _____, to modify the insured mortgage or the obligation secured thereby;
2. The priority of any lien or encumbrance over the lien of the insured mortgage as modified by the above mentioned agreement, except for those matters shown in Schedule B as prior to the insured mortgage, and the following matters:

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

ALTA Environmental Protection Lien Endorsement 8.1
CLTA Environmental Protection Lien Endorsement 110.9

**ENDORSEMENT ATTACHED TO AND MADE A PART
OF POLICY OF TITLE INSURANCE
SERIAL NUMBER _____
ISSUED BY**

**STEWART TITLE
GUARANTY COMPANY
HEREIN CALLED THE COMPANY**

Order No.:

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 the insured against loss or damage sustained by reason of lack of priority of the lien of the insured mortgage over:

(a) any environmental protection lien which, 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 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 for by any state statute in effect at Date of Policy, except environmental protection liens provided for by the following state statutes:

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Signed under seal for the Company, but this endorsement is to be valid only when it bears an authorized countersignature.

CLTA Property Description Same as Survey Endorsement 116.1

ENDORSEMENT

Attached to Policy No.

Issued by

**STEWART TITLE
GUARANTY COMPANY
HEREIN CALLED THE COMPANY**

The Company hereby insures the insured against loss or damage which the insured shall sustain by reason of the failure of the land to be the same as that delineated on the plat of a survey made by _____, on _____, designated Job No. _____, a copy of which is attached hereto and made a part hereof.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

CLTA Contiguity Endorsement 116.4

ENDORSEMENT

Attached to Policy No.

Issued by

**STEWART TITLE
GUARANTY COMPANY
HEREIN CALLED THE COMPANY**

The Company hereby insures the insured against loss or damage which the insured shall sustain by reason of the failure of the land described in Schedule _____ to be contiguous to*

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

** Describe land contiguous to subject land by legal description or by reference to a recorded instrument.*

CLTA Subdivision Map Act Endorsement 116.7

ENDORSEMENT

Attached to Policy No.

Issued by

**STEWART TITLE
GUARANTY COMPANY
HEREIN CALLED THE COMPANY**

The Company hereby insures the insured against loss or damage which the insured shall sustain by reason of the failure of the land described as Parcel _____ in Schedule _____ to constitute a lawfully created parcel according to the Subdivision Map Act (Section 66410, et seq., of the California Government Code) and local ordinances adopted pursuant thereto.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

ALTA Zoning-Completed Structure Endorsement 3.1
CLTA Zoning-Completed Structure Endorsement 123.2

ENDORSEMENT ATTACHED TO AND MADE A PART
OF POLICY OF TITLE INSURANCE
SERIAL NUMBER _____
ISSUED BY
STEWART TITLE
GUARANTY COMPANY
HEREIN CALLED THE COMPANY

1. The Company hereby insures the Insured against loss or damage in the event that, at Date of Policy:

(a) According to applicable zoning ordinances and amendments thereto, the land is not classified Zone _____.

(b) The following use or uses are not allowed under that classification:

and there shall be no liability under this 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 thereto mentioned above, including but not limited to the failure to secure necessary consents or authorizations as a prerequisite to the use or uses:

2. The Company further insures the insured against loss or damage arising from a final decree of a court of competent jurisdiction

(a) prohibiting the use of the land, with any structure presently located thereon, as insured in paragraph 1(b); or

(b) requiring the removal or alteration of the structure on the basis that, at Date of Policy, the ordinances and amendments thereto have been violated with respect to any of the following matters:

(i) Area, width or depth of the land as a building site for the structure;

(ii) Floor space area of the structure;

(iii) Setback of the structure from the property lines of the land;

(iv) Height of the structure; or,

(v) Number of parking spaces.

There shall be no liability under this endorsement based on:

(a) The invalidity of the ordinances and amendments thereto mentioned above 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 estate or interest covered by this policy.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Signed under seal for the Company, but this endorsement is to be valid only when it bears an authorized countersignature.

STG Doing Business Endorsement 1

DOING BUSINESS ENDORSEMENT

Attached to and Forming a Part of

Loan Policy No. _____

Issued by

STEWART TITLE GUARANTY COMPANY

Except as provided hereafter, the Company hereby insures the named Insured at Date of Policy against loss or damage which said Insured shall sustain by reason of the entry of any court order or judgment which constitutes a final determination and denies the right to enforce the lien of the mortgage referred to in Schedule A on the ground that making the loan secured thereby constituted a violation of Section 191, et seq. of the California Corporations Code (for purposes of this Endorsement, the "Corporate Doing Business Law") in effect at Date of Policy.

This Endorsement does not insure against loss or damage if (1) violation of the Corporate Doing Business Law is the result of other transactions, if any, by said Insured within the state, or (2) said Insured maintains an office or place of business in the state, or (3) the loan is negotiated in the State.

THIS ENDORSEMENT MAY NOT BE ISSUED WITHOUT APPROVAL FROM STEWART TITLE GUARANTY UNDERWRITING PERSONNEL

This Endorsement is made a part of the Policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the Policy and any prior endorsements, nor does it extend the Effective Date of the Policy and any prior endorsements, nor does it increase the face amount thereof.

[Witness clause optional]

FAIRWAY ENDORSEMENT

Attached to and Forming a Part of

Owner's Policy No. _____

Issued by

**STEWART TITLE
GUARANTY COMPANY**

The Company hereby assures and agrees with the insured that, notwithstanding anything to the contrary contained in this Policy, in the event of loss or damage insured against under this Policy, the Company shall not deny liability under this Policy to the insured on the ground that after the Effective Date of this Policy a dissolution or termination of the insured partnership has occurred or a new partnership has been formed solely by reason of any one or more transfers of all or any part of the partnership interests of:

(i) any one or more of the general partners of the insured to a Designated Transferee and/or;

(ii) any one or more of the limited partner(s) of the insured and/or;

(iii) any one or more of the limited partner's interest to the current general partner or a Designated Transferee (hereafter called "Permitted Transfers").

**THIS ENDORSEMENT MAY NOT BE ISSUED WITHOUT APPROVAL FROM STEWART TITLE
GUARANTY UNDERWRITING PERSONNEL**

The Company hereby agrees that it shall be and remain liable to any successor of the named insured resulting from any such Permitted Transfer, in accordance with all of the terms and provisions of this Policy, notwithstanding any such transfer of partnership interests or admission of new or substituted general or limited partners. The benefits of the insurance coverage provided for herein shall be limited to the Date of the Policy and shall be subject to the Exclusions From Coverage, the Schedules and the Conditions and Stipulations of the Policy, and any rights or defenses the Company would have had against the named insured or its constituent partners before or after any withdrawal or substitution thereof. A Designated Transferee shall be:

This Endorsement should not be construed as providing any insurance (a) as to matters attaching or created after date of Policy; or (b) as to the status of the insured after any permitted transfer.

This Endorsement is made a part of the Commitment or Policy. It is subject to all the terms of the Commitment or Policy and prior endorsements. Except as expressly stated on this Endorsement, the terms, dates and amount of the Commitment or Policy and prior endorsements are not changed.

[Witness clause optional]

STG Gap Coverage Endorsement 1

ENDORSEMENT

Attached To and Forming a Part of

Policy of Title Insurance No.

Issued By

STEWART TITLE GUARANTY COMPANY

Notwithstanding the provisions of Paragraph 3(d) of the Exclusions from Coverage, the Company insures the insured against loss or damage (including costs, attorneys' fees and expenses) sustained or incurred by the insured as provided in the policy by reason of defects, liens, encumbrances, adverse claims, or other matters attaching or created subsequent to Date of Policy and prior to the recordation of the insured mortgage.

THIS ENDORSEMENT MAY NOT BE ISSUED WITHOUT APPROVAL FROM STEWART TITLE GUARANTY UNDERWRITING PERSONNEL

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

[Witness clause optional]

STG Gap Indemnity 1991

Form of Indemnity Agreement

Commitment No. _____

HOLD HARMLESS INDEMNITY

WHEREAS, Stewart Title Guaranty Company (Stewart Title) has been asked to issue its _____ policy(ies) of title insurance in the aggregate amount of \$ _____ in favor of _____ covering premises being acquired from _____ as more particularly described in Schedule A attached hereto;

AND WHEREAS, Stewart Title is unwilling to give insurance coverage until the instruments under which _____ acquire(s) the title are filed for record in the appropriate registry;

AND WHEREAS the parties to the transaction have requested Stewart Title to furnish a so-called "New York Style Closing" which provides for the unconditional delivery of the deed by the seller to the purchaser and payment of the purchase price by the purchaser to the seller;

NOW, THEREFORE, it is agreed that in consideration of Stewart Title issuing its policy effective as of the date closing occurs in _____ without making exception therein to matters which may arise between said date of closing and the date the documents creating the interest being insured have been filed for record and which matters may constitute an encumbrance on or affect said title, (I)/(we) agree to promptly defend, remove, bond or otherwise dispose of any encumbrance, lien or objectionable matter to title which may arise or to be filed, as the case may be, against the captioned premises during the period of time between date of closing and date of recording of all closing instruments, and to hold harmless, and indemnify Stewart Title against all expenses, costs, and attorneys' fees, which may arise out of our failure to so remove, bond or otherwise dispose of any said liens, encumbrances or objectionable matters.

Dated this _____ day of _____ 20_____.

(Acknowledgment)

USURY ENDORSEMENT

Attached to Policy No. _____

Issued by

STEWART TITLE GUARANTY COMPANY

The Company hereby insures against loss or damage by reason of a final judgment determining the invalidity or unenforceability of the lien of the insured mortgage resulting from violation of the usury laws of the State of _____ in effect at Date of Policy.

THIS ENDORSEMENT MAY NOT BE ISSUED WITHOUT APPROVAL FROM STEWART TITLE GUARANTY UNDERWRITING PERSONNEL

This Endorsement is made a part of the Policy and is subject to all the terms and provisions thereof and of any prior endorsement thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the Policy in any prior endorsement, nor does it extend the Effective Date of the Policy or any prior endorsement, nor does it increase the face amount thereof.

IN WITNESS WHEREOF, the Company has caused its corporate name and seal to be hereunto affixed by its duly authorized officers.

[Witness clause optional]

NON-IMPUTATION ENDORSEMENT

Attached to and Forming a Part of

_____ Policy of Title Insurance No. _____

Issued by

STEWART TITLE GUARANTY COMPANY

The Company hereby assures _____ that the Company will not deny liability thereunder to said insured under paragraph 3(b) of the Exclusions from Coverage on the ground that said insured had knowledge of any matter solely by reason of notice thereof imputed to it through _____ (the "Other Person") by operation of law.

Provided, however, that Company shall have no liability under this Endorsement to the Other Person and all rights of subrogation and indemnity the Company may have against the Other Person shall not be affected hereby.

In the event of loss under this Endorsement, the amount of such loss paid by the Company shall be equal to the actual loss (as determined under the Conditions and Stipulations of the Policy) less a percentage of such loss equal to the percentage of partnership interest in the Insured [then owned] owned at Date of Policy by Other Person. [Delete this paragraph if Other Person is not an investor or participant in Insured.]

THIS ENDORSEMENT MAY NOT BE ISSUED WITHOUT APPROVAL FROM STEWART TITLE GUARANTY UNDERWRITING PERSONNEL

The total liability of the Company under said Policy and any endorsements therein shall not exceed, in the aggregate, the face amount of said Policy and costs which the Company is obligated under the Conditions and Stipulations thereof to pay.

Nothing herein contained shall be construed as extending or changing the Effective Date of said Policy, unless otherwise expressly stated.

This Endorsement, when approved as above stated and countersigned below by a validating signatory, is made a part of said Policy and is subject to the Exclusions from Coverage (except to the extent paragraph 3(b) of the Exclusions is modified hereby; no other Exclusion being limited by this Endorsement), the Conditions and Stipulations, and the Exceptions in the Schedules.

IN WITNESS WHEREOF, the Company has caused its corporate name and seal to be hereunto affixed by its duly authorized officers.

STG Indemnity-Non-Imputation Endorsement

INDEMNITY - NON-IMPUTATION ENDORSEMENT

WHEREAS, STEWART TITLE GUARANTY COMPANY, hereinafter referred to as "the Company", is about to issue its Title Insurance Policies Nos. _____ hereinafter referred to as "the Title Insurance Policies", in respect to the lands described in the Company's Commitment For Title Insurance Nos. _____ ("the Commitment");

AND WHEREAS, the Company has been requested to issue the Title Insurance Policy or Policies and Substitute Policy in the form then commonly used by the Company in respect to the lands or to some part or parts thereof, or interest therein, all of the foregoing being hereafter referred to as "Future Policies", together with "Non-Imputation Endorsements", sometimes hereafter referred to as "the Endorsements", pursuant to which the Company agrees that notwithstanding the terms of the Conditions and Stipulations or the Exclusions from Coverage of the Title Insurance Policies to the contrary, in the event of loss or damage insured against under the Title Insurance Policies, the Company will not deny its liability thereunder to the Insured under Paragraph 3(b) of the Exclusions on the ground that said Insured had knowledge of any matter solely by reason of notice thereof imputed to it through _____, all as more fully set forth in the Endorsements;

AND WHEREAS, the Company would refrain from issuing the Endorsements to the Title Insurance Policies in the absence of the representations, agreements and undertakings contained herein.

NOW, THEREFORE, the undersigned, as a material inducement to the Company to issue the Title Insurance Policies with the Endorsements, represent and affirm that neither _____, nor any of the undersigned has done anything to create any lien, encumbrance, transfer of interest, constructive trust or other equity in the land not disclosed in the Commitments or in the Public Records (as defined in the Title Insurance Policies), nor do they have any knowledge of any such adverse interests not disclosed in the Commitments or in the Public Records (as defined in the Title Insurance Policies), EXCEPT FOR the following matters: (if none, so state)

FURTHER, the undersigned, jointly and severally, for themselves, their heirs, personal representatives and assigns do hereby covenant and agree with the Company: (1) To forever fully protect, defend and save the Company harmless from and against from any and all loss, cost, damages, attorneys' fees and expenses of every kind and nature which it may suffer, expend or incur under or by reason of, or in consequence of, the Title Insurance Policies with the Endorsements on account of, or in consequence of, or going out of any such lien, encumbrance, transfer of interest, constructive trust or other equity in the land created by any of the undersigned (whether acting on behalf of the insured under the Title Insurance Policies or otherwise) or otherwise known by any of the undersigned (whether acting on behalf of the insured under the Title Insurance Policies or otherwise) and not disclosed in the Commitment or in the Public Records (as defined in the Title Insurance Policies), or on account of the assertion or enforcement or attempted assertion or enforcement thereof or of any rights existing or hereafter arising or which may be claimed to exist under, or by reason of or in consequence of, or growing out of the items referred to above; (2) To provide for the defense, at their own expense, on behalf and for the protection of the Company and parties protected under the Endorsements who may become so protected, against loss or damage under the Title Insurance Policies with the Endorsements (but without prejudice to the right of the Company to defend if it so elects) in all litigation consisting of actions or proceedings based on any items referred to above which may be asserted or attempted to be asserted, established or enforced in, to, upon, against or in respect to the lands or any part thereof, or interest therein; and (3) To pay, discharge, satisfy or remove all

or any of the items referred to above, when called upon by the Company after thirty (30) days' notice in writing and mailed to the undersigned at the address set out below.

Nothing contained herein shall be construed so as to obligate the Company to issue its Title Insurance Policies with the Endorsements in the form requested. However, should the Company issue any such Title Insurance Policies, it will do so in reliance upon the undertakings of the undersigned and the issuance of such Title Insurance Policies with the Endorsements shall be the consideration for the above undertakings by the undersigned.

The Company shall have the right at any time hereafter, after notice to the undersigned below, when it shall deem necessary, expedient, desirable or of interest to do so, in its sole discretion, to pay, discharge, satisfy or remove from the title to said real estate all or any of the items set out above. The undersigned covenants and agrees to pay to the Company all amounts so expended on demand.

IN WITNESS WHEREOF, the undersigned have executed this Agreement on this the _____ day of _____, A.D. 20____.

BY: _____

Subscribed and sworn to before me the undersigned authority this _____ day of _____, 20____.

Notary Public, State of _____

My Commission Expires: _____

Tax Lot Endorsement

ENDORSEMENT

Attached To and Forming a Part of

Policy of Title Insurance No.

Issued By

STEWART TITLE GUARANTY COMPANY

THE COMPANY HEREBY ASSURES THE INSURED THAT THE LAND REFERRED TO IN SCHEDULE A CONSISTS OF SEPARATE TAX LOT OR LOTS AND SAID LOT OR LOTS WILL NOT INCLUDE ANY PROPERTY NOT INCLUDED WITHIN SAID LAND.

THIS ENDORSEMENT IS MADE A PART OF THE POLICY AND IS SUBJECT TO ALL OF THE TERMS AND PROVISIONS THEREOF AND OR ANY PRIOR ENDORSEMENTS THERETO. EXCEPT TO THE EXTENT EXPRESSLY STATED, IT NEITHER MODIFIES ANY OF THE TERMS AND PROVISIONS OF THE POLICY AND ANY PRIOR ENDORSEMENTS, OR DOES IT EXTEND THE EFFECTIVE DATE OF THE POLICY AND ANY PRIOR ENDORSEMENTS, NOR DOES IT INCREASE THE FACE AMOUNT THEREOF.

SIGNED UNDER SEAL FOR THE COMPANY, BUT THIS ENDORSEMENT IS TO BE VALID ONLY WHEN IT BEARS AN AUTHORIZED COUNTERSIGNATURE.

DATED:

Pending Improvements

ENDORSEMENT

Attached to Policy No.

Issued by

**STEWART TITLE
GUARANTY COMPANY
HEREIN CALLED THE COMPANY**

LIABILITY HEREUNDER AT THE DATE HEREOF IS LIMITED TO \$_____.
LIABILITY SHALL INCREASE AS CONTEMPLATED IMPROVEMENTS ARE MADE, SO THAT ANY LOSS PAYABLE HEREUNDER SHALL BE LIMITED TO SAID SUM PLUS THE AMOUNT ACTUALLY EXPENDED BY THE INSURED IN IMPROVEMENTS AT THE TIME THE LOSS OCCURS. ANY EXPENDITURES MADE FOR IMPROVEMENTS, SUBSEQUENT TO THE DATE OF THIS POLICY, WILL BE DEEMED MADE AS OF THE DATE OF THIS POLICY. IN NO EVENT SHALL THE LIABILITY OF THE COMPANY HEREIN EXCEED THE FACE AMOUNT OF THIS POLICY. NOTHING CONTAINED IN THIS PARAGRAPH SHALL BE CONSTRUED AS LIMITING ANY EXCEPTION OR ANY PRINTED PROVISIONS OF THIS POLICY.

THIS ENDORSEMENT IS MADE A PART OF THE POLICY AND IS SUBJECT TO ALL OF THE TERMS AND PROVISIONS THEREOF AND OR ANY PRIOR ENDORSEMENTS THERETO. EXCEPT TO THE EXTENT EXPRESSLY STATED, IT NEITHER MODIFIES ANY OF THE TERMS AND PROVISIONS OF THE POLICY AND ANY PRIOR ENDORSEMENTS, NOR DOES IT EXTEND THE EFFECTIVE DATE OF THE POLICY AND ANY PRIOR ENDORSEMENTS, NOR DOES IT INCREASE THE FACE AMOUNT THEREOF.

SIGNED UNDER SEAL FOR THE COMPANY, BUT THIS ENDORSEMENT IS TO BE VALID ONLY WHEN IT BEARS AN AUTHORIZED COUNTERSIGNATURE.

DATED:

Utility Availability Endorsement

Attached To and Made a Part of
Policy No. _____
Issued By

STEWART TITLE GUARANTY COMPANY

The Company hereby insures the insured (but the Company does not insure that any of the Utilities have been installed at the date hereof) against actual loss or damage which said insured shall sustain by reason of any inaccuracies in the following assurance:

1. Water, gas, electric, telephone, storm sewer and sanitary sewer services are available to the land described in Schedule A, either over, under or upon public rights of way directly adjacent to said land or over, under or upon any easement (not terminable at the grantor thereof or by his heirs, personal representatives, successors or assigns) for the benefit of said land that connects to public rights of way.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

Dated:

ALIEN INVASION ENDORSEMENT
Attached to Policy No.
Issued by

HEREIN CALLED THE COMPANY

The Company hereby insures against loss or damage arising out of the dispossession of the insured from the land or impairment of priority of the lien of the insured mortgage by reason of an interstellar alien invasion in which the insured land is used as a base camp or other permanent or semi-permanent site to assist in a hostile takeover of the Earth. The insured shall be deemed dispossessed if the improvements have been destroyed by an anti-matter ray, phaser, photon torpedo or they are crushed by the Mothership. The insured will not be deemed dispossessed if the insured is consumed by the aliens as food or their bodies are taken over. In such cases proof must be offered by the heirs of the insured that the aliens are making a claim to superior title to the insured land. A claim by the aliens that they are superior beings does not in and of itself meet this requirement. This Policy will not cover dispossession if the insured land is given to the aliens by the U.S. Government or a world representative body as a peace offering.

At the company's option they may negotiate with the aliens, attempt to repel them by force or just pay the diminution in value of the property.

Proof of dispossession may be in the form of a video, photograph or an affidavit signed by a certified alien commander or a NASA scientist. Such proof shall become the sole property of the Company and may be sold to Hard Copy, The National Enquirer or other such organization to offset the expenses of the claim.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

ALIEN INVASION ENDORSEMENT (AREA 51)

Purpose:

Provides coverage against the dispossession of the insured from the land, or the impairment of the priority of the insured mortgage by reason of an interstellar alien invasion in which the insured land is used as a base camp or other permanent or semi-permanent site to assist in the hostile takeover of the Earth. The insured shall be deemed dispossessed if the improvements located on the land have been destroyed by an anti-matter ray, phaser or photon torpedo. The insured is not deemed "dispossessed" if consumed by the aliens as food, or the insured's body is taken over by the aliens.

This endorsement is often referred to as the "Area 51" endorsement.

Policy to be endorsed:

Owner and/or Loan Policy

Suggested Premium:

Contact Regional Underwriting

Underwriting Guidelines:

1. A physical inspection of the property must verify, and the seller must execute an affidavit stating that:
 - a. There is no visible evidence of cattle mutilations on the ground;
 - b. There is no visible evidence of crop circles;
 - c. There is no visible evidence of circular or cigar shaped ground indentations on the ground;
 - d. There are no strange or unusual "humming" sounds heard on the ground.
2. A careful visual inspection of the seller is required. Contact Regional Underwriting immediately if your visual inspection of the seller reveals:
 - a. The seller has a pointed head, and when asked where he is from, he replies, "France"; or
 - b. The seller's ears appear to be "pointed", and the seller repeatedly says: "That is illogical"; or
 - c. At closing the seller appears with a friend named "Gort", and is heard to say, "Klaztu Barada Nikto".

REQUEST FOR APPROVAL TO ISSUE OVERLIMITS (LARGE) POLICY

cc:

To: Stewart Title Guaranty Company
Authorized Underwriting Personnel
Re: File/Order No.

Title was examined from 11-30-99 to present (attach copy of Commitment)

Starter or prior examination: Stewart ALTA 1992

Interest to be insured (fee, lease, easement, option, etc.): fee

Policy Form and Type Insured Amount
(Example: 1992 ALTA (fee & leasehold) Owner)

Policy Form and Type	Insured	Amount
<u>1990 CLTA</u>		\$ <u>2,600,000⁰⁰</u>
<u>1992 ALTA</u>		\$ <u>460,000</u>

Describe transaction and purpose of financing: sale

Does land abut an open, dedicated road? YES If not, was title to access easement examined?

Is priority of insured lien to be based on subordination agreement? (attach) NO

Brief description of type of property (e.g., apartments, offices, etc.): office see attached photo

Describe authority of seller/borrower (Resolution, Power of Attorney, Limited Partner or Shareholder or Member approval, review of Partnership Agreement or Operating Agreement, Good Standing):

If recent construction and within lien period, describe proof of payment. (Was a notice of completion filed?): None

This transaction is a construction loan and we (are) (are not) giving mechanic's lien coverage. (Line through inapplicable language and attach exception or endorsement to be used).

Endorsements requested (attach copies if necessary) see attached copy of requested endorsement

Other unusual risks and/or affirmative coverages

From our examination of the title and the foregoing, we are of the opinion that the Policy or other form presently requested can be safely issued.

LENDER OR CHIEF TITLE OFFICER

PRESIDENT

ed upon the information above given, approval is hereby granted to issue the Policy as requested, subject to the following:

ALL US IF ADDITIONAL COVERAGES OR RISKS ARE LATER REQUESTED OR APPLY. CALL OUR INSURANCE DEPARTMENT AT 1-800-729-1906 IF REINSURANCE IS REQUIRED.

UNDERWRITER PERSONNEL SIGNATURE

ADDITIONAL UNDERWRITER SIGNATURE

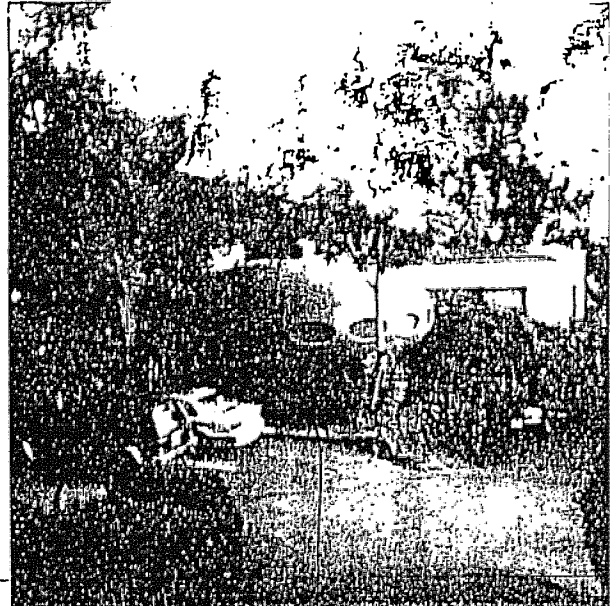
CALIFORNIA TITLE SERVICES

Inspection Report

Request Photo

Title Company: Stewart Order # _____
 Title Officer: _____ Date Ord: _____
 Property Address: _____ Inspectio _____

 Seller/Owner: _____
 Lender: _____ Sellers Agent / Ph _____



Mechanics Lien Priority Inspection: _____
 No Work in Progress _____ Ph _____
 Work in Progress. Extent of Work in Progress: _____

 Date: _____ Inspector: _____

Foundation Inspection:
 Not Completed as of (Date) _____
 Complete. (Sketch Location of Foundation. Identify Any En _____
 Date: _____ Inspector: _____

UFD OFFICE

Need Complete ALTA Inspection: or Specify:

1. Sketch Location and Size of Buildings, and Distances to Lot Lines on Map
2. Encroachments - Sketch Buildings, ETC. Which Encroach Over Lot Lines or onto Easements, Including Footages, on Attached Map
3. Easements - Sketch All Easements, Including Footages, Not Already shown on Map
4. Improvements

A. Type of Structure: (~~single family dwelling, Apts., etc.~~) PROFESSIONAL OFFICES

B. Approximate Age of Improvements: 30 ± yrs.

5. Construction in Progress:

No
 Yes _____ % Completed. Indicate Work Necessary For Completion:

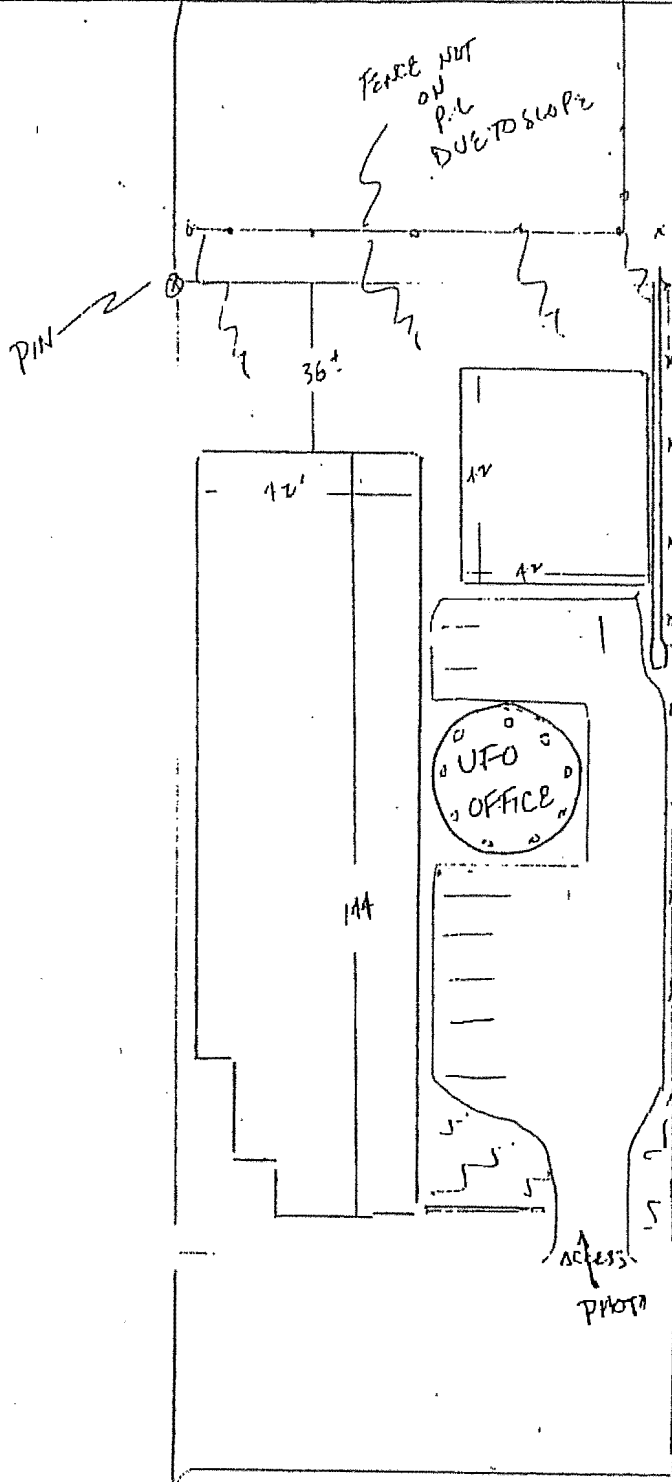
6. Property Address: Same as Shown Above Other: _____

7. Occupied By: Name SEE SKETCH Owner Lessee
 Other Specify: _____

8. Access:

A. Curbs Yes No Sidewalks Yes No Streets Paved Yes No

B. Property Physically Fronts On _____
 Easements in Description Attached Terminates in Public Way Know as _____



- 3601 - JUDD DESIGN
GERHARDT US
WINE BROKER
- 3605A } UNOCCUPIED
3605B }
- 3625 - VIVID MINDS
COMMUNICATO
- 3627A - DONALD PITMAN
DESIGNS
- 3627B - NUTTER
ELECTRICAL
DESIGN
- 3631 - DWIGHT ROGE
ARCHITECT

CHECK PROPERTY IN QUESTION FOR THE FOLLOWING AND EXPLAIN:

ENCROACHMENTS:

- YES NO Onto street right of way _____
- YES NO Onto adjoining property _____
- YES NO Onto record easements _____
- YES NO Adjoining parcel onto PIQ _____
- YES NO Basement extensions _____
- YES NO Fuel or other intakes/exhausts _____
- YES NO Cornices, eaves, window ledges _____
- YES NO pipes, canopies, fire escapes, etc. _____

IMPROVEMENTS ALONG BOUNDARY LINES:

- YES NO Fences _____ *CUTAIN MARK*
- YES NO Walls Retaining Privacy _____
- YES NO Gates, doors, other passages _____
- YES NO Trees, hedges, other landscaping _____
- YES NO Sprinkler Systems _____
- YES NO Railroad rights-of-way _____
- YES NO Driveways and/or walkways _____

UTILITY & DRAINAGE:

- YES NO Transmission Lines _____
- YES NO Pipelines _____
- YES NO Electrical transformers _____
- YES NO Fire hydrant _____
- YES NO Vaults _____
- YES NO [] on PIQ [] Within St. limits _____
- YES NO Manhole _____
- YES NO [] on PIQ [] Within St. limits _____
- YES NO Discharge/diversion of storm waters _____
- YES NO [] Stormdrain [] Open conc. drain [] Natural _____

UNIMPROVED LAND:

- YES NO Construction office _____
- YES NO Test borings _____
- YES NO Engineering stakes _____
- YES NO Land clearing/excavation _____
- YES NO Const. materials/equipment on site _____

MISCELLANEOUS:

- YES NO Mobile home [] Permanent foundation _____
- YES NO Wells - oil or water _____
- YES NO Posted notices, signs, billboards _____
- YES NO Pavements _____
- YES NO Equestrian trail _____
- YES NO Other _____

BULLETIN
Stewart Title Guaranty Company
P. O. Box 2029 Houston, Texas 77252-2029 (800) 729-1902

NL000097

Date: January 22, 2001

From: National Legal Department

To: All Issuing Offices

RE: Revised Over Limits Approval Form

Dear Associates:

Stewart Title Guaranty Company's new improved Request for Approval to issue Over-limits is available through the references section at the end of this bulletin. I think you will find it easier to use than the old, longer form. Each of you have an under-writing limit contained in your underwriting agreement. When you are requested to issue a policy in excess of this limit, you will need to utilize this form. Here are some instructions for use and distribution of the form.

1. Please fill out the form as completely as possible. If there is not enough room to write your response to the questions, please use an additional blank piece of paper.
2. Always attach a copy of the commitment or preliminary report to the Request.
3. Send the completed form with the attached commitment to the Stewart underwriter that has reviewed your overlimits requests in the past. If time permits, you can mail the request. If approval is needed immediately, you should fax or email the request to the appropriate Stewart underwriter. If the amount of the policy to be issued is within the underwriting limit of the Stewart underwriter, you will receive a response from that underwriter. If the policy to be issued exceeds the underwriter's authority limit, the underwriter will forward the request to a senior underwriter for the senior underwriter's approval.

If you have any questions, please contact us at Stewart National Legal Department in Houston.

THIS BULLETIN IS FURNISHED TO INFORM YOU OF CURRENT DEVELOPMENTS. OUR UNDERWRITING AGREEMENTS DO NOT AUTHORIZE OUR ISSUING AGENTS TO ENGAGE IN SETTLEMENTS OR CLOSINGS ON BEHALF OF STEWART TITLE GUARANTY COMPANY. THIS BULLETIN IS NOT INTENDED TO DIRECT YOUR ESCROW OR SETTLEMENT PRACTICES OR TO CHANGE PROVISIONS OF APPLICABLE UNDERWRITING AGREEMENTS.

References

Bulletins Replaced:	None.
Related Bulletins:	NL000059 Overlimit Authority and Reinsurance Form.
Underwriting Manual:	None.
Exceptions Manual:	None.
Forms:	STG Overlimits Approval Request 1

REQUEST FOR APPROVAL TO ISSUE OVERLIMITS (LARGE) POLICY

From: _____ To: Stewart Title Guaranty Company

Authorized Underwriting Personnel

Re: File/Order No. _____

1. Title was examined from _____ to _____ (attach copy of Commitment)

2. Starter or prior examination: _____

3. Interest to be insured (fee, lease, easement, option, etc.): _____

4. Policy Form and Type	Insured	Amount
(Example: 1992 ALTA (fee & leasehold) Owner)		
_____ (____)	_____	\$ _____
_____ (____)	_____	\$ _____
_____ (____)	_____	\$ _____

5. Describe transaction and purpose of financing: _____

6. Does land abut an open, dedicated road? _____. If not, was title to access easement examined? _____

7. Is priority of insured lien to be based on subordination agreement? (attach)

8. Brief description of type of property (e.g., apartments, offices, etc.): _____

9. Describe authority of seller/borrower (Resolution, Power of Attorney, Limited Partner or Shareholder or Member approval, review of Partnership Agreement or Operating Agreement, Good Standing): _____

10. If recent construction and within lien period, describe proof of payment. (Was a notice of completion filed?): _____

11. This transaction is a construction loan and we (are) (are not) giving mechanic's lien coverage. (Line through inapplicable language and attach exception or endorsement to be used).

12. Endorsements requested (attach copies if necessary) _____

13. Other unusual risks and/or affirmative coverages _____

14. From our examination of the title and the foregoing, we are of the opinion that the Policy or other form presently requested can be safely issued.

TITLE EXAMINER OR CHIEF TITLE OFFICER

PRESIDENT

Based upon the information above given, approval is hereby granted to issue the Policy as requested, subject to the following:

**CALL US IF ADDITIONAL COVERAGES OR RISKS ARE LATER REQUESTED OR APPLY.
CALL OUR REINSURANCE DEPARTMENT AT 1-800-729-1906 IF REINSURANCE IS
REQUIRED.**

Dated: _____

UNDERWRITER PERSONNEL SIGNATURE

ADDITIONAL UNDERWRITER SIGNATURE

**REQUEST FOR APPROVAL TO ISSUE OVERLIMITS (LARGE) POLICY, REINSURANCE
AND/OR ENDORSEMENT TO OVERLIMITS POLICY, OR OTHER FORM**

(Please fill out in triplicate and mail to address shown below)
(Enclose a copy of the Title Report or outside Attorney's Opinion and
a copy of proposed Preliminary Report, Binder or Commitment.)

From:

To:

Stewart Title Guaranty Company
Authorized Underwriting Personnel
or
Stewart Title Guaranty Company
National Legal Department
P. O. Box 2029
Houston, Texas 77252-2029
In Re: Our Order No. _____

We have been requested to issue Policy(ies), Guarantee(s), Binder(s) or other form(s) (e.g., Endorsements) of title insurance, covering property described in the attached Preliminary Report, Binder or Commitment ("Commitment").

We found marketable* title in the person shown in the Commitment; we have made a determination that the chain of title was complete; all matters found in the chain of title were examined; all encumbrances, except as shown in the Commitment, were properly released and satisfied; and all litigation was examined and found to be regular and nonappealable, all necessary parties having been duly served. (Here add any further information which might be of value in determining this risk, including facts about occupancy, and any information you have on the financial status of the "purchaser/mortgagor".)

1. Period of search: Title was examined from _____ to _____

2. Starter or prior examination (describe and furnish copy): _____

3. Who examined title?

4. Who is closing transaction? _____

5. Is the policy being issued to or on behalf of a lender, developer, owner, insured or any other person where any such persons have an ownership interest in or other indirect-control of the agent or an employee or other person involved with the issuance of the policy?(e.g., party to transaction has interest in agent) NO _____ YES _____ (If yes, please explain):

6. Interest to be insured (fee, lease, easement, option, etc.): _____

7. Policy Form and Type	Insured	Amount
(Example: 1992 ALTA (fee & leasehold) Owner);		
Check () if extended coverage will be given:		
_____ ()	_____	\$ _____
_____ ()	_____	\$ _____
_____ ()	_____	\$ _____
_____ ()	_____	\$ _____

8. If extended coverage is being given, will a tenant's exception be shown as an exception?: Yes _____ No _____

If answer is no, please explain why not: _____

9. Type of Deed to Insured/Mortgagor (e.g., Warranty, Quitclaim): _____

10. Describe transaction and purpose of financing: (e.g., corporate or partnership change; purpose of financing): _____

11. Does land abut open, dedicated road? _____. If not, was title to access easement examined? _____

12. Is priority of insured lien to be based on subordination agreement? (attach) _____

13. Brief description of type of property (e.g., apartments, offices, unimproved, etc.): _____

14. Is spouse of owner joining in Deed/Mortgage? _____

15. Who is in possession of the land? _____

16. Describe authority of seller/borrower (Resolution, Power of Attorney, Limited Partner or Shareholder approval, review of Partnership Agreement, Good Standing): _____

17. How recent was construction? _____
(If within lien period, describe proof of payment. Was a notice of completion filed) _____

18. Other unusual risks (e.g., insuring over lien): _____

Check applicable boxes and circle choices:

19. **This transaction is a construction loan and we (are) (are not) giving mechanic's lien coverage. (Line through inapplicable language and attach exception or endorsement to be used).

20. **If we give mechanic's lien coverage on construction loan, an inspection verified priority (attach report): YES _____ NO _____
(Describe Financials, Indemnity, Bond, Pending Disbursement language, who is disbursing): _____

21. **If we give mechanic's lien coverage on construction loan, other comments on priority or insurability: _____

22. We will be issuing endorsements to the policy(ies). The endorsements are:

Describe underwriting for endorsements: _____

23. We will be providing express or affirmative insurance (describe):

24. We are relying upon indemnities (describe indemnity and collateral):

25. Tidelands, filled (and submerged) land or riparian issues:

An exception for tidelands, etc., (will / will not) be used (attach exception).

26. Title is based on judicial proceedings (e.g., condemnation, bankruptcy) (describe): _____

27. The land is a hospital or health care facility where Hill-Burton funds (or funds of similar federal or state program) have been used. (If so, add Hill-Burton Exception).

28. We have reviewed a recent acceptable survey (describe).

29. We made an inspection of the land. It discloses (describe use, improvements). _____

30. There will be multiple borrowers or cross collateralization (describe).

31. There will be multiple beneficiaries/assignees (describe).

32. Reinsurance is required (Stewart requires if over \$25,000,000). The insured requires the following reinsurers. _____

33. Coinsurance is required and the following coinsurers will be used.

34. There are rumors that title is defective or may be attacked (describe).

35. From our examination of the title and the foregoing, we are of the opinion that the Policy or other form presently requested (can / cannot) be safely issued.

Title Officer

President/ATO/Operations Manager

From:
Stewart Title Guaranty Company
Authorized Underwriting Personnel

Based upon the information above given, approval is hereby granted to issue the Policy as requested, subject to the following:

CALL US IF ADDITIONAL COVERAGES OR RISKS ARE LATER REQUESTED OR APPLY.

Dated: _____

Senior Underwriting Personnel

Vice President

IF TRANSACTION IS OVER \$25,000,000, PLEASE ANSWER THE FOLLOWING QUESTIONS

Prior Reinsurance file number issued (if any) _____

Project Name _____

County, State _____

Have the Insured's limited the amount of risk Stewart may retain, the reinsurers we may use and the amount the reinsurer's may assume?

Direct access requested on the reinsurance agreement? Yes _____ No _____

Who referred transaction to you? _____

Was this a bid transaction or a filed rate transaction? (Circle one)

Please show gross premium charged to Insured and remittance to STG, and any other split occurring: _____

If this is a bid transaction, which authorized STG personnel authorized the bid?

Address Reinsurance Commitment Letters from the Reinsurers to:

Attention _____
Company _____
Address _____
City, State Zip Code _____
FAX No. _____ Telephone No. _____

**PLEASE ATTACH ENDORSEMENTS TO BE ISSUED ALONG WITH ANY PRO-FORMA
POLICY AND/OR COMMITMENT.**

After issuance of policy(ies) with a liability over \$25,000,000, please forward one or more copies of each policy to the Reinsurance Department with a copy of this executed Overlimit Form, even if reinsurance was not obtained.



EXHIBIT 4



LENDER BEWARE: WHEN REAL PROPERTY TITLE ISSUES ARISE, DON'T FORGET YOUR ESCROW CLAIM

Jason Goldstein

When a lender experiences real property title issues involving a secured loan, the first thought that normally comes to mind is: where is my title insurance policy? While this is a very good initial reaction—and one that cannot be forgotten—what is sometimes overlooked is that the lender may also have an escrow claim based on the instructions it provided to the escrow holder who closed the loan. Accordingly, when title issues arise with respect to loans secured by real property: don't forget your escrow claim!

In other words: welcome to the *escrow claim zone*. It is an area close to, and sometime overlaps, the *title claim zone*. Nevertheless, entrance into both zones always begins the same way. A would-be borrower fills out an application for a loan and compiles supporting documentation. This documentation is either submitted directly to the lender by the borrower or through a broker or a correspondent lender. The would-be lender then reviews the application and supporting documentation and obtains an appraisal to determine whether the value of the proposed real property security is sufficient to justify the proposed loan amount. If the information compiled by the lender satisfies its underwriting guidelines, the proposed loan is approved.

An escrow is then set-up and instructions are provided by the lender to the escrow holder. These instructions are normally in writing, although they do not have to be, and include a request for the issuance of a title insurance policy which insures that title to the real property securing the loan is vested in the borrower and that the deed of trust securing the loan is in a first lien position on the secured property. A closing date is set, the borrower signs the appropriate loan and security documents, and then the loan funds. The deed of trust securing the loan is then recorded with the applicable county recorder and the origination process is complete.

In a perfect world, shortly after the escrow closes the lender receives a title insurance policy with no exceptions that indicates that title to the real property security is vested in its borrower alone. The borrower then begins to make timely payments on the loan and does so until the entire loan balance is satisfied. The lender then happily reconveys its deed of trust and closes the books on what was a perfect loan.

But wait, we are not in a perfect world . . . we have traveled into the *escrow claim zone*! Here, borrowers do not always tell the truth or make payments on time. These borrowers sometimes fall on hard times and are willing to do things that honest people are not willing to do.

Similarly, in the *escrow claim zone*, escrow companies do not always follow the instructions that they are given. The escrow companies also cannot always be relied upon to make sure that the lender is fully apprised of all pertinent facts—of which they have actual knowledge at the most important time—prior to the funding of the loan.

For example, in the *escrow claim zone*, borrowers default on loans secured by properties that they misrepresented that they owned (but didn't) and the title insurance company who issued your policy did not catch this material issue or is part of the borrower's scheme to defraud. This same title insurance company, which gladly took the lender's money to issue a title policy, now refuses to issue the litigation guarantee that the lender needs to provide to the trustee under the deed of trust so that the foreclosure sale can proceed.

In this situation, the lender should of course tender a claim under its title insurance policy. In fact, it is always a best practice, subject to certain exceptions, to try and tender every possible claim that you may have to an insurer. However, title insurance is a policy of indemnity and not a guarantee. Practically speaking, this means that just because the title insurance company screwed up, it does not mean that the title insurer needs to pay the full amount of the policy, which is generally the cap on damages a lender will be able to obtain against a title insurer.

To keep all of the lender's options open, the lender should also consider an escrow claim. An escrow claim is based on the lender's instructions to the escrow holder in conjunction with the closing of the loan.

Since an escrow holder is the agent of all of the parties to the escrow, it has a fiduciary duty to the parties to the escrow. A fiduciary duty is the highest duty of care provided for in the law. As a result, the escrow holder is required to strictly comply with the instructions provided to it and is liable for damages to the lender when it does not do so. Accordingly, unlike a title claim,



which is solely contractual in nature, an escrow claim is not so limited.

For example, an escrow claim does form the basis for a breach of contract cause of action. But it can also form the basis for negligence, breach of fiduciary duty and fraud claims. This means that the damages a lender suffers from an escrow claim may not be limited solely to contract—benefit of the bargain principles—but may be governed by common law tort principles which include damages proximately caused as a result of the escrow company’s breaches of duty. Under certain circumstances, tort principles can allow a lender to recover an amount in excess of what is obtainable in indemnity under a title insurance policy.

Accordingly, when real property title issues arise: don’t forget the escrow claim.

Jason Goldstein is Senior Counsel in the Litigation Practice Group in Orange County. He can be reached at 949.224.6235 or jgoldstein@buchalter.com.