

# 2006 ALTA Policy Forms

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Stewart Title Guaranty Company

# De-certified ALTA Policies:

- ALTA Owner's Policy (10/17/92)
- ALTA Loan Policy (10/17/92)
- Short Form Loan Policy (10/21/00)

# ALTA Owner's Policy (6/17/06)

- Covered Risks
- Elysian Investment Group LLC v. Stewart Title Guaranty Company, 105 Cal. App. 4<sup>th</sup> 315

## ALTA Owner's Policy – Covered Risks

- 1992

1. Title to the estate or interest described in Schedule A being vested other than as stated therein.

- 2006

1. Title being vested other than as stated in Schedule A.

## ALTA Owner's Policy – Covered Risks

- 1992

2. Any defect in or lien or encumbrance on the title.

- 2006

2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
  - a) A defect in the Title caused by
    - i. forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
    - ii. failure of any person or Entity to have authorized a transfer or conveyance;
    - iii. a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
    - iv. failure to perform those acts necessary to create a document by electronic means authorized by law;
    - v. a document executed under a falsified, expired, or otherwise invalid power of attorney;
    - vi. a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
    - vii. a defective judicial or administrative proceeding.

## ALTA Owner's Policy – Covered Risks

- 1992
  - 2. Any defect in or lien or encumbrance on the title.
- 2006
  - b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
  - c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.

## ALTA Owner's Policy – Covered Risks

- 1992

3. Unmarketability of the title.

- 2006

3. Unmarketable Title

## ALTA Owner's Policy – Covered Risks

- 1992

4. Lack of a right of access to and from the land.

- 2006

4. No right of access to and from the Land.

## ALTA Owner's Policy – Covered Risks

- 1992 Exclusions from Coverage

4. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

- 2006

5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - a) the occupancy, use, or enjoyment of the Land;
  - b) the character, dimensions, or location of any improvement erected on the Land;
  - c) the subdivision of land; or
  - d) environmental protection

if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.

## ALTA Owner's Policy – Covered Risks

- 1992 Exclusions from Coverage
  1. (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- 2006
  6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.

## ALTA Owner's Policy – Covered Risks

- 1992 Exclusions from Coverage
- 2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
- 2006
- 7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
- 8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.

## ALTA Owner's Policy – Covered Risks

- 1992 Exclusions from Coverage
  - 2006
4. Any claim, which arises out of the transaction vesting in the Insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
- i. the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
  - ii. the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
    - a) to timely record the instrument of transfer; or
    - b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.
9. Title being vested other than as stated in Schedule A or being defective
- a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
  - b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
    - i. to be timely, or
    - ii. to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.

## ALTA Owner's Policy – Covered Risks

- 1992
- Various "gap" exceptions in Schedule B

- 2006

10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

## ALTA Owner's Policy – Exclusions From Coverage

- 1992
- 1 through 4 remain similar.

- 2006

10. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A

## ALTA Owner's Policy – Conditions

• 1992

- 2006 Definition of Terms
  - a) “Amount of Insurance”: The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b), or decreased by Sections 11 and 12 of these Conditions.
  - c) “Entity”: A corporation, partnership, trust, limited liability company, or other similar legal entity.

## ALTA Owner's Policy – Conditions

- 1992
  - a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.
- 2006 Definition of Terms
  - d) "Insured": The Insured named in Schedule A.
    - i. The term "Insured" also includes
      - a) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;
      - b) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
      - c) successors to an Insured by its conversion to another kind of Entity;

- d) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
  - 1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,
  - 2) if the grantee wholly owns the named Insured,
  - 3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or
  - 4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.

# ALTA Owner's Policy – Conditions

- 1992

## 7. DETERMINATION, EXTENT OF LIABILITY AND COINSURANCE.

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

- (i) the Amount of Insurance stated in Schedule A; or,
- (ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the Amount of Insurance stated in Schedule A at the Date of Policy is less than 80 percent of the value of the insured estate or interest or the full consideration paid for the land, whichever is less, or if subsequent to the Date of Policy an improvement is erected on the land which increases the value of the insured estate or interest by at least 20 percent over the Amount of Insurance stated in Schedule A, then this Policy is subject to the following:

- (i) where no subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that the amount of insurance at Date of Policy bears to the total value of the insured estate or interest at Date of Policy; or
- (ii) where a subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that 120 percent of the Amount of Insurance stated in Schedule A bears to the sum of the Amount of Insurance stated in Schedule A and the amount expended for the improvement.

The provisions of this paragraph shall not apply to costs, attorneys' fees and expenses for which the Company is liable under this policy, and shall only apply to that portion of any loss which exceeds, in the aggregate, 10 percent of the Amount of Insurance stated in Schedule A.

(c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

- 2006 Conditions

## 8. **DETERMINATION AND EXTENT OF LIABILITY**

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

a) The extent of liability of the Company for loss or damage under this policy shall not exceed the lesser of

- i. the Amount of Insurance; or
- ii. the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy.

b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title, as insured,

i. the Amount of Insurance shall be increased by 10 %, and

ii. the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.

## ALTA Owner's Policy – Conditions

- 1992
- 8. APPORTIONMENT.
- If the land described in Schedule [A][C] consists of two or more parcels which are not used as a single site, and a loss is established affecting one or more of the parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each parcel by the Company and the insured at the time of the issuance of this policy and shown by an express statement or by an endorsement attached to this policy.

## ALTA Owner's Policy – Conditions

- 1992

- 14. Arbitration

All arbitrable matters when the Amount of Insurance is \$1,000,000 or less shall be arbitrated at the option of either the Company or the insured.

- 2006

- 14. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured.

# ALTA Loan Policy (6/17/06)

## ALTA Loan Policy – Covered Risks

- 1992

5. The invalidity or unenforceability of the lien of the insured mortgage upon the title;

- 2006

9. The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title. This Covered Risk includes but is not limited to insurance against loss from any of the following impairing the lien of the Insured Mortgage

(a) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;

(b) failure of any person or Entity to have authorized a transfer or conveyance;

(c) the Insured Mortgage not being properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;

(d) failure to perform those acts necessary to create a document by electronic means authorized by law;

(e) a document executed under a falsified, expired, or otherwise invalid power of attorney;

(f) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or

(g) a defective judicial or administrative proceeding.

## ALTA Loan Policy – Covered Risks

- 1992

7. Lack of priority of the lien of the insured mortgage over any statutory lien for services, labor or material:
  - (a) arising from an improvement or work related to the land which is contracted for or commenced prior to Date of Policy; or
  - (b) arising from an improvement or work related to the land which is contracted for or commenced subsequent to Date of Policy and which is financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance;

- 2006

11. The lack of priority of the lien of the Insured Mortgage upon the Title
  - (a) as security for each and every advance of proceeds of the loan secured by the Insured Mortgage over any statutory lien for services, labor, or material arising from construction of an improvement or work related to the Land when the improvement or work is either
    - (i) contracted for or commenced on or before Date of Policy; or
    - (ii) contracted for, commenced, or continued after Date of Policy if the construction is financed, in whole or in part, by proceeds of the loan secured by the Insured Mortgage that the Insured has advanced or is obligated on Date of Policy to advance; and
  - (b) over the lien of any assessments for street improvements under construction or completed at Date of Policy.

## ALTA Loan Policy – Covered Risks

- 1992 Exclusions from Coverage
  - 2006
7. Any claim, which arises out of the transaction vesting in the Insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
- a) The transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
  - b) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
  - c) the transaction creating the estate or interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
    - a) to timely record the instrument of transfer; or
    - b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.
13. The invalidity, unenforceability, lack of priority, or avoidance of the lien of the Insured Mortgage upon the Title
- a) resulting from the avoidance in whole or in part, or from a court order providing an alternative remedy, of any transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction creating the lien of the Insured Mortgage because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
  - b) because the Insured Mortgage constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
    - i. to be timely, or
    - ii. to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.

## ALTA Loan Policy – Covered Risks

- 1992
- Various "gap" exceptions in Schedule B

- 2006

14. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 13 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the Insured Mortgage in the Public Records.

## ALTA Loan Policy – Conditions

- 1992
- 10. LIABILITY NONCUMULATIVE.
- If the insured acquires title to the estate or interest in satisfaction of the indebtedness secured by the insured mortgage, or any part thereof, it is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy.

- Small Business Administration



## ALTA Loan Policy

- 1992 Conditions and Stipulations
9. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY.
- (a) All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto. However, any payments made prior to the acquisition of title to the estate or interest as provided in Section 2(a) of these Conditions and Stipulations shall not reduce pro tanto the amount of the insurance afforded under this policy except to the extent that the payments reduce the amount of the indebtedness secured by the insured mortgage.
- (b) Payment in part by any person of the principal of the indebtedness, or any other obligation secured by the insured mortgage, or any voluntary partial satisfaction or release of the insured mortgage, to the extent of the payment, satisfaction or release, shall reduce the amount of insurance pro tanto. The amount of insurance may thereafter be increased by accruing interest and advances made to protect the lien of the insured mortgage and secured thereby, with interest thereon, provided in no event shall the amount of insurance be greater than the Amount of Insurance stated in Schedule A.
- (c) Payment in full by any person or the voluntary satisfaction or release of the insured mortgage shall terminate all liability of the Company except as provided in Section 2(a) of these Conditions and Stipulations.

- 2006 Conditions and Stipulations
9. **REDUCTION OF INSURANCE;  
REDUCTION OR TERMINATION OF  
LIABILITY**
- (a) All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment. However, any payments made prior to the acquisition of Title as provided in Section 2 of these Conditions shall not reduce the Amount of Insurance afforded under this policy except to the extent that the payments reduce the Indebtedness.
- (b) The voluntary satisfaction or release of the Insured Mortgage shall terminate all liability of the Company except as provided in Section 2 of these Conditions.