

## TOP THREE COMMERCIAL ALTA ENDORSEMENTS

BY TITLE AMERICA, AGENTS FOR FIRST AMERICAN TITLE

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Every transaction is unique and has its own set of circumstances. However, there are three common title endorsements we regularly experience in our commercial transactions. These endorsements, Contiguity and Survey, Comprehensive and Access provide the foundational protections needed to secure your ownership rights and investment in commercial property transactions. Below you will find a summary of these endorsements.

### CONTIGUITY AND SURVEY ENDORSEMENTS

Provides coverage to the insured that two or more parcels are contiguous when the land to be insured consists or might consist of an assemblage of two or more parcels. Although contiguity endorsements are often requested, a better solution for this situation is a request for a new perimeter description of the assembled properties. The policy will insure title to all of the land inside the new perimeter description. Since the goal is to insure title to all of the property within the perimeter without any gaps or gores, the direct approach may be best.

There are two contiguity endorsements available. The ALTA 19.06 is used when there are multiple parcels being insured and the insured want the assurance that the parcels are contiguous to each other. The second contiguity endorsement is the ALTA 19.1-06. This endorsement is used when the insured wants assurance that the parcel being insured is contiguous to another parcel that is not being insured.

The ALTA 25-06 Survey Endorsement insures the policyholder that the land described in the policy is the same land as shown on the survey identified in the endorsement.

The ALTA 25.1-06 Same as Portion of Survey Endorsement insures the policyholder that the land described in the policy is the same as that specified portion of land shown on the survey identified in the endorsement.

### COMPREHENSIVE ENDORSEMENT

The comprehensive endorsement (ALTA 9.0-06) Restrictions, Encroachments, Minerals Endorsement) is one of the most commonly requested endorsements to a loan policy and provides protection against loss or damage sustained by reason of any inaccuracies in the assurances that:

- a. There are no covenants, conditions, or restrictions under which the lien of the mortgage could be divested, subordinated or extinguished, or its validity, priority or enforceability impaired; and
- b. Unless expressly excepted in Schedule B of the Title Commitment
  - i.) Present violations on the Land of any enforceable covenants, conditions, or restrictions, or existing improvements on the land described in Schedule A that violate any building setback lines shown on a plat of subdivision recorded or filed in the Public Records.
  - ii.) Any instrument referred to in Schedule B as containing covenants, conditions, or restrictions on the Land that, in addition, (A) establishes an easement on the Land, (B) provides a lien for liquidated damages, (C) provides for a private charge or assessment, (D) provides for an option to purchase, a right of first refusal, or the prior approval of a future purchaser or occupant.

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iii.) 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.

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

v.) Any notices of violation of covenants, conditions, or restrictions relating to environmental protection recorded or filed in the Public Records.

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. The invalidity, loss of priority, or unenforceability of the lien of the Insured Mortgage; or
- b. The loss of Title if the Insured shall acquire Title in satisfaction of the Indebtedness secured by the Insured Mortgage.

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

- a. That 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.

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

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.

A comprehensive endorsement is also available for an Owner's Policy. ALTA has adopted ALTA Form 9.1-06, for unimproved land and ALTA Form 9.2-06 for improved land.

The ALTA 9.3-06 endorsement, in addition to the coverage provided in ALTA 9.0-06 endorsement, insures the lender against damage to existing and future improvements by reason of mineral development.

Similar to the ALTA 9.3-06 Endorsement, the ALTA 9.4-06 and 9.5-06 provide owners with coverage against existing and/or future improvements by reason of mineral development on unimproved or improved land respectively.

## ACCESS AND ENTRY ENDORSEMENTS

Insuring provision number 4 insures against no right of access to and from the Land. However, this basic coverage assures only some type of legal access and issues still exist as to the quality, character and location of the access.

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The ALTA 17-06 Endorsement is designed to be issued where there is direct access to a publicly dedicated roadway. It provides coverage in the event (i) the Land does not abut and have both actual vehicular and pedestrian access to and from a named Street, (ii) the Street is not physically open and publicly maintained, or (iii) the Insured has no right to use existing curb cuts or entries along that portion of the Street abutting the Land.

Not all property physically abuts a dedicated street and the owner must rely on an easement to obtain access to a publicly dedicated roadway. In this situation it would be wise for the insured to have the easement which provides access insured as well as the fee interest in the property being purchased or financed. In this situation the ALTA 17.1-06 would be the proper endorsement. This endorsement insures the insured in the event that; (i) the easement identified in Schedule A (the "Easement") does not provide the other land described in Schedule A (the fee parcel), both actual vehicular and pedestrian access to and from a named street (the "Street"), (ii) the Street is not physically open and publicly maintained, or (iii) the Insured has no right to use existing curb cuts or entries along that portion of the Street abutting the Easement.

For more information on Title America's innovative products and services, contact Joseph Maressa Jr., Esq. at 856-767-8573.

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