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the FEE SIMPLE

The Journal of the
Virginia State Bar
Real Property Section

http://www.vsb.org/site/sections/realproperty

Vol. XLII, No. 2 Fall 2021

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Cover photo montage by Patrick Byler Clark

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The FEE SIMPLE *is published semiannually by the Virginia State Bar, 1111 East Main Street, Suite 700, Richmond Virginia, 23219. It is distributed to members of the Real Property Section of the Bar.*

Anyone wishing to submit an article for publication should send it in Microsoft Word format to Felicia A. Burton ((757) 221-3813, (email) faburt@wm.edu)). Authors are responsible for the accuracy of the content of their article(s) in the FEE SIMPLE *and the views expressed therein must be solely those of the author(s). Submission will also be deemed consent to the posting of the article on the Real Property Section website, http://www.vsb.org/site/sections/realproperty/newsletters. The* FEE SIMPLE *reserves the right to edit materials submitted for publication.*

The Board of Governors gratefully acknowledges the dedication and the hard work of Felicia A. Burton, of the William & Mary Law School.

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SPRING 2022 SUBMISSION DEADLINE: FRIDAY, APRIL 1, 2022

THE NEXT MEETING OF THE BOARD OF GOVERNORS OF THE REAL PROPERTY SECTION OF THE VIRGINIA STATE BAR WILL BE HELD ON

FRIDAY, JANUARY 21, 2022, AT 1:00 PM

WILLIAMSBURG INN, WILLIAMSBURG, VIRGINIA

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CHAIR'S MESSAGE

By Kathryn N. Byler

Kathryn Byler is the 2021-2022 Chair of the Real Property Section of the Virginia State Bar. She has practiced with Pender & Coward, PC at their Virginia Beach office since being admitted to the VA bar in 1998. As a licensed real estate broker and commercial property owner, Kathryn brings a heightened understanding of her clients' real estate and business needs. She holds a BSBA from Old Dominion University, an MBA from Golden Gate University and a JD from Regent University School of Law where she is an adjunct professor teaching Real Estate Transactions, Contracts and Business Entities.

The 2021-2022 year begins with an air of uncertainty. My sincere appreciation goes to the immediate past-chair, Lori Schweller, on her outstanding leadership keeping the Real Property section on track with excellent CLE's, regular section meetings, and committee work during a year of isolation and social distancing. Just when we thought we were ending the virtual meetings to resume in-person gatherings, the Delta variant and increasing numbers of COVID-19 cases have caused us all to hesitate and re-evaluate. In small and large ways every day, we modify how our law offices operate and the manner in which we engage with our clients. We adapt to frequently changing court procedures; countless other things that used to require no thought are now subject to reconsideration and innovation. A section meeting that was in-person in 2019 became virtual in 2020 and a blend of both in 2021. Although some of these changes are a matter of personal choice, many are not.

The reality of the COVID-19 pandemic impact on the practice of real estate law is highlighted in landlord/tenant matters. What used to be a simple 5-day notice is now a complicated process involving a 14-day notice, mandatory disclosures regarding the Virginia Rent Relief Program (RRP) and other rental relief programs (such as 211 Virginia), availability of a local legal aid program for free legal assistance to low-income people, and protection from eviction. The tenant may elect to (1) pay the amount due and owing, (2) enter into a payment plan for all past due rent and charges, (3) complete the tenant portion of the (RRP) application and ask the landlord to apply for RRP on his/her behalf, or (4) apply for rental assistance through the RRP or another rent relief program and provide landlord with written proof of such application for assistance. And that's just to start the process– well before getting to the point where a summons of unlawful detainer can be issued.

The CARES Act eviction moratorium began on March 27, 2020 and ended on July 24, 2020. Following close behind, the Center for Disease Control and Protection (CDC) eviction moratorium took effect on September 4, 2020 and has been extended several times. It was designed to protect tenants who are not high earners: those who earned less than $99,000 ($198,000 per couple) in 2020, or, received a stimulus payment from the government in 2020, or made too little to be required to file a tax return in 2019. Further, it protects those who have lost income due to COVID-19, have extraordinary medical expenses, have been unable to pay full rent, and would be homeless or would have to move in with others if evicted. What began last year has been extended numerous times. It was extended legislatively through January 31, 2021 and again by the CDC through March 31, 2021 then until June 30, 2021. At the time of this writing, the CDC has an eviction moratorium in place until October 2021.

Some people believe the executive branch of the government has exceeded its authority and they may be right. On August 26, 2021, the Supreme Court of the United States (SCOTUS) issued an eight-page majority opinion (*Alabama Association of Realtors, et al. v. Department of Health and Human Services, et al.*) rejecting the Biden administration's latest moratorium on evictions saying that the CDC had exceeded its authority and that Congress needs to act. The opinion reads in part, *"the CDC has imposed a nationwide moratorium on evictions in reliance on a decades-old statute that authorizes it to implement measures like fumigation and pest extermination. It strains credulity to believe that this statute grants the CDC the sweeping authority that it asserts."* [emphasis added]

At this writing, it's unknown if Congress will pick up the CDC eviction moratorium again. Meanwhile, state legislatures and governors are acting. Virginia is among those states with rent relief programs in place. On August 11th, 2021, Governor Northam signed a budget bill extending eviction protection until June 30, 2022.

The controlling rules are coming from various state and federal sources and are changing so often that a landlord with a few properties is likely to be confused and overwhelmed. Even seasoned attorneys are finding it difficult to keep up. In the words of my beloved Bob Dylan, "The times they are a changin'."

I welcome the opportunity to serve the section at this most interesting time. It's particularly rewarding to serve as chair in this historic and unprecedented year when the immediate past-president and all three members of the executive board are women. Reach out to me when you have occasion. Let's meet for coffee or for a virtual happy hour. I encourage each section member to get involved on a committee and let's see where this year takes us. With a little luck, my year will end at Steinhilber's surrounded by the fine people of the Real Property section and toasting to another successful year.

2021 TRAVER SCHOLAR AWARD RECIPIENT

James M. ("Jim") McCauley, Ethics Counsel for the Virginia State Bar, is the **2021 recipient of The Traver Scholar Award,** which is awarded by the Real Property Section of the Virginia State Bar and Virginia Continuing Legal Education to honor men and women who embody the highest ideals and expertise in the practice of real estate law. Traver Scholars are Real Property Section members who have made significant contributions to the practice of real property law generally and the Section specifically and have generously shared their knowledge with others. The award is named for the "patriarch" of Virginia real estate lawyers, Courtland L. Traver, whose outstanding legal ability and willingness to share his knowledge and experience was an inspiration to others.

Jim has been involved with the Real Property section through his teaching and responding to questions from attorneys. He's been active in the Real Property Section since the 1990s as a Board Member and Area Representative, as well as being active through the Ethics Committee participating in the majority of calls for at least 20+ years. He routinely solicits input from Section members about real estate issues to determine current practices. He's a frequent speaker and author on ethics issues related to real estate.

Jim graduated *cum laude* from James Madison University in 1978. He received his law degree from the T.C. Williams School of Law, University of Richmond, in 1982. Before his employment with the Virginia State Bar, Jim was in private practice for seven years. As Ethics Counsel for the Virginia State Bar he manages the staff counsel serving the Standing Committee on Legal Ethics. His office also investigates complaints alleging unauthorized Practice of Law. He and his staff write the draft advisory opinions for the Standing Committee and provide informal advice over the telephone to members of the bar, bench and general public on matters involving legal ethics, lawyer advertising and the unauthorized practice of law.

Other highlights of Jim McCauley's career include:

- Lectures and publishes articles frequently on matters relating to legal ethics and the unauthorized practice of law.
- Taught Professional Responsibility for 19 years at the T.C. Williams School of Law in Richmond, Virginia. From 2008-2011,
- Served on the American Bar Association's Standing Committee on Legal Ethics and Professionalism.
- Served as Assistant Bar Counsel for the Virginia State Bar for six years, prosecuting cases of attorney misconduct before the District Committees, Disciplinary Board and Three-Judge Courts.
- Served as a member on the Virginia State Bar's Mandatory Professionalism Course faculty from 2004-2010.
- Fellow of the Virginia Law and the American Bar Foundations.
- Member of the John Marshall Inn of Court in Richmond, Virginia.

- Appointed in 2013 by Chief Justice Kinser to serve on the Special Committee to Study Criminal Discovery Rules.
- Elected in 2014 to Board of Directors, Lawyers Helping Lawyers.
- Selected for the Class of 2018 "Leaders in the Law" sponsored by the Virginia Lawyers Weekly and elected "Leader in the Law" by the Class of 2018.

PROPERTY LAW FROM THE PERSPECTIVE OF A RECENTLY BARRED PRACTITIONER

By Hayden-Anne Breedlove

Hayden-Anne Breedlove is the co-editor of the Fee Simple and is associate counsel for Old Republic Title. She attended the University of Virginia for her undergraduate studies, with a double major in politics and history, with a minor in French. She then continued on to law school at the University of Richmond School of Law, where she was the President of the Real Estate Law Society and the recipient upon graduation of the Carrico Center Pro Bono and Public Interest Award. She clerked for the Honorable Judges of Henrico County Circuit Court and is now enjoying working in the title insurance industry as associate counsel.

As I sit here writing this piece, it has been almost two years since, after months of waiting, I found out I had passed the July 2019 bar exam. By the time this edition of the *Fee Simple* is released, it will have been two years since I was sworn in and admitted to the bar, in December of 2019. It is crazy to think about how quickly those two years have passed.

Soon after being sworn in, we first starting hearing about a virus that was spreading rapidly in China, not knowing at the time that the virus would cause emergency judicial orders, stay at home orders, and months and months of "unprecedented times." Needless to say, recently-barred attorneys all over the country had an atypical introduction to working in the law. Over the past year and a half, the legal industry adapted its business models, with working from home, e-filing, and even virtual court hearings becoming commonplace Beginning my career in the law has definitely been impacted by the pandemic, but I have to say that it's impacted it in a positive way.

When I matriculated in the fall of 2016 at the University of Richmond School of Law, I had just completed an internship at a law firm in Charlottesville. The firm focused on many areas, including real estate, business, and criminal law. This is where I was first thought about the idea of a career in real estate law. After attending many criminal court hearings with my mentor at that internship, I quickly realized criminal law was not an area in which I was extremely interested. Instead, I found looking at the land records and reviewing various real estate documents to be much more interesting. (After all, I have always had a passion for reading.)

Fast forward three years of law school and one clerkship later, I am now happily working for a title insurance company as associate counsel. While I had an idea that I wanted to practice real estate law, I had no idea about the title insurance industry when I started law school. After all, title insurance is not an area covered in a first year property course.

My first year property course covered the basics of property law – the types of tenancies, leaseholds, and the dreaded rule against perpetuities. There were other property and real estate law class options as well, including Real Estate Transactions and Financing and Housing Law. Real Estate Transactions and Financing did cover title insurance, providing students with a basic introduction to the industry and the importance of obtaining title insurance.

Aside from numerous courses available in real property during law school, there were many other opportunities to get involved in real estate law, such as research assistant positions, as well as legal clinics. The University's Carrico Center for Pro Bono and Public Service also partnered with the Legal Aid Justice Center to provide pro bono housing law assistance. We also had a student-led organization devoted entirely to the practice of real estate law, sponsoring many networking events with local attorneys.

Overall, law school provided much exposure to real estate law throughout my three years. Each course, pro bono clinic, or networking event with local practitioners reaffirmed my desire to enter the field of real estate law.

Once I began practicing, I quickly realized that despite all the cases read, cold calls answered, and bar prep questions, law school itself doesn't really teach you how to practice law. It's the internships, clinical placement programs, and actual experience "in the trenches" that teaches you the practice of law.[1] Once out of law school, it seemed like every task was new, something I'd never done before (or only read about in a textbook). However, it seems that one of the many beauties of the law is the element of life-long learning – there is always a new case, argument, or law to grapple with.

Being a life-long learner is essential to the practice of law, and the Real Property section has provided me access to the resources necessary always to be learning. From numerous CLE opportunities and new articles in each edition of the *Fee Simple*, to the minds of other section members who either have more experience or have dealt with a particular issue before, there is always a new opportunity to learn. I am looking forward to seeing how the next year of practice goes with more in-person CLE's and networking.

[1] Stepping out from behind the Ed., I agree with Hayden-Anne on this. I have long held the belief that lawyers, like doctors, are not competent to practice law immediately upon passing the bar. I have advocated that lawyers should be required to intern with an experienced practitioner for a minimum of 1 year before being certified to "solo." –SG

DEFINING 'WELLNESS': HOW COMMON LANGUAGE SURROUNDING THE RISKS OF LAWYERING FOSTERS CONNECTION AND IMPROVES OUR PROFESSION*

By Margaret Hannapel Ogden

As the Wellness Coordinator in the Office of the Executive Secretary of the Supreme Court of Virginia, Margaret Hannapel Ogden is dedicated to improving mental health and addressing substance abuse in the legal profession through education, regulation, and outreach. A lawyer by training, Margaret began her career in the Roanoke City Commonwealth Attorney's Office before entering private practice to defend criminal cases throughout the Roanoke and New River Valleys. Immediately prior to joining the Virginia Lawyers' Wellness Initiative, she served as the Staff Attorney for the Pennsylvania Interbranch Commission for Gender, Racial and Ethnic Fairness, where she analyzed policy, drafted and commented on proposed rules and legislation, and advised judges and attorneys on best practices for addressing bias in the state court system. A native of Washington, D.C., Margaret graduated Phi Beta Kappa from the University of Maryland's College of Behavioral and Social Sciences. She earned her J.D. from Washington & Lee School of Law in 2011. When not traveling around the Commonwealth discussing attorney well-being, you can find Margaret walking in Richmond's Fan neighborhood with her husband, Nathan, and their dogs, Jackson and Tilda.

In the current storm of a global pandemic, community trauma caused by racism, and the mounting economic fallout, it can seem gauche to talk about "wellness," particularly among lawyers. Some days, it is all we can do to raise our weary bodies from our beds, fumble through our bare minimum professional and family obligations, choke down enough of the endless cycle of grim news to prevent feeling irresponsibly out-of-touch, and finally plead with our racing thoughts as we attempt some semblance of sleep before starting the terror afresh the next day. Conversations about "wellness" can trigger righteous indignation: "I'm an attorney and acutely aware of the world's problems and yet still meet my ethical requirements! 'Work hard, play hard' is all the wellness I need! I certainly haven't the time for something as frothy as self-care!"

As someone who has uttered all these phrases, let me challenge underlying assumptions upon which they are built. We assume that "wellness" is simply being free of disease. We assume that, if we aren't impaired, we are fulfilling our professional duties. We assume that a lack of well-being, such as an untreated mental health or substance abuse issue, is a rarely occurring personal problem, not a profession-wide crisis.

In 2017, the National Task Force for Lawyer Well-Being (NTF) published a catalyzing report, The Path to Lawyer Well-Being: Practical Recommendations for Positive Change, that turned these assumptions on their heads. Drawing on new studies of law students and lawyers that showed rates of depression, anxiety, substance abuse, and burnout at two to four times that of the general population, the NTF proposed a cultural overhaul in the legal profession that started by changing how we define wellness.[1] *This broader understanding of attorney well-being as a continuous, collective process is particularly helpful as we are called upon to meet the present storm with professionalism, grace, and resilience.*

A Six Part Definition from the National Task Force for Lawyer Well-Being

So how do the experts define "wellness" for lawyers? The NTF views it "as a continuous process whereby lawyers seek to thrive in each of the following areas: emotional health, occupational pursuits, creative or intellectual endeavors, sense of spirituality or greater purpose in life, physical

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* Reprinted with permission from the Office of the Executive Secretary of the Supreme Court of Virginia.

[1] See The National Task Force on Lawyer Well-Being, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change* (2017) available online at https://lawyerwellbeing.net/

health, and social connections with others."[2] If we put this process-based definition into actionable steps, here's what it looks like:

1. **Emotional**: Recognizing the importance of emotions. Identifying and managing our emotions to support mental health, achieve goals, and inform decision-making. Seeking help for mental health when needed.

2. **Occupational**: Cultivating personal satisfaction and growth in work; financial stability.

3. **Intellectual**: Engaging in continuous learning and the pursuit of creative or intellectually challenging activities; monitoring cognitive wellness.

4. **Spiritual**: Developing a sense of meaningfulness and purpose in life.

5. **Physical:** Striving for regular physical activity, proper nutrition, sufficient sleep; minimizing the use of addictive substances. Seeking help for physical health when needed.

6. **Social:** Developing a sense of connection, belonging, and a support network; contributing to our groups and communities.

Individual Versus Organizational Wellness

This six-part applied definition based on ongoing growth, purpose-seeking, and meaningful learning may seem overwhelming for individual lawyers, particularly as we adapt to judicial emergency orders and remote/alternative work arrangements. However, this definition recognizes the role that our workplaces play in shaping our individual well-being, and encourages legal organizations to evaluate their policies and practices across the same six dimensions. As the American Bar Association urges, "Well-being is a team sport. For example, research reflects that, much more than individual employee traits and qualities, situational factors like workload, a sense of control and autonomy, adequate rewards, a sense of community, fairness, and alignment of values with our organizations influence whether people experience burnout or work engagement."[3]

Virginia's Lawyers Tackle Occupational Risks

Armed with aspirational definitions from the nation's experts, Virginia's legal community began to delve deeper into current well-being issues at the state level. First, the Supreme Court of Virginia's (SCV) Committee on Lawyer Well-Being published its report, *A Profession at Risk*, with sections for judges, law schools, private sector attorneys, and regulators to address wellness in a holistic manner.[4] The groundbreaking recommendations from that report focus on the policy underpinnings of institutional well-being: expanding the Virginia Judges and Lawyers Assistance Program (VJLAP, formerly Lawyers Helping Lawyers) to help legal professionals struggling with mental health or addiction issues across the Commonwealth, ensuring CLEs are available on a variety of wellness topics, and establishing the Virginia Lawyers' Wellness Initiative in the Office of the Executive Secretary to coordinate these efforts for the SCV.

But what should the aforementioned wellness-focused CLEs address? In 2019, the Virginia State Bar (VSB) President's Special Committee on Lawyer Well-Being answered that very question with its

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[2] *Id*. at 9.

[3] Brafford, Anne, *Well-Being Toolkit for Lawyers and Legal Employers*, American Bar Association (August 2018), available online at https://www.americanbar.org/content/dam/aba/administrative/lawyer_assistance/ ls_colap_well-being_toolkit_for_lawyers_legal_employers.pdf

[4] *See* Committee on Lawyer Well-Being of the Supreme Court of Virginia, *A Profession at Risk*, (2018) available online at http://www.courts.state.va.us/programs/concluded/clw/2018_0921_final_report.pdf

wide-ranging report, *The Occupational Risks of the Practice of Law*.[5] As the report explains, "[u]nlike other occupations that educate and prepare participants for the specific occupational risks they face, thus far little, if any, attempt has been made to identify the occupational risks to an attorney's well-being… Stated simply, before the wellness crisis can be properly addressed, the root causes of the wellness issues must be identified. Once identified, participants in the profession will hopefully become educated and informed of the risks, so that those risks can be avoided or at least the effects of those risks can be mitigated."[6]

The VSB report goes on to define and discuss twenty different occupational risks across four categories: (1) physical risks, such as the sedentary nature of the work, long and unusual hours, and sleep deprivation; (2) mental/emotional risks, like the adversarial and individual nature of the work, vicarious trauma, and the need to display confidence and conceal vulnerability; (3) adaptation risks, including changing legal paradigms, lack of diversity in the profession, and external pressures on lawyer independence; and finally (4) self-actualization risks, like a values conflict with a client/practice setting or the reality-expectation gap in the practice of law. This list may seem daunting, so the VSB included practice pointers for individuals and organizations to ameliorate each risk. When presenting their findings at the VSB Annual Meeting in June 2019, the Committee noted, "[w]hile some risks may be avoidable, others are not. However, before an individual can take action to avoid, minimize, or mitigate the risks, the individual must be aware of and made knowledgeable about them…With this in mind, the second goal of the committee in publishing this report is to prompt discussion and further study."[7]

Moving the Conversations Forward

Since stepping into the Wellness Coordinator position in October 2019, one of my major responsibilities has been working with stakeholders to understand how our common occupational risks play out in different practice settings, and tailoring CLEs and other resources to address ensuing wellness needs. The ways these risks manifest themselves will be different for law students, solo and small firm practitioners, district court judges, law clerks, magistrates, and even appellate attorneys, all audiences who have called on me to facilitate training around well-being. The way we respond to these risks will also shift as the COVID-19 pandemic limits the types of safe interactions we can have. That is why the VSB report is an incredible touchstone resource: it provides a common language for discussing sensitive and difficult topics, and lets each audience know that they are not alone in their experience of the practice of law.

Although sometimes viewed as a rarefied practice insulated from the worst client traumas and adversarial system stressors, appellate attorneys are not immune from these occupational risks. Creating meaningful social connections can be challenging due to the individual and precise nature of your work. Business management concerns may be exacerbated by feelings of lack of control over professional destiny. Factor into the equation a generally sedentary, indoor work lifestyle under pandemic restrictions, and it's easy to see how these risks can add up once we name and enumerate them. Luckily, Virginia's legal community is committed to addressing these risks collectively through evidence-based recommendations. I urge you to take a fresh look at the Virginia reports, talk openly with your colleagues about the sections that resonate with you, and take advantage of the many no-cost CLEs that are being offered by VJLAP, Virginia CLE, bar associations, and other providers. Together, we can strengthen our profession and stand tall during any storm.

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[5] *See* Virginia State Bar President's Special Committee on Lawyer Well-Being, *The Occupational Risks of the Practice of Law*, (May 2019) available online at https://www.vsb.org/docs/VSB_wellness_report.pdf

[6] *Id*. at ii.

[7] *Id.* at x.

NEW 2021 ALTA POLICY FORMS PUBLISHED*

Revisions to the 2021 ALTA Policy Forms collection have been published and went into effect July 30, 2021. Recommended changes were approved by ALTA's Board of Governors in May, for adoption on July 1, 2021.

The ALTA standard Policy Forms have been formally revised over the years to reflect changes in the marketplace brought about by evolving business practices, expectations of insureds, laws, regulations and legal decisions. Advancements in electronic notarizations, changes in certain consumer and creditor' rights law, and case law developments were primary drivers leading to the latest revision of the ALTA Loan and Owner's policies and numerous other ALTA forms and endorsements.

To prepare for the new forms, attorneys and title companies should participate in training and guidance from their underwriters. Attorney agents will also want to work with their production software providers to ensure that the updates have been made after forms have been appropriately filed and approved by state regulators, and authorized by their underwriters.

For historical perspective, the 1970 policies were revised in 1984, followed by a complete rewrite in 1987. In 1990, the forms were modified again, adding the creditor's rights exclusion for the first time. A limited modification was made in 1992, followed by a complete rewrite of the base forms in 2006.

Forms may be downloaded at alta.org/policy-forms.

As always, the forms have been developed by the ALTA Forms Committee and approved by the ALTA Board. An opportunity to review and comment were extended to and utilized by ALTA members, Policy Forms Licensees and industry customers before final publication. The forms, in general, are made available for customer convenience. The parties are free in each case to agree to different terms and the use of these forms is voluntary unless required by law. The forms are copyrighted, and use is restricted to ALTA Policy Forms Licensees (including ALTA members) in good standing as of the date of use. Permission to reprint may be requested by contacting publications@alta.org.

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ALTA LOAN POLICY COMPARISON CHART

This comparison chart is intended as a guide to identifying differences between the 2021 and 2006 ALTA policies. It should not be relied upon for the interpretation of these policies.

2006 ALTA LOAN POLICY	2021 ALTA LOAN POLICY COMPARISON (v. 7-30-2021)	COMMENTS
American Land Title Association — Loan Policy Adopted 6-17-06	American Land Title Association — Loan Policy ~~Adopted 6-17-06~~ 2021 v. 01.00 (07-01-2021)	These policies are referred to respectively as the 2006 ALTA Loan Policy and the 2021 ALTA Loan Policy. Reference to 2006 ALTA policies or 2021 ALTA policies refers to both Owner's and Loan Policies.
LOAN POLICY OF TITLE INSURANCE **Issued By** **BLANK TITLE INSURANCE COMPANY**	ALTA **LOAN POLICY OF TITLE INSURANCE** ~~**Issued By**~~ issued by **BLANK TITLE INSURANCE COMPANY**	**SAME.**
	This policy, when issued by the Company with a Policy Number and the Date of Policy, is valid even if this policy or any endorsement to this policy is issued electronically or lacks any signature.	**ADDED COVERAGE.** This clause is similar to ALTA 39[-06] (Policy Authentication), which agrees that the Company will not deny liability under the policy or any endorsements issued with the policy solely on the grounds that the policy or endorsements were issued electronically or lack signatures in accordance with the Conditions.
Any notice of claim and any other notice or statement in writing required to be given to the Company under this Policy must be given to the Company at the address shown in Section 17 of the Conditions.	**Any notice of claim and any other notice or statement in writing required to be given to the Company under this ~~Policy~~policy must be given to the Company at the address shown in ~~Section 17 of the Conditions~~Condition 16.**	**SAME.** This clause is designed to help direct the Insured to the appropriate section (Condition 16 of the 2021 ALTA Loan Policy) so the Insured will know where to file a notice of claim or any other notice to be given to the insurer.
COVERED RISKS	**COVERED RISKS**	**SAME.** The term "Covered Risks" descriptively designates matters covered under the policy.
SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, BLANK TITLE INSURANCE COMPANY, a Blank corporation (the "Company") insures as of Date of Policy and, to the extent stated in Covered Risks 11, 13, and 14, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:	SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, ~~[BLANK TITLE INSURANCE COMPANY]~~[Blank Title Insurance Company], a [Blank] corporation (the "Company"), insures as of the Date of Policy and, to the extent stated in Covered Risks 11, 13, and 14, after the Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:	**SAME.** The lead-in provisions are substantively the same.
1. Title being vested other than as stated in Schedule A.	1. The Title being vested other than as stated in Schedule A.	**SAME.**
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from	2. Any defect in or lien or encumbrance on the Title. ~~This~~ Covered Risk 2 includes, but is not limited to, insurance against loss from:	**ADDED COVERAGE.** The 2021 ALTA Loan Policy continues to provide a non-exhaustive list of coverages, but has added some additional coverage descriptions to that list of items.
(a) A defect in the Title caused by	(a) ~~A~~a defect in the Title caused by:	**SAME.**
(i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;	(i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;	**SAME.**
(ii) failure of any person or Entity to have authorized a transfer or conveyance;	(ii) the failure of ~~any~~ person or Entity to have authorized a transfer or conveyance;	**SAME.**
(iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;	(iii) a document affecting the Title not properly authorized, created, executed, witnessed, sealed, acknowledged, notarized (including by remote online notarization), or delivered;	**IMPROVED COVERAGE.** Covered Risk 2.a.iii. of the 2021 ALTA Loan Policy clarifies coverage by adding "authorized" and by including remote online notarization in the scope of notarization. Covered Risks 2.a.iii., 2.a.iv., and 2.a.vi. of the 2021 ALTA Loan Policy make it clear that certain aspects of electronic transactions are covered by the policy.
(iv) failure to perform those acts necessary to create a document by electronic means authorized by law;	(iv) a failure to perform those acts necessary to create a document by electronic means authorized by law;	**SAME.**

ALTA LOAN POLICY COMPARISON CHART

This comparison chart is intended as a guide to identifying differences between the 2021 and 2006 ALTA policies. It should not be relied upon for the interpretation of these policies.

2006 ALTA LOAN POLICY	2021 ALTA LOAN POLICY COMPARISON (v. 7-30-2021)	COMMENTS
(v) a document executed under a falsified, expired, or otherwise invalid power of attorney;	(v) a document executed under a falsified, expired, or otherwise invalid power of attorney;	SAME.
(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	(vi) a document not properly filed, recorded, or indexed in the Public Records, including the failure to ~~perform~~have performed those acts by electronic means authorized by law; ~~or~~	SAME.
(vii) a defective judicial or administrative proceeding.	(vii) a defective judicial or administrative proceeding; or	SAME.
	(viii) The repudiation of an electronic signature by a person that executed a document because the electronic signature on the document was not valid under applicable electronic transactions law.	**IMPROVED COVERAGE.** This coverage is similar to the coverage provided by Covered Risk 2.a.iii in the 2006 and 2021 ALTA policies, but now expressly addresses the "repudiation" of an electronic signature.
(b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.	(b) ~~The~~the lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.	SAME.
(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.	(c) ~~Any encroachment~~ the effect on the Title of an encumbrance, violation, variation, ~~or~~ adverse circumstance ~~affecting the Title that~~, boundary line overlap, or encroachment (including an encroachment of an improvement across the boundary lines of the Land), but only if the encumbrance, violation, variation, adverse circumstance, boundary line overlap, or encroachment would ~~be~~have been disclosed by an accurate and complete land title 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.~~	**IMPROVED COVERAGE.** The 2021 ALTA policies now include express coverage with respect to boundary line overlaps.
3. Unmarketable Title.	3. Unmarketable Title.	SAME.
4. No right of access to and from the Land.	4. No right of access to and from the Land.	SAME.
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	5. ~~The~~A violation or enforcement of ~~any~~a law, ordinance, permit, or governmental regulation (including those relating to building and zoning) ~~restricting, regulating, prohibiting, or relating to~~, but only to the extent of the violation or enforcement described by the enforcing governmental authority in an Enforcement Notice that identifies a restriction, regulation, or prohibition relating to:	**SIMILAR.** The 2021 ALTA policies include a new defined term "Enforcement Notice" and revise the defined term "Public Records." The term "Public Records" does not include any record pertaining to environmental protection, planning, permitting, zoning, licensing, building, health, public safety, or national security matters unless the record is contained in an Enforcement Notice.
(a) the occupancy, use, or enjoyment of the Land;	(a) the occupancy, use, or enjoyment of the Land;	SAME.
(b) the character, dimensions, or location of any improvement erected on the Land;	(b) the character, dimensions, or location of ~~any~~an improvement ~~erected~~ on the Land;	SAME.
(c) the subdivision of land; or	(c) the subdivision of ~~land~~the Land; or	SAME.
(d) environmental protection	(d) environmental remediation or protection on the Land.	**BROADENED.** Environmental protection now expressly includes environmental "remediation."
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.	~~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.~~	**SAME.** The term "Enforcement Notice" of the 2021 ALTA policies addresses the notice that is covered.

ALTA LOAN POLICY COMPARISON CHART

This comparison chart is intended as a guide to identifying differences between the 2021 and 2006 ALTA policies. It should not be relied upon for the interpretation of these policies.

2006 ALTA LOAN POLICY	2021 ALTA LOAN POLICY COMPARISON (v. 7-30-2021)	COMMENTS
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.	6. An enforcement ~~action based on the exercise~~ of a governmental forfeiture, police, regulatory, or national security 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~~described by the enforcing governmental authority in an Enforcement Notice.	**BROADENED COVERAGE.** The 2021 ALTA policies include the added "forfeiture," "regulatory," and "national security" power in Covered Risk 6 and in Exclusion 1.b.
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.	7. ~~The~~An exercise of the power~~rights~~ of eminent domain ~~if~~, but only to the extent ~~that~~ a. ~~a notice~~ of the exercise ~~describing~~ described ~~any part of the Land, is recorded~~ in an Enforcement Notice~~the Public Records~~; or	**SAME.** The 2021 ALTA policies include a new defined term "Enforcement Notice" and a revised defined term "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.	~~8.~~ b. Anythe taking ~~by a governmental body that has~~ occurred and is binding on ~~the rights of~~ a purchaser for value without Knowledge.	**SAME.**
	c. An enforcement of a PACA-PSA Trust, but only to the extent of the enforcement described in an Enforcement Notice.	**NEW COVERAGE.** The 2021 ALTA Loan Policy includes a new defined term "PACA-PSA Trust" and provides coverage if the Public Records contain an Enforcement Notice as of the Date of Policy.
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:	9. The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title. ~~This~~ Covered Risk 9 includes, but is not limited to, insurance against loss ~~from any of the following impairing the lien of the Insured Mortgage~~caused by:	**ADDED COVERAGE.** The 2006 and 2021 ALTA Loan Policies provide a non-exhaustive list of coverages but does not limit coverage to those listed items.
(a) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;	~~(a)~~a. forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;	**SAME.**
(b) failure of any person or Entity to have authorized a transfer or conveyance;	~~(b)~~b. the failure of ~~any~~ person or Entity to have authorized a transfer or conveyance;	**SAME.**
(c) the Insured Mortgage not being properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;	~~(c)~~c. the Insured Mortgage not being properly authorized, created, executed, witnessed, sealed, acknowledged, notarized (including by remote online notarization), or delivered;	**IMPROVED COVERAGE.** Covered Risk 9.c. of the 2021 ALTA Loan Policy clarifies coverage by adding "authorized" and by including remote online notarization in the scope of notarization. Covered Risks 9.c., 9.d., and 9.f. of the 2021 ALTA Loan Policy make it clear that certain aspects of electronic transactions are covered by the policy.
(d) failure to perform those acts necessary to create a document by electronic means authorized by law;	~~(d)~~d. a failure to perform those acts necessary to create a ~~document~~an Insured Mortgage by electronic means authorized by law;	**SAME.**
(e) a document executed under a falsified, expired, or otherwise invalid power of attorney;	~~(e)~~e. a document having been executed under a falsified, expired, or otherwise invalid power of attorney;	**SAME.**
(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	~~(f)~~f. ~~a document not~~the Insured Mortgage not having been properly filed, recorded, or indexed in the Public Records, including the failure to ~~perform~~have performed those acts by electronic means authorized by law; ~~or~~	**SAME.**
(g) a defective judicial or administrative proceeding.	~~(g)~~g. a defective judicial or administrative proceeding.; or	**SAME.**
	h. invalidity or unenforceability of the lien of the Insured Mortgage as a result of the repudiation of an electronic signature by a person that executed the Insured Mortgage because the electronic signature on the Insured Mortgage was not valid under applicable electronic transactions law.	**BROADENED.** This coverage is similar to Covered Risk 9.c. of the 2021 ALTA Loan Policy but also includes "repudiation" of an electronic signature.
10. The lack of priority of the lien of the Insured Mortgage upon the Title over any other lien or encumbrance.	10. The lack of priority of the lien of the Insured Mortgage upon the Title over any other lien or encumbrance ~~on the Title~~ as security for the following components of the Indebtedness:	**CLARIFIED COVERAGE.** The 2021 ALTA Loan Policy clarifies the coverage to explicitly insure priority of the lien of the Insured Mortgage for the listed components of the

ALTA LOAN POLICY COMPARISON CHART

This comparison chart is intended as a guide to identifying differences between the 2021 and 2006 ALTA policies. It should not be relied upon for the interpretation of these policies.

2006 ALTA LOAN POLICY	2021 ALTA LOAN POLICY COMPARISON (v. 7-30-2021)	COMMENTS
	a. the amount of the principal disbursed as of the Date of Policy;	Indebtedness, subject to the Exclusions and the Exceptions. Available Endorsements can expand the priority coverage for future advances or disbursements (e.g., ALTA 14 Series).
	b. the interest on the obligation secured by the insured Mortgage;	
	c. the reasonable expense of foreclosure;	
	d. amounts advanced for insurance premiums by the Insured before the acquisition of the estate or interest in the Title; and	
	e. the following amounts advanced by the Insured before the acquisition of the estate or interest in the Title to protect the priority of the lien of the Insured Mortgage:	
	i. real estate taxes and assessments imposed by a governmental taxing authority; and	
	ii. regular, periodic assessments by a property owners association.	
11. The lack of priority of the lien of the Insured Mortgage upon the Title	**11.** The lack of priority of the lien of the Insured Mortgage upon the Title:	**SAME.**
(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	(a) as security for each ~~and every~~ advance of proceeds of the loan secured by the Insured Mortgage over any statutory lien for ~~services~~service, labor, ~~or~~ material, or equipment arising from construction of an improvement or work related to the Land when the improvement or work is ~~either~~:	**SIMILAR.** The 2021 ALTA Loan Policy clarifies coverage by adding "service" and "equipment," which are words included in the mechanics' lien coverage of the ALTA 32 Series (Construction Loan) endorsements.
(i) contracted for or commenced on or before Date of Policy; or	(i) contracted for or commenced on or before the Date of Policy; or	**SAME.**
(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	(ii) contracted for, commenced, or continued after the 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 the Date of Policy to advance; and	**SAME.**
(b) over the lien of any assessments for street improvements under construction or completed at Date of Policy.	(b) over the lien of any assessments for street improvements under construction or completed at the Date of Policy	**SAME.**
12. The invalidity or unenforceability of any assignment of the Insured Mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the Insured Mortgage in the named Insured assignee free and clear of all liens.	**12.** The invalidity or unenforceability of any assignment of the Insured Mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the Insured Mortgage in the named Insured assignee free and clear of all liens.	**SAME.**
13. The invalidity, unenforceability, lack of priority, or avoidance of the lien of the Insured Mortgage upon the Title	**13.** The invalidity, unenforceability, lack of priority, or avoidance of the lien of the Insured Mortgage upon the Title, or the effect of a court order providing an alternative remedy.	**IMPROVED COVERAGE.** This creditors' rights coverage addresses and provides coverage relating to transactions occurring prior to the transaction creating the interest being insured. The 2021 ALTA Loan Policy improves the coverage by extending the phrase, "the effect of a court order providing an alternative remedy" to both the coverage of 13.a. and 13.b. Section 550(a) of the Bankruptcy Code authorizes an alternative remedy in allowing the bankruptcy trustee to "...recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property."

ALTA LOAN POLICY COMPARISON CHART

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2006 ALTA LOAN POLICY	2021 ALTA LOAN POLICY COMPARISON (v. 7-30-2021)	COMMENTS
(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	(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~~Title to the Land 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~~	**UPDATED COVERAGE.**
	(i) fraudulent conveyance, fraudulent transfer, or preferential transfer under federal bankruptcy, state insolvency, or similar state or federal creditors' rights law; or	**SAME.**
	(ii) voidable transfer under the Uniform Voidable Transactions Act; or	**UPDATED COVERAGE.** In 2014, the National Conference of Commissioners changed the Uniform Fraudulent Transfer Act to the Uniform Voidable Transactions Act and substituted "voidable transaction" for "fraudulent transfer." The 2021 ALTA policies provide coverage pertaining to this updated Act.
(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	(b) because the Insured Mortgage constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar state or federal creditors' rights ~~laws~~law by reason of the failure ~~of its recording in the Public Records~~;	**SAME.**
(i) to be timely, or	(i) to ~~be~~ timely record the Insured Mortgage in the Public Records after execution and delivery of the Insured Mortgage to the Insured; or	**SIMILAR.** The 2021 ALTA policies clarify the commonly understood meaning of "failure of its recording ... to be timely".
(ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.	(ii) of the recording of the Insured Mortgage in the Public Records to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.	**SIMILAR.**
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.	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 the Date of Policy and prior to the recording of the Insured Mortgage in the Public Records.	**SAME.**
	DEFENSE OF COVERED CLAIMS	**SAME.** This is a new heading, but the coverage remains the same.
The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.	The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this ~~Policy~~policy, but only to the extent provided in the Conditions.	**SAME.**
[Witness clause optional]	[Witness clause ~~optional~~]	**SAME.**
BLANK TITLE INSURANCE COMPANY **BY:** **PRESIDENT** **BY:** **SECRETARY**	**BLANK TITLE INSURANCE COMPANY** By~~BY~~: _____ [Authorized Signatory]~~PRESIDENT~~ By~~BY~~: _____ [Authorized Signatory]~~SECRETARY~~	**SAME.**
EXCLUSIONS FROM COVERAGE	**EXCLUSIONS FROM COVERAGE**	**SAME.**
The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:	The following matters are ~~expressly~~ excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:	**SAME.**
1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to	1. (a) ~~a~~Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) that restricting, regulating, prohibiting, or relating to:	**SAME.**
(i) the occupancy, use, or enjoyment of the Land;	(i) the occupancy, use, or enjoyment of the Land;	**SAME.**

ALTA LOAN POLICY COMPARISON CHART

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2006 ALTA LOAN POLICY	2021 ALTA LOAN POLICY COMPARISON (v. 7-30-2021)	COMMENTS
(ii) the character, dimensions, or location of any improvement erected on the Land;	~~(ii)~~ the character, dimensions, or location of any improvement ~~erected~~ on the Land;	**SAME.**
(iii) the subdivision of land; or	~~(iii)~~ the subdivision of land; or	**SAME.**
(iv) environmental protection;	~~(iv)~~ environmental remediation or protection,	**CLARIFICATION.**
or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.	~~or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.~~	**SAME.** This provision has been moved to the end of this Exclusion.
(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.	~~(b)~~ aAny governmental forfeiture, police, regulatory, or national security power. ~~This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.~~	**CLARIFICATION.** The 2021 ALTA Loan Policy adds "forfeiture," "regulatory," and "national security" power for clarification.
	c. the effect of a violation or enforcement of any matter excluded under Exclusion 1.a. or 1.b.	**SAME.**
	Exclusion 1 does not modify or limit the coverage provided under Covered Risk 5 or 6.	**SAME.**
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.	2. ~~Rights~~Any power of eminent domain. ~~This~~ Exclusion 2 does not modify or limit the coverage provided under Covered Risk 7 ~~or 8~~.	**SAME.**
3. Defects, liens, encumbrances, adverse claims, or other matters	3. Any d~~D~~efects, liens, encumbrances, adverse claims, or other matters~~;~~	**SAME.**
(a) created, suffered, assumed, or agreed to by the Insured Claimant;	~~(a)~~ created, suffered, assumed, or agreed to by the Insured Claimant;	**SAME.**
(b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;	~~(b)~~ not Known to the Company, not recorded in the Public Records at the Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;	**SAME.**
(c) resulting in no loss or damage to the Insured Claimant;	~~(c)~~ resulting in no loss or damage to the Insured Claimant;	**SAME.**
(d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or	~~(d)~~ attaching or created subsequent to the Date of Policy ~~(however, this~~Exclusion 3.d. does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or	**CLARIFICATION.**
(e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.	~~(e)~~ resulting in loss or damage that would not have been sustained if consideration sufficient to qualify the Insured ~~Claimant~~named in Schedule A as a bona fide purchaser or encumbrancer had ~~paid value~~been given for the Insured Mortgage at the Date of Policy.	**IMPROVED COVERAGE.** The modified coverage matches what has recently been explained as the purpose of Exclusion 3.e.: to exclude matters based upon the failure of the insured to pay sufficient consideration in order to be a "bona fide purchaser" under the recording laws, as opposed, for example, to the effect of the failure to pay reasonably equivalent or fair market value.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.	4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business law~~laws of the state where the Land is situated~~.	**SAME.**
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.	5. Invalidity or unenforceability ~~in whole or in part~~ of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury ~~or any consumer credit protection or truth-in-lending law~~law or Consumer Protection Law.	**SIMILAR.** The 2021 ALTA Loan Policy includes a new defined term "Consumer Protection Law."
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is	6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights ~~law~~law, that the transaction creating the lien of the Insured Mortgage, is a	**SIMILAR.**
(a) a fraudulent conveyance or fraudulent transfer, or	~~(a)~~ a fraudulent conveyance or fraudulent transfer~~, or~~	**SAME.**

ALTA LOAN POLICY COMPARISON CHART

This comparison chart is intended as a guide to identifying differences between the 2021 and 2006 ALTA policies. It should not be relied upon for the interpretation of these policies.

2006 ALTA LOAN POLICY	2021 ALTA LOAN POLICY COMPARISON (v. 7-30-2021)	COMMENTS
	b. voidable transfer under the Uniform Voidable Transactions Act; or	**SIMILAR.** This addition is intended to modernize the ALTA 2021 policies by referring to the Uniform Voidable Transactions Act, which has been adopted in at least 19 states and is an amended version of the Uniform Fraudulent Transfer Act.
(b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.	~~(b)c.~~ ~~a~~ preferential transfer ~~for any reason not stated in Covered Risk 13(b) of this policy~~;	**SAME.**
	i. to the extent the Insured Mortgage is not a transfer made as a contemporaneous exchange for new value; or	**CLARIFICATION.** The 2006 and 2021 ALTA Loan Policies exclude liability for a voidable preference claim arising out of the transaction creating the lien of the Insured Mortgage because the transfer was not a contemporaneous exchange for new value given to the debtor (regardless of the subsequent timing of recording).
	ii. for any other reason not stated in Covered Risk 13.b.	**SAME.** Exclusion 6.c.ii. of the 2021 ALTA Loan Policy is the same as Exclusion 6(b) of the 2006 ALTA Loan Policy.
	7. Any claim of a PACA-PSA Trust. Exclusion 7 does not modify or limit the coverage provided under Covered Risk 8.	**NEW EXCLUSION.** Covered Risk 8 of the 2021 ALTA Loan Policy insures with respect to enforcement of a PACA-PSA Trust (as defined in the Conditions), but only to the extent of the enforcement described in an Enforcement Notice. The Perishable Agricultural Commodities Act (7 U.S.C. §§ 499a, et seq.) imposes a trust under 7 U.S.C. § 499e(c) for unpaid suppliers, sellers and agents of fresh fruits and fresh vegetables. The Packers and Stockyards Act (7 U.S.C. §§ 181, et seq.) establishes a similar trust on assets of packers to protect livestock producers. These risks were generally excepted from coverage in Schedule B but are now addressed through Covered Risk 8 and this Exclusion.
7. 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 Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).	~~7.~~8. Any lien on the Title for real estate taxes or assessments imposed by a governmental authority and created or attaching between the Date of Policy and the date of recording of the Insured Mortgage in the Public Records. ~~This~~ Exclusion 8 does not modify or limit the coverage provided under Covered Risk 2.b. or 11.(b).	**SIMILAR.** The 2006 and 2021 ALTA Loan Policy provide gap coverage (Covered Risk 14). Because of Exclusion 7 of the 2006 ALTA Loan Policy and the parameters of the gap coverage, the gap coverage does not include real estate taxes and assessments. The 2021 ALTA Loan Policy does not insure against taxes and assessments that become due and payable after the Date of Policy, whether before or after recording of the Insured Mortgage. Exclusion 8 does not affect the coverage of Covered Risk 2.b., which insures against real estate taxes and assessments due or payable, but unpaid.
	9. Any discrepancy in the quantity of the area, square footage, or acreage of the Land or of any improvement to the Land.	**NEW EXCLUSION.** Covered Risk 2.c. of the 2006 and 2021 ALTA policies does not insure the acreage or quantity of the Land or of any improvement. These risks were generally excepted from coverage in Schedule B but are now addressed through this Exclusion.
	[Transaction Identification Data, for which the Company assumes no liability as set forth in Condition 8.e.: Issuing Agent: Issuing Office: Issuing Office's ALTA® Registry ID: Loan ID Number: Issuing Office File Number: Property Address]	**IMPROVED TRANSACTION IDENTIFYING INFORMATION.** A Transaction Identification Data header has been added to Schedule A to provide clarity and, again, make post-closing smoother and general inquiries easier to initiate. This informational header was added to the 2016 ALTA Commitment for Title Insurance and is now carried over to the policies. This information is intentionally set apart from the insured information in Schedule A so it's not an insured matter but serves as reference information to improve communication between the policy issuer and the lender or servicer to verify that the proper property, loan, and settlement location is being used on the file. This loan and property verification should make sale on the secondary market more efficient as well. This new header includes the ALTA Registry ID – the unique settlement agent identifier created and maintained by ALTA to provide lenders with a single source for underwriter-confirmed title agents' contact information.

ALTA LOAN POLICY COMPARISON CHART

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2006 ALTA LOAN POLICY	2021 ALTA LOAN POLICY COMPARISON (v. 7-30-2021)	COMMENTS
SCHEDULE A	**SCHEDULE A**	**SAME.**
Name and Address of Title Insurance Company: [File No.:] Policy No.: Loan No.: Address Reference: Amount of Insurance: $ [Premium: $] Date of Policy: [at a.m./p.m.]	Name and Address of Title Insurance Company: ~~[File No.:]~~ Policy Number~~No.~~: ~~Loan No.:~~ ~~Address Reference:~~ Amount of Insurance: $ [Premium: $] Date of Policy: [at a.m./p.m.]	**SAME.**
1. Name of Insured:	1. ~~Name of~~The Insured is:	**SAME.**
2. The estate or interest in the Land that is encumbered by the Insured Mortgage is:	2. The estate or interest in the Land ~~that is~~ encumbered by the Insured Mortgage is:	**SAME.**
3. Title is vested in:	3. The Title encumbered by the Insured Mortgage is vested in:	**SAME.**
4. The Insured Mortgage and its assignments, if any, are described as follows:	4. The Insured Mortgage and its assignments, if any, are described as follows:	**SAME.**
5. The Land referred to in this policy is described as follows:	5. The Land ~~referred to in this policy~~ is described as follows:	**SAME.** Since Land is a defined term, the additional wording was unnecessary.
[6. This policy incorporates by reference those ALTA endorsements selected below: 4-06 (Condominium) 4.1-06 5-06 (Planned Unit Development) 5.1-06 6-06 (Variable Rate) 6.2-06 (Variable Rate--Negative Amortization) 8.1-06 (Environmental Protection Lien) Paragraph b refers to the following state statute(s): 9-06 (Restrictions, Encroachments, Minerals) 13.1-06 (Leasehold Loan) 14-06 (Future Advance-Priority) 14.1-06 (Future Advance-Knowledge) 14.3-06 (Future Advance-Reverse Mortgage) 22-06 (Location) The type of improvement is a _____, and the street address is as shown above.]	[6. This policy incorporates by reference ~~those ALTA~~the endorsements ~~designated/selected~~ below~~,~~ adopted by the [American Land Title Association][ ] as of the Date of Policy:] ~~4-06 (Condominium)~~ ~~4.1-06~~ ~~5-06 (Planned Unit Development)~~ ~~5.1-06~~ ~~6-06 (Variable Rate)~~ ~~6.2-06 (Variable Rate--Negative Amortization)~~ ~~8.1-06 (Environmental Protection Lien) Paragraph b refers to the following state statute(s):~~ ~~9-06 (Restrictions, Encroachments, Minerals)~~ ~~13.1-06 (Leasehold Loan)~~ ~~14-06 (Future Advance-Priority)~~ ~~14.1-06 (Future Advance-Knowledge)~~ ~~14.3-06 (Future Advance-Reverse Mortgage)~~ ~~22-06 (Location) The type of improvement is a _____, and the street address is as shown above.]~~	**SIMILAR OPTIONAL PROVISION.** The 2021 ALTA policies allow reference to adopted ALTA endorsements. Reference can also be made to other available endorsements. Unlike the 2006 ALTA Loan Policy, there is no specific list of optional endorsements in the 2021 ALTA policies that do not require the addition of substantial transaction specific information. This format is similar to the ALTA Short Form Residential Loan Policies.
SCHEDULE B	**SCHEDULE B**	**SIMILAR.**
[File No.] Policy No.	~~[File No.]~~ Policy Number~~No.~~	**SIMILAR.**
EXCEPTIONS FROM COVERAGE	**EXCEPTIONS FROM COVERAGE**	**SIMILAR.**
	Some historical land records contain Discriminatory Covenants that are illegal and unenforceable by law. This policy treats any Discriminatory Covenant in a document referenced in Schedule B as if each Discriminatory Covenant is redacted, repudiated, removed, and not republished or recirculated. Only the remaining provisions of the document are excepted from coverage.	**NEW PROVISION.** Typically, a similar reference is made in any Schedule B exception to restrictions that may contain unenforceable discriminatory provisions. This new provision will apply to all covenants and restrictions excepted in Schedule B. This provision makes clear that the policy does not perpetuate or republish such illegal provisions but preserves those portions of the covenants that are enforceable.
	[This policy does not insure against loss or damage and the Company will not pay costs, attorneys' fees, or expenses resulting from the terms and conditions of any lease or easement identified in Schedule A, and the following matters:	**SIMILAR.** There are two sets of alternate preamble clauses to account for those markets that do not use a Part II of Schedule B. This provision excepts to the terms and conditions of leases and easements identified in Schedule A, without the need for a separate Schedule B exception.

ALTA LOAN POLICY COMPARISON CHART

This comparison chart is intended as a guide to identifying differences between the 2021 and 2006 ALTA policies. It should not be relied upon for the interpretation of these policies.

2006 ALTA LOAN POLICY	2021 ALTA LOAN POLICY COMPARISON (v. 7-30-2021)	COMMENTS
	[Insert Schedule B exceptions here]	**SIMILAR.** Although the ALTA has adopted optional model exceptions, there are no model exceptions incorporated in Schedule B of the 2006 ALTA policies or the 2021 ALTA policies.
[Except as provided in Schedule B - Part II,] t[or T]his policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:	[~~Except as provided in Schedule B - Part II,~~ t[or T]~~his~~This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses ~~that arise by reason of~~resulting from the terms and conditions of any lease or easement identified in Schedule A, and the following matters:	**SIMILAR.** This is the alternative preamble for use with Schedule B - Part II.
[PART I	**[PART I**	**SAME.**
	[Insert Schedule B exceptions here]	**SAME.**
PART II	**PART II**	**SAME.**
In addition to the matters set forth in Part I of this Schedule, the Title is subject to the following matters, and the Company insures against loss or damage sustained in the event that they are not subordinate to the lien of the Insured Mortgage.**]**	~~In addition to the matters set forth in Part I of this Schedule, the Title is subject to the following matters, and the Company~~Covered Risk 10 insures against loss or damage sustained ~~in the event that they are not subordinate to~~by the Insured by reason of the lack of priority of the lien of the Insured Mortgage over the matters listed in Part II, subject to the terms and conditions of any subordination provision in a matter listed in Part II.**]**	**SIMILAR.** The 2021 ALTA Loan Policy preamble uses the Covered Risk 10 priority coverage to address the insurance in Schedule B – Part II. Schedule B—Part II of the 2021 ALTA Loan Policy excepts to the terms and conditions of any subordination agreement identified in the Part II Exceptions.
CONDITIONS	**CONDITIONS**	**DIFFERENT COVERAGE.** There are a number of differences in the Conditions of the 2006 and 2021 ALTA policies.
1. DEFINITION OF TERMS	**1.** DEFINITION OF TERMS	**SAME.**
The following terms when used in this policy mean:	In this policy, the following terms have the meanings given to them below. Any defined term includes both the singular and the plural, as the context requires:~~The following terms when used in this policy mean:~~	**SIMILAR.**
	a. "Affiliate": An Entity: i. that is wholly owned by the Insured; ii. that wholly owns the Insured; or iii. if that Entity and the Insured are both wholly owned by the same person or eEntity.	**NEW DEFINED TERM.** This term is utilized in the 2021 ALTA policies to expand the definition of Insured.
(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 Section 10 of these Conditions.	~~(a)~~b. "Amount of Insurance": The ~~amount~~Amount of Insurance stated in Schedule A, as may be increased ~~by~~by Condition 8.c.; decreased by ~~endorsement to this policy,~~ Condition 10; or increased ~~by Section 8(b)~~ or decreased by ~~Section 10 of these Conditions~~endorsements to this policy.	**SIMILAR.**
	c. "Consumer Protection Law": Any law regulating trade, lending, credit, sale, and debt collection practices involving consumers; any consumer financial law; or any other law relating to truth-in-lending, predatory lending, or a borrower's ability to repay a loan.	**NEW DEFINED TERM.** The definition in the 2021 ALTA Loan Policy replaces the terms "consumer credit protection laws and truth in lending laws" used in Exclusion 5 of the 2006 ALTA Loan Policy.

ALTA LOAN POLICY COMPARISON CHART

This comparison chart is intended as a guide to identifying differences between the 2021 and 2006 ALTA policies. It should not be relied upon for the interpretation of these policies.

2006 ALTA LOAN POLICY	2021 ALTA LOAN POLICY COMPARISON (v. 7-30-2021)	COMMENTS
(b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.	~~(b)~~d. "Date of Policy": The ~~date designated as~~ "Date of Policy" stated in Schedule A.	**SIMILAR.**
	e. "Discriminatory Covenant": Any covenant, condition, restriction, or limitation that is unenforceable under applicable law because it illegally discriminates against a class of individuals based on personal characteristics such as race, color, religion, sex, sexual orientation, gender identity, familial status, disability, national origin, or other legally protected class.	**NEW DEFINED TERM.** This term is used in a new introductory clause to the Exceptions from Coverage of Schedule B in the 2021 ALTA policies.
	f. "Enforcement Notice": A document recorded in the Public Records that describes any part of the Land and: i. is issued by a governmental agency that identifies a violation or enforcement of a law, ordinance, permit, or governmental regulation; ii. is issued by a holder of the power of eminent domain or a governmental agency that identifies the exercise of a governmental power; or iii. asserts a right to enforce a PACA-PSA Trust.	**NEW DEFINED TERM.** This is a new definition in the 2021 ALTA policies. "Enforcement Notice" is used in Covered Risks 5, 6, 7.a., and 8 of the 2021 ALTA policies and in the definition of "Public Records" of the 2021 ALTA policies.
(c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.	~~(c)~~g. "Entity": A corporation, partnership, trust, limited liability company, or other ~~similar legal~~ entity authorized by law to own title to real property in the State where the Land is located.	**SIMILAR.** The term "Entity" is used primarily in the definition of ~~the~~ "Insured."
	h. "Government Mortgage Agency or Instrumentality": Any government agency or instrumentality that is the owner of the Indebtedness, an insurer, or a guarantor under an insurance contract or guaranty insuring or guaranteeing the Indebtedness or any part of it, whether named as an Insured or not.	**NEW DEFINED TERM.** The new definition in the 2021 ALTA Loan Policy does not impact coverage. The term is used in the definitions of "Insured" and "Obligor."
(d) "Indebtedness": The obligation secured by the Insured Mortgage including one evidenced by electronic means authorized by law, and if that obligation is the payment of a debt, the Indebtedness is the sum of	~~(d)~~i. "Indebtedness": ~~The~~Any obligation secured by the Insured Mortgage, including ~~one~~ an obligation evidenced by electronic means authorized by law ~~and~~ if, if that obligation is the payment of a debt, the Indebtedness is ~~the sum of~~:	**SIMILAR.**
	i. the sum of:	**SAME.**
(i) the amount of the principal disbursed as of Date of Policy;	(~~i~~a). ~~the amount of the~~ principal disbursed as of the Date of Policy;	**SAME.**
(ii) the amount of the principal disbursed subsequent to Date of Policy;	(~~ii~~b). ~~the amount of the~~ principal disbursed subsequent to the Date of Policy;	**SAME.**
(iii) the construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the Land or related to the Land that the Insured was and continued to be obligated to advance at Date of Policy and at the date of the advance;	(~~iii~~c). the construction loan advances made subsequent to the Date of Policy for the purpose of financing, in whole or in part, the construction of an improvement to the Land or related to the Land that the Insured was and ~~continued~~continues to be obligated to advance at the Date of Policy and at the date of the advance;	**SAME.**
(iv) interest on the loan;	(~~iv~~d). interest on the loan;	**SAME.**
(v) the prepayment premiums, exit fees, and other similar fees or penalties allowed by law;	(~~v~~e). ~~the~~ prepayment premiums, exit fees, and other similar fees or penalties allowed by law;	**SAME.**
(vi) the expenses of foreclosure and any other costs of enforcement;	(~~vi~~f). ~~the~~ expenses of foreclosure and any other costs of enforcement;	**SAME.**

ALTA LOAN POLICY COMPARISON CHART

This comparison chart is intended as a guide to identifying differences between the 2021 and 2006 ALTA policies. It should not be relied upon for the interpretation of these policies.

2006 ALTA LOAN POLICY	2021 ALTA LOAN POLICY COMPARISON (v. 7-30-2021)	COMMENTS
	(g) advances for insurance premiums;	NEW.
(vii) the amounts advanced to assure compliance with laws or to protect the lien or the priority of the lien of the Insured Mortgage before the acquisition of the estate or interest in the Title;	(vii) the amounts advancedadvances to assure compliance with laws or to protect the validity, enforceability, lien or the priority of the lien of the Insured Mortgage before the acquisition of the estate or interest in the Title; including, but not limited to:	SIMILAR.
	(1) real estate taxes and assessments imposed by a governmental taxing authority, and	SIMILAR.
	(2) regular, periodic assessments by a property owners' association; and	CLARIFICATION.
(viii) the amounts to pay taxes and insurance; and	(viii) the amounts to pay taxes and insurance; and	SIMILAR. Advances before acquisition of the Title by the Insured will be components of the Indebtedness under the 2021 ALTA Loan Policy.
(ix) the reasonable amounts expended to prevent deterioration of improvements;	(ix) the reasonable amounts expendedadvances to prevent deterioration of improvements; before the Insured's acquisition of the Title, but	SIMILAR. Advances before acquisition of the Title by the Insured will be components of the Indebtedness under the 2021 ALTA Loan Policy.
but the Indebtedness is reduced by the total of all payments and by any amount forgiven by an Insured.	ii. but the Indebtedness is reduced by the totalsum of all payments and by any amountamounts forgiven by an Insured.	SIMILAR.
(e) "Insured":	(ei) "Insured":	IMPROVED COVERAGE.
The Insured named in Schedule A.	(a) The Insured named in Item 1 of Schedule A or future owner of the Indebtedness other than an Obligor, if the named Insured or future owner of the Indebtedness owns the Indebtedness, the Title, or an estate or interest in the Land as provided in Condition 2, but only to the extent the named Insured or the future owner either:	SIMILAR. This additional language in the 2021 ALTA Loan Policy does not alter the coverage that was provided in the 2006 ALTA Loan Policy, but does clarify that the Insured is a person that holds the Title after acquiring the Indebtedness, regardless of the means of acquisition.
(i) The term "Insured" also includes	(i) The term "Insured" also includes	
(A) the owner of the Indebtedness and each successor in ownership of the Indebtedness, whether the owner or successor owns the Indebtedness for its own account or as a trustee or other fiduciary, except a successor who is an obligor under the provisions of Section 12(c) of these Conditions;	(1A) the owner of the Indebtedness and each successor in ownership of the Indebtedness, whether the owner or successor owns the Indebtedness for its own account or as a trustee or other fiduciary, except a successor who is an obligor under the provisions of Section 12(c) of these Conditions; or	SIMILAR.
	(2) owns the Title after acquiring the Indebtedness;	SIMILAR.
(B) the person or Entity who has "control" of the "transferable record," if the Indebtedness is evidenced by a "transferable record," as these terms are defined by applicable electronic transactions law;	(2B) the person or Entity who has "control" of the "transferable record," if the Indebtedness is evidenced by a "transferable record," as these terms are defined by applicable electronic transactions law;	SAME.
(C) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;	(3C) successorsthe successor to the Title of an Insured bysresulting from dissolution, merger, consolidation, distribution, or reorganization;	SIMILAR. This additional language in the 2021 ALTA Loan Policy does not alter the coverage that was provided in the 2006 ALTA Loan Policy, but does clarify that the Insured is a person that holds the Title as a successor.

ALTA LOAN POLICY COMPARISON CHART

This comparison chart is intended as a guide to identifying differences between the 2021 and 2006 ALTA policies. It should not be relied upon for the interpretation of these policies.

2006 ALTA LOAN POLICY	2021 ALTA LOAN POLICY COMPARISON (v. 7-30-2021)	COMMENTS
(D) successors to an Insured by its conversion to another kind of Entity;	(Dc). ~~successors~~the successor to the Title of an Insured by resulting from its conversion to another kind of Entity;	**SIMILAR.** This additional language in the 2021 ALTA Loan Policy does not alter the coverage that was provided in the 2006 ALTA Loan Policy, but does clarify that the Insured is a person that holds the Title as a successor.
(E) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title	(Ed). a~~the~~ grantee of an Insured under a deed ~~delivered without payment of actual valuable consideration conveying~~or other instrument transferring the Title, if the grantee is an Affiliate;	**IMPROVED COVERAGE.** The 2021 ALTA policies no longer condition the application of the definition of the Insured on a deed to an affiliate "delivered without payment of actual valuable consideration."
(1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,	~~(1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,~~	**SIMILAR.** The definition of "Affiliate" in the 2021 ALTA policies incorporates this provision.
(2) if the grantee wholly owns the named Insured, or	~~(2) if the grantee wholly owns the named Insured, or~~	**SIMILAR.** The definition of "Affiliate" in the 2021 ALTA policies incorporates this provision.
(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,	~~(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,~~	**SIMILAR.** The definition of "Affiliate" in the 2021 ALTA policies incorporates this provision.
	(f) an Affiliate that acquires the Title through foreclosure or deed-in-lieu of foreclosure of the Insured Mortgage; or	**IMPROVED COVERAGE.** The 2021 ALTA Loan Policy includes an Affiliate that acquires the Title regardless of whether the Affiliate owned or held the Indebtedness.
(F) any government agency or instrumentality that is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the Indebtedness secured by the Insured Mortgage, or any part of it, whether named as an Insured or not;	(Eg). any Government Mortgage Agency or Instrumentality~~government agency or instrumentality that is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the Indebtedness secured by the Insured Mortgage, or any part of it, whether named as an Insured or not~~;	**SIMILAR.** The 2021 ALTA Loan Policy uses the new defined term "Government Mortgage Agency or Instrumentality."
(ii) With regard to (A), (B), (C), (D) , and (E) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured, unless the successor acquired the Indebtedness as a purchaser for value without Knowledge of the asserted defect, lien, encumbrance, or other matter insured against by this policy.	(ii). With regard to ~~(A), (B), (C), (D)~~ Conditions 1.i.i.(a), and ~~(E) reserving, however,~~ 1.i.i.(b), the Company reserves all rights and defenses as to any successor that the Company would have had against any predecessor Insured, unless the successor acquired the Indebtedness as a purchaser for value without Knowledge of the asserted defect, lien, encumbrance, adverse claim, or other matter insured against by this policy.	**SIMILAR.** The protection afforded a purchaser for value without Knowledge applies only to Conditions 1.i.i.(a) and 1.i.i.(b) of the 2021 ALTA Loan Policy, so this change has no substantive effect.
	iii. With regard to Conditions 1.i.i.(c), 1.i.i.(d), 1.i.i.(e), and 1.i.i.(f), the Company reserves all rights and defenses as to any successor or grantee that the Company would have had against any predecessor Insured.	**SIMILAR.** The persons named in these subsections remain subject to defenses that apply to the predecessor Insured under the 2021 ALTA Loan Policy.
(f) "Insured Claimant": An Insured claiming loss or damage.	~~(f)~~e. "Insured Claimant": An Insured claiming loss or damage arising under this policy.	**SAME.**
(g) "Insured Mortgage": The Mortgage described in paragraph 4 of Schedule A.	~~(g)~~i. "Insured Mortgage": The Mortgage described in ~~paragraph~~item 4 of Schedule A.	**SAME.**

ALTA LOAN POLICY COMPARISON CHART

This comparison chart is intended as a guide to identifying differences between the 2021 and 2006 ALTA policies. It should not be relied upon for the interpretation of these policies.

	2006 ALTA LOAN POLICY		2021 ALTA LOAN POLICY COMPARISON (v. 7-30-2021)	COMMENTS
(h)	"Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.	(m)m.	"Knowledge" or "Known": Actual knowledge, or actual notice, but not constructive ~~knowledge or notice that may be imputed to an Insured~~imparted by ~~reason of~~the Public Records ~~or any other records that impart constructive notice of matters affecting the Title~~.	**SIMILAR.** There are different views on whether actual knowledge is the same as or includes actual notice, which is expressly included in the definition of "Knowledge" of the 2021 ALTA policies.
(i)	"Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.	(n)n.	"Land": The land described in Item 5 of Schedule A, and ~~affixed~~ improvements located on that land at the Date of Policy that by State law constitute real property. The term "Land" does not include any property beyond ~~the lines of the area~~that described in Schedule A, nor any right, title, interest, estate, or easement in any abutting streets, roads, avenues, alleys, lanes, right-of-ways, body of water, or waterways, but ~~this~~ does not modify or limit the extent that a right of access to and from the Land is insured by this policy.	**SAME.**
(j)	"Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.	(o)o.	"Mortgage": ~~Mortgage~~A mortgage, deed of trust, trust deed, security deed, or other real property security instrument, including one evidenced by electronic means authorized by law.	**IMPROVED.**
		p.	"Obligor": A person or ~~e~~Entity that is or becomes a maker, borrower, or guarantor as to all or part of the Indebtedness or other obligation secured by the Insured Mortgage. A Government Mortgage Agency or Instrumentality is not an Obligor.	**NEW DEFINED TERM.** The term "Obligor" is used primarily in Condition 12 of the 2021 ALTA Loan Policy, but Condition 12 of the 2006 and 2021 ALTA Loan Policy remain substantively the same.
		q.	"PACA-PSA Trust": A trust under the federal Perishable Agricultural Commodities Act or the federal Packers and Stockyards Act or a similar State or federal law.	**NEW DEFINED TERM.** The term "PACA-PSA Trust" is used in Covered Risk 8 and in the Exclusions of the 2021 ALTA policies.
(k)	"Public Records": 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. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.	(k)r.	"Public Records": ~~Records~~The recording or filing system established under ~~state~~State statutes in effect at the Date of Policy ~~for the purpose of imparting~~under which a document must be recorded or filed to impart constructive notice of matters relating to ~~real property~~the Title to ~~purchasers~~ purchaser for value ~~and~~ without Knowledge. ~~With respect to Covered Risk 5(d), The term~~ "Public Records" ~~shall also~~ does not include any other recording or filing system, including any pertaining to environmental remediation or protection ~~liens filed in the records of~~, planning, permitting, zoning, licensing, building, health, public safety, or national security matters~~the clerk of the United States District Court for the district where the Land is located~~.	**SIMILAR.** The 2021 ALTA policies modify the definition of "Public Records" to distinguish those records that are Public Records for purposes of title insurance policies and other governmental records that have not intended to be, and are generally not construed as, within the scope of Public Records for limited purposes in title insurance policies.
		s.	"State": The state or commonwealth of the United States within whose exterior boundaries the Land is located. The term "State" also includes the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and Guam.	**NEW DEFINED TERM.**
(l)	"Title": The estate or interest described in Schedule A.	(t)t.	"Title": The estate or interest in the Land ~~described~~ identified in Item 2 of Schedule A.	**SAME.**

ALTA LOAN POLICY COMPARISON CHART

This comparison chart is intended as a guide to identifying differences between the 2021 and 2006 ALTA policies. It should not be relied upon for the interpretation of these policies.

2006 ALTA LOAN POLICY	2021 ALTA LOAN POLICY COMPARISON (v. 7-30-2021)	COMMENTS
(m) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title or a prospective purchaser of the Insured Mortgage to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.	~~(m)~~a. "Unmarketable Title". The Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title ~~or~~, a lender on the Title, or a prospective purchaser of the Insured Mortgage to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.	SAME.
2. CONTINUATION OF INSURANCE	2. CONTINUATION OF ~~INSURANCE~~COVERAGE	SIMILAR. The provision has been restructured to enhance readability.
The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured after acquisition of the Title by an Insured or after conveyance by an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.	~~The coverage of this~~This policy ~~shall~~ continues ~~in force as~~ of the Date of Policy in favor of an Insured:	SIMILAR.
	a. after the Insured's acquisition of the Title ~~by an Insured or~~, so long as the Insured retains an estate or interest in the Land; and	SIMILAR.
	b. after the Insured's conveyance of the Title ~~by an Insured, but only~~ so long as the Insured:	SIMILAR.
	i. retains an estate or interest in the Land; ~~or~~	SIMILAR.
	ii. ~~holds~~ owns an obligation secured by a purchase money Mortgage given by a purchaser from the Insured; or	SIMILAR.
	iii. ~~only so long as the Insured shall have~~has liability ~~by reason of~~for warranties given by the Insured in any transfer or conveyance of the Insured's Title.	SIMILAR.
	Except as provided in Condition 2, this policy terminates and ceases to have any further force or effect after the Insured conveys the Title. This policy ~~shall~~ does not continue in force or effect in favor of any ~~purchaser from~~person or entity that is not the Insured ~~of either (i) an estate or interest in the Land~~ and acquires the Title or ~~(ii)~~ an obligation secured by a purchase money Mortgage given to the Insured.	SIMILAR.
3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT	3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT	SIMILAR. The provision has been restructured to enhance readability.
The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured of any claim of title or interest that is adverse to the Title or the lien of the Insured Mortgage, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title or the lien of the Insured Mortgage, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.	The Insured ~~shall~~must notify the Company promptly in writing if the Insured has Knowledge of:	SIMILAR.
	a. ~~(i) in case of~~ any litigation or other matters ~~set forth in Section 5(a) of these Conditions~~. ~~(ii) in case Knowledge shall come to an Insured of any claim of title or interest that is adverse to the Title or the lien of the Insured Mortgage, as insured, and that might cause loss or damage~~ for which the Company may be liable ~~by virtue of~~under this policy; or	SIMILAR.
	b. ~~(iii)~~ any rejection of ~~if~~ the Title or the lien of the Insured Mortgage, ~~as insured, is rejected~~ as Unmarketable Title.	SIMILAR.
	If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under ~~the~~this policy ~~shall be~~is reduced to the extent of the prejudice.	SIMILAR.
4. PROOF OF LOSS	4. PROOF OF LOSS	MODIFIED PROVISION.

ALTA LOAN POLICY COMPARISON CHART

This comparison chart is intended as a guide to identifying differences between the 2021 and 2006 ALTA policies. It should not be relied upon for the interpretation of these policies.

2006 ALTA LOAN POLICY	2021 ALTA LOAN POLICY COMPARISON (v. 7-30-2021)	COMMENTS
In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.	~~In the event the Company is unable to determine the amount of loss or damage, the~~The Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, adverse claim, or other matter insured against by this policy that constitutes the basis of loss or damage and ~~shall~~must state, to the extent possible, the basis of calculating the amount of the loss or damage.	The 2021 ALTA policies do not condition the right of the Company to require a signed proof on its inability to determine the amount of loss or damage.
5. DEFENSE AND PROSECUTION OF ACTIONS	5. DEFENSE AND PROSECUTION OF ACTIONS	**SIMILAR.**
(a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.	(a) Upon written request by the Insured, and subject to the options contained in ~~Section 7 of these Conditions~~Condition 7, the Company, at its own cost and without unreasonable delay, ~~shall~~will provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company ~~shall have~~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 as to those ~~stated~~covered causes of action. ~~It shall~~The Company is not ~~be~~ liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of ~~those causes~~any cause of action that ~~allege~~alleges matters not insured against by this policy.	**SIMILAR.**
(b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title or the lien of the Insured Mortgage, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.	(b) The Company ~~shall have~~has the right, in addition to the options contained in ~~Section 7 of these Conditions~~Condition 7, at its own cost, to institute and prosecute any action or proceeding or to do any other act that, in its opinion, may be necessary or desirable to establish the Title or the lien of the Insured Mortgage, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it ~~shall be~~is liable to the Insured. The Company's exercise of these rights ~~shall~~is not ~~be~~ an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under ~~this subsection~~Condition 5.b., it must do so diligently.	**SIMILAR.**
(c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.	(c) ~~Whenever~~When the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court ~~of competent~~having jurisdiction ~~and it expressly~~. The Company reserves the right, in its sole discretion, to appeal any adverse judgment or order.	**SIMILAR.**
6. DUTY OF INSURED CLAIMANT TO COOPERATE	6. DUTY OF INSURED CLAIMANT TO COOPERATE	**SIMILAR.**
(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose.	(a) ~~In all cases where~~When this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured ~~shall~~will secure to the Company the right to ~~so~~ prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose.	**SAME.**

ALTA LOAN POLICY COMPARISON CHART

This comparison chart is intended as a guide to identifying differences between the 2021 and 2006 ALTA policies. It should not be relied upon for the interpretation of these policies.

2006 ALTA LOAN POLICY	2021 ALTA LOAN POLICY COMPARISON (v. 7-30-2021)	COMMENTS
Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title, the lien of the Insured Mortgage, or any other matter as insured.	~~Whenever~~When requested by the Company, the Insured, at the Company's expense, ~~shall~~must give the Company all reasonable aid in:	**SAME.** This provision has been restructured to enhance readability.
	(i) ~~in~~ securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement; and	**SAME.**
	(ii) ~~in~~ any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title, the lien of the Insured Mortgage, or any other matter, as insured.	**SAME.**
If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.	If the Company is prejudiced by ~~the~~any failure of the Insured to furnish the required cooperation, the Company's liability and obligations to the Insured under ~~the~~this policy ~~shall~~ terminate, including any ~~liability or~~ obligation to defend, prosecute, or continue any litigation, ~~with regard to~~regarding the matter ~~or matters~~ requiring such cooperation.	**SAME.**
(b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.	(b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos, whether bearing a date before or after the Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant ~~shall~~must grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all ~~of these~~the records in the custody or control of a third party that reasonably pertain to the loss or damage. ~~All~~No information designated in writing as confidential by the Insured Claimant provided to the Company pursuant to ~~this Section shall not~~Condition 6 will be later disclosed to others unless, in the reasonable judgment of the Company, ~~it~~disclosure is necessary in the administration of the claim or required by law. Any ~~failure~~Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in ~~this subsection~~Condition 6.b., unless prohibited by law ~~or governmental regulation, shall terminate~~terminates any liability of the Company under this policy as to that claim.	**SIMILAR.**
7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY	7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY	**SAME.** The changes made in Condition 7 of the 2021 ALTA policies are non-substantive revisions.
In case of a claim under this policy, the Company shall have the following additional options:	In case of a claim under this policy, the Company ~~shall have~~has the following additional options:	**SAME.**
(a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.	~~(a)~~ *To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.*	**SAME.**

ALTA LOAN POLICY COMPARISON CHART

This comparison chart is intended as a guide to identifying differences between the 2021 and 2006 ALTA policies. It should not be relied upon for the interpretation of these policies.

2006 ALTA LOAN POLICY	2021 ALTA LOAN POLICY COMPARISON (v. 7-30-2021)	COMMENTS
(i) To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay; or	(i) To pay or tender payment of the Amount of Insurance under this policy ~~together with~~, in addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay; or	SAME.
(ii) To purchase the Indebtedness for the amount of the Indebtedness on the date of purchase, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of purchase and that the Company is obligated to pay.	(ii) To purchase the Indebtedness for the amount of the Indebtedness on the date of purchase ~~together with~~, in addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of purchase and that the Company is obligated to pay.	SAME.
When the Company purchases the Indebtedness, the Insured shall transfer, assign, and convey to the Company the Indebtedness and the Insured Mortgage, together with any collateral security.	~~When~~If the Company purchases the Indebtedness, the Insured ~~shall~~must transfer, assign, and convey to the Company the Indebtedness and the Insured Mortgage, together with any collateral security.	SAME.
Upon the exercise by the Company of either of the options provided for in subsections (a)(i) or (ii), all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in those subsections, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.	Upon the exercise by the Company of either ~~of the options~~option provided for in ~~subsections (a)(i) or (ii)~~Condition 7.a., ~~all~~ the Company's liability and obligations ~~of the Company~~ to the Insured under this policy ~~other than to make the payment required in those subsections, shall~~ terminate, including any ~~liability or~~ obligation to defend, prosecute, or continue any litigation.	SAME.
(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.	(b) *To Pay or Otherwise Settle ~~W~~with Parties ~~O~~other ~~T~~than the Insured or ~~W~~with the Insured Claimant.*	SAME.
(i) to pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or	(i) ~~T~~to pay or otherwise settle with ~~other~~ parties other than the Insured for or in the name of ~~a~~the Insured Claimant ~~any claim insured against under this policy~~, in addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or	SAME.
(ii) to pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.	(ii) ~~T~~to pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, ~~together with~~, in addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.	SAME.
Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.	Upon the exercise by the Company of either ~~of the options~~option provided for in Condition 7.b, ~~subsections (b)(i) or (ii)~~, the Company's liability and obligations to the Insured under this policy for the claimed loss or damage ~~other than the payments required to be made, shall~~ terminate, including any ~~liability or~~ obligation to defend, prosecute, or continue any litigation.	SAME.
8. **DETERMINATION AND EXTENT OF LIABILITY**	8. CONTRACT OF INDEMNITY; DETERMINATION AND EXTENT OF LIABILITY	IMPROVED.

ALTA LOAN POLICY COMPARISON CHART

This comparison chart is intended as a guide to identifying differences between the 2021 and 2006 ALTA policies. It should not be relied upon for the interpretation of these policies.

2006 ALTA LOAN POLICY	2021 ALTA LOAN POLICY COMPARISON (v. 7-30-2021)	COMMENTS
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.	This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by ~~the~~an Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy. This policy is not an abstract of the Title, report of the condition of the Title, legal opinion, opinion of the Title, or other representation of the status of the Title. All claims asserted under this policy are based in contract and are restricted to the terms and provisions of this policy. The Company is not liable for any claim alleging negligence or negligent misrepresentation arising from or in connection with this policy or the determination of the insurability of the Title.	**SIMILAR.** Condition 8 emphasizes that the policy is a contract of indemnity and that the policies are not abstracts of title, reports, legal opinions, opinions of title, or other representations of title. This provision aligns the 2021 policies to the terms of the 2016 Commitment and now the 2021 Commitment.
(a) The extent of liability of the Company for loss or damage under this policy shall not exceed the least of	~~(a)~~ The extent of liability of the Company for loss or damage under this policy ~~shall~~does not exceed the least of:	**SAME.**
(i) the Amount of Insurance;	~~(i)~~ the Amount of Insurance;	**SAME.**
(ii) the Indebtedness;	~~(ii)~~ the Indebtedness;	**SAME.**
(iii) 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; or	~~(iii)~~ the difference between the fair market value of the Title, as insured, and the fair market value of the Title subject to the ~~risk~~matter insured against by this policy; or	**SIMILAR.**
(iv) if a government agency or instrumentality is the Insured Claimant, the amount it paid in the acquisition of the Title or the Insured Mortgage in satisfaction of its insurance contract or guaranty.	~~(iv)~~ if a Government Mortgage Agency or Instrumentality ~~government agency or instrumentality~~ is the Insured Claimant, the amount it paid in the acquisition of the Title or the Insured Mortgage or in satisfaction of its insurance contract or guaranty relating to the Title or the Insured Mortgage.	**SAME.** "Government Mortgage Agency or Instrumentality" is a defined term in the 2021 ALTA Loan Policy.
	b. Fair market value of the Title in Condition 6.a.ii. is calculated using either:	**SIMILAR.** The 2021 ALTA Loan Policy identifies the appropriate date for determining the amount of loss.
	i. the date the Insured acquires the Title as a result of a foreclosure or deed in lieu of foreclosure of the Insured Mortgage; or	**IMPROVED COVERAGE.**
	ii. the date the lien of the Insured Mortgage or any assignment set forth in Item 4 of Schedule A is extinguished or rendered unenforceable by reason of a matter insured against by this policy.	**IMPROVED COVERAGE.**
(b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title or the lien of the Insured Mortgage, as insured,	~~(b)~~c. If the Company pursues its rights under ~~Section 5 of these Conditions~~Condition 5.b. and is unsuccessful in establishing the Title or the lien of the Insured Mortgage, as insured,	**SAME.**
(i) the Amount of Insurance shall be increased by 10%, and	~~(i)~~ the Amount of Insurance ~~shall~~will be increased by ~~10~~15%, and	**IMPROVED COVERAGE.** The 2006 ALTA Loan Policy provides that the Amount of Insurance will be increased by 10% if the Company is unsuccessful in establishing the Title as insured. The 2021 ALTA Loan Policy provides that the Amount of Insurance will be increased by 15% if the Company is unsuccessful in establishing the Title as insured.

ALTA LOAN POLICY COMPARISON CHART

This comparison chart is intended as a guide to identifying differences between the 2021 and 2006 ALTA policies. It should not be relied upon for the interpretation of these policies.

2006 ALTA LOAN POLICY	2021 ALTA LOAN POLICY COMPARISON (v. 7-30-2021)	COMMENTS
(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.	(ii) the Insured Claimant may, by written notice given to the Company, elect, as an alternative to the dates set forth in Condition 8.b., to use either the date the settlement, action, proceeding, or other act described in Condition 5.b. is concluded or the date the notice of claim required by Condition 3 is received by the Company as the date for calculating the fair market value of the Title in Condition 8.a.ii. ~~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.~~	**IMPROVED COVERAGE.** New Condition 8.b. provides additional choices for the Insured to choose the date for determining the amount of the loss or damage, and revised Condition 8.c.ii. establishes a third alternative date as of the date the settlement, action, proceeding, or other act is concluded.
(c) In the event the Insured has acquired the Title in the manner described in Section 2 of these Conditions or has conveyed the Title, then the extent of liability of the Company shall continue as set forth in Section 8(a) of these Conditions.	~~(c) In the event the Insured has acquired the Title in the manner described in Section 2 of these Conditions or has conveyed the Title, then the extent of liability of the Company shall continue as set forth in Section 8(a) of these Conditions.~~	**SAME.** Condition 2 of the 2021 ALTA policies addresses continuation of coverage.
(d) In addition to the extent of liability under (a), (b), and (c), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.	(d) In addition to the extent of liability for loss or damage under ~~(a), (b), and (c)~~Conditions 8.a. and 8.c., the Company will also pay ~~these~~the costs, attorneys' fees, and expenses incurred in accordance with ~~Sections 5 and 7 of these Conditions~~Conditions 5 and 7.	**SAME.**
9. LIMITATION OF LIABILITY	**9. LIMITATION OF LIABILITY**	**SAME.** These sections are substantively the same, minor changes have been made in the 2021 ALTA policies for easier readability.
(a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, or establishes the lien of the Insured Mortgage, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.	(a) ~~If the~~The Company fully performs its obligations and is not liable for any loss or damage caused to the Insured if the Company accomplishes any of the following in a reasonable manner:	**SIMILAR.** The paragraph has been reordered to improve readability.
	i. ~~establishes the Title, or~~ removes the alleged defect, lien, ~~or~~ encumbrance, adverse claim, or other matter; ~~or~~	**SAME.**
	ii. cures the lack of a right of access to ~~or~~ and from the Land; ~~or~~	**SAME.**
	iii. cures the claim of Unmarketable Title; or	**SAME.**
	iv. establishes the lien of the Insured Mortgage,	**SAME.**
	all as insured. ~~in a reasonably diligent manner.~~ The Company may do so by any method, including litigation and the completion of any appeals. ~~It shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.~~	**SAME.**
(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title or to the lien of the Insured Mortgage, as insured.	(b) ~~In the event~~The Company is not liable for loss or damage arising out of any litigation, including litigation by the Company or with the Company's consent, ~~the Company shall have no liability for loss or damage~~ until ~~there has been a final determination by a~~ State or federal court ~~of competent~~having jurisdiction, ~~and disposition of all appeals,~~ makes a final, non-appealable determination adverse to the Title or to the lien of the Insured Mortgage ~~as insured~~.	**SAME.**

ALTA LOAN POLICY COMPARISON CHART

This comparison chart is intended as a guide to identifying differences between the 2021 and 2006 ALTA policies. It should not be relied upon for the interpretation of these policies.

2006 ALTA LOAN POLICY	2021 ALTA LOAN POLICY COMPARISON (v. 7-30-2021)	COMMENTS
(c) The Company 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 Company.	(c) The Company ~~shall~~ is 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 Company.	**SAME.**
	d. An Insured Claimant must own the indebtedness or have acquired the Title at the time that a claim under this policy is paid.	**NEW PROVISION.**
	e. The Company is not liable for the content of the Transaction Identification Data, if any.	**NEW PROVISION.** The "Transaction Identification Data" is transaction information that is not insured.
10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY	10. REDUCTION ~~OF INSURANCE; REDUCTION~~ OR TERMINATION OF ~~LIABILITY~~INSURANCE	**IMPROVED.**
(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.	(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 by the Company prior to the acquisition of the Title as provided in ~~Section 2 of these Conditions~~Condition 2 ~~shall~~does not reduce the Amount of Insurance afforded under this policy, except to the extent that the payments reduces the Indebtedness.	**SAME.**
	b. When the Title is acquired by the Insured as a result of foreclosure or deed in lieu of foreclosure, the amount credited against the Indebtedness does not reduce the Amount of Insurance.	**IMPROVED.** The 2021 ALTA Loan Policy provides that the amount credited against the Indebtedness as a result of a foreclosure or deed in lieu of foreclosure does not reduce the Amount of Insurance.
(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.	(b)c. The voluntary satisfaction or release of the Insured Mortgage ~~shall terminate~~terminates all liability of the Company, except as provided in ~~Section 2 of these Conditions~~Condition 2.	**SAME.**
11. PAYMENT OF LOSS	11. PAYMENT OF LOSS	**SAME.**
When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.	When liability and the extent of loss or damage ~~have been definitely fixed~~are determined in accordance with ~~these~~the Conditions, the ~~payment shall be made~~Company will pay the loss or damage within 30 days.	**SAME.**
12. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT	12. COMPANY'S ~~RIGHTS OF~~ RECOVERY AND SUBROGATION RIGHTS UPON SETTLEMENT AND PAYMENT ~~OR SETTLEMENT~~	**SIMILAR.**
(a) The Company's Right to Recover	(a) *~~The~~ Company's Right to Recover*	**SAME.**

ALTA LOAN POLICY COMPARISON CHART

This comparison chart is intended as a guide to identifying differences between the 2021 and 2006 ALTA policies. It should not be relied upon for the interpretation of these policies.

2006 ALTA LOAN POLICY	2021 ALTA LOAN POLICY COMPARISON (v. 7-30-2021)	COMMENTS
Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title or Insured Mortgage and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.	i. ~~Whenever~~If the Company ~~shall have settled~~settles and ~~paid~~pays a claim under this policy, it ~~shall be~~is subrogated and entitled to the rights and remedies of the Insured Claimant in the Title or Insured Mortgage and all other rights and remedies in respect to the claim that the Insured Claimant has against any person, entity or property to the fullest extent ~~of~~ permitted by law, but limited to the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant ~~shall~~must execute documents to ~~evidence the~~ transfer ~~to the Company of~~ these rights and remedies to the Company. The Insured Claimant ~~shall permit~~permits the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.	**SAME.**
If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.	ii. If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company ~~shall defer~~defers the exercise of its subrogation right ~~to recover~~ until after the Insured Claimant ~~shall have recovered~~fully recovers its loss.	**SAME.**
	b. *Company's Subrogation Rights against Obligors*	**SIMILAR.**
	The Company's subrogation right includes the Insured's rights against Obligors including the Insured's rights to repayment under a note, indemnity, guaranty, warranty, insurance policy, or bond, despite any provision in those instruments that addresses recovery or subrogation rights. An Obligor cannot avoid the Company's subrogation right by acquiring the Indebtedness as a result of an indemnity, guaranty, warranty, insurance policy, or bond, or in any other manner. The Obligor is not an Insured under this policy. The Company may not exercise its rights under Condition 12.b. against a Government Mortgage Agency or instrumentality.	**SIMILAR.** Condition 12.b. of the 2021 ALTA Loan Policy is substantially the same as Condition 12(c) of the 2006 ALTA Loan Policy.
(b) The Insured's Rights and Limitations	~~(b)~~c. *~~The~~ Insured's Rights and Limitations*	**SAME.**
(i) The owner of the Indebtedness may release or substitute the personal liability of any debtor or guarantor, extend or otherwise modify the terms of payment, release a portion of the Title from the lien of the Insured Mortgage, or release any collateral security for the Indebtedness, if it does not affect the enforceability or priority of the lien of the Insured Mortgage.	~~(i)~~i. The owner of the Indebtedness may release or substitute the personal liability of any debtor or guarantor, extend or otherwise modify the terms of payment, release a portion of the Title from the lien of the Insured Mortgage, or release any collateral security for the Indebtedness, if ~~the~~ action does not affect the enforceability or priority of the lien of the Insured Mortgage.	**SAME.**

ALTA LOAN POLICY COMPARISON CHART

This comparison chart is intended as a guide to identifying differences between the 2021 and 2006 ALTA policies. It should not be relied upon for the interpretation of these policies.

2006 ALTA LOAN POLICY	2021 ALTA LOAN POLICY COMPARISON (v. 7-30-2021)	COMMENTS
(ii) If the Insured exercises a right provided in (b)(i), but has Knowledge of any claim adverse to the Title or the lien of the Insured Mortgage insured against by this policy, the Company shall be required to pay only that part of any losses insured against by this policy that shall exceed the amount, if any, lost to the Company by reason of the impairment by the Insured Claimant of the Company's right of subrogation.	(ii) If the Insured exercises a right provided in Condition 12.c.i.(b)(i), but has Knowledge of any claim adverse to the Title or the lien of the Insured Mortgage insured against by this policy, the Company ~~shall be~~is required to pay only that part of ~~any losses~~the loss insured against by this policy that ~~shall exceed~~exceeds the amount, if any, lost to the Company by reason of the impairment by the Insured Claimant of the Company's ~~right of~~ subrogation right.	**SAME.**
(c) The Company's Rights Against Noninsured Obligors	~~(c) The Company's Rights Against Noninsured Obligors~~	**SIMILAR.**
The Company's right of subrogation includes the Insured's rights against non-insured obligors including the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights. The Company's right of subrogation shall not be avoided by acquisition of the Insured Mortgage by an obligor (except an obligor described in Section 1(e)(i)(F) of these Conditions) who acquires the Insured Mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond, and the obligor will not be an Insured under this policy.	~~The Company's right of subrogation includes the Insured's rights against non-insured obligors including the rights of the Insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights. The Company's right of subrogation shall not be avoided by acquisition of the Insured Mortgage by an obligor (except an obligor described in Section 1(e)(i)(F) of these Conditions) who acquires the Insured Mortgage as a result of an indemnity, guarantee, other policy of insurance or bond, and the obligor will not be an Insured under this policy.~~	**SIMILAR.** Condition 12.b. of the 2021 ALTA Loan Policy is substantially the same as Condition 12(c) of the 2006 ALTA Loan Policy.
13. ARBITRATION	~~13. ARBITRATION~~	**SIMILAR.**
Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. 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. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.	~~Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. 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. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.~~	**SIMILAR.** The Arbitration section has moved to Condition 18 in the 2021 ALTA Loan Policy, so that it is the last condition and is bracketed for more convenient deletion if not permitted in a particular state, or if the issuing company elects not to use it
14. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT	~~14.~~13. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT	**SIMILAR.** The provisions of this Condition have been reordered to improve readability.
(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.	~~(a)~~ This policy together with all endorsements, if any, ~~attached to it~~issued by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy ~~shall~~will be construed as a whole. This policy and any endorsement to this policy may be evidenced by electronic means authorized by law.	**SIMILAR.** The provisions of Condition 13.a. and 13.b. of the 2021 ALTA Loan Policy are similar to Conditions 14(a), 14(b), and 14(c) in the 2006 ALTA Loan Policy. Condition 13.a. also states that the policy and any endorsement may be evidenced by electronic means. Various other provisions such as the introductory paragraph of the 2021 ALTA policies recognize that the policy and endorsement may be issued electronically.

ALTA LOAN POLICY COMPARISON CHART

This comparison chart is intended as a guide to identifying differences between the 2021 and 2006 ALTA policies. It should not be relied upon for the interpretation of these policies.

2006 ALTA LOAN POLICY	2021 ALTA LOAN POLICY COMPARISON (v. 7-30-2021)	COMMENTS
(b) Any claim of loss or damage that arises out of the status of the Title or lien of the Insured Mortgage or by any action asserting such claim shall be restricted to this policy.	~~(b) Any claim of loss or damage that arises out of the status of the Title or lien of the Insured Mortgage or by any action asserting such claim shall be restricted to this policy.~~	**SIMILAR.** This is now addressed in Condition 8 of the 2021 ALTA policies.
(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.	~~(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.~~	**SAME.**
(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not	~~(d)~~b. Any amendment of this policy must be by a written endorsement issued by the Company. To the extent any term or provision of an endorsement is inconsistent with any term or provision of this policy, the term or provision of the endorsement controls. ~~Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions.~~ Unless~~Except as~~ the endorsement expressly states, it does not	**SAME.**
(i) modify any of the terms and provisions of the policy,	~~(i) modify any of the terms and provisions of the policy,~~	**SIMILAR.**
(ii) modify any prior endorsement,	~~(ii)~~c. modify any prior endorsement,	**SAME.**
(iii) extend the Date of Policy, or	~~(iii)~~d. extend the Date of Policy, ~~or~~	**SAME.**
	e. insure against loss or damage exceeding the Amount of Insurance, or	**SIMILAR.**
(iv) increase the Amount of Insurance.	~~(iv)~~f. increase the Amount of Insurance.	**SAME.**
15. SEVERABILITY	**~~15.~~14.** SEVERABILITY	**SAME.**
In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.	In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, ~~the~~this policy ~~shall~~will be deemed not to include that provision or ~~such~~the part held to be invalid, but all other provisions ~~shall~~will remain in full force and effect.	**SAME.**
16. CHOICE OF LAW; FORUM	**~~16.~~15.** CHOICE OF LAW AND CHOICE OF FORUM	**SIMILAR.**
(a) Choice of Law:	~~(a)~~a. *Choice of Law.*	**SIMILAR.**
The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.	The ~~Insured acknowledges the~~ Company has underwritten the risks covered by this policy and determined the premium charged ~~therefor~~ in reliance upon the State law affecting interests in real property and the State law applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the ~~jurisdiction~~ State where the Land is located.	**SIMILAR.** Condition 15.a. of the 2021 ALTA Loan Policy clearly provides the State law of the State where the Land is located governs the interpretation, rights, remedies, or enforcement of the policy.
Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title or the lien of the Insured Mortgage that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.	~~Therefore, the court or an arbitrator shall apply the~~The State law of the State~~jurisdiction~~ where the Land is located, or to the extent it controls, federal law, will~~o~~ determine the validity of claims against the Title or the lien of the Insured Mortgage ~~that are adverse to the Insured~~ and the interpretation~~to interpret~~ and enforcement of~~enforce~~ the terms of this policy. ~~In neither case shall the court or arbitrator apply its~~, without regard to conflicts of law principles to determine the applicable law.	
(b) Choice of Forum:	~~(b)~~b. *Choice of Forum.*	**SIMILAR.**
Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.	Any litigation or other proceeding brought by the Insured against the Company must be filed only in a State~~state~~ or federal court ~~within the United States of America or its territories~~ having ~~appropriate~~ jurisdiction.	**SAME.**

ALTA LOAN POLICY COMPARISON CHART

This comparison chart is intended as a guide to identifying differences between the 2021 and 2006 ALTA policies. It should not be relied upon for the interpretation of these policies.

2006 ALTA LOAN POLICY	2021 ALTA LOAN POLICY COMPARISON (v. 7-30-2021)	COMMENTS
17. NOTICES, WHERE SENT	~~17.~~16. NOTICES ~~WHERE SENT~~	**SAME.**
Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at [fill in].	Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at: *(fill in)*	**SAME.**
	17. CLASS ACTION	**NEW CONDITION.**
	ALL CLAIMS AND DISPUTES ARISING OUT OF OR RELATING TO THIS POLICY, INCLUDING ANY SERVICE OR OTHER MATTER IN CONNECTION WITH ISSUING THIS POLICY, ANY BREACH OF A POLICY PROVISION, OR ANY OTHER CLAIM OR DISPUTE ARISING OUT OF OR RELATING TO THE TRANSACTION GIVING RISE TO THIS POLICY, MUST BE BROUGHT IN AN INDIVIDUAL CAPACITY. NO PARTY MAY SERVE AS PLAINTIFF, CLASS MEMBER, OR PARTICIPANT IN ANY CLASS OR REPRESENTATIVE PROCEEDING.	**NEW CONDITION.** This Condition prohibits Class Action proceedings arising from the policy.
13. ARBITRATION	118. ARBITRATION	**SIMILAR.** For reading convenience, Condition 13 of the 2006 ALTA Loan Policy is shown next to Condition 18 of the 2021 ALTA Loan Policy.
Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. 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. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.	a. ~~Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or~~ All claims and disputes ~~between the Company and the Insured~~ arising out of or relating to this policy, including any service or other matter in connection with ~~its issuance~~issuing this policy, or the any breach of a policy provision, or to any other ~~controversy or~~ claim or dispute arising out of or relating to the transaction giving rise to this policy may be solved by arbitration. ~~All arbitrable matters when~~If the Amount of Insurance is $2,000,000 or less, any claim or dispute may be submitted to binding arbitration~~shall be arbitrated~~ at the election~~option~~ of either the Company or the Insured. ~~All arbitrable matters when~~If the Amount of Insurance is ~~in excess of~~greater than $2,000,000, any claim or dispute may be submitted to binding arbitration ~~shall be arbitrated~~ only when agreed to by both the Company and the Insured. Arbitration must be conducted pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("ALTA Rules"). The ALTA Rules are available online at www.alta.org/arbitration. The ALTA Rules incorporate, as appropriate to a particular dispute, the Consumer Arbitration Rules and Commercial Arbitration Rules of the American Arbitration Association ("AAA Rules"). The AAA Rules are available online at www.adr.org.	**SIMILAR.** Condition 18 of the 2021 ALTA Loan Policy is an optional provision that a title insurer may include in the policy. The condition has been restructured to improve readability.

ALTA LOAN POLICY COMPARISON CHART

This comparison chart is intended as a guide to identifying differences between the 2021 and 2006 ALTA policies. It should not be relied upon for the interpretation of these policies.

2006 ALTA LOAN POLICY	2021 ALTA LOAN POLICY COMPARISON (v. 7-30-2021)	COMMENTS
	b. ALL CLAIMS AND DISPUTES MUST BE BROUGHT IN AN INDIVIDUAL CAPACITY. NO PARTY MAY SERVE AS PLAINTIFF, CLASS MEMBER, OR PARTICIPANT IN ANY CLASS OR REPRESENTATIVE PROCEEDING IN ANY ARBITRATION GOVERNED BY CONDITION 18. The arbitrator does not have authority to conduct any class action arbitration or arbitration involving joint or consolidated claims under any circumstance.	
	c. *If there is a final judicial determination that a request for particular relief cannot be arbitrated in accordance with this Condition 18, then only that request for particular relief may be brought in court. All other requests for relief remain subject to this Condition 18.*	
	d. [The Company will pay all AAA filing, administration, and arbitrator fees of the consumer when the arbitration seeks relief of $100,000 or less. Other fees[Fees] will be allocated in accordance with the applicable AAA Rules. ~~Arbitration pursuant to this policy and under the Rules shall~~The results of arbitration will be binding upon the parties. The arbitrator may consider, but is not bound by, rulings in prior arbitrations involving different parties. The arbitrator is bound by rulings in prior arbitrations involving the same parties to the extent required by law. The arbitrator must issue a written decision sufficient to explain the findings and conclusions on which the award is based. Judgment upon the award rendered by the A~~arbitrator~~(s)~~ may be entered in any State or federal court ~~of competent~~[having jurisdiction.]	
NOTE: Bracketed [ ] material optional	***NOTE:*** *Bracketed [ ] material optional*	**SAME.**
Copyright 2006-2009 American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association.	**Copyright 2021~~2006-2009~~ American Land Title Association. All rights reserved.** ~~The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited.~~ Reprinted under license from the American Land Title Association. ~~This form has not been approved as an ALTA standard form.~~	**SIMILAR.**

ALTA OWNER'S POLICY COMPARISON CHART

This comparison chart is intended as a guide to identifying differences between the 2021 and 2006 ALTA policies. It should not be relied upon for the interpretation of these policies.

2006 ALTA OWNER'S POLICY	2021 ALTA OWNER'S POLICY COMPARISON (v. 07-30-2021)	COMMENTS
American Land Title Association — Owner's Policy Adopted 6-17-06	American Land Title Association — Owner's Policy ~~Adopted 6-17-06~~ 2021 v. 01.00 (07-01-2021)	These policies are referred to respectively as the 2006 ALTA Owner's Policy and the 2021 ALTA Owner's Policy. Reference to 2006 ALTA policies or 2021 ALTA policies refers to both Owner's and Loan Policies.
OWNER'S POLICY OF TITLE INSURANCE **Issued by** **BLANK TITLE INSURANCE COMPANY**	ALTA **OWNER'S POLICY OF TITLE INSURANCE** ~~Issued~~issued by **BLANK TITLE INSURANCE COMPANY**	**SAME.**
	This policy, when issued by the Company with a Policy Number and the Date of Policy, is valid even if this policy or any endorsement to this policy is issued electronically or lacks any signature.	**ADDED COVERAGE.** This clause is similar to ALTA 39[-06] (Policy Authentication), which agrees that the Company will not deny liability under the policy or any endorsements issued with the policy solely on the grounds that the policy or endorsements were issued electronically or lack signatures in accordance with the Conditions.
Any notice of claim and any other notice or statement in writing required to be given to the Company under this Policy must be given to the Company at the address shown in Section 18 of the Conditions.	**Any notice of claim and any other notice or statement in writing required to be given to the Company under this ~~Policy~~policy must be given to the Company at the address shown in ~~Section 18 of the Conditions~~Condition 17.**	**SAME.** This clause is designed to help direct the Insured to the appropriate section (Condition 17 of the 2021 ALTA Owner's Policy) so the Insured will know where to file a notice of claim or any other notice to be given to the insurer.
COVERED RISKS	**COVERED RISKS**	**SAME.** The term "Covered Risks" descriptively designates matters covered under the policy.
SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, BLANK TITLE INSURANCE COMPANY, a Blank corporation (the "Company") insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:	SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, ~~[BLANK TITLE INSURANCE COMPANY]~~[Blank Title Insurance Company], a [Blank] corporation (the "Company"), insures, as of the Date of Policy and, to the extent stated in Covered Risks 9 and 10, after the Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:	**SAME.** The lead-in provisions are substantively the same.
1. Title being vested other than as stated in Schedule A.	1. The Title being vested other than as stated in Schedule A.	**SAME.**
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from	2. Any defect in or lien or encumbrance on the Title. ~~This~~ Covered Risk 2 includes, but is not limited to, insurance against loss from:	**ADDED COVERAGE.** The 2021 ALTA Owner's Policy continues to provide a non-exhaustive list of coverages, but has added some additional coverage descriptions to that list of items.
(a) A defect in the Title caused by	~~(a)~~ A defect in the Title caused by:	**SAME.**
(i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;	~~(i)~~ forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;	**SAME.**
(ii) failure of any person or Entity to have authorized a transfer or conveyance;	~~(ii)~~ the failure of ~~any~~ person or Entity to have authorized a transfer or conveyance;	**SAME.**
(iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;	~~(iii)~~ a document affecting the Title not properly authorized, created, executed, witnessed, sealed, acknowledged, notarized (including by remote online notarization), or delivered;	**IMPROVED COVERAGE.** Covered Risk 2.a.iii. of the 2021 ALTA Owner's Policy clarifies coverage by adding "authorized" and by including remote online notarization in the scope of notarization. Covered Risks 2.a.iii., 2.a.iv., and 2.a.vi. of the 2021 ALTA Owner's Policy make it clear that certain aspects of electronic transactions are covered by the policy.
(iv) failure to perform those acts necessary to create a document by electronic means authorized by law;	~~(iv)~~ a failure to perform those acts necessary to create a document by electronic means authorized by law;	**SAME.**
(v) a document executed under a falsified, expired, or otherwise invalid power of attorney;	~~(v)~~ a document executed under a falsified, expired, or otherwise invalid power of attorney;	**SAME.**

ALTA OWNER'S POLICY COMPARISON CHART

This comparison chart is intended as a guide to identifying differences between the 2021 and 2006 ALTA policies. It should not be relied upon for the interpretation of these policies.

2006 ALTA OWNER'S POLICY	2021 ALTA OWNER'S POLICY COMPARISON (v. 07-30-2021)	COMMENTS
(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	(vi) a document not properly filed, recorded, or indexed in the Public Records, including the failure to ~~perform~~have performed those acts by electronic means authorized by law; ~~or~~	**SAME.**
(vii) a defective judicial or administrative proceeding	(vii) a defective judicial or administrative proceeding; or	**SAME.**
	(viii) the repudiation of an electronic signature by a person that executed a document because the electronic signature on the document was not valid under applicable electronic transactions law.	**IMPROVED COVERAGE.** This coverage is similar to the coverage provided by Covered Risk 2.a.iii in the 2006 and 2021 ALTA policies, but now expressly addresses the "repudiation" of an electronic signature.
(b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.	(b) ~~The~~the lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.	**SAME.**
(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.	(c) ~~Any encroachment~~the effect on the Title of an encumbrance, violation, variation, ~~or~~ adverse circumstance ~~affecting the Title that~~ boundary line overlap, or encroachment (including an encroachment of an improvement across the boundary lines of the Land), but only if the encumbrance, violation, variation, adverse circumstance, boundary line overlap, or encroachment would ~~be~~have been disclosed by an accurate and complete land title 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.~~	**IMPROVED COVERAGE.** The 2021 ALTA policies now include express coverage with respect to boundary line overlaps.
3. Unmarketable Title.	3. Unmarketable Title	**SAME.**
4. No right of access to and from the Land.	4. No right of access to and from the Land.	**SAME.**
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	5. ~~That~~A violation or enforcement of ~~any~~a law, ordinance, permit, or governmental regulation (including those relating to building and zoning) ~~restricting, regulating, prohibiting, or relating to,~~ but only to the extent of the violation or enforcement described by the enforcing governmental authority in an Enforcement Notice that identifies a restriction, regulation, or prohibition relating to:	**SIMILAR.** The 2021 ALTA policies include a new defined term "Enforcement Notice" and revise the defined term "Public Records." The term "Public Records" does not include any record pertaining to environmental protection, planning, permitting, zoning, licensing, building, health, public safety, or national security matters unless the record is contained in an Enforcement Notice.
(a) the occupancy, use, or enjoyment of the Land;	(a) the occupancy, use, or enjoyment of the Land;	**SAME.**
(b) the character, dimensions, or location of any improvement erected on the Land;	(b) the character, dimensions, or location of ~~any~~an improvement ~~erected~~on the Land;	**SAME.**
(c) the subdivision of land; or	(c) the subdivision of ~~land~~the Land; or	**SAME.**
(d) environmental protection	(d) environmental remediation or protection on the Land.	**BROADENED.** Environmental protection now expressly includes environmental "remediation."
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.	~~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.~~	**SAME.** The term "Enforcement Notice" of the 2021 ALTA policies addresses the notice that is covered.

ALTA OWNER'S POLICY COMPARISON CHART

This comparison chart is intended as a guide to identifying differences between the 2021 and 2006 ALTA policies. It should not be relied upon for the interpretation of these policies.

2006 ALTA OWNER'S POLICY	2021 ALTA OWNER'S POLICY COMPARISON (v. 07-30-2021)	COMMENTS
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.	6. An enforcement ~~action based on the exercise~~ of a governmental forfeiture, police, regulatory, or national security power ~~not covered by Covered Risk 6 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~~described by the enforcing governmental authority in an Enforcement Notice.	**BROADENED COVERAGE.** The 2021 ALTA policies include the added "forfeiture," "regulatory," and "national security" power in Covered Risk 6 and in Exclusion 1.b.
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.	7. ~~The~~An exercise of the ~~right~~power of eminent domain ~~if, but only to the extent a notice of the exercise, describing any part of the Land, is recorded in the Public Records~~ ii. ~~a notice~~ of the exercise ~~describing~~ described ~~any part of the Land, is recorded~~ in an Enforcement Notice~~the Public Records~~, or	**SAME.** The 2021 ALTA policies include a new defined term "Enforcement Notice" and revised defined term "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.	8. ~~c.~~ Any~~the~~ taking ~~by a governmental body that has~~ occurred and is binding on ~~the rights of~~ a purchaser for value without Knowledge.	**SAME.**
	8. An enforcement of a PACA-PSA Trust, but only to the extent of the enforcement described in an Enforcement Notice.	**NEW COVERAGE.** The 2021 ALTA Owner's Policy includes a new defined term "PACA-PSA Trust" and provides coverage if the Public Records contain an Enforcement Notice as of the Date of Policy.
9. Title being vested other than as stated in Schedule A or being defective	9. The Title being vested other than as stated in Schedule A, or~~the~~ Title being defective, or the effect of a court order providing an alternative remedy.	**IMPROVED COVERAGE.** This creditors' rights coverage addresses and provides coverage relating to transactions occurring prior to the transaction creating the interest being insured. The 2021 ALTA Owner's Policy clarifies the coverage by insuring against loss or damage by a court order providing an alternative remedy. Section 550(a) of the Bankruptcy Code authorizes an alternative remedy in allowing the bankruptcy trustee to "...recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property."
(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	i. ~~as a result of~~resulting from the avoidance, in whole or in part, ~~or from a court order providing an alternative remedy, of a~~ of any transfer of all or any part of the ~~title~~Title to the Land or any interest in the Land occurring prior to the transaction vesting the 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~~	**UPDATED COVERAGE.**
	i. fraudulent conveyance, fraudulent transfer, or preferential transfer under federal bankruptcy, state insolvency, or similar state or federal creditors' rights law; or	**SAME.**
	ii. voidable transfer under the Uniform Voidable Transactions Act, or	**UPDATED COVERAGE.** In 2014, the National Conference of Commissioners changed the Uniform Fraudulent Transfer Act to the Uniform Voidable Transactions Act and substituted "voidable transaction" for "fraudulent transfer." The 2021 ALTA policies provide coverage pertaining to this updated Act.
(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.	~~(b)~~ because the instrument ~~of transfer~~ vesting ~~the~~ Title ~~as shown in Schedule A~~ constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar state or federal creditors' rights ~~laws~~law by reason of the failure ~~of its recording in the Public Records~~;	**SAME.**

ALTA OWNER'S POLICY COMPARISON CHART

This comparison chart is intended as a guide to identifying differences between the 2021 and 2006 ALTA policies. It should not be relied upon for the interpretation of these policies.

2006 ALTA OWNER'S POLICY	2021 ALTA OWNER'S POLICY COMPARISON (v. 07-30-2021)	COMMENTS
(i) to be timely, or	(i) to be timely record the instrument vesting the Title in the Public Records after execution and delivery of the instrument to the Insured, or	SIMILAR. The 2021 ALTA policies clarify the commonly understood meaning of "failure of its recording ... to be timely".
(ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.	(ii) of the recording of the instrument vesting the Title in the Public Records to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.	SIMILAR.
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.	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 the Date of Policy and prior to the recording of the deed or other instrument of transfer vesting the Title in the Public Records that vests Title as shown in Schedule A.	SAME.
	Defense of Covered Claims	SAME. This is a new heading, but the coverage remains the same.
The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.	The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policypolicy, but only to the extent provided in the Conditions.	SAME.
[Witness clause optional]	[Witness clause optional]	SAME.
BLANK TITLE INSURANCE COMPANY **BY:** **PRESIDENT** **BY:** **SECRETARY**	**BLANK TITLE INSURANCE COMPANY** By BY: _____ PRESIDENT [Authorized Signatory] By BY: _____ SECRETARY [Authorized Signatory]	SAME.
EXCLUSIONS FROM COVERAGE	**EXCLUSIONS FROM COVERAGE**	SAME.
The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:	The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:	SAME.
1 (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to	1. (a) aAny law, ordinance, permit, or governmental regulation (including those relating to building and zoning) that restricting, regulateing, prohibiting, or relateing to:	SAME.
(i) the occupancy, use, or enjoyment of the Land;	(i) the occupancy, use, or enjoyment of the Land;	SAME.
(ii) the character, dimensions, or location of any improvement erected on the Land;	(ii) the character, dimensions, or location of any improvement erected on the Land;	SAME.
(iii) the subdivision of land; or	(iii) the subdivision of land; or	SAME.
(iv) environmental protection;	(iv) environmental remediation or protection;	CLARIFICATION.
or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.	or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.	SAME. This provision has been moved to the end of the Exclusion.
(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.	(bi) aAny governmental forfeiture, police, regulatory, or national security power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.	SIMILAR. The 2021 ALTA Owner's Policy adds "forfeiture," "regulatory," and "national security" power for clarification
	c. the effect of a violation or enforcement of any matter excluded under Exclusion 1.a. or 1.b.	SAME.
	Exclusion 1 does not modify or limit the coverage provided under Covered Risk 5 or 6.	SAME.

ALTA OWNER'S POLICY COMPARISON CHART

This comparison chart is intended as a guide to identifying differences between the 2021 and 2006 ALTA policies. It should not be relied upon for the interpretation of these policies.

2006 ALTA OWNER'S POLICY	2021 ALTA OWNER'S POLICY COMPARISON (v. 07-30-2021)	COMMENTS
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.	2. ~~Rights~~Any power of eminent domain. ~~This~~ Exclusion 2 does not modify or limit the coverage provided under Covered Risk 7 ~~or~~ 8.	**SAME.**
3. Defects, liens, encumbrances, adverse claims, or other matters	3. Any ~~d~~Defects, liens, encumbrances, adverse claims, or other matters	**SAME.**
(a) created, suffered, assumed, or agreed to by the Insured Claimant;	~~(~~a) created, suffered, assumed, or agreed to by the Insured Claimant;	**SAME.**
(b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;	~~(~~b) not Known to the Company, not recorded in the Public Records at the Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;	**SAME.**
(c) resulting in no loss or damage to the Insured Claimant;	~~(~~c) resulting in no loss or damage to the Insured Claimant;	**SAME.**
(d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or	~~(~~d) attaching or created subsequent to the Date of Policy (~~however, this~~Exclusion 3.d. does not modify or limit the coverage provided under Covered Risk 9 ~~and~~or 10); or	**CLARIFICATION.**
(e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.	~~(~~e) resulting in loss or damage that would not have been sustained if consideration sufficient to qualify the Insured Claimant~~named in Schedule A as a bona fide purchaser~~ had ~~paid value~~been given for the Title at the Date of Policy.	**IMPROVED COVERAGE.** The modified coverage matches what has recently been explained as the purpose of Exclusion 3.e.: to exclude matters based upon the failure of the insured to pay sufficient consideration in order to be a "bona fide purchaser" under the recording laws, as opposed, for example, to the effect of the failure to pay reasonably equivalent or fair market value.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is	4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is a:	**SIMILAR.**
(a) a fraudulent conveyance or fraudulent transfer; or	~~(~~a) ~~a~~fraudulent conveyance or fraudulent transfer; ~~or~~	**SAME.**
	i. voidable transfer under the Uniform Voidable Transactions Act; or	**SIMILAR.** This addition is intended to modernize the ALTA 2021 policies by referring to the Uniform Voidable Transactions Act, which has been adopted in at least 19 states and is an amended version of the Uniform Fraudulent Transfer Act.
(b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.	~~(~~b)c. ~~a~~preferential transfer ~~for any reason not stated in Covered Risk 9 of this policy~~;	**SAME.**
	i. to the extent the instrument of transfer vesting the Title as shown in Schedule A is not a transfer made as a contemporaneous exchange for new value; or	**CLARIFICATION.** The 2006 and 2021 ALTA Owner's Policies exclude liability for a voidable preference claim arising out of the transaction vesting the Title because the transfer was not a contemporaneous exchange for new value given to the debtor (regardless of the subsequent timing of recording).
	ii. for any other reason not stated in Covered Risk 9.b.	**SAME.** Exclusion 4.c.ii. of the 2021 ALTA Owner's Policy is the same as Exclusion 4(b) of the 2006 ALTA Owner's Policy.
	5. Any claim of a PACA-PSA Trust. Exclusion 5 does not modify or limit the coverage provided under Covered Risk 8.	**NEW EXCLUSION.** Covered Risk 8 of the 2021 ALTA Owner's Policy insures with respect to enforcement of a PACA-PSA Trust (as defined in the Conditions), but only to the extent of the enforcement described in an Enforcement Notice. The Perishable Agricultural Commodities Act (7 U.S.C. §§ 499a, et seq.) imposes a trust under 7 U.S.C. § 499e(c) for unpaid suppliers, sellers and agents of fresh fruits and fresh vegetables. The Packers and Stockyards Act (7 U.S.C. §§ 181, et seq.) establishes a similar trust on assets of packers to protect livestock producers. These risks were generally excepted from coverage in Schedule B but are now addressed through Covered Risk 8 and this Exclusion.

ALTA OWNER'S POLICY COMPARISON CHART

This comparison chart is intended as a guide to identifying differences between the 2021 and 2006 ALTA policies. It should not be relied upon for the interpretation of these policies.

2006 ALTA OWNER'S POLICY	2021 ALTA OWNER'S POLICY COMPARISON (v. 07-30-2021)	COMMENTS
5. 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.	6. Any lien on the Title for real estate taxes or assessments imposed or collected by a governmental authority that becomes due and payable after ~~and created or attaching between~~ the 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~~. Exclusion 6 does not modify or limit the coverage provided under Covered Risk 2.b.	**SIMILAR.** The 2006 and 2021 ALTA Owner's Policy provide gap coverage (Covered Risk 10). Because of Exclusion 5 of the 2006 ALTA Owner's Policy and the parameters of the gap coverage, the gap coverage does not include real estate taxes and assessments. The 2021 ALTA Owner's Policy does not insure against taxes and assessments that become due and payable after the Date of Policy, whether before or after recording of deed or other instrument of transfer. Exclusion 6 does not affect the coverage of Covered Risk 2.b., which insures against real estate taxes and assessments due or payable, but unpaid.
	7. Any discrepancy in the quantity of the area, square footage, or acreage of the Land or of any improvement to the Land.	**NEW EXCLUSION.** Covered Risk 2.c. of the 2006 and 2021 ALTA policies does not insure the acreage or quantity of the Land or of any improvement. These risks were generally excepted from coverage in Schedule B but are now addressed through this Exclusion.
	[Transaction Identification Data, for which the Company assumes no liability as set forth in Condition 9.d.: Issuing Agent: Issuing Office: Issuing Office's ALTA® Registry ID: Issuing Office File Number: Property Address:]	**IMPROVED TRANSACTION IDENTIFYING INFORMATION.** A Transaction Identification Data header has been added to Schedule A to provide clarity and, again, make post-closing smoother and general inquiries easier to initiate. This informational header was added to the 2016 ALTA Commitment for Title Insurance and is now carried over to the policies. This information is intentionally set apart from the insured information in Schedule A so it's not an insured matter but serves as reference information to improve communication between the policy issuer and the customer to verify that the proper information is being used on the file. This new header includes the ALTA Registry ID – the unique settlement agent identifier created and maintained by ALTA to provide customers with a single source of truth for underwriter-confirmed title agents' contact information.
SCHEDULE A	**SCHEDULE A**	**SAME.**
Name and Address of Title Insurance Company: [File No.:] Policy No.: Address Reference: Amount of Insurance: $ [Premium: $] Date of Policy: [at a.m./p.m.]	Name and Address of Title Insurance Company: ~~[File No.:~~] ~~Policy No.~~ Number: ~~Address Reference:~~ Amount of Insurance: $ [Premium: $] Date of Policy: [at a.m./p.m.]	**SAME.**
1. Name of Insured:	1. ~~Name of~~The Insured is:	**SAME.**
2. The estate or interest in the Land that is insured by this policy is:	2. The estate or interest in the Land ~~that is~~ insured by this policy is:	**SAME.**
3. Title is vested in:	3. The Title is vested in:	**SAME.**
4. The Land referred to in this policy is described as follows:	4. The Land ~~referred to in this policy~~ is described as follows:	**SAME.** Since Land is a defined term, the additional wording was unnecessary.
	[5. This policy incorporates by reference the endorsements designated below, adopted by the [American Land Title Association][ ] as of the Date of Policy.]	**NEW OPTIONAL PROVISION.** The 2021 ALTA policies allow reference to adopted ALTA endorsements. Reference can also be made to other available endorsements.
SCHEDULE B	**SCHEDULE B**	**SIMILAR.**
[File No.] Policy No.	[File No.] Policy ~~No.~~ Number:	**SIMILAR.**
EXCEPTIONS FROM COVERAGE	**EXCEPTIONS FROM COVERAGE**	**SIMILAR.**
	Some historical land records contain Discriminatory Covenants that are illegal and unenforceable by law. This policy treats any Discriminatory Covenant in a document referenced in Schedule B as if each Discriminatory Covenant is redacted, republished, removed, and not republished or recirculated. Only the remaining provisions of the document are excepted from coverage.	**NEW PROVISION.** Typically, a similar reference is made in an exception to restrictions that may contain unenforceable discriminatory provisions. This new provision will apply to all covenants and restrictions excepted in Schedule B. This provision makes clear that the policy does not perpetuate or republish such illegal provisions but preserves those portions of the covenants that are enforceable.

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ALTA OWNER'S POLICY COMPARISON CHART

This comparison chart is intended as a guide to identifying differences between the 2021 and 2006 ALTA policies. It should not be relied upon for the interpretation of these policies.

2006 ALTA OWNER'S POLICY	2021 ALTA OWNER'S POLICY COMPARISON (v. 07-30-2021)	COMMENTS
This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees, or expenses that arise by reason of:	This policy does not insure against loss or damage and the Company will not pay costs, attorneys' fees, or expenses ~~that arise by reason of~~resulting from the terms and conditions of any lease or easement identified in Schedule A, and the following matters:	**SIMILAR.** This provision excepts to the terms and conditions of leases and easements identified in Schedule A, without the need for a separate Schedule B exception.
1. [Policy may include regional exceptions if so desired by the issuing Company.] 2. [Variable exceptions such as taxes, easements, CC&R's, etc., shown here]	*[Insert Schedule B exceptions here]* ~~1. [Policy may include regional exceptions if so desired by the issuing Company.]~~ ~~2. [Variable exceptions such as taxes, easements, CC&R's, etc., shown here]~~	**SIMILAR.** Although the ALTA has adopted optional model exceptions, there are no model exceptions incorporated in the 2006 ALTA policies or the 2021 ALTA policies.
CONDITIONS	**CONDITIONS**	**DIFFERENT COVERAGE.** There are a number of differences in the Conditions of the 2006 and 2021 ALTA policies.
1. DEFINITION OF TERMS	1. DEFINITION OF TERMS	**SAME.**
The following terms when used in this policy mean:	In this policy, the~~The~~ following terms ~~when used in this policy mean~~have the meanings given to them below. Any defined term includes both the singular and the plural, as the context requires:	**SIMILAR.**
	a. "Affiliate": An Entity: i. that is wholly-owned by the Insured; ii. that wholly-owns the Insured; or iii. if that Entity and the Insured are both wholly-owned by the same person or entity.	**NEW DEFINED TERM.** This term is utilized in the 2021 ALTA policies to expand the definition of Insured.
(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 10 and 11 of these Conditions.	~~(a)~~b. "Amount of Insurance": The ~~amount~~Amount of Insurance stated in Schedule A, as may be increased by Condition 8.d. or decreased by ~~endorsement to this policy~~Condition 10 or 11; or increased ~~by Section 8(b),~~ or decreased by ~~Sections 10 and 11 of these Conditions,~~ endorsements to this policy.	**SIMILAR.**
(b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.	~~(b)~~c. "Date of Policy": The ~~date designated as~~ "Date of Policy" stated in Schedule A.	**SIMILAR.**
	g. "Discriminatory Covenant": Any covenant, condition, restriction, or limitation that is unenforceable under applicable law because it illegally discriminates against a class of individuals based on personal characteristics such as race, color, religion, sex, sexual orientation, gender identity, familial status, disability, national origin, or other legally protected class.	**NEW DEFINED TERM.** This term is used in a new introductory clause to the Exceptions from Coverage of Schedule B in the 2021 ALTA policies.
	e. "Enforcement Notice": A document recorded in the Public Records that describes any part of the Land and: i. is issued by a governmental agency that identifies a violation or enforcement of a law, ordinance, permit, or governmental regulation; ii. is issued by a holder of the power of eminent domain or a governmental agency that identifies the exercise of a governmental power; or iii. asserts a right to enforce a PACA-PSA Trust.	**NEW DEFINED TERM.** This is a new definition in the 2021 ALTA policies. "Enforcement Notice" is used in Covered Risks 5, 6, 7.a., and 8 of the 2021 ALTA policies and in the definition of "Public Records" of the 2021 ALTA policies.
(c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.	~~(c)~~f. "Entity": A corporation, partnership, trust, limited liability company, or other ~~similar legal~~ entity authorized by law to own title to real property in the State where the Land is located.	**SIMILAR.** The term "Entity" is used primarily in the definition of the "Insured".
(d) "Insured":	~~(d)~~g. "Insured":	**IMPROVED COVERAGE.**
The Insured named in Schedule A.	i. (a) The Insured named in Item 1 of Schedule A.	**SAME.**
(i) the term "Insured" also includes	~~(i) the term "Insured" also includes~~	

ALTA OWNER'S POLICY COMPARISON CHART

This comparison chart is intended as a guide to identifying differences between the 2021 and 2006 ALTA policies. It should not be relied upon for the interpretation of these policies.

2006 ALTA OWNER'S POLICY	2021 ALTA OWNER'S POLICY COMPARISON (v. 07-30-2021)	COMMENTS
(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;	(Ab). ~~successors~~the successor to the Title of ~~the~~an Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;	**SAME.**
(B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;	(Ba). ~~successors~~the successor to the Title of an Insured ~~by~~resulting from dissolution, merger, consolidation, distribution, or reorganization;	**SIMILAR.** This additional language in the 2021 ALTA Owner's Policy does not alter the coverage that was provided in the 2006 ALTA Owner's Policy, but does clarify that the Insured is a person that holds the Title as a successor.
(C) successors to an Insured by its conversion to another kind of Entity;	(Cd). ~~successors~~the successor to the Title of an Insured ~~by~~resulting from its conversion to another kind of Entity; or	**SIMILAR.** This additional language in the 2021 ALTA Owner's Policy does not alter the coverage that was provided in the 2006 ALTA Owner's Policy, but does clarify that the Insured is a person that holds the Title as a successor.
(D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title	(Dp). ~~a~~the grantee of an Insured under a deed ~~delivered without payment of actual valuable consideration conveying~~or other instrument transferring the Title, if the grantee is:	**IMPROVED COVERAGE.** The 2021 ALTA policies no longer condition the application of the definition of the Insured on a deed to an affiliate "delivered without payment of actual valuable consideration."
	(1) an Affiliate;	**SIMILAR.**
(1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,	~~(1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,~~	**SIMILAR.** The definition of "Affiliate" in the 2021 ALTA policies incorporates this provision.
(2) if the grantee wholly owns the named Insured,	~~(2) if the grantee wholly owns the named Insured,~~	**SIMILAR.** The definition of "Affiliate" in the 2021 ALTA policies incorporates this provision.
(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	~~(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~~	**SIMILAR.** The definition of "Affiliate" in the 2021 ALTA policies incorporates this provision.
(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.	(42). ~~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 by an Insured;	**SAME.**
	(3) a spouse who receives the Title because of a dissolution of marriage;	**INCREASED COVERAGE.** The 2021 ALTA Owner's Policy extends to a spouse of the Insured, whether by divorce decree, settlement agreement, or deed in connection with the dissolution of marriage.
	(4) a transferee by a transfer effective on the death of an Insured as authorized by law; or	**INCREASED COVERAGE.** This definition includes a beneficiary under a Transfer on Death Deed or other transfer that is effective on the death of the Insured.
	(5) another Insured named in Item 1 of Schedule A.	**INCREASED COVERAGE.** If two or more persons are named as Insureds in Schedule A of the policy, the policy coverage extends to the interest acquired by an Insured from another Insured. This provision may apply if the Insureds are co-tenants or if the Insureds own different interests.

ALTA OWNER'S POLICY COMPARISON CHART

This comparison chart is intended as a guide to identifying differences between the 2021 and 2006 ALTA policies. It should not be relied upon for the interpretation of these policies.

	2006 ALTA OWNER'S POLICY		2021 ALTA OWNER'S POLICY COMPARISON (v. 07-30-2021)	COMMENTS
	(ii) with regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.	(ii)	with regard to (A), (B), (C), and (C) reserving, however,The Company reserves all rights and defenses as to any successor or grantee that the Company would have had against any predecessor Insured.	**SIMILAR.** In each case where a successor or grantee becomes an Insured under the ALTA Owner's Policy, it will be subject to defenses that applied to the predecessor Insured.
(e)	"Insured Claimant": An Insured claiming loss or damage.	(eiii)	"Insured Claimant": An Insured claiming loss or damage arising under this policy.	**SAME.**
(f)	"Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.	(fiv)	"Knowledge" or "Known": Actual knowledge, or actual notice, but not constructive knowledge or notice that may be imputed to an insuredimparted by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.	**SIMILAR.** There are different views on whether actual knowledge is the same as or includes actual notice, which is expressly included in the definition of "Knowledge" of the 2021 ALTA policies.
(g)	"Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.	(gv)	"Land": The land described in Item 4 of Schedule A, and affixed improvements located on that land at the Date of Policy that by State law constitute real property. The term "Land" does not include any property beyond the lines of the areathat described in Schedule A, nor any right, title, interest, estate, or easement in any abutting streets, roads, avenues, alleys, lanes, right-of-ways, body of water, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.	**SAME.**
(h)	"Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.	(hvi)	"Mortgage": MortgageA mortgage, deed of trust, trust deed, security deed, or other real property security instrument, including one evidenced by electronic means authorized by law.	**SIMILAR.**
		l.	"PACA-PSA Trust": A trust under the federal Perishable Agricultural Commodities Act or the federal Packers and Stockyards Act or a similar State or federal law.	**NEW DEFINED TERM.** The term "PACA-PSA Trust" is used in Covered Risk 8 and in the Exclusions of the 2021 ALTA policies.
(i)	"Public Records": 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. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.	(iivii)	"Public Records": RecordsThe recording or filing system established under stateState statutes in effect at the Date of Policy for the purpose of impartingunder which a document must be recorded or filed to impart constructive notice of matters relating to real propertythe Title to purchasersa purchaser for value and without Knowledge. With respect to Covered Risk 5(d),The term "Public Records" shall alsodoes not include any other recording or filing system, including any pertaining to environmental remediation or protection liens filed in the records of planning, permitting, zoning, licensing, building, health, public safety, or national security matters.the clerk of the United States District Court for the district where the Land is located.	**SIMILAR.** The 2021 ALTA policies modify the definition of "Public Records" to distinguish those records that are Public Records for purposes of title insurance policies and other governmental records that have not intended to be, and are generally not construed as, within the scope of Public Records for limited purposes in title insurance policies.
		n.	"State": The state or commonwealth of the United States within whose exterior boundaries the Land is located. The term "State" also includes the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and Guam.	**NEW DEFINED TERM.**
(j)	"Title": The estate or interest described in Schedule A.	(iiix)	"Title": The estate or interest in the Land described identified in Item 2 of Schedule A.	**SAME.**

ALTA OWNER'S POLICY COMPARISON CHART

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2006 ALTA OWNER'S POLICY	2021 ALTA OWNER'S POLICY COMPARISON (v. 07-30-2021)	COMMENTS
(k) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.	~~(k)~~q. "Unmarketable Title": The Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or a lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.	SAME.
2. CONTINUATION OF INSURANCE	2. CONTINUATION OF ~~INSURANCE~~COVERAGE	SIMILAR. The provision has been restructured to enhance readability.
The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.	~~The coverage of this~~This policy ~~shall~~ continues ~~in force~~ as of the Date of Policy in favor of an Insured, ~~but only~~ so long as the Insured:	SIMILAR.
	a. retains an estate or interest in the Land; ~~or~~	SIMILAR.
	b. ~~holds~~ owns an obligation secured by a purchase money Mortgage given by a purchaser from the Insured; or	SIMILAR.
	c. ~~only so long as the Insured shall have~~has liability ~~by reason of~~for warranties given by the Insured in any transfer or conveyance of the Insured's Title.	SIMILAR.
	Except as provided in Condition 2, this policy terminates and ceases to have any further force or effect after the Insured conveys the Title. This policy ~~shall~~ does not continue in force or effect in favor of any ~~purchaser from~~ person or ~~e~~Entity that is not the Insured ~~of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured~~ acquires the Title or ~~(ii)~~ an obligation secured by a purchase money Mortgage given to the Insured.	SIMILAR.
3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT	3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT	SIMILAR. The provision has been restructured to enhance readability.
The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured hereunder of any claim of title or interest that is adverse to the Title, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.	The Insured ~~shall~~must notify the Company promptly in writing if the Insured has Knowledge of:	SIMILAR.
	a. ~~(i) in case of~~any litigation ~~or as set forth in Section 5(a) of these Conditions;~~	SIMILAR.
	~~(ii) in case Knowledge shall come to an Insured hereunder of any claim of title or interest that is adverse to the Title, as insured, and that might cause loss or damage~~other matter for which the Company may be liable ~~by virtue of~~under this policy; or	
	b. ~~(iii)~~ any rejection of ~~if~~ the Title, ~~as insured, is rejected~~ as Unmarketable Title.	SIMILAR.
	If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under ~~the~~this policy ~~shall be~~is reduced to the extent of the prejudice.	SIMILAR.
4. PROOF OF LOSS	4. PROOF OF LOSS	MODIFIED PROVISION.
In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.	~~In the event the Company is unable to determine the amount of loss or damage, the~~The Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, adverse claim, or other matter insured against by this policy that constitutes the basis of loss or damage and ~~shall~~must state, to the extent possible, the basis of calculating the amount of the loss or damage.	The 2021 ALTA policies do not condition the right of the Company to require a signed proof on its inability to determine the amount of loss or damage.
5. DEFENSE AND PROSECUTION OF ACTIONS	5. DEFENSE AND PROSECUTION OF ACTIONS	SIMILAR.

ALTA OWNER'S POLICY COMPARISON CHART

This comparison chart is intended as a guide to identifying differences between the 2021 and 2006 ALTA policies. It should not be relied upon for the interpretation of these policies.

2006 ALTA OWNER'S POLICY	2021 ALTA OWNER'S POLICY COMPARISON (v. 07-30-2021)	COMMENTS
(a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.	(a) Upon written request by the Insured, and subject to the options contained in ~~Section 7 of these Conditions~~Condition 7, the Company, at its own cost and without unreasonable delay, ~~shall~~will provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company ~~shall have~~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 as to those ~~stated~~covered causes of action. ~~It shall~~The Company is not ~~be~~ liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of ~~those causes of~~any cause of action that alleges matters not insured against by this policy.	**SIMILAR.**
(b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.	(b) The Company ~~shall have~~has the right, in addition to the options contained in ~~Section 7 of these Conditions~~Condition 7, at its own cost, to institute and prosecute any action or proceeding or to do any other act that, in its opinion, may be necessary or desirable to establish the Title, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it ~~shall be~~is liable to the Insured. The Company's exercise of these rights ~~shall~~is not ~~be~~ an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under ~~this subsection~~Condition 5.b., it must do so diligently.	**SIMILAR.**
(c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.	(c) ~~Whenever~~ When the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court ~~of competent~~having jurisdiction, ~~and it expressly~~. The Company reserves the right, in its sole discretion, to appeal any adverse judgment or order.	**SIMILAR.**
6. DUTY OF INSURED CLAIMANT TO COOPERATE	**6. DUTY OF INSURED CLAIMANT TO COOPERATE**	**SIMILAR.**
(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose.	(a) ~~In all cases where~~When this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured ~~shall~~will secure to the Company the right to ~~so~~ prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose.	**SAME.**
Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter as insured.	~~Whenever~~ When requested by the Company, the Insured, at the Company's expense, ~~shall~~ must give the Company all reasonable aid in:	**SAME.** This provision has been restructured to enhance readability.
	(i) ~~in~~ securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and	**SAME.**
	(ii) ~~in~~ any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter, as insured.	**SAME.**

ALTA OWNER'S POLICY COMPARISON CHART

This comparison chart is intended as a guide to identifying differences between the 2021 and 2006 ALTA policies. It should not be relied upon for the interpretation of these policies.

2006 ALTA OWNER'S POLICY	2021 ALTA OWNER'S POLICY COMPARISON (v. 07-30-2021)	COMMENTS
If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.	If the Company is prejudiced by ~~any~~the failure of the Insured to furnish the required cooperation, the Company's liability and obligations to the Insured under ~~this~~the policy ~~shall~~ terminate, including any ~~liability or~~ obligation to defend, prosecute, or continue any litigation, ~~with regard to~~regarding the matter ~~or matters~~ requiring such cooperation.	**SAME.**
(b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.	~~(b)~~ The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos, whether bearing a date before or after the Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant ~~shall~~must grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all ~~of these~~the records in the custody or control of a third party that reasonably pertain to the loss or damage. ~~All~~No information designated in writing as confidential by the Insured Claimant provided to the Company pursuant to ~~this Section shall not~~Condition 6 will be later disclosed to others unless, in the reasonable judgment of the Company, ~~it~~disclosure is necessary in the administration of the claim. ~~Failure~~ or required by law. Any failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in ~~this subsection~~ Condition 6.b., unless prohibited by law ~~or governmental regulation, shall terminate~~terminates any liability of the Company under this policy as to that claim.	**SIMILAR.**
7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY	7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY	**SAME.** The changes made in Condition 7 of the 2021 ALTA policies were non-substantive revisions.
In case of a claim under this policy, the Company shall have the following additional options:	In case of a claim under this policy, the Company ~~shall have~~has the following additional options:	**SAME.**
(a) To Pay or Tender Payment of the Amount of Insurance.	~~(a)~~ *To Pay or Tender Payment of the Amount of Insurance.*	**SAME.**
To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay.	To pay or tender payment of the Amount of Insurance under this policy ~~together with~~. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay.	**SAME.**
Upon the exercise by the Company of this option, all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in this subsection, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.	Upon the exercise by the Company of this option, ~~all~~ provided for in Condition 7.a., the Company's liability and obligations ~~of the Company~~ to the Insured under this policy, ~~other than to make the payment required in this subsection, shall~~ terminate, including any ~~liability or~~ obligation to defend, prosecute, or continue any litigation.	**SAME.**

ALTA OWNER'S POLICY COMPARISON CHART

This comparison chart is intended as a guide to identifying differences between the 2021 and 2006 ALTA policies. It should not be relied upon for the interpretation of these policies.

2006 ALTA OWNER'S POLICY	2021 ALTA OWNER'S POLICY COMPARISON (v. 07-30-2021)	COMMENTS
(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant	~~(b)~~ *To Pay or Otherwise Settle ~~W~~with Parties ~~O~~other ~~T~~than the Insured or ~~W~~with the Insured Claimant*	**SAME.**
(i) to pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or	~~(i)~~ ~~t~~To pay or otherwise settle with ~~other~~ parties other than the Insured for or in the name of ~~an~~the Insured Claimant ~~any claim insured against under this policy~~. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or	**SAME.**
(ii) to pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.	~~(ii)~~ ~~t~~To pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy ~~together with~~, in addition the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.	**SAME.**
Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.	Upon the exercise by the Company of either ~~of the option~~option provided for in Condition 7.b. ~~subsections (b)(i) or (ii)~~, the Company's liability and obligations to the Insured under this policy for the claimed loss or damage, ~~other than the payments required to be made, shall~~ terminate, including any ~~liability or~~ obligation to defend, prosecute, or continue any litigation.	**SAME.**
8. DETERMINATION AND EXTENT OF LIABILITY	**8. CONTRACT OF INDEMNITY; DETERMINATION AND EXTENT OF LIABILITY**	**IMPROVED.**
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.	This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by ~~the~~an Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy. This policy is not an abstract of the Title, report of the condition of the Title, legal opinion, opinion of the Title, or other representation of the status of the Title. All claims asserted under this policy are based in contract and are restricted to the terms and provisions of this policy. The Company is not liable for any claim alleging negligence or negligent misrepresentation arising from or in connection with this policy or the determination of the insurability of the Title.	**SIMILAR.** Condition 8 emphasizes that the policy is a contract of indemnity and that the policies are not abstracts of title, reports, legal opinions, opinions of title, or other representations of title. This provision aligns the 2021 policies to the terms of the 2016 Commitment and now the 2021 Commitment.
(a) The extent of liability of the Company for loss or damage under this policy shall not exceed the lesser of	~~(a)~~ The extent of liability of the Company for loss or damage under this policy ~~shall~~does not exceed the lesser of:	**SAME.**
(i) the Amount of Insurance; or	~~(i)~~ the Amount of Insurance; or	**SAME.**
(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.	~~(ii)~~ the difference between the fair market value of the Title, as insured, and the fair market value of the Title subject to the ~~risk~~matter insured against by this policy.	**SIMILAR.**
	b. Except as provided in Condition 8.c. or 8.d., the fair market value of the Title in Condition 8.a.ii. is calculated using the date the Insured discovers the defect, lien, encumbrance, adverse claim, or other matter insured against by this policy.	**SIMILAR.** This provision of the 2021 ALTA Owner's Policy identifies the appropriate date for determining the amount of loss under most circumstances.

ALTA OWNER'S POLICY COMPARISON CHART

This comparison chart is intended as a guide to identifying differences between the 2021 and 2006 ALTA policies. It should not be relied upon for the interpretation of these policies.

2006 ALTA OWNER'S POLICY	2021 ALTA OWNER'S POLICY COMPARISON (v. 07-30-2021)	COMMENTS
	c. If, at the Date of Policy, the Title to all of the Land is void by reason of a matter insured against by this policy, then the Insured Claimant may, by written notice given to the Company, elect to use the Date of Policy as the date for calculating the fair market value of the Title in Condition 8.a.ii.	**IMPROVED COVERAGE.** This new provision allows an insured owner to select an alternative date for determining loss in the event that their title in void at Date of Policy.
(b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title, as insured,	~~(b)~~d. If the Company pursues its rights under ~~Section 5 of these Conditions~~Condition 5.b. and is unsuccessful in establishing the Title, as insured,	**SAME.**
(i) the Amount of Insurance shall be increased by 10%, and	~~(i)~~i. the Amount of Insurance ~~shall~~will be increased by ~~10~~15%, and	**IMPROVED COVERAGE.** The 2006 ALTA Owner's Policy provides that the Amount of Insurance will be increased by 10% if the Company is unsuccessful in establishing the Title as insured. The 2021 ALTA Owner's Policy provides that the Amount of Insurance will be increased by 15% if the Company is unsuccessful in establishing the Title as insured.
(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.	~~(ii)~~ii. the Insured Claimant may, by written notice given to the Company, elect, as an alternative to the dates set forth in Condition 8.b. or, if it applies, 8.c., to use either the date the settlement, action, proceeding, or other act described in Condition 8.b. is concluded or the date the notice of claim required by Condition 3. is received by the Company as the date for calculating the fair market value of the Title in Condition 8.a.ii. ~~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.~~	**IMPROVED COVERAGE.** New Condition 8.b. provides additional choices for the Insured to choose the date for determining the amount of the loss or damage, and revised Condition 8.c.ii. establishes a third alternative date as of the date the settlement action, proceeding, or other act is concluded.
(c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.	~~(c)~~e. In addition to the extent of liability for loss or damage under ~~(a) and (b)~~Conditions 8.a. and 8.d., the Company will also pay ~~those~~the costs, attorneys' fees, and expenses incurred in accordance with ~~Sections 5 and 7 of these Conditions~~Conditions 5 and 7.	**SAME.**
9. LIMITATION OF LIABILITY	9. LIMITATION OF LIABILITY	**SAME.** These sections are substantively the same, minor changes have been made in the 2021 ALTA policies for easier readability.
(a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.	~~(a)~~a. ~~If the~~The Company fully performs its obligations and is not liable for any loss or damage caused to the Insured if the Company accomplishes any of the following in a reasonable manner:	**SIMILAR.** The paragraph has been reordered to improve readability.
	i. ~~establishes the Title, or~~ removes the alleged defect, lien, ~~or~~ encumbrance, adverse claim, or other matter; ~~or~~	**SAME.**
	ii. cures the lack of a right of access to ~~or~~ and from the Land; or	**SAME.**
	iii. cures the claim of Unmarketable Title,	**SAME.**
	all as insured. ~~in a reasonably diligent manner.~~ The Company may do so by any method, including litigation and the completion of any appeals. ~~It shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.~~	**SAME.**

ALTA OWNER'S POLICY COMPARISON CHART

This comparison chart is intended as a guide to identifying differences between the 2021 and 2006 ALTA policies. It should not be relied upon for the interpretation of these policies.

2006 ALTA OWNER'S POLICY	2021 ALTA OWNER'S POLICY COMPARISON (v. 07-30-2021)	COMMENTS
(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as insured.	(b) ~~In the event~~The Company is not liable for loss or damage arising out of any litigation, including litigation by the Company or with the Company's consent, ~~the Company shall have no liability for loss or damage until there has been a final determination by~~until a State or federal court ~~of competent~~having jurisdiction ~~and disposition of all appeals~~ makes a final, non-appealable determination adverse to the Title ~~as insured~~.	SAME.
(c) The Company 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 Company.	(c) The Company ~~shall~~is 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 Company.	SAME.
	d. The Company is not liable for the content of the Transaction Identification Data, if any.	**NEW PROVISION.** The "Transaction Identification Data" is transaction information that is not insured.
10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY	10. REDUCTION ~~OF INSURANCE; REDUCTION~~ OR TERMINATION OF ~~LIABILITY~~ INSURANCE	SAME.
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.	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.	SAME.
11. LIABILITY NONCUMULATIVE	11. LIABILITY NONCUMULATIVE	SAME.
The Amount of Insurance shall be reduced by any amount the Company pays 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 executed by an Insured after Date of Policy and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment to the Insured under this policy.	The Amount of Insurance ~~shall~~ will be reduced by any amount the Company pays 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 executed by an Insured after the Date of Policy and which is a charge or lien on the Title, and the amount so paid ~~shall~~ will be deemed a payment to the Insured under this policy.	SAME.
12. PAYMENT OF LOSS	12. PAYMENT OF LOSS	SAME.
When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.	When liability and the extent of loss or damage ~~have been definitely fixed~~are determined in accordance with ~~these~~the Conditions, the ~~payment shall be made~~Company will pay the loss or damage within 30 days.	SAME.
13. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT	13. ~~COMPANY'S RIGHTS OF~~ RECOVERY AND SUBROGATION RIGHTS ~~UPON~~ SETTLEMENT AND PAYMENT ~~OR SETTLEMENT~~	SIMILAR.
(a) Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.	(a) ~~Whenever~~If the Company ~~shall have settled~~settles and ~~paid~~pays a claim under this policy, it ~~shall be~~is subrogated and entitled to the rights and remedies of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person, entity, or property to the fullest extent of permitted by law, but limited to the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant ~~shall~~must execute documents to ~~evidence the~~ transfer ~~to the Company of~~ these rights and remedies to the Company. The Insured Claimant ~~shall permit~~permits the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.	SAME.

ALTA OWNER'S POLICY COMPARISON CHART

This comparison chart is intended as a guide to identifying differences between the 2021 and 2006 ALTA policies. It should not be relied upon for the interpretation of these policies.

2006 ALTA OWNER'S POLICY	2021 ALTA OWNER'S POLICY COMPARISON (v. 07-30-2021)	COMMENTS
If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.	b. If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company ~~shall defer~~defers the exercise of its subrogation right ~~to recover~~ until after the Insured Claimant ~~shall have recovered~~fully recovers its loss.	**SAME.**
(b) The Company's right of subrogation includes the rights of the Insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.	~~(b)~~c. The Company's ~~right of~~ subrogation right includes the Insured's rights ~~of the Insured~~ to indemnities, guaranties, warranty, other policies of insurance policy, or bonds, ~~notwithstanding~~despite any ~~terms or conditions~~provision ~~contained~~ in those instruments that addresses recovery of subrogation rights.	**SIMILAR.**
14. ARBITRATION	~~14.~~ ARBITRATION	**SIMILAR.**
Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. 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. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.	~~Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. 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. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.~~	**SIMILAR.** The Arbitration section has moved to Condition 19 in the 2021 ALTA Owner's Policy, so that it is the last condition and is bracketed for more convenient deletion if not permitted in a particular state, or if the issuing company elects not to use it
15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT	~~15~~14. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT	**SIMILAR.** The provisions of this Condition have been reordered to improve readability.
(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.	~~(a)~~a. This policy together with all endorsements, if any, ~~attached to~~issued by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy ~~shall~~will be construed as a whole. This policy and any endorsement to this policy may be evidenced by electronic means authorized by law.	**SIMILAR.** The provisions of Condition 14.a. and 14.b. of the 2021 ALTA Owner's Policy are similar to Conditions 15(a), 15(b), and 15(c) in the 2006 ALTA Owner's Policy. Condition 14.a. also states that the policy and any endorsement may be evidenced by electronic means. Various other provisions such as the introductory paragraph of the 2021 ALTA policies recognize that the policy and endorsement may be issued electronically.
(b) Any claim of loss or damage that arises out of the status of the Title or by any action asserting such claim shall be restricted to this policy.	~~(b) Any claim of loss or damage that arises out of the status of the Title or by any action asserting such claim shall be restricted to this policy.~~	**SIMILAR.** This is now addressed in Condition 8 of the 2021 ALTA policies.
(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.	~~(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.~~	**SAME.**
(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not:	~~(d)~~b. Any amendment of this policy must be by a written endorsement issued by the Company. To the extent any term or provision of an endorsement is inconsistent with any term or provision of this policy, the term or provision of the endorsement controls. ~~Each endorsement to this policy issued at any time is made a part of the policy and is subject to all of its terms and provisions. Unless~~Except as the endorsement expressly states, it does not:	**SAME.**

ALTA OWNER'S POLICY COMPARISON CHART

This comparison chart is intended as a guide to identifying differences between the 2021 and 2006 ALTA policies. It should not be relied upon for the interpretation of these policies.

2006 ALTA OWNER'S POLICY	2021 ALTA OWNER'S POLICY COMPARISON (v. 07-30-2021)	COMMENTS
(i) modify any of the terms and provisions of the policy;	~~(i) modify any of the terms and provisions of the policy;~~	SIMILAR.
(ii) modify any prior endorsement;	~~(ii)~~ modify any prior endorsement;	SAME.
(iii) extend the Date of Policy; or	~~(iii)~~ extend the Date of Policy; ~~or~~	SAME.
	ii. insure against loss or damage exceeding the Amount of Insurance; or	SIMILAR.
(iv) increase the Amount of Insurance.	~~(iv)~~ increase the Amount of Insurance.	SAME.
16. SEVERABILITY	1615. SEVERABILITY	SAME.
In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.	In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, this policy ~~shall~~will be deemed not to include that provision or ~~such~~the part held to be invalid, but all other provisions ~~shall~~will remain in full force and effect.	SAME.
17. CHOICE OF LAW; FORUM	1716. CHOICE OF LAW AND CHOICE OF FORUM	SIMILAR.
(a) Choice of Law:	(a) *Choice of Law:*	SIMILAR.
The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.	The ~~Insured acknowledges the~~ Company has underwritten the risks covered by this policy and determined the premium charged ~~therefor~~ in reliance upon the State law affecting interests in real property and the State law applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the ~~jurisdiction~~State where the Land is located.	SIMILAR. Condition 16.a. of the 2021 ALTA Owner's Policy clearly provides the State law of the State where the Land is located governs the interpretation, rights, remedies, or enforcement of the policy.
Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.	~~Therefore, the court or an arbitrator shall apply the~~The State law of the ~~jurisdiction~~State where the Land is located, or, to the extent it controls, federal law, will~~o~~ determine the validity of claims against the Title ~~that are adverse to the Insured~~ and ~~t~~the interpretation and enforcement of the terms of this policy, without regard to ~~in neither case shall the court or arbitrator apply its~~ conflicts of law principles to determine the applicable law.	
(b) Choice of Forum:	(b) *Choice of Forum:*	SIMILAR.
Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.	Any litigation or other proceeding brought by the Insured against the Company must be filed only in a ~~state~~State or federal court ~~within the United States of America or its territories~~ having ~~appropriate~~ jurisdiction.	SAME.
18. NOTICES, WHERE SENT	1817. NOTICES ~~WHERE SENT~~	SAME.
Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at [fill in].	Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at: *(fill in)*	SAME.

ALTA OWNER'S POLICY COMPARISON CHART

This comparison chart is intended as a guide to identifying differences between the 2021 and 2006 ALTA policies. It should not be relied upon for the interpretation of these policies.

2006 ALTA OWNER'S POLICY	2021 ALTA OWNER'S POLICY COMPARISON (v. 07-30-2021)	COMMENTS
	18. CLASS ACTION	**NEW CONDITION.**
	ALL CLAIMS AND DISPUTES ARISING OUT OF OR RELATING TO THIS POLICY, INCLUDING ANY SERVICE OR OTHER MATTER IN CONNECTION WITH ISSUING THIS POLICY, ANY BREACH OF A POLICY PROVISION, OR ANY OTHER CLAIM OR DISPUTE ARISING OUT OF OR RELATING TO THE TRANSACTION GIVING RISE TO THIS POLICY MUST BE BROUGHT IN AN INDIVIDUAL CAPACITY. NO PARTY MAY SERVE AS PLAINTIFF, CLASS MEMBER OR PARTICIPANT IN ANY CLASS, REPRESENTATIVE OR PRIVATE ATTORNEY GENERAL PROCEEDING.	**NEW CONDITION.** This Condition prohibits Class Action proceedings arising from the policy.
14. ARBITRATION	[19. ARBITRATION	**SIMILAR.** For reading convenience, Condition 14 of the 2006 ALTA Owner's Policy is shown next to Condition 19 of the 2021 ALTA Owner's Policy.
Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. 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. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.	a. ~~Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or~~All claims and disputes ~~between the Company and the Insured~~ arising out of or relating to this policy, including any service or other matter in connection with ~~its issuance~~issuing this policy, or the any breach of a policy provision, or ~~to~~ any other ~~controversy or~~ claim or dispute arising out of or relating to the transaction giving rise to this policy, may be resolved by arbitration. ~~All arbitrable matters when~~If the Amount of Insurance is $2,000,000 or less, any claim or dispute may be submitted to binding arbitration ~~shall be arbitrated~~ at the election~~option~~ of either the Company or the Insured. ~~All arbitrable matters when~~If the Amount of Insurance is ~~in excess of~~greater than $2,000,000, any claim or dispute may be submitted to binding arbitration ~~shall be arbitrated~~ only when agreed to by both the Company and the Insured. Arbitration must be conducted pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("ALTA Rules"). The ALTA Rules are available online at www.alta.org/arbitration. The ALTA Rules incorporate, as appropriate to a particular dispute, the Consumer Arbitration Rules and Commercial Arbitration Rules of the American Arbitration Association ("AAA Rules"). The AAA Rules are available online at www.adr.org.	**SIMILAR.** Condition 19 of the 2021 ALTA Owner's Policy is an optional provision that a title insurer may include in the policy. The condition has been restructured to improve readability.
	b. ALL CLAIMS AND DISPUTES MUST BE BROUGHT IN AN INDIVIDUAL CAPACITY. NO PARTY MAY SERVE AS PLAINTIFF, CLASS MEMBER, OR PARTICIPANT IN ANY CLASS, REPRESENTATIVE, OR PRIVATE ATTORNEY GENERAL PROCEEDING IN ANY ARBITRATION GOVERNED BY CONDITION 19. The arbitrator does not have authority to conduct any class action arbitration, private attorney general arbitration, or arbitration involving joint or consolidated claims under any circumstance.	

ALTA OWNER'S POLICY COMPARISON CHART

This comparison chart is intended as a guide to identifying differences between the 2021 and 2006 ALTA policies. It should not be relied upon for the interpretation of these policies.

2006 ALTA OWNER'S POLICY	2021 ALTA OWNER'S POLICY COMPARISON (v. 07-30-2021)	COMMENTS
	c. *If there is a final judicial determination that a request for particular relief cannot be arbitrated in accordance with this Condition 19, then only that request for particular relief may be brought in court. All other requests for relief remain subject to this Condition 19.*	
	d. [The Company will pay all AAA filing, administration, and arbitrator fees of the consumer when the arbitration seeks relief of $100,000 or less. Other fees][Fees] will be allocated in accordance with the applicable AAA Rules. ~~Arbitration pursuant to this policy and under the Rules shall~~The results of arbitration will be binding upon the parties. The arbitrator may consider, but is not bound by, rulings in prior arbitrations involving different parties. The arbitrator is bound by rulings in prior arbitrations involving the same parties to the extent required by law. The arbitrator must issue a written decision sufficient to explain the findings and conclusions on which the award is based. Judgment upon the award rendered by the ~~A~~arbitrator~~(s)~~ may be entered in any State or federal court ~~of competent~~having jurisdiction.]	
NOTE: Bracketed [ ] material optional	***NOTE:*** *Bracketed [ ] material optional*	**SAME.**
Copyright 2006-2009 American Land Title Association. All rights reserved. The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited. Reprinted under license from the American Land Title Association.	**Copyright 2021~~2006-2009~~ American Land Title Association. All rights reserved.** ~~The use of this Form is restricted to ALTA licensees and ALTA members in good standing as of the date of use. All other uses are prohibited.~~ Reprinted under license from the American Land Title Association. ~~This form has not been adopted as an ALTA standard Form~~	**SIMILAR.**

HOLDING ON TO A FAMILY LEGACY

By Kathryn N. Byler and Sandra Liedl

Kathryn N. Byler is an attorney with Pender & Coward, PC at their Virginia Beach office. Kathryn focuses her practice in the areas of real estate, guardianships, estate planning and business matters. As a licensed real estate broker and commercial property owner, she brings a heightened understanding of her clients' real estate and business needs. Kathryn holds a Bachelor of Science in Business Administration from Old Dominion University, an MBA from Golden Gates University and a JD from Regent University School of Law where she is an adjunct professor. Kathryn is the current Chair of the VSB Real Property section and Chair of the District 2-1 Disciplinary subcommittee.

Sandra Liedl, a lifelong resident of Virginia Beach, graduated from Salem High School and then Virginia Wesleyan University. She earned her law degree from Regent University School of Law, graduating in May 2021. While at Regent she served as a member of the Honor Council, President of the Virginia Bar Association Law School Council, and a Graduate Assistant in the Office of Career and Alumni Services. Sandra passed the July 2021 Virgina Bar Exam and joined Jones, Walker & Lake, P.C. as an Associate Attorney. Her practice concentrates in real estate law and estate planning.

Real property that has been passed down informally through generations is commonly known as "heirs' property." Usually the landowners die intestate, so the heirs take title as tenantsin common regardless of whether they live on the land, maintain the land or improvements, pay taxes on it, or have ever visited it. The result is all too often the family's loss of the property through partition suits by savvy investors.

The American Bar Association's Real Property Section and Trust & Estates Law Section advocated for the passage of the Uniform Partition of Heirs Property Act (UPHPA). Presently, the UPHPA has passed in 13 states including Virginia, with legislation pending in other jurisdictions. When adopted, the UPHPA requires safety measures designed to protect heirs, including:

- A requirement for an independent appraisal of the property
- The right to first refusal to purchase the share of the petitioner
- In-kind division, if it can be done equitably
- Factors to consider including sentimental attachment and ancestral value
- Listing for sale at appraised value before an auction

Partition suits and forced sales of heirs' property have been the cause of immeasurable amounts of loss and have left many individuals homeless and penniless. This article attempts first to educate those on heirs' property and partition suits generally. Next, it defines the reforms recently put in place, specifically in Virginia, to better protect heirs' property owners. Finally, this article introduces the Black Family Land Trust, Inc., and details the work the Trust has done to help the community in need.

Heirs' Property

Property being transferred from one generation to another by intestate succession is considered "heirs' property." According to state law, when someone who owns real property dies without an estate plan, those deemed to be the heirs of the deceased person are generally entitled to an ownership interest in the real property. If two or more heirs are entitled to receive an interest in the real property, the heirs will own the property as tenants in common with undivided interests and common rights.

Tenancy-in-common is the most widespread form of real property ownership among multiple owners. Individual tenants do not own a particular portion of the property; they own a fractional interest of an undivided whole. The fractions of interest held by each tenant-in-common are not necessarily equal,

but all owners have the same right to occupy and use the property, no matter how small their percentage of ownership. In theory, the idea of transferring land by intestate succession may be thought an easy alternative but it's rife with problems and potential conflicts. A decedent may have been confident that his or her heirs would be able to remain on the property for as long as they wish; however, heirs' property ownership in the form of tenancy-in-common is actually one of the least stable forms of common ownership of real property. Just as all owners have the right to occupy and use the property, each owner can initiate (a) a sale of his or her interest, or (b) a suit in which the court is asked to force a sale of the property. If sold to an outside third party without familial affections, a partition suit is highly likely.

It is not uncommon for heirs' property that has been passed down for generations to be owned by one hundred people or more. The hypothetical below shows how heirs' property can be divided among many individuals in just three generations.

- When A died without a will, his interest passed intestate as follows: 1/3 to B, 1/3 to C, and 1/3 to D.
- When B died without a will his 1/3 interest was divided in half, 1/6 to E and 1/6 to F.
- When C died, his 1/3 interest passed to his only heir, G.
- When F passed without a will his 1/6 was divided in half between his heirs, 1/12 to H and 1/12 to I.

All of those with interest in the property hold title as tenants-in-common. This means that even though H and I only have a one-twelfth interest in the property, they have the same rights to use and enjoyment as any other owner.; They also have the same right to sell their interest or to file a partition suit as any other owner.

Partition of Real Estate

Partition law governs withdrawal from tenancy-in-common ownership. Any tenant, regardless of the fractional interest he or she holds, can file a partition action. Many families assume that the larger percentage of ownership held by the family makes their title secure because of their belief that most common owners must agree to sell. In reality, unrelated individuals or businesses can acquire a small interest in family-owned property and file a partition suit requesting that the court order the entire property be sold. It is not uncommon for real estate speculators to abuse partition suits in order to gain title to large portions of land. By taking advantage of their co-owners' inability to pay cash or secure financing necessary to buy the entire parcel, a speculator can force a sale at auction and take complete ownership at a below fair-market price.

Partition Suits in Virginia

In order to file a suit for partition, the action must first be filed as a civil action in the circuit court, in the city of county in which the land, or part of it, lies. Virginia Code § 8.01-81 defines the procedure to be followed in a suit for partition. The Code places no restrictions or limitations on the courts as a matter of procedure; courts are free to adopt the methods best suited to meet the needs of each case.

The primary issue the court must decide is whether physical division, or partition in-kind, of the property is convenient, practical, and in the best interest of the parties; or, whether their interests will best be served by a partition by sale. Statutorily, a court has no power to order the sale of the property without first determining, from 'competent evidence,' that the land cannot be conveniently partitioned in kind.

When partition in-kind is found to be impractical, there are different avenues provided by statute. Prior to recent amendments, the court would order the public or private sale of the property to an unrelated buyer, and then divide the proceeds among the parties. It was simply up to the court to decide what would be in the best interest of all parties involved.

Uniform Partition of Heirs Property Act

The Uniform Partition of Heirs Property Act ("UPHPA") was introduced by the Uniform Laws Commission in 2010 and is designed to remedy the problems those who own family real property face in keeping their property and their wealth within the family. The Act specifically targeted a few key elements of a partition suit that had historically been unfavorable to heirs' property.

Courts traditionally have favored partition by sale over partition in kind, as many have developed and applied an economic test. A sale of the property will be ordered if this test shows that the hypothetical fair market value of the entire property is more than the aggregated fair market value of the sub-parcels that would result from a physical division of the property. The courts would then order the property sold at auction, which would often lend to a sales price much lower than fair market value. In so doing, the emotional or ancestral ties to the land are overlooked. Further complicating the situation, banks and other lending entities will often not accept a partial interest in property as collateral, so poorer families would be unable to secure the financing to be able to bid competitively on the land on which their family had been living for generations. In addition to yielding less than fair value, a number of fees and costs would have to be paid before the remaining proceeds of the sale would be distributed. Typical fees include court-appointed commissioners, surveyor fees, and attorney fees.

Prior to implementation of the UPHPA, partition sales often resulted in an involuntary loss of property rights and a loss of wealth proceeds from the sale of the property. Many former tenants-in-common were left with nowhere to go and no money to show for their loss of property.

The UPHPA addressed a need for notice to all parties, the proper procedure for determination of value, suggested allowing co-tenants to buy out the rights of those filing for partition by sale, suggested partition alternatives, and listed elements that must be considered by the courts when making a final decision. The Uniform Act was written to remedy the inequality of partition suits of heirs' property.

Virginia Adopts Provisions of UPHPA

In the interest of equity, Virginia adopted provisions of the UPHPA for all partition actions filed after July 1, 2020[1]. Updates to the Code included a section defining the need to put a defendant on notice by posting and maintaining a post while the action in pending– a 'conspicuous' sign on the property that is the subject of the action. A new section reads that, unless either the parties agree on the value of the property or the evidentiary value of an appraisal is outweighed by the cost of the appraisal itself, the court must appoint a disinterested appraiser to determine the fair market value of the property. Another addition to the code states that the property may be allotted to any one of the parties who will buy out the other parties' rights to ownership, either by agreement or by court order. Finally, if multiple co-tenants wish to purchase the whole property, the court is required to consider a number of factors in deciding who should get to do so. These factors include how long each person or his or her immediate relatives owned it, whether there is a sentimental attachment to the property, and who has been paying the taxes, insurance, and other expenses. The addition of these sections serves to solidify the fact that a forced sale may only take place where it is neither practical nor equitable for the property to be allotted or sold to co-tenants.

Black Family Land Trust, Inc.

Studies have found that low- to middle-income property owners tend to transfer their property by intestate succession at a much higher rate than wealthier property owners who may have more access to wills and trust attorneys. According to these studies, there is a substantial race element to the patterns of intestate succession due to the significant gap in rates of White Americans and Non-

[1] § 8.01-81, et seq., Code of Virginia, as amended.

White Americans who create an estate plan. One study revealed that 64% of White Americans and only 24% of Black Americans had created a will or estate plan. Further, over the last 15 years, Black American home ownership has significantly decreased. Black home ownership rates stood at 40.6% in 2020, compared to 49.1% in 2004.

Between the end of the Civil War and 1920, Black Americans acquired at least 100 million acres of agriculture land. So many years later, they struggle to maintain their status as property owners. For example, until 1950, a substantial part of Hilton Head Island, South Carolina, was owned by Black American families. Real estate speculators and developers found heirs who owned small portions of these properties as tenants-in-common. They then bought out these individuals' percentages of interest. As the buyers now owned title in the real estate, they were able to file partition suits and force sales of large parcels of Black-owned property. This decimated Black land ownership on the island.

In early 2002, forty black individuals came together to discuss creating a land trust to protect black-owned farms and family lands and then, in February 2004, the Black Family Land Trust, Inc. ("BFLT") emerged. The Trust has led the way in preservation of protection of Black American and other historically underserved populations' land assets.

Today, the BFLT provides educational, technical, and financial services to those in need. They currently work primarily in the Southeastern United States and have active projects in Virginia, North Carolina, and South Carolina. Some of the groups that have partnered with the BFLT to create change include the USDA, the Farm Service Agency, Burt's Bees, Conservation Trust, Center for Heirs Property Preservation, and American Forest Foundation. Over the years, they have worked to retain more than 3,000 acres of family-controlled land assets in twenty-eight designated USDA StrikeForce counties between with a cumulative land-value of over twelve million dollars in Virginia, North and South Carolina.

The Virginia State Bar Real Property Section and Trust & Estates Section are working together to develop Continuing Legal Education programs to better educate attorneys on the UPHPA and the important work of the Black Family Land Trust, Inc. Additionally, efforts are underway for ways in which to educate the general public of resources available to protect common owners of ancestral property. This area of the law continues to develop into a more fair and equitable manner of transferring wealth through real property.

VIRGINIA AND THE UNIFORM PARTITION OF HEIRS PROPERTY ACT: A PRACTICAL GUIDE TO THE NEW LAW

By Miriam R. Epstein

Miriam R. Epstein owns her own firm in Fairfax, Virginia, where she focuses her practice on trust and estate litigation, administration, and planning. She also serves as legal counsel and as court-appointed guardian ad litem for guardianship and conservatorship cases. She holds a J.D. from William and Mary School of Law, an M.F.A. from the Yale School of Drama, and a B.A. from Williams College.

Introduction

In July of 2020, Virginia joined the states that have passed the Uniform Partition of Heirs Property Act (UPHPA), revising the previous law on partition matters.[1] The purpose of the law is to address the "widespread, well-documented problem faced by many low to middle-income families across the country who have been dispossessed of their real property and much of their real property-related wealth over the past several decades as a result of court-ordered partition sales of tenancy-in-common properties."[2] Specifically, it seeks to cure issues faced by persons who have become tenants-in-common though intestate inheritance. While intestate inheritance may not cause any immediate difficulties (property often passes directly to a spouse or to a small number of children), as time goes by and the heirs pass on their ownership to heirs of their own, a single piece of property may come to be owned by dozens or even hundreds of heirs or non-relatives who have purchased ownership from the heirs. Because the rules and procedures previously in place tended to favor forced sale of land at one co-tenant's request, many families have been forced off their properties and received only a pittance in return. The UPHPA addresses this by establishing procedures to protect low- and middle-income families owning inherited property as tenants in common from the worst substantive and procedural abuses that have arisen.[3]

Because the UPHPA has only started to be promulgated in the last few years, there is still little case law about its use. However, a few cases have highlighted the areas that have potential to cause issues for the practitioner. In particular, the cases thus far reveal that the biggest disputes can be over the appraisal of the property in question and the application of the multi-factor test where multiple co-tenants wish to purchase the property. While every case will have its own facts, Virginia attorneys should be aware of the concerns that may arise under the new statutory scheme.

A. Virginia's Implementation of the UPHPA is Unique

As of this writing, the UPHPA has been enacted by eighteen other states and territories in addition to Virginia, including Alabama, Arkansas, Connecticut, Florida, Georgia, Hawai'i, Illinois, Iowa, Mississippi, Missouri, Montana, Nevada, New Mexico, New York, South Carolina, Texas, and the U.S.

[1] Virginia Code § 8.01-81 *et seq*.

[2] Unif. Partition of Heirs Prop. Act, Prefatory Note (2010).

[3] *Id.*

Virgin Islands.[4] On July 23, 2021, California became the nineteenth state to enact the UPHPA.[5] Another seven states have introduced the UPHPA but not yet enacted it.[6]

It is important to note that Virginia's implementation of the UPHPA is significantly different from both the model version and that of every other adopting state thus far. Specifically, rather than adopting the UPHPA as a whole (as other states have), the General Assembly chose instead to fold a number of its provisions into its existing partition law. The most important difference this creates is the type of partition action to which it applies. Because the UPHPA was originally conceived as a carve-out of pre-existing state partition laws, the model version, and therefore the version enacted in other states, only applies to a subset of tenancy-in-common property called "heirs property." In order to constitute heirs property, the property in question must meet all of the following requirements:

(A) there is no agreement in a record binding all the cotenants which governs the partition of the property;
(B) one or more of the cotenants acquired title from a relative, whether living or deceased; and
(C) Any of the following applies:
  (i) 20 percent or more of the interests are held by cotenants who are relatives;
  (ii) 20 percent or more of the interests are held by an individual who acquired title from a relative, whether living or deceased; or
  (iii) 20 percent or more of the cotenants are relatives.[7]

Therefore, in order for the UPHPA to apply under the provisions adopted by every other state so far, the court must make an initial determination as to whether the property at issue is in fact heirs property.[8] If not, then the preexisting law on partition applies.

In contrast, Virginia has chosen to apply the UPHPA to every kind of partition action, meaning that the law does not simply apply to "heirs property," but also to partition actions between joint tenants, divorcing spouses, corporations, etc. While many of the ensuing new procedures may not ultimately apply to such actions, attorneys prosecuting or defending any partition action in Virginia must take heed of the changes in the law to make sure that they are complying with the new rules.

B. The Role of the Appraisal in Determining Fair Market Value

Virginia Code § 8.01-81.1, which incorporates Section Six of the UPHPA, mandates that the court "shall" order an appraisal of the property at issue unless either 1) the parties agree to a value, or 2) "the court determines that the evidentiary value of an appraisal is outweighed by the cost of the

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[4] Ala. Code § 35-6A-1; Ark. Code Ann. § 18-60-1001 (eff. Jan. 1, 2016); Conn. Gen. Stat. Ann. § 52-503f (eff. Oct. 1, 2015); Fla. Stat. Ann. § 64.201 (eff. July 1, 2020); Ga. Code Ann., § 44-6-180 (eff. Jan 1, 2013) ; Haw. Rev. Stat. Ann. § 668A-1 (eff. Jan. 1, 2017); 755 Ill. Comp. Stat. Ann. 75/1 (eff. Aug. 23, 2019); Iowa Code Ann. § 651.27 (eff. July 1, 2018); Miss. Code. Ann. § 91-31-5 (eff. July 1, 2020); Mo. Ann. Stat. § 528.700 (West) (eff. Aug. 28, 2019); Mont. Code Ann. § 70-29-401 (eff. Oct. 1, 2013); Nev. Rev. Stat. Ann. § 39.600 (West) (eff. Oct. 1, 2011); N.M. Stat. Ann. § 42-5A-3 (eff. Jan. 1, 2018); N.Y. Real Prop. Acts. Law § 993 (McKinney) (eff. Dec. 6, 2019); S.C. Code Ann. § 15-61-310 (eff. Jan. 1, 2017); Tex. Prop. Code Ann. § 23A.001 (eff. Sept. 1, 2017); 28 V.I.C. § 511.

[5] *See* Cal. Civ. Proc. Code § 874.311 (eff. Jan. 1, 2022).

[6] *Partition of Heirs Property Act*, UNIFORM LAWS COMMISSION, https://www.uniformlaws.org/committees/community-home?CommunityKey=50724584-e808-4255-bc5d-8ea4e588371d (last visited Sept. 14, 2021).

[7] Unif. Partition of Heirs Prop. Act, § 2.

[8] Unif. Partition of Heirs Prop. Act, § 3; *see also Faison v. Faison*, 811 S.E.2d 431 (Ga. Ct. App. 2018) (finding that the trial court had erred by failing to make this determination even where the plaintiff and those defendants not in default had agreed to a settlement).

appraisal."[9] If such an appraisal is ordered, the court must appoint a disinterested real estate appraiser licensed in the Commonwealth to conduct the appraisal. When the appraisal is complete, the appraiser must file it with the court and mail a notice of filing to all parties stating the appraised value, notice that the appraisal has been filed with the court, and informing the parties that they may file an objection not less than thirty days after the notice is sent. The court is then required to conduct a hearing on the fair market value of the property even if no party files an objection and issue an order on the fair market value before a hearing on the merits of the partition action itself.

Not surprisingly, a few of the cases from other jurisdictions have turned on the parties' issues with this process. For example, in the Georgia case *Morton v. Pitts*,[10] the plaintiff had obtained her own appraisal a few months before filing her petition, though because she disputed its value, she asked the court in her pleadings to order an appraisal and continued to reiterate that request. However, the trial court agreed with the defendants that no such court-ordered appraisal was necessary and adopted the value from the plaintiff's appraisal as constituting the fair market value of the property. On appeal, the Court of Appeals found that the word "shall" was mandatory, and that the trial court had committed error by failing to order a new appraisal. It therefore vacated and remanded the case to the trial court.

In a recent Alabama case, the trial court appointed a disinterested appraiser for multiple separate properties which had been inherited by two sisters.[11] After the appraisals were filed, the defendant sister disputed the appraisal of one of the properties on the grounds that the appraiser had failed to take into account the varying soil conditions of the property and had failed to consider comparable sales, which should have resulted in a lower appraisal. The court held a hearing at which the court's appraiser, the defendant's appraiser, and two foresters who had provided opinions to the appraisers all testified. The court found that the difference between appraisals turned in part on a difference in opinion between the foresters as to the amount of merchantable and pre-merchantable property, but that, more importantly, the court found an unexplained discrepancy in the method of calculation used by the defendant's appraisal. It therefore ruled that the fair market value of the property was that provided by the court-appointed appraiser.

The defendant filed a timely notice stating that she intended to purchase the property,[12] and after a bench trial regarding a number of other outstanding matters, the court entered an order requiring her to pay her share of the funds by a particular date. However, after seeking and receiving a number of extensions to raise the funds, the defendant filed a motion to reconsider the court-ordered appraisal, on the grounds that she had hired a second appraiser who questioned the court-appointed appraiser's credentials and appraisal. The court denied the motion, and the defendant was ultimately unable to purchase the property.[13]

Among other matters raised in her appeal, the defendant argued that the trial court had erred in failing to order a new appraisal. The Alabama Supreme Court viewed this claim with skepticism, noting that the request came only after she had failed to obtain financing and after she had filed motions agreeing to the court's determination of value. Accordingly, it allowed the trial court's judgment to stand.

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[9] Va. Code § 8.01-81.1; Unif. Partition of Heirs Prop. Act, § 6.

[10] 851 S.E.2d 141 (Ga. Ct. App. 2020).

[11] *Langford v. Broussard*, Ala. No. 1190623, 2021 WL 2024718 (Ala. May 21, 2021).

[12] Ala. Code § 35-6A-7; Unif. Partition of Heirs Prop. Act, § 7. This provision of the UPHPA has not been adopted in Virginia.

[13] *Langford*, Ala. No. 1190623, 2021 WL 2024718, at *5.

Finally, a recent Connecticut case[14] demonstrates the court's ability to take a more active role in determining the value of a contested property. After the parties agreed to the appointment of a disinterested appraiser for two lakeside properties, the plaintiffs objected to both appraisals, arguing that both the appraisals and the tax assessed value undervalued the actual fair market value. The court not only held a hearing to receive evidence of the value, but also, by agreement of the parties, conducted an *ex parte* physical inspection of the properties. It ultimately agreed with one of the appraisals but found that the town's assessment was more appropriate for the other, based in part on the fact that one of the properties had a superior view to the other. It also noted that the appraisals failed to take in the "character" of both lots compared to those surrounding them.

These cases lay out a number of factors for the practitioner to consider regarding appraisals under the statute, including the primary importance of making sure the court follows the new law and orders an appraisal when the fair market value is disputed. If a client expresses interest in purchasing the property, the attorney should also consult with the client to make sure any barriers to being able to raise the requisite funds are addressed before the court makes a determination of value. Practitioners may also be able to find creative ways to influence the court's assessment of value where the property is unique.

The statute also raises a few potential problems which have yet to be addressed. In particular, the Virginia codification of the UPHPA section requires the appraiser to provide notice to the parties of the thirty-day deadline for objections to the appraisal, but does not require her to provide the appraisal to anyone other than the court.[15] Notably, the corresponding provision of the UPHPA requires the court, not the appraiser, to provide the relevant notice to the parties.[16] It is unclear why the General Assembly chose to make this change, as it is likely to create significant confusion and possibly waiver of the deadline if the appraiser is unaware of the notice provision.

C. The Path to Determine Partition in Kind, Allotment, or Sale

The revised Virginia Code § 8.01-83 incorporates Section 9 of the UPHPA for situations where at least one party petitions for allotment. Although the previous version of the Virginia code allowed for allotment, the court was not required to consider it; rather, the statutes provided that a property "may" be allotted when partition in kind could not be made.[17] Under the revised version, as long as at least one party petitions for allotment, the court **must** consider allotment if it determines that a partition in kind cannot be practically made; specifically, it must consider allotment of the property as a whole "to any one or more of the parties who will accept it for a price equal to the value determined pursuant to § 8.01-81.1, and pay therefor to the other parties such sums of money as their interest therein may entitle them to receive."[18] Notably, although at least one party must petition for allotment, the statute makes clear that any party may seek allotment after the court makes the initial determination that the property cannot be divided in kind; however, the party that made the initial request is required to notify all the other parties that the court is considering allotment and the required price.[19]

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[14] *Walker v. Waggoner*, Conn. Super. Ct. No. CV196017163S, 2021 WL 761816 (Conn. Super. Ct. Jan. 28, 2021).

[15] Va. Code § 8.01-81.1(D).

[16] *See* Unif. Partition of Heir Prop. Act, § 6(e).

[17] Va. Code § 8.01-83 (prior version).

[18] Va. Code § 8.01-83(B).

[19] Va. Code § 8.01-83(B)(1); *cf., Langford*, Ala. No. 1190623, 2021 WL 2024718, at *3 (allowing the defendant to elect to purchase properties after the court had determined their fair market value).

If there are disputes between the parties about who should be allotted the property, the court is required to engage in a multi-factor test to make allotment, as follows:

> a. Evidence of the collective duration of ownership or possession of the property by a party and one or more predecessors in title or predecessors in possession to the party who are or were related to the party or each other;
>
> b. A party's sentimental attachment to the property, including any attachment arising because the property has ancestral or other unique or special value to the party;
>
> c. The lawful use being made of the property by a party and the degree to which the party would be harmed if the party could not continue the same use of the property;
>
> d. The degree to which the parties have contributed their pro rata share of the property taxes, insurance, and other expenses associated with maintaining ownership of the property or have contributed to the physical improvement, maintenance, or upkeep of the property; and
>
> e. Any other relevant factor.[20]

No single one of these factors may be dispositive unless the court weighs "the totality of all relevant factors and circumstances." If the court finds that the entire property cannot be practicably or equitably allotted, it may also allot a portion and sell the remainder.[21] The court may only order a sale of the whole property if it finds that it is not practicable or equitable to allot any part of the property.[22]

If the court finds in favor of an allotment, after making a decision as to the specific amounts each party should receive or pay, the court must set a date no sooner than 60 days after notification to the parties for the requisite amounts to be paid into court.[23] If that does not occur, it may either give another party reasonable time to purchase shares, based on the multi-factor test, or it may proceed to order a sale.

It should be noted that, again, Virginia's enactment of this section of the UPHPA is somewhat different from the model, under which the court is required to determine whether partition in kind would result in great or manifest prejudice to the co-tenants as a group – a standard which Virginia chose not to adopt at all.[24] It is also required to consider, as part of the multi-factor test, "whether partition in kind would apportion the property in such a way that the aggregate fair market value of the parcels resulting from the division would be materially less than the value of the property if it were sold as a whole"; in other words, whether there would be a greater economic benefit to the co-tenants as a whole in selling the property as a whole in a court-ordered sale than in partitioning it into separate parcels.[25] While a Virginia court is not required to consider these two factors, depending on the facts of a particular case, they could certainly be raised as relevant factors under (B)(2)(e).

If the court finds that a sale is necessary, the new Virginia Code § 8.01-83.1 mandates that it must be an open-market sale "unless the court finds that a sale by sealed bids or at auction would be more economically advantageous and in the best interests of the parties as a group."[26] The statute then

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[20] Va. Code § 8.01-83(B)(2).

[21] Va. Code § 8.01-83(C).

[22] Va. Code § 8.01-83(D).

[23] Va. Code § 8.01-83(B)(3).

[24] Unif. Partition of Heir Prop. Act, § 9.

[25] *Id.*

[26] Va. Code § 81.

goes through a number of requirements on choosing a broker and establishing the broker's commission, which must be reasonable, and the process for reviewing offers and making the sale. This statute is derived entirely from Sections 10 and 11 of the UPHPA.

The recent Alabama case *Stephens v. Claridy*[27] is the only reported opinion thus far to deal with the full application of the multi-factor test for partition in kind under the UPHPA. The plaintiff, who sought partition by sale, owned two-thirds of the property in question, while the remaining third was owned by the two defendants as joint tenants with right of survivorship. After determining the fair value of the property, the trial court gave the defendants the right to elect to purchase the plaintiff's share, but they chose not to do so; the court therefore had to determine whether partition in kind was appropriate or whether the property should be sold.

The parties put on evidence to show that one of the defendants had been living on the property since around 1972, and he argued that he had made significant improvements during that time. He had paid the taxes on the property for fifteen years, though not in the two years before the case was filed. The second defendant had lived on the property for approximately a decade during his youth, but did not acquire his interest until 2019. The plaintiff had never lived on the property and had obtained his interest through a conveyance by a previous owner, not direct inheritance. After hearing testimony, the judge personally visited the property and determined, among other things, that it was overgrown with dilapidated buildings, and that "the differences in terrain, elevation, and condition of the property rendered some of the property to be of significantly lower value than the rest of the property."[28] Based on this finding, as well as the testimony and materials, the court found, in what was described as "a detailed judgment," that the property could not be partitioned in kind and ordered it to be sold.

On appeal, the second defendant argued that the court had failed to consider the totality of circumstances and had only relied on the second factor of the multi-factor test, i.e., whether the co-tenants would receive a greater economic benefit from the sale of the property as a whole rather than partition in kind. He further argued that the court's ruling had provided no discussion of the other factors and no analysis of the potential prejudice to the co-tenants from a sale.[29] However, the Supreme Court of Alabama disagreed, holding that the statute did not require a written analysis of the factors as a whole. Instead, the fact that the court had entered a detailed judgment suggested that it had thoroughly considered all the factors and simply given the greatest weight to that one.[30]

Although the multi-factor test was not relevant to the one reported Virginia case regarding the UPHPA to date, the opinion provides an excellent example of the trial court navigating the complexities of Va. Code § 8.01-83 as a whole. *Lee v. Stephenson*[31] involved co-tenants who had purchased and lived in a single-family home together for a time, until the plaintiff decided to move out and that she wanted to sell the property. Although the plaintiff had the financial ability to buy out the defendant, she did not wish to do so; conversely, the defendant wished to stay in the property but did not have the means to buy out the plaintiff's share.

The court began by finding, as the parties themselves agreed, that the property was not amenable to partition in kind under Va. Code § 8.01-83(B). It further found that, given the parties' positions,

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[27] *Stephens v. Claridy*, Ala. No. 1200006, 2021 WL 2672891 (Ala. June 30, 2021).
[28] *Id*. at *3.

[29] *Id.*

[30] *Id.*; *cf. Taylor v. Taylor*, 5 Va. App. 436, 444 (1988) (holding, in regard to the division of marital property under Va. Code § 20-107.3, that the trial court "is required to consider all of the factors set forth [but] … need not quantify or elaborate exactly what weight was given to each of the factors" as long as they are based on credible evidence).

[31] 2021 WL 3373180 (Va. Cir. Ct., March 19, 2021).

allotment was not feasible. Although the defendant proposed that he refinance the property and make payments to the plaintiff, the court held that this was not an arrangement contemplated by the statute. Accordingly, the court held that the property had to be sold. It then walked through the requirements of Va. Code § 8.01-83.1 to craft the details of how the sale should take place, finding that an open market sale was in order because no evidence had been presented that a sale by sealed bids or auction would be more advantageous or in the parties' best interests.[32] While this particular case did not raise any of the more problematic issues that the UPHPA was meant to address, it is a thoughtfully crafted walkthrough of the new procedure under the statute.[33]

D. Other Statutory Changes of Note

The other two additions from the UPHPA to Virginia partition law are relatively minor compared to these substantive changes but may come up in particular cases. First, in any partition case where the court enters an order of publication, within ten days of the order the plaintiff must post and maintain for the entirety of the suit a "conspicuous sign" on the property, including details about the action, the address of the court in which it is pending, and the "common designation" of the property; the court may also require the names of the plaintiff and known defendants.[34] Second, if commissioners are appointed for a judicial sale, they must be "disinterested and impartial and not a party to or participant in the action."[35] No cases have yet been reported from other jurisdictions regarding these particular provisions of the UPHPA.

Conclusion

Virginia's implementation of the UPHPA is substantially different from both the model code and that implemented by other jurisdictions to date, affecting not merely "heir property" but every type of partition action. Accordingly, clients need to be advised to consider the potential value of the property, the factors affecting such value, and what they are able to pay (or willing to accept) from the very beginning of the process. Practitioners should also be able to advise their clients regarding the various scenarios for allotment of a particular property. The process is likely to be much fairer to defendants going forward; however, it remains to be seen what new pitfalls will arise.

[32] *Id.* at *2-3.

[33] *Lee v. Stephenson* was not appealed.

[34] Virginia Code § 8.01-83.2; Unif. Partition of Heir Prop. Act § 4.

[35] Virginia Code § 8.01-83.3; Unif. Partition of Heir Prop. Act § 5.

DISTRIBUTED LEDGER TECHNOLOGY AND THE NEW ERA OF REAL ESTATE TRANSACTIONS

By Tanner Ray, Brandon H. Zeigler, LeeAnne C. Schocklin

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INTRODUCTION

Buying and selling real estate is a complicated enterprise that requires the collaboration of multiple entities over the course of a lengthy period of time when compared to the purchase of other assets.[1] It involves a substantial amount of capital and the commitment of many working hours to verify that the vast amount of information from numerous sources is correct. To ensure a smooth closing, one must review the survey, title report (including any exceptions), applicable zoning restrictions, and loan package. This list assumes there are no liens or unresolved title issues that need to be addressed.[2] The time and energy spent during this verification process is necessary to validate all of the information and avoid errors when these data points are transferred among the various entities which have a role in finalizing the closing. With this many people contributing essential information to the process, human error often corrupts the process. Distributed ledger technology ("DLT") has the potential to significantly improve real estate transactions by making the process more transparent, efficient, and accurate. As use of this technology becomes the standard, attorneys must educate themselves with this process to comply with the Rules of Professional Conduct. .[3]

DISTRIBUTED LEDGER TECHNOLOGY EXPLAINED

Though a relatively new technology, DLT has revolutionized the way information is securely recorded, stored, and verified. DLT "refers to the technological infrastructure and protocols that allows simultaneous access, validation, and record updating in an immutable manner across a network that's spread across multiple entities or locations."[4] Many readers are familiar with the term Blockchain. Blockchain is used by Bitcoin and other cryptocurrencies and is one type of DLT. Blockchain is a database comprised of blocks of data arranged in a chain which creates a secure log

[1] For a more a more in-depth analysis of this process, see George Lefcoe, REAL ESTATE LAW AND BUSINESS: BROKERING, BUYING, SELLING, AND FINANCING REALTY 5-9 (2016).

[2] Matsele Fosa, *The distributed ledger*, Prop. J., Mar. 2020, at 47.

[3] VA. RULES OF PRO. CONDUCT R. 1.1 cmt. 6 ("Attention should be paid to the benefits and risks associated with relevant technology.").

[4] Fosa *supra* note 2.

of sensitive activity. New data is entered into a new "block" that is then "chained" to the previous block of data creating a chronological ledger of immutable information.[5]

Another benefit of DLT is that it is a decentralized ledger system. Unlike centralized databases where information is held by a single entity in a single location, decentralized databases copy and share information among a network of individual ledgers (referred to as "nodes"). In a centralized database, "client" nodes are connected to a central server. In decentralized systems, there is no need for a central entity, and nodes reside on the participant's local systems and are constantly compared with the information stored on other nodes. Unlike a centralized ledger with its single point of failure, the nature of decentralized ledgers protects against cybercrimes because cybercriminals would need to simultaneously infiltrate all copies of the information stored on the network to be successful.[6] In addition, to update a centralized system requires a central database, which after an update needs to share the updated information with the various users. This is contrasted to updates made in distributed ledgers which, because of the constant sharing of information between nodes, such updates are faster for all participants and more reliable as there are constant checks and balances between the information in the various nodes.[7]

APPLICATIONS IN REAL ESTATE

DLT can be used in property transactions in several creative ways. These include securely linking multiple sources of data during a complicated transaction, registering property ownership, and "tokenizing" properties.

Instant Property Network ("IPN") was one of the first companies to show what a real estate closing using a DLT network would look like. IPN conducted a global trial in 2019 that simulated the sale of several properties using a DLT-based system. "With the first transaction taking less than an hour to complete," the trial "showcased how duplications and costly reconciliation processes could be removed from the buy/sell process."[8] Noting the current status of real estate transactions as "operating on an archaic paper and email-based foundation" that requires "continuous reconciliation of facts and data," IPN believes that DLT can make the process more efficient through its ability to allow the many parties involved in the transaction to "join up their business processes and transact directly."[9] "If these efficiencies were applied to the global property market[,] it could equate to an annual saving of approximately $160 billion."[10]

Additionally, DLT could potentially be used to record and validate title deeds.[11] Currently, to verify the ownership of a given parcel of land, a buyer will order a title search. To perform a title search, a title examiner reviews the title history of the property and records all past deeds, liens, judgments, and other issues that would affect title. This process is not without error, however, as defective titles can be mistakenly identified as good titles. Land registries and their scribes are not perfect.

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[5] Luke Conway, *Blockchain Explained*, INVESTOPEDIA (May 31, 2021), https://www.investopedia.com/terms/b/blockchain.asp.

[6] Jake Frankenfield, *Distributed Ledger Technology (DLT)*, INVESTOPEDIA (Feb. 1, 2021), https://www.investopedia.com/terms/d/distributed-ledger-technology-dlt.asp.

[7] *Id.*

[8] Press Release, Instant Property Network, Search Acumen Participates in First Property Distributed Ledger Technology Trial (Apr. 4, 2019) https://search-acumen.co.uk/News/Read?Ref=w4Ld5q.

[9] *Id.*

[10] *Id.*

[11] Riccardo Sibani, *Applied design of distributed ledgers for real estate and land registration*, KTH ROYAL INST. TECH. 20 (2018).

Therefore, buyers are often encouraged to purchase title insurance, at a significant cost,[12] to protect against potential defects. Such risks can be diminished with the aid of DLT.[13] As a decentralized and self-validating technology, registries and buyers would benefit from recording deeds on a transparent and secure system that does not require a centralizing mechanism. Proving ownership over a distributed ledger can be achieved through "smart contracts."[14] These contracts, unlike contracts for the exchange of goods or services, are instead algorithmic protocols that forever record an individual's possession and use of data within the blockchain for verification. This record could not "be tampered with by anyone once they have been accepted and deployed by the parties, due to [DLT's] immutability."[15] As applied to title deeds, anyone with access to the register would be able to identify quickly the possessor of a title and determine if such title is "good" title. First American Financial and Old Republic Insurance Group, two large title insurance agencies, utilize blockchain systems in the title insurance process to "increase efficiency, reduce risk[,] and improve the title production process."[16]

For all the reasons stated, the UK government intends to convert the country's entire property register to blockchain citing the desire to provide better accessibility and efficiency and "deliver significant benefits for the public, conveyancers, lawyers[,] and other government departments" that utilize the register.[17]

Finally, while DLT can be used to help further the process of a real estate transaction, it can also be instrumental in creating a market for real estate ownership by "tokenizing" property.[18] This is the process whereby the owner of a property creates a digital security of his property and may trade that security (or fractional securities) over a digital exchange.[19] This would allow someone to buy and sell fractional interests in property much like individual shares of stock.[20] Unlike in a real estate investment trust wherein one buys shares of a trust that manages properties, the investor would be able to cut out the middleman and purchase "shares" of individual properties.[21] Partnering with tZERO (an online trading platform), Vertalo has already begun tokenizing properties.[22] These first properties include hotels in Pennsylvania and Costa Rica. With the aid of DLT, buyers may purchase ownership interests in these properties in a similar manner to how one would purchase

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[12] Opinions expressed herein are those of the authors.—Ed.

[13] Goran Sladi´c et al., *A Blockchain Solution for Securing Real Property Transactions: A Case Study for Serbia*, INT'L J. GEO-INFO. 17-18 (2021).

[14] KOSHIK RAJ, FOUNDATIONS OF BLOCKCHAIN: THE PATHWAY TO CRYPTOCURRENCIES AND DECENTRALIZED BLOCKCHAIN APPLICATIONS 170 (2019).

[15] *Id.* at 171.

[16] Ben Lane, *First American, Old Republic Title bringing blockchain to title insurance*, HOUSING WIRE (November 28, 2018), https://www.housingwire.com/articles/47515-first-american-old-republic-title-bringing-blockchain-to-title-insurance/.

[17] Head of Data Capture and Management, Enhancing our registers, https://hmlandregistry.blog.gov.uk/2019/10/01/enhancing-our-registers/

[18] Oleksii Konashevych, *General Concept of Real Estate Tokenization on Blockchain*, 9 EUROPEAN PROP. L.J. 21, 55 (2020).

[19] *Real Estate Tokenization*, SOLID BLOCK, https://www.solidblock.co/tokenize-real-estate.html (last visited Mar. 3, 2021).

[20] *Id.*

[21] *Id.*

[22] Nathan DiCamillo, *Vertalo, tZERO Are Bringing $300M in Real Estate to the Tezos Blockchain*, COINDESK (Apr. 17, 2020, 3:47 PM), https://www.coindesk.com/vertalo-tzero-are-bringing-300m-in-real-estate-to-the-tezos-blockchain.

cryptocurrencies. Such purchases would be recorded, validated, and encrypted across multiple nodes—securing claim to one's ownership interest. However, unlike with cryptocurrencies, the interests at stake would be for physical assets rather than intangible currency.

THE FUTURE IS HERE

This is not a look into the future or commentary of what might be. The future is here and is being utilized every day not only in real estate but also in other commercial applications. Despite the anticipated slow adoption of DLT in real estate transactions, large financial institutions, including Barclays, have pledged their confidence and invested in the system.[23] Furthermore, the Securities and Exchange Commission launched its Strategic Hub for Innovation and Financial Technology ("FinHub"), which "coordinates the agency's oversight and response regarding emerging technologies in financial, regulatory, and supervisory systems, including in the areas of distributed ledger technology."[24] With an increase in governmental regulatory guidance, it is presumed that more investors and business platforms will adopt this technology.

CONCLUSION

The Rules of Professional Conduct require attorneys to provide competent representation to clients.[25] The notes accompanying this rule state that "[a]ttention should be paid to the benefits and risks associated with relevant technology."[26] As the use of blockchain and distributed ledger technology increases, it is important that attorneys remain abreast of this technology to represent clients competently. As the technology continues to evolve and its application becomes more widespread, attorneys must understand this technology to evaluate its benefits and risks–as required by the Rules of Professional Conduct.

[23] Press Release, *supra* note 8.

[24] *Strategic Hub for Innovation and Financial Technology (FinHub)*, U.S. SEC. AND EXCH. COMM'N, https://www.sec.gov/finhub (last visited Sep. 30, 2021).

[25] VA. RULES OF PRO. CONDUCT R. 1.1.

[26] *Id.* at cmt. 6.

VIRGINIA REAL ESTATE CASE LAW UPDATE (SELECTED CASES)

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A. FEDERAL CASES

1. *Federal National Mortgage Association v. Davis*, 2020 WL 3550006 (E.D. Va. 2020).

Facts: Davis purchased property in 2007 and executed a note and deed of trust. Later that year, Davis bought three acres of adjoining property and filed to have the lot line dissolved, and the two parcels made into one. Davis entered into an agreement with Goochland County to accomplish this. On July 30, 2012, One West Bank foreclosed on the deed of trust securing the note on the original property. One West transferred the property to Fannie Mae. Fannie Mae did not assert any ownership over the three acres, but because the lot line agreement combined them into a single tax parcel, it filed suit to quiet title and to declare what it owned pursuant to the foreclosure deed.

Davis removed to federal court and filed a motion to dismiss.

Holding: The court denied the motion to dismiss.

Discussion: Recognizing that a claim to quiet title is based on who has good title to property and that Fannie Mae had a foreclosure deed, the court held that Fannie Mae had stated a proper claim. In addition, the court held that neither Mr. nor Mrs. Davis gave any factual or legal support in their motions to dismiss. Mr. Davis alleged that Fannie Mae used forgeries to "perpetrate [its] fraudclosures" and Mrs. Davis alleged that "Bad Faith Plaintiffs are entitled to no relief." The Court held those claims are not sufficient to support a 12(b) (6) motion to dismiss.

2. *Flinn v. Deutsche Bank Trust Company Americas, as Trustee for Residential Accredit Loans, Inc., et al.*, 2020 U.S. Dist. LEXIS 154353 (W.D. Va. 2020).

Facts: Flinn signed a note and deed of trust naming MERS as the original beneficiary. MERS assigned all of its rights to Deutsche Bank. Deutsche Bank appointed Surety as the substitute trustee and Surety conducted a foreclosure sale. Deutsche bank was the successful bidder at the foreclosure sale. Flinn filed suit in state court for tortious interference with contractual rights against Deutsche and against Surety. Deutsche removed the case to federal court based on diversity jurisdiction. Flinn filed a motion to remand and Deutsche filed a motion to dismiss.

Holding: The court denied the motion to remand and granted the motion to dismiss.

Discussion: Flinn argued that diversity jurisdiction did not exist as both Surety and he were citizens of Virginia. Deutsche maintained the position that Surety's citizenship for diversity purposes should be disregarded under the theory of fraudulent joinder. Under that claim, a court can disregard citizenship of a non-diverse defendant either for outright fraud or if there is no possibility that the plaintiff would be able to establish a cause of action against the in-state defendant. The court noted that this test was favorable to Flinn because Flinn only had to show a "glimmer of hope" of succeeding against Surety.

However, the court compared the claims made to a rejected "show me the note" case- which has time and again been rejected under Virginia law. The court also cited numerous precedents under Virginia law stating that Flinn did not have standing to challenge the validity of the appointment of substitute trustee. The court then held that similarly, even though Virginia had not squarely decided it, Flinn lacked standing to challenge the securitization or assignment of his mortgage. As Flinn had no possible claim against Surety, fraudulent joinder applied and jurisdiction existed based on diversity.

The court granted the motion to dismiss because a party cannot tortiously interfere with its own contract.

3. *Lavin v. Freedom Mortgage Corporation, et al.*, 2020 U.S. Dist. LEXIS 144801 (E.D. Va. 2020)

Facts: Lavin filed suit against Freedom for breach of contract for failure to follow HUD regulations pertaining to the face-to-face requirement under 24 C.F.R. § 203.500 and other provisions. Freedom removed the case to federal court and Lavin filed a motion to remand.

Holding: The court granted the motion to remand.

Discussion: Freedom asserted that the court had federal question jurisdiction over count one for breach of the deed of trust and then had supplemental jurisdiction over count two for breach of fiduciary duty against the trustee. The court noted several times that it could only exercise supplemental jurisdiction if it had original jurisdiction over count one. It found that it did not.

The court cited four previous opinions in determining that in cases involving a face-to-face meeting under the HUD regulations, the court did not have federal question jurisdiction. The court concluded that this was a breach of contract claim under Virginia law and did not raise a federal question. The court further concluded that the case does not raise a substantial question of federal law. The court held that when federal mortgage regulations are embedded in a state law breach of contract claim, it does not give rise to a substantial enough claim to trigger federal question jurisdiction.

See Wells Fargo Bank, N.A. v. Peters, (W.D. Va. Nov. 23, 2020) for the latest case on the merits of a face-to-face claim in post-foreclosure cases.

4. *Mt. Valley Pipeline, LLC v. 23.74 Acres of Land*, 2020 U.S. Dist. LEXIS 56633 (W.D. Va. 2020).

Facts: Mountain Valley Pipeline ("MVP") was constructing a natural gas pipeline across land owned by one party on which The Nature Conservancy ("TNC") had an easement. TNC filed a motion for summary judgment asking the court to rule that it was entitled to its pro rata portion of the money paid as just compensation for the taking of MVP for the pipeline. A prior owner of the property had an appraisal done and it was determined that 88.72% of the value of the property was encompassed by the TNC easement. TNC asked the court to use this pro rata portion to award it compensation for MVP's easement for the pipeline.

Holding: The court granted summary judgment in favor of TNC for the permanent easement but denied it for the temporary easement as there were genuine issues of material fact.

Discussion: The court decided the motion for summary judgment looking at the plain language of the TNC easement. The easement provided that "whenever all or part of the protected Property is

taken in an exercise of eminent domain . . . so as to abrogate the restrictions imposed by this Conservation Easement . . . the proceeds shall be divided in accordance with the proportionate value of the Grantee's and the Grantor's interest." The court defined the word abrogate to mean it makes the conservation easement impossible or impractical for its purposes. Following this reasoning, the court agreed with the proportionate award of compensation for MVP's permanent easement, but on the temporary easements, it was denied.

B. VIRGINIA SUPREME COURT CASES

1. *Berry v. Fitzhugh*, 299 Va. 111 (Va. 2020).

Facts: This case arose from a dispute between five siblings over partition of property left to them by their mother. Three of the siblings were represented by two separate counsel and two were unrepresented. The matter went to trial. At trial, the issues were whether the filing party, one sibling, was entitled to more than her fair share due to two of the siblings living in the property for the years they co-owned it and whether the filing party was entitled to an award of attorney's fees.

Trial Court: The circuit court found that partition could not be made in kind and ordered the property sold with the proceeds equally divided among all five siblings. The circuit court denied the award of attorney's fees finding that it was not fair for two unrepresented parties to pay attorney fees to the represented filing party.

Supreme Court Holding: The Virginia Supreme Court affirmed.

Discussion: On the attorney fee issue, the Virginia Supreme Court held that Virginia Code § 8.01-92 governed the decision, but it did not interpret it to mean that use of the word "shall" was dispositive. That code section states:

In any partition suit when there are unrepresented shares, the court shall allow reasonable fees to the attorney or attorneys bringing the action on account of the services rendered to the parceners unrepresented by counsel.

The filing party focused solely on use of the word "shall," but the Supreme Court found that it was to use statutory interpretation to decide whether "shall" was mandatory or permissive. The Supreme Court found that focusing solely on "shall" ignores the statute's context. The Court found instead that the proper analysis was a determination of whether services were rendered for the unrepresented siblings. The Court then held that the filing sibling did not produce any evidence that the unrepresented siblings supported her partition suit so she did not meet the burden of showing services were rendered to her unrepresented siblings. The Supreme Court held that receiving money from a partition sale may be a benefit, but it is not a foregone conclusion that it leads to an award of attorney's fees against unrepresented parties.

On the issue of whether the filing party was entitled to more than her fair share for unpaid rent from her siblings, the Supreme Court was careful to distinguish between getting a fair share and causing added expense that is not part of a fair share. Citing to § 8.01-31 on an accounting, the court held that seeking to have her siblings share in the cost attributed to her failed attempt to get attorney's fees and rent paid was not required by the statute.

2. *Canova Land and Investment Co. v. Lynn,* 299 Va. 604 (2021)

Facts: Purchaser at foreclosure sale brought action against church seeking to quiet title to a one acre portion of the five acre property, which portion was subject to a possibility of reverter under clause in an 1875 deed that provided that the one acre would "revert to the grantors or their heirs if it ceases to be used . . . for the worship of God in accordance with the customs and regulations of [the Woodbine Baptist Church]." In 2007 trustees of the church gifted the property to the Woodbine Family Worship Center and Christian School (the "Worship Center"). In 2007, the Worship Center

took out a loan secured by a deed of trust on a five-acre parcel, which included the one-acre parcel that was the subject of the 1875 deed. The Worship Center defaulted on the loan and Canova acquired the property at the foreclosure sale. Canova did a title search before its acquisition that only traced the title to 1900;the 1875 deed did not come up in the title search. Canova filed suit seeking to void the clause as an unreasonable restraint on alienation because it only allowed use by the Woodbine Baptist Church. The heirs of the grantor argued that the limitation allowed use by the broader Baptist denomination, thus was not unreasonably limited; the heirs also argued a charitable exception to restraints on alienation.

Trial Court: The circuit court dismissed the complaint with prejudice at trial, finding that the reverter clause was a reasonable land use restriction on a charitable gift.

Supreme Court Holding: The Virginia Supreme Court affirmed.

Discussion: The Supreme Court noted that one limitation on a grantor's absolute right to transfer property is the rule against restraints on alienation. A condition totally prohibiting alienation of a fee simple estate or requiring forfeiture upon alienation is void. Reasonable restraints are valid, however, and courts use a "liberal interpretation to uphold" deeds involving land for charitable purposes. The Court found that the 1875 deed conveyed a fee simple estate subject to a possibility of reverter and noted that restrictions triggering reverters of fee simple estates are generally valid. The Court found that the clause merely limited the use of the land "for the worship of God" and was not unreasonably restrictive. The Court also noted that charitable gifts are "favored creatures under the law."

3. *C. Robert Johnson, III, et al. v. City of Suffolk, et al.*, 299 Va. 364 (2020).

Facts: The petitioners leased oyster grounds from the Commonwealth for raising oysters in the Nansemond River. They filed an inverse condemnation suit against the City of Suffolk and the Hampton Roads Sanitation District alleging that discharge from the sewer system polluted the Nansemond River and that prevented them from properly managing and using their oyster ground leases. The respondents filed demurrers on various grounds.

Trial Court: The circuit court granted the demurrers and dismissed the case.

Supreme Court Holding: The Virginia Supreme Court affirmed.

Discussion: The first part of the Supreme Court's analysis involved a determination of what property interest the leaseholders had. As the court noted, "[a] threshold question in any takings case if whether the government action has affected a property interest that is cognizable under pertinent clauses of the United States and Virginia constitutions." The court then reviewed § 28.2-1200 and precedent in finding that "[a] lessee does not own the bottomlands or have the right to control the waters that flow over them." The court also reviewed the leases, prior law, changes in environmental law, and on property rights and held that the takings claim failed as a matter of law because the respondents did not interfere with their limited property rights. The court further analyzed a line of cases used by the petitioners to support their claims and found that those cases do not control because the petitioners only held a leasehold interest. The court stated that it was the nature of the property right, a leasehold interest, which controlled the determination.

4. *Gregory v. Northam,* 2021 WL 3918894 (2021).

Facts: Gregory claimed that pursuant to wills of Bettie F. Allen Gregory and Roger Gregory and the wills of their heirs he inherited the rights of the "covenantees" of deeds signed by Bettie and Roger Gregory in 1887 and 1890 which conveyed ownership of the Lee Monument and parcel on which it was erected. The 1890 deed contained a clause pursuant to which the Commonwealth provides "her guarantee that she will hold said Statue and Pedestal and Circle of ground perpetually sacred to the Monumental purpose to which they have been devoted and that she will faithfully guard it and

affectionately protect it." Gregory argued that he had the right to compel the Commonwealth to maintain the Lee Monument in its present location.

Trial Court: The circuit court sustained the defendants' demurrer, concluding that the parties to the deeds intended to create an easement appurtenant, not an easement in gross. Because the plaintiff sued to enforce an easement in gross – and not as the owner of a benefitted parcel of land, the court sustained the demurrer

Supreme Court Holding: The Virginia Supreme Court affirmed.

Discussion: The trial court noted that an easement in gross – or a personal easement – is one that is not appurtenant to any estate in land, "but in which the servitude is imposed upon land with the benefit thereof running to an individual." An easement appurtenant "runs with the land," meaning that "the benefit conveyed or the duty owed under the easement passes with the ownership of the land to which it is appurtenant."

The Court noted that a "court will never presume that an easement is an easement in gross; it must plainly appear from the granting instrument or deed that the parties intended to create an easement in gross." Then the Court discussed the law regarding easements in gross, including the long-standing rule that an easement is "never presumed to be in gross when it [can] fairly be construed as appurtenant." Following that rule, the court held that the easement was appurtenant because the plain language of the deeds at issue do not state an intent to create an easement in gross.

5. *Historic Alexandria Foundation v. City of Alexandria,* 299 Va. 694 (2021)

Facts: Historic preservation group brought suit challenging City's approval of landowner's application to renovate Justice Hugo Black's historic residence. Group owned property approximately 1500 feet from the property at issue, both of which were in an historic district. The owner and the City filed demurrers arguing that the suit failed to allege sufficient facts to establish standing to pursue the appeal.

Trial Court: The circuit court noted that to be an "aggrieved" party within the meaning of the zoning ordinance at issue, the party must suffer "a harm that is particularized to them and different than that which would be suffered by the public at large." The court determined that the petition failed to allege sufficient facts to make this showing, sustained the demurrers, and dismissed the case with prejudice.

Supreme Court Holding: The Virginia Supreme Court affirmed.

Discussion: The Supreme Court noted that to have standing a complainant must (i) own or occupy property within or in close proximity to the subject of the land use determination to establish that it has "a direct, immediate, pecuniary and substantial interest in the decision" and (ii) allege facts demonstrating a particularized harm to some personal or property right, or the imposition of a burden different than that suffered by the public generally. The Court found that the group failed to allege sufficient facts to meet the particularized harm test. The harm alleged – that the proposed renovation would compromise the integrity of the historic residence on the property and diminish the open space easements on the subject property – was shared by the public generally.

6. *Hooked Group, LLC v. City of Chesapeake*, 298 Va. 613 (2020).

Facts: The plaintiff was a landowner of commercial use property in Chesapeake. The property was accessible from two roads, but in 2017, the City closed one road to all travel, except for use by emergency vehicles. The landowner filed suit claiming the closure was a taking that entitled it to compensation. The landowner claimed that it had an easement on the closed street as a property owner abutting the street. It claimed that the closure had a "substantial negative effect on the value and highest and best use of" the property. (Interestingly, there was evidence that the entrance from

the closed street had been chained for many years.) The City filed a demurrer claiming it was not a taking because the closure was an exercise of police power and the landowner still had access from the other street.

Trial Court: The circuit court agreed with the city and dismissed the case on demurrer.

Supreme Court Holding: The Virginia Supreme Court affirmed.

Discussion: After a discussion of police power, the Supreme Court did find that even with the use of police power, a taking can occur under "certain circumstances" and that the police power must be balanced with the right of landowners to access to their property. The Supreme Court held that the landowner still had access to its property and the closure was not a taking in this case. While agreeing with the circuit court, the Supreme Court did find that its decision "swept too broadly" as the circuit court held that there is only a taking if "a complete extinguishment and termination of all access" occurs. The Supreme Court stated that a taking can occur with less if the remaining access is unreasonably restricted. The Supreme Court also held that the 2012 amendment to the Virginia Constitution does not change this analysis because under §§ 25.1-00 and 25.1-230.1, material impairment of direct access is not found where the owner still has other access.

7. *Marble Technologies, Inc. v. Mallon*, 2020 WL 6326374 (Va. 2020) (unpublished).

Facts: In 2012 Mallon and other landowners sued Marble Technologies, Inc. ("MTI") seeking to establish the location of an express easement across MTI's properties as documented in a 1936 deed. Alternatively, the landowners claimed an implied easement. The trial court found in favor of the landowners and ruled that an express easement existed and that the easement moved with the mean high water mark. The trial court also ruled that, considering its finding of an express easement, no implied easement existed. MTI appealed to the Supreme Court, which affirmed the finding of the existence of an express easement but determined that the easement "never moved from the mean high water line as it existed in 1936." Marble Techs., Inc. v. Mallon, 290 Va. 27, 34 (2015).

In 2018, the landowners filed another declaratory judgment action seeking to establish the existence of an implied easement – apparently erosion had effectively extinguished the express easement. MTI filed a plea in bar claiming that the landowners' claim was barred by res judicata.

Trial Court: The trial court overruled the plea in bar and an interlocutory appeal followed.

Supreme Court Holding: Reversed.

Discussion: The Court determined that the second action was barred by res judicata. Rule 1:6 provides that a final decree is conclusive of every question raised and decided, as well as "every claim properly belonging to the subject of the litigation, which the parties might have raised in the first proceeding." Here, the landowners raised the issue of the implied easement in the first action, the circuit ruled that the existence of an implied easement was precluded by the express easement, and the Supreme Court found that an express easement existed on appeal. As a result, the issues raised in the second action were addressed in the first action, which was decided on the merits;therefore the second action is barred.

8. *Palmyra Associates, LLC v. Comm'r of Highways*, 299 Va. 377 (2020).

Facts: Palmyra owned 44 acres of unimproved property at the intersection of Routes 15 and 53 in Fluvanna County, which it intended for a commercial development as reflected in a site plan which was drawn up approximately ten years prior to the take. VDOT decided to upgrade the intersection and sought to acquire 0.166 acres in fee, 0.103 acres for a drainage easement, and some additional property for temporary construction easements. VDOT recorded a certificate of take in January of 2016 and filed a petition in condemnation in July of 2016.

Palmyra identified one of the members of the LLC – David Sutton – to testify as an expert that the value of a one-acre site pad on the front portion of the property was $400,000–which would be lost as a result of the take. His opinion was later supplemented to include that the proposed roundabout would further reduce the property's frontage, eliminating a fourth building pad for a total amount of $545,000 for damages to the residue. VDOT filed a motion *in limine* regarding the testimony about the one-acre site pad alleging that because the property had not yet been subdivided, damages could not be measured on a per-lot basis. The trial court ruled that Sutton could testify, but that he could not offer evidence of damage on a per-lot basis.

At trial, Sutton testified that the damage to the residue was $545,000. The trial court refused to admit into evidence the site plans that had been submitted but not approved by the County. The commissioners nominated by Palmyra returned an award of $350,000 for damage to the residue, while the commissioners nominated by VDOT returned an award of $125,000.

VDOT filed exceptions to the commissioners' report, arguing that Sutton's testimony had to have been based on the loss of the pad site. The circuit court agreed and ruled that Sutton testified in contravention of the ruling on the motion in limine and that his testimony should be stricken.

Trial Court: The trial court entered a final order confirming the commissioners' award as to the value of the underlying take but setting aside the award for damages to the residue.

Supreme Court Holding: Affirmed.

Discussion: The Supreme Court determined that the circuit court did not abuse its discretion in refusing to admit the site plans because contingencies existed before those plans could be approved. The Court noted that in determining damages to the residue, both present and future circumstances which affect the value of the property may be considered, but remote and speculative damages may not. Thus, if there exists a reasonable probability of a favorable rezoning such that a prospective buyer would take that into account in valuing the property, that can be considered when determining damages. Site plans can also be relevant if a prospective buyer would recognize the probability of site plan approval when determining market value.

The Court ruled that the circuit court did not abuse its discretion in refusing to admit the site plans because (i) they had not been approved, (ii) the conditions that the County had imposed for approval had not been met, (iii) the property was situated in a flood plan and it was unclear how Palmyra was going to build a retaining wall and "lose a little land" at the toe, (iv) it was unclear whether a road and nearby bridge would need to be widened and rebuilt at a cost of around $4,000,000, and (v) Palmyra would need to gain approval for a secondary entrance.

The trial court also did not err in striking Sutton's testimony regarding damages to the residue because Sutton's testimony at trial was necessarily based on the lost pad site – the evidence of which had been properly excluded by the trial court for the reasons noted above.

9. *RWW 34, LLC v. Hash Group, LLC,* 2020 WL 4355426 (Va. 2020) (unpublished).

Facts: In 1993 Roger and Barbara Woody purchased a 42 acre tract of land in Christiansburg. The land was located behind a shopping center and had no public road frontage so the deed conveyed a 50 foot easement (which was recorded in 1975) over an adjacent parcel. In 2003, Hash Group bought the property that was subject to the easement. In 2008, the Woodys filed a declaratory judgment proceeding against Hash Group and others. The circuit court adopted the recommended disposition of a commissioner in chancery who found that the Woodys were entitled to a nonexclusive 50 foot easement for ingress and egress across the Hash Group property and ordered the removal of any encroachments within the easement. In 2009, while the litigation was proceeding, the Woodys transferred their property to RWW 34, LLC but failed to timely file a motion to add RWW as a party to the litigation.

In 2017, RWW filed suit against Hash and others alleging that the defendants had destroyed and obstructed the easement, leaving RWW's property landlocked and valueless. Hash group filed a plea of res judicata asserting that the damages claims were precluded because they had been asserted but not pursued in the prior action.

Trial Court: The trial court granted the plea, noting that "no specific dates were alleged in the [complaint] and, therefore, it was impossible to tell when the alleged damages occurred." The trial court then inferred that most of the damages had to have occurred prior to the final judgment in the prior action. The trial court also ruled that the complaint should be dismissed for an independent reason – that the Town had denied RWW's application for an entrance to Roanoke Street, which lies at the terminus of the easement. The court reasoned that the plaintiffs would have to demonstrate access to the public street from the easement to establish any damage associated with any alleged obstructions to the easement.

Supreme Court Holding: Affirmed.

Discussion: Although RWW identified three assignments of error, two related to res judicata and one related to access to the public road, RWW's brief addressed only the first two assignments. The Court found, therefore, that RWW had waived that issue and an independent ground for relief existed – that RWW could not prove any damages.

10. *SGT Kang's Group, LLC v. Board of Supervisors of Prince William County,* 2020 WL 6192947 (Va. 2020) (unpublished).

Facts: In the 1980s two adjoining property owners obtained a special use permit to build an automotive service center and car wash on their properties. The SUP required that the owners dedicate a right-of-way along Route 1 to the County. In 1985, the owners entered into and recorded a Declaration of Easements, Covenants, Conditions and Restrictions pursuant to which the owners granted and reserved reciprocal easements for, among other things, ingress and egress.

In 1986, the owners recorded a Deed of Dedication and corresponding plat which showed a right of way running along Route 1 identified as "Proposed Street Dedication." The plat also showed the ingress and egress easements reflected in the 1985 Declaration but did not indicate that those were existing easements or that they had been reserved or otherwise excluded from the 1986 Dedication. In the 30 years since, the County never asserted any right to use the ingress and egress easements referenced in the 1986 plat.

In 2018, the County filed a petition to condemn a strip of the property – now owned by SGT – to widen Route 1. The strip was located within the area shown on the plat as the ingress and egress easements. That particular area was used by SGT to finish cleaning and drying cars after they went through the "tunnel" of the car wash.

Before trial, the County filed a motion in limine to prohibit DGT from presenting evidence regarding its use of the strip at issue, arguing that the 1986 Dedication and plat create a public ingress and egress easement such that SGT did not have a right to use the strip for anything other than ingress and egress.

Trial Court: The trial court granted the County's motion in limine and then entered an agreed order certifying the issues raised in the motion for interlocutory appeal pursuant to Virginia Code § 8.01-670.1.

Supreme Court Holding: The Supreme Court reversed the trial court's ruling.

Discussion: The Supreme Court reviewed the 1985 Declaration, the 1986 Dedication, and the then current version of Virginia Code § 15.1-478, which addressed recordation of plats dedicating streets, easements, and rights of way. That statute noted that the recordation of a plat transfers to the

municipality "any easement indicated on such plat to create a public right of passage over the same; but nothing contained in this article shall affect any right of a subdivider of land heretofore validly reserved."

Although not noted in the 1986 Dedication or in the corresponding plat, the 1985 Dedication reserved the ingress and egress easements before the 1986 plat was recorded and expressly noted that the easements "shall not be construed to nor shall they create any easements . . . in the general public or in any parties other than the Declarants." The County had constructive notice of this reservation because the 1985 Declaration was recorded prior to the 1986 Dedication. Thus, the Supreme Court ruled that with respect to former Code § 15.1-478, the property owners were not required to reserve the ingress and egress easements on the face of the 1986 plat to validly reserve their property rights.

11. *Stafford v. D.R. Horton, Inc.,* 299 Va. 567 (2021)

Facts: Real estate developers filed petitions against county challenging planning department's determination that developers' plans needed to undergo a comprehensive plan compliance review. In 2005 and 2007, two developers submitted preliminary subdivision plans to the planning commission, which included a request to extend public water and sewer to portions of each of the properties. (Some portions of each property were in areas designated to be served by public water and sewer but others were not.) The extension requests were approved, but the developers did not proceed with their subdivision plans.

In 2012, both developers submitted plans for cluster developments on their properties which increased the number of lots on each property. The plans relied on the previous approval to extend sewer and water. The planning department required a comprehensive plan review. The developers objected on the grounds that their developments were by rightand they appealed the determination to the Board of Supervisors, which upheld the determination.

Trial Court: The trial occurred on July 2 and 3, 2014 and "[f]or reasons that are not clear from the record, the circuit court did not rule until approximately five years later, on August 16, 2019." The circuit court entered an order directing the County to approve the cluster development plans.

Supreme Court Holding: Reversed and remanded.

Discussion: The Court found that because only parts of the properties were served by public water and sewer, Virginia Code § 15.2-2286.1 – the cluster development statute – did not apply. That statute prohibits a locality from refusing to extend water and sewer from an adjacent property to a cluster development if such development is "located within an area designed for water and sewer service." Because the properties were only partially within the service area, they did not meet the requirements of the statute and the developers were required to submit their plans to the planning commission for review. The Court reversed the trial court's ruling and remanded the case to the planning commission for a review pursuant to Virginia Code § 15.2-2232.

12. *Taylor v. Northam,* 2021 WL 391840 (2021).

Facts: On July 15, 1887, the descendants of William C. Allen conveyed the Circle at the intersection of Monument Avenue and Allen Avenue to the Lee Monument Association "to have and to hold the said property . . . to the following uses and purposes and none other, to wit, as a site for a monument to General Robert E. Lee." The Deed was countersigned by the President of the Association signifying its agreement to be bound by the terms of the deed. The Association then prepared the Circle and acquired the pedestal and monument in anticipation of transferring the property to the Commonwealth.

On December 19, 1889, the General Assembly approved a joint resolution authorizing and requesting the Governor to accept a gift of the monument – including the pedestal and Circle – from the Association.

On March 17, 1890, the Association conveyed the monument, pedestal and Circle to the Commonwealth by deed, which provided that the conveyance was with the approval and consent of the grantors of the 1887 Deed. The 1890 Deed further required that the Commonwealth provide "her guarantee that she will hold said Statue and Pedestal and Circle of ground perpetually sacred to the Monumental purpose to which they have been devoted and that she will faithfully guard it and affectionately protect it." The deed was signed by the grantors of the 1887 Deed, by the President of the Association, and by the Governor of Virginia.

On June 4, 2020 Governor Northam announced that he was going to remove the statue and directed the Department of General Services to develop a removal plan.

Plaintiffs alleged that (i) the 1889 Joint Resolution is binding and the Governor's intended removal would violate various provisions of the Virginia Constitution, and (ii) that the Commonwealth is bound by the restrictive covenants in the 1887 Deed and the 1890 Deed.

Plaintiffs Massey, Heltzel and Hostetler established at trial that they all own property in the area of the Circle and are successors in title from the original Allen heirs who executed the 1887 Deed and the 1890 Deed.

Trial Court: The court determined that the restrictive covenants were unenforceable because they are in violation of public policy and that, because of that change in public policy, the removal of the statue would not be in violation of the Virginia Constitution

Supreme Court Holding: Affirmed.

Discussion: The Court's ruling focused on the principle that governmental speech is a vital power, and restrictive covenants impact that governmental right. The Court noted that "a restrictive covenant against government is unreasonable if it compels the government to contract away, abridge, or weaken any sovereign right because such a restrictive covenant would interfere with the interest of the public." Because the state cannot "barter away" its essential powers, contracts purporting to do so are void. The Court concluded that the 1890 Deed was unenforceable because it constituted an attempt to "barter away the free exercise of government speech."

The Court also found that, if the language in the 1887 and 1890 Deeds created restrictive covenants, those covenants are unenforceable as contrary to public policy.

The Commonwealth introduced the text of the House and Senate Budget Bills which both included provisions authorizing the removal of the Statue and repealing the 1889 Joint Resolution as evidence of public policy and relied on ample other evidence of public policy.

13. *White v. Llewellyn,* 299 Va. 658 (2021)

Facts: Husband and wife were defendants in personal injury action arising out of an accident in 2013 that injured plaintiff White. In 2015 while suit was pending, the Defendants finalized their divorce. In 2016, the husband was dismissed form the suit and, several months later, wife executed a deed of gift transferring title to the marital home as part of their property settlement agreement. In 2018, White filed suit seeking to set aside the deed of gift as a fraudulent conveyance.

Trial Court: The court found that White established a prima facie case, thereby establishing a presumption of a fraudulent conveyance and shifting the burden of production to the defendants "but not the burden of persuasion." The trial court found that the defendants satisfied their burden of production of countervailing evidence showing that the conveyance was not done with the intent

to evade the plaintiff. The trial court then held that White failed to satisfy her burden of persuasion and entered judgment for defendants.

Supreme Court Holding: Reversed and remanded.

Discussion: The Court on this issue of first impression found that the trial court erred by only shifting the burden of production – and not the burden of persuasion – to defendants once White established a badge of fraud. The Court held that once a presumption of a fraudulent conveyance is established upon the proof of a badge of fraud, the burdens of both production and persuasion shift to the defendant to uphold the validity of the transaction by rebutting the presumption by establishing the bona fides of the transaction by "strong and clear evidence."

14. *Wilburn v. Mangano,* 299 Va. 348 (2020).

Facts: In March of 2002, Jeanne Mangano executed a will pursuant to which she (i) devised her residence to her three daughters, but (ii) gave her son an option to purchase the property from his sisters, which option was exercisable within one-year from the probate of the will at a purchase price equal to the tax assessment in the year of Jeanne's death.

On October 12, 2005, Jeanne executed a codicil in which she revised the purchase price for the option so that it would be for "an amount equal to the fair market value at the time of my death."

Jeanne died on November 16, 2005 and the son thereafter notified his sisters that he intended to exercise his option under the terms of the will or the terms of the codicil, "whichever the [court] upholds."

The son then filed suit seeking to set aside the codicil. The jury found the codicil valid and the court entered an order to that effect.

The sisters also filed suit seeking to compel the son to purchase the property in accordance with the option. The son filed a demurrer, arguing that there was no enforceable contract because "fair market value at the date of [Jeanne's] death" was not sufficiently specific to establish mutual assent to the purchase price.

Trial Court: The trial court sustained the demurrer, finding that "fair market value" was "too vague to find a meeting of the minds" as to a purchase price because the method to compute fair market value was not provided. The trial court suggested that Jeanne foresaw further negotiations regarding price after the son's notice of his desire to purchase.

Holding: Affirmed.

Discussion: The Supreme Court noted that (i) an option contract is a continuing offer to sell, which becomes a contract once the option holder exercises his right and (ii) a contract relating to the sale of land which is incomplete or uncertain in its material terms will not be specifically enforced. Because price is a material term it must be either "fixed by the agreement itself" or the agreement must provide a mode "for ascertaining it with certainty" in order for a court to specifically enforce the contract. The issue for the court was whether the term "fair market value" on a date certain was sufficient to provide a mode for ascertaining the sale price so that a court could compel specific performance.

Relying on the definition of fair market value – the price that a seller is willing to accept and a buyer is willing to pay on the open market – the Court concluded that Jeanne gave her son the option to purchase the Property "at a price the Sisters are willing to accept and that Anthony is willing to pay." Because there is no "single, fixed approach to determine fair market value," the codicil failed to

provide sufficient specificity for determining the price of the property or a means of ascertaining the price with any certainty.

C. VIRGINIA CIRCUIT COURT CASES

1. *In Re: July 17, 2019 Decision of the Board of Zoning Appeals of the Town of Vienna*, 105 Va. Cir. 359 (Fairfax County 2020).

Facts: Petitioners live on a corner lot in the town of Vienna and applied for a variance to build a screened porch on the back of their house which extends into the rear yard setback requirement. The house currently has a deck that encroaches 7.4 feet into the setback. The proposed porch would replace part of the deck and would encroach 10.8 feet into the rear yard setback. The basis for the variance was that the house was constructed diagonally on the lot, which is wider than it is deep, which creates a hardship with respect to additional living space due to the setbacks.

The BZA denied the application for a variance.

Holding: The decision of the BZA was reversed and the court ordered that the variance be granted.

Discussion: The Petitioners overcame the presumption of correctness by demonstrating that two of the BZA's conclusions of law were in error. First, the BZA erroneously concluded that the location of the house and the effect of the setbacks did not unreasonably restrict the utilization of the property. The basis for this conclusion was that the house had been occupied for sixty years without a screened porch. The trial court determined that the fact the house had been occupied for sixty years does not justify the conclusion that the current homeowners are not unreasonably restricted.

The BZA also erred in determining that the condition presented was of a general or recurring nature because many homeowners wish to expand their homes. The Petitioners situation was not of a general nature because their property was a corner lot, with a house with a diagonal footprint, with a lot wider than deep, where expansion of the house on the left was impractical due to utilities, and expansion on the right was not possible due to a 25 foot setback.

2. *In Re: March 10, 2021 Hearing of the Board of Zoning Appeals of Fairfax County* (Fairfax County 2021).

Facts: Issue before the court is whether the Fairfax County Board of Supervisors can file a demurrer to a petition appealing a decision of the BZA pursuant to Virginia Code § 15.2-2314.

Holding: The Board has no authority to pursue a demurrer in an action where the circuit court is exercising its appellate jurisdiction under Virginia Code § 15.2-2314.

Discussion: An appeal to the circuit court of a decision by the BZA is a hybrid of an appeal and a trial, the requirements of which are controlled by the provisions of the code and decisions interpreting the statute, not be default rules applicable to ordinary actions. The appeal process under § 15.2-2314 is simple, streamlined, and different than most civil actions. Because an action under the statute is an appeal and the statute itself governs procedure, the procedural rules relating to ordinary actions – like the right to take a nonsuit – are not available.

3. *American Cigar Factory, LLC v. City of Norfolk*, 2020 Va. Cir. LEXIS 116 (City of Norfolk 2020).

Facts: American Cigar Factory ("ACF") purchased the property in 2014 and had plans to rehabilitate the historic structure. ACF reduced the four-story structure to three and a half walls with no roof and shored one wall with steel beams and concrete barriers. On June 29, 2015, ACF received a letter from the city stating the building was unsafe and uninhabitable and gave ACF 35 days to repair it or it would be demolished. Then, an upper portion of a wall collapsed in hurricane. Three days later,

the city notified ACF that it intended to demolish the remainder of the building. ACF acquired an injunction on the demolition to allow it to make repairs. Engineers for both sides testified that the repairs done made the building safe.

Then, ACF and the city entered into a settlement agreement providing that the city could demolish any structures in its discretion if ACF did not commence construction in 150 days and provide letters of intent from lenders and tax credit purchasers within 120 days. ACF did not do as required and the city sent notice it was going to demolish the building. ACF again sought an injunction, but it was denied because the court found that ACF was unlikely to establish compliance with the settlement agreement. The building was demolished. ACF entered into an agreement to sell the property to SL Nusbaum. Eight months later, the city filed suit against ACF for unpaid taxes and to recover nuisance abatement liens. The city and ACF entered into a forbearance agreement that provided that if the city was paid from the sale to Nusbaum all outstanding amounts, it would refrain from collecting unpaid taxes and acting on any liens. The forbearance also reserved to ACF the right to later contest the fact or amount of the taxes, levies, and other charges. ACF paid the city $240,000 from the closing but alleged that two creditors who should have been paid from closing were not paid. ACF filed suit seeking reimbursement to it for the demolition costs. It claimed that while the city had the right to demolish the building, it was not authorized to assess costs against ACF or attach a lien to the property. The city filed a demurrer and plea in bar based on res judicata.

Holding: The Norfolk Circuit Court sustained the demurrer but overruled the plea in bar.

Discussion: The main reason the city filed the demurrer is that it alleged ACF failed to plead that it had standing to file the case and seek reimbursement of demolition costs. The city maintained that ACF did not allege that it paid any of the demolition costs and was only filing suit to vindicate the rights of two creditors that were allegedly harmed but were not parties to the action. Citing the three factor test annunciated by the United States Supreme Court for standing (1) plaintiff must suffer an actual injury, (2) there must be causation between injury and defendant's actions, and (3) a favorable decision would redress the injury, the Norfolk Circuit Court found that ACF did not properly plead that it paid the demolition costs so the demurrer on standing had to be sustained. The court did give ACF leave to amend as ACF proffered that it paid the demolition costs.

In consideration of the city's plea in bar based on *res judicata*, the court analyzed the test and Supreme Court precedent for *res judicata* and overruled the plea in bar. The court found that the final order from the City's lien sale case was a final judgment on the merits for purposes of *res judicata*. The court held that the parties in the two cases were the same. However, the court also held that the prior action did not arise from the same transaction or occurrence as this action. The court noted specially that in the forbearance agreement, ACF specifically retained the right to later challenge the tax and lien amounts. From that, it was clear that the parties did not intend the lien case to serve as a bar to ACF to challenge those amounts.

4. *Farrell v. Fairfax County Board of Supervisors*, 105 Va. Cir. 529 (Fairfax County 2020).

Facts: In 2010, Farrell purchased property in Fairfax County that was part of the Sleepy Hollow Subdivision. During storms, the County's stormwater system carries stormwater through an underground pipe, which ends at the Farrell property and deposits water on that property, leading to a physical occupation of the Farrell property for public use.

Farrell filed suit against the County for inverse condemnation. Fairfax County filed a demurrer on two issues: (i) whether Farrell failed to comply with the Virginia Claims Procedure Act under Va. Code § 15.2-1248 by failing to present his claim to the County before filing suit, and (ii) whether Farrell adequately alleged a claim for inverse condemnation.

Holding: The trial court overruled the demurrer, holding that Farrell was not required to present his claim to the County before filing suit and that Farrell adequately alleged facts establishing a claim for inverse condemnation.

Discussion: The circuit court ruled that an inverse condemnation claim, which asserts a violation of just compensation under Article I, § 11 of the Virginia Constitution, is self-executing and therefore gives rise to a common law action regardless of whether the legislature has provided a statutory procedure for authorizing one. The court further determined that the language of § 15.2-1248 – which provides that "[n]o action shall be maintained by any person against a county upon any claim or demand until such person has presented his claim to the governing body" – cannot be reconciled with the applicable provision of the Constitution. Relying on a U.S. Supreme Court case that held that the takings clause of the 5th Amendment is self-executing and that a plaintiff can assert a federal lawsuit without first exhausting state remedies, the circuit court ruled that a state constitution inverse condemnation claim can likewise proceed without satisfying the procedural barriers established by § 15.2-1248.

The circuit court also ruled that Farrell had sufficiently alleged a claim for inverse condemnation.

5. *Rustgi v. Webb*, 105 Va. Cir. 199 (Fairfax County 20202).

Facts: In 1966 the owners of Lots 612, 613, and 615 in the Barcroft Lake Shores Subdivision recorded an easement to provide lake access to Lots 613 and 615, which do not directly abut Lake Barcroft. The easement granted the owners of those lots access to a 20-foot area on Lot 612 for "the purposes of ingress and egress to Lake Barcroft." The owner of Lot 612 reserved "the right to use said area on said plat for their own use."

At the time of the grant, Lot 613 was owned by the Robinsons, who proceeded to build a retaining wall, dredge portions of the lake, install an electrical outlet outside of the easement area, and regularly docked a pontoon boat at the retaining wall.

In 2013, Rustgi purchased Lot 613 and used the easement in the same manner the Robinsons did. In 2017, the Webbs purchased Lot 612 and, in 2019, sent a letter to Rustgi and the owner of Lot 615 requesting that they "make arrangements to conform to the original obligations of the easement" which they asserted did not include boat docking, electrical wiring, or storage of personal property.

In July of 2019, Rustgi filed a declaratory judgment action seeking to establish that the easement permitted his use or, alternatively, that he and his predecessors in title had established a prescriptive easement for such use. Defendants counterclaimed for trespass and nuisance.

Holding: The court held that (i) the express easement did not permit docking of a boat or installation of an electrical outlet, (ii) a prescriptive easement was not established, and (iii) defendants established their claims for trespass and nuisance and ordered injunctive relief.

Discussion: In holding that the easement did not include the right to dock a boat, the court relied on the plain language of the easement – that it was for "ingress and egress to Lake Barcroft" – and that expanding the easement to include the right to dock a boat would be inconsistent with the limitations of the easement. In reaching this conclusion, the court analogized to cases regarding whether an easement allows parking of vehicles, which generally hold that parking is not implicit in an easement for ingress and egress and must be explicitly enumerated in the easement. Moreover, long-term docking of a boat hinders the ability of others to access the lake across the easement. Finally, the court found that there was no implicit grant of riparian rights.

The court also determined that no prescriptive easement was established because the evidence showed that the Robinsons' docking of their boat was with the consent of the owners of Lot 612. The testimony – from the Robinsons' son – also established that he and his parents believed the electrical outlet was within the easement area.

Finally, the court ruled that, because there was no right to dock the boat or install the electrical outlet, Rustgi's actions were trespassory and constituted a nuisance. The court required that Rustgi remove

the boat. Because the outlet was not installed by Rustgi and the statute of limitations for its removal had passed, Rustgi was not required to remove the outlet but was ordered to cease electrifying the outlet so that it could be safely removed by the Webbs.

NOTE: Due to technical difficulties, these meeting minutes do not reflect the corrections to the minutes made during the September meeting.

REAL PROPERTY SECTION OF THE VIRGINIA STATE BAR

ANNUAL MEETING OF THE BOARD OF GOVERNORS, AREA REPRESENTATIVES AND GENERAL MEMBERSHIP

MINUTES

Thursday, June 17, 2021, 11:00 a.m. Webex Meeting

I. **Attendees (Officers):** Lori Schweller, Chair; Kathryn Byler, Vice-Chair; Karen Cohen, Secretary

Attendees (Board of Governors – Non-Officer)*: Stephen Gregory; Robert Hawthorne, Jr.; Blake Hegeman; Sarah Louppe Petcher; Rick Chess; Whitney Levin

* The Section's Board of Governors is 10 members: 3 officer members plus 7 non-officer members.

Attendees (Members) (alphabetical by first name):

1. Alyssa Dangler
2. Barbara Goshorn
3. Benjamin Winn
4. Bill Nusbaum
5. Brooke Barden
6. Charles Land
7. Douglass Dewing
8. DR Goodman
9. Eric Zimmerman
10. Hayden-Anne Breedlove
11. Heather Steele
12. Hope Payne
13. James McCauley
14. Jean Mumm
15. Jeremy Root
16. Jon Brodegard
17. Justin Ritter
18. Kay Creasman
19. Michael Barney
20. Michael Coughlin
21. Michael Lafayette
22. Michelle Rosati
23. Page Williams
24. Pam Faber
25. Pam Fairchild
26. Paul Melnick
27. Paula Caplinger
28. Ralph Kipp
29. Randy Howard
30. Ray W. King
31. Regina Petruzzi Neumann
32. Richard Campbell
33. Robert Barclay
34. Ronald D. Wiley, Jr.
35. Stephen Romine
36. Tom Lipscomb
37. Tyler Rosa
38. Vanessa Carter
39. Will Homiller

II. ADOPTION OF MINUTES —Rick Chess moved to adopt the minutes of the Spring Meeting of the BOG and Section, which was held virtually via Microsoft Teams and conference call on March 4, 2021. The motion was seconded by Robert Hawthorne and passed unanimously.

III. FINANCIAL REPORT — Lori Schweller presented the budget and expressed that the Section is looking forward to next year when it can spend budgeted funds on activities.

IV. STANDING COMMITTEES

1. Membership — **Pam Fairchild and Rick Chess**

   a. Lori welcomed the Section's new Academic Liaison, Professor Carol Brown of the University of Richmond School of Law.

Prof. Carol Brown thanked the Section for allowing her to affiliate with it, saying she was honored to be a member of the Bar. Prof. Brown attended law school at Duke, practiced law in Virginia, and entered academia at University of Alabama. She currently teaches 1L property and 3 upper level courses (housing, land use real and planning; estate transfers & finance). Prof. Brown said that Ron Wiley was the first person to reach out to her professionally and offered to assist her at University of Richmond, and that this connection to the profession has been a benefit to her and her students. She said she is excited to participate in the Section and has asked a student who is interested in real estate to reach out to Section leadership to establish a mentor-mentee relationship. Prof. Brown said she shares Ron's passion to urge students to think about real estate transactions as a fulfilling career path. She offered to do anything she could to help the Section, noting that she is looking forward to being extremely engaged and is honored to participate.

Ron Wiley enthusiastically nominated Prof. Brown as the Section's Academic Liaison. Blake Hegeman seconde the motion, which passed unanimously.

b. Nomination of new Area Representatives:

i. Michael Coughlin (Exhibit D) – Kay Creasman

Kay nominated Michael Coughlin of Walsh Colucci as a new AR. Michael is a litigation attorney whose practice in Northern Virginia focuses on eminent domain.

Michael accepted the nomination, noting that it has been good working with Kay on the VBA Real Property Committee. Michael said his firm covers all areas of real estate law and that he specializes in eminent domain and looks forward to contributing in that regard.
Kay moved to nominate Michael Coughlin as an AR; the motion was seconded by Mike Barney. The motion passed unanimously.

ii. Tyler J. Rosá (Exhibit E) – Lori Schweller

Lori nominated Tyler Rosá of Williams Mullen's Virginia Beach office as an AR. Tyler is a commercial real estate lawyer, practicing in real estate transactions and land use and zoning. Lori said that Tyler been an asset to Williams Mullen clients and to the Section, recently providing important case law updates to the Land Use and Environmental Committee.

Lori moved to nominate Tyler Rosá as a Hampton Roads AR. Steve Romine seconded. The motion passed unanimously.

c. *Real Property Section Virginia State Bar Board of Governors and Area Representative Handbook* [Exhibit F] (Board resolution required)

Lori thanked Pam Fairchild and the three prior chairs, Larry McIlwain, Kay Creasman and Phil Hart, for their work on the handbook. Rick Chess said that the handbook was reviewed with the help of the three prior chairs. Rick noted that a number of items have been placed within the purview of the Vice Chair. Kay said main thing they did was to go through and talk about the things that people actually did in these positions to try to create a list of jobs that happen on an annual basis (and that otherwise can get forgotten when moving from one group of people to the next). The goal was to try to make it more reflective of what is actually happening.

Rick moved for approval of the handbook as an organic document that will need updating. He noted that work continues on updating the Appendix. Paula Caplinger seconded. The motion passed unanimously.

2. Fee Simple – **Steve Gregory & Rick Chess**

a. Spring Fee Simple

Steve Gregory reported that the typical publication schedule is usually to have the spring issue out before the annual meeting; however, that was not possible this time. The Spring issue should be getting out in the next week or so – before the end of June. In this issue, case law summary has been pushed to the fall issue. Steve asked the Section to please send cases to Steve or Hayden-Anne to get them included. Steve said this is the largest issue we've had – a lot of good material. Steve thanked all the contributors and noted that Bill Nusbaum has two articles in this issue. The deadline for the fall issue is the first Friday in October. Steve asked the Section to please provide ideas for topics.

Steve explained that the subject index is getting unwieldy, explaining that it is up to 32 pages and very difficult to find anything. Steve explained that the Committee hopes to have a streamlined index by the fall issue, which will include updated articles and removing those that are out of date.

Mike Barney raised the question of digital accessibility and Steve said the index is only in the digital issue.

Lori thanked Steve, Hayden-Anne and all the contributors.

3. Programs – **Sarah Louppe Petcher & Heather Steele**

Lori thanked Heather Steele for agreeing to co-chair the Committee with Sarah. Sarah reported that the Committee had a programs meeting last week. For the Annual program held virtually on May 24 on one day, Sarah reported that there were just under 300 attendees and that there also were a large number of attendees for the remote advanced seminar earlier this year. For 2022, the Committee recommends having both in-person and virtual at the same time. Sarah said that VA CLE is capable of doing that and that the in-person Annual meeting will be in Williamsburg on March 4 and 5, 2022. The Annual meeting also will be simultaneously broadcast.

Sarah thanked those who participated in topic submissions, including Ben Leigh, who continues to contribute even though he is no longer co-chair. Sarah also thanked Kay, Heather, Susan, Howard and Tracy for their help. The Programs Committee already has several topics and speakers lined up -- having the ability to continue to offer a remote platform allowed the Committee to reach out to speakers and avoid travel costs.

Sarah explained they are still finalizing some of the subjects and said they are looking for speaker and topic suggestions for ethics. Heather said the Committee so far has the following topics:

- Opportunity Zones and Tax Updates for RE (Jenny Connors)
- Corporate Transparency Act (Jan. 1, 2021) – small privately-held business entities -- FINCEN reporting requirements (looking for speaker)
- Legal Writing & Communications – Non-verbal communications in your practice

area – after a year of screens/masks, we have lost full-facial interaction (looking for psychologist or someone trained in this)
- Location and Addresses and Naming Rights in Real Estate (Ben suggested) – what happens when a locality changes an address; naming rights relative to a project or building (city or county planner for a growing community, *e.g.*, Lynchburg area)
- Eminent Domain – Mike Coughlin agreed to do; Primer plus a developments in the law portion
- Psychology of Real Estate – second ethics hour
- Co-Housing – new type of community association; entire community must agree 100% before any decision takes place; Co-Housing Association of America – trying to reach president of that association
- Alternative Housing Arrangements – movement from granny pods to accessory dwelling units (reaching out to McGuire Woods attorneys)
- Measure of Damages in Real Estate Cases
- Closing Letters
- Ethics

Heather asked the Section to please contact her and Sarah with any additional ideas for topics or speakers.

4. Technology — **Matson Coxe** [No Report]

V. SUBSTANTIVE COMMITTEES – *Reminder: if you are an Area Representative and are not on at least one committee, please choose one to join and contact the committee chair(s).* ***Area Representatives who are not active in Section meetings and at least one committee may be removed from the A/R roster. Committee Chairs please report to an officer if you have members who have not attended the past three meetings (or more).***

a. Commercial Real Estate — **John Hawthorne**

Not Present/ No Report.

b. Common Interest Community — **Josh Johnson & Sue Tarley**

Not Present/No Report.

c. Creditor's Rights and Bankruptcy – **Lewis Biggs**

Not Present/No Report.

d. Eminent Domain — **Chuck Lollar**

Not Present/No Report.

e. Ethics — **Ed Waugaman and Blake Hegeman** – [no formal report]

The LEO team is continuing to review LEOs and hopes to have a useable data base for our members by 2022. Blake confirmed they are laser-focused on the LEO projects.

f. Land Use and Environmental —

g. **Karen Cohen & Lori Schweller** (Report Exhibit G)

Karen talked about the group's discussion of *Rowland v. Town Council of* Warrenton, a case involving proffers that Tyler had brought to the attention of the Committee. Karen referred the Section to the Committee Report in the meeting package, which contains

a detailed discussion of the *Rowland* case and other topics covered in the Land Use & Environmental Committee's meeting.

h. Residential Real Estate — **Susan Walker & Benn Winn** (meeting not held due to medical leave)

(i) VAR Summary of Statutes (Exhibit H) – Sarah Louppe Petcher

Sarah directed the Section's attention to the NAR summary for its members. She noted that it is focused on residential but that it is an interesting summary to read through, and includes links to bills to explore further.

i. Title Insurance — **Cynthia Nahorney**

Not Present/No Report.

VI. VBA UPDATE — **Jeremy Root**

Jeremy reported that there has been a quiet period after a busy legislative session. Jeremy explained the role of the VBA, explaining that it is a separate organization from the VSB and that VBA has the ability to separately lobby on behalf of its members for legislation that benefits real estate in Virginia. He explained that the VBA's legislative efforts are not intended to promote one political outlook or another. Ideas for legislation are taken to the VBA Board and a lobbyist with Reed Smith takes the proposals to the General Assembly On September 23rd , VBA's Legislative Day; ideas are taken to the Board to decide which ones to push. The Real Estate Council's role is to try to collect ideas to take to Board. It is both a proactive and reactive committee. The reactive committee looks at prefiled bills to see which ones are related to real estate. Kay is on the proactive committee and is beginning to put together potential legislative items to take to the VBA Board to push on Legislative Day. Jeremy said he would love to have VSB RPS Section members as VBA members if you are not already a member, and even if not, to please send him ideas.

Jeremy said the VBA often tries to do a fall social to coincide with VSB's fall meeting in Charlottesville. He is waiting for VSB to make a decision regarding date and place and once that is confirmed, VBA will try to set up their meeting and social for the same date.

Lori said Kathryn will provide Jeremy with date updates.

VII. NEW BUSINESS – Annual Elections

Per Article III, Section 3 of the Bylaws, the Nominating Committee consists of the Immediate Past Chair (Ron Wiley), current Chair (Lori Schweller), Vice-Chair (Kathryn Byler), and two additional Active Members selected by the Chair (Whitney Levin, Paul Melnick).

The Nominating Committee presented the following slates for the Board of Governors and the Section Officers:

Board of Governors:
Re-election: Robert E. Hawthorne (for his 2nd term)
Blake Hegeman (for his 3rd, final term)
New: Heather Steele

10-member BOG currently (allowed to have up to 12)

Officers:
President: Kathryn Byler
Vice President: Karen Cohen
Secretary Sarah Louppe Petcher

Lori said she spoke with Dolly Shaffner at VSB, who suggested that last year's electronic voting worked very well, and that the same type of electronic ballot would be sent after the meeting.

Per the bylaws, Lori opened up the floor for nominations. Rick moved to close the slate. Ben Winn seconded. Steve moved to approve electronic voting. Rick seconded the motion.

A discussion followed. Bill asked how long the electronic voting would be open. Ron noted that when we meet in person, we have 30 seconds to vote. Mike Barney asked why we are doing the voting electronically, noting that usually, if you have a quorum, you vote at the meeting. Bill pointed out that the Section can respond electronically right after the meeting, and that only the slate is available because the slate has been closed. Bill said he did not think electronic voting would need to remain open beyond Wednesday or Thursday. Mike asked whether we need to vote on how long to leave voting open. Lori said she would suggest that it be no longer than a week. Rick pointed out that the bylaws say the vote shall be held at the annual meeting unless otherwise ordered.

The above made motions to close the slate and vote electronically after the meeting, passed unanimously.

VIII. ANNOUNCEMENTS – **Traver Award Recipient 2021 – announced by Kay Creasman**

Kay announced James McCauley Ethics Counsel for the VSB as the Traver Award Recipient 2021 recipient. Jim's bio will be published in The Fee Simple. Kay said that Jim is a very worthy recipient. Jim thanked the Section for the award, commenting that Court [Traver] was a brilliant lawyer who always made you feel comfortable. Jim said he was flattered and extremely honored to accept the award. He said the RPS is the only section of which he has been a member, serving on the ethics committee. He noted that the RPS became important with the VSB's work with unauthorized practice of law (UPL), title companies, and the pitfalls that real estate professionals deal with daily. Jim named many section members and thanked them for their time in helping him work through very challenging issues.

IX. NEXT MEETING — Kathryn Byler thanked Lori for navigating us through the pandemic and doing such a great job. September is typically the month for meeting at VA CLE offices. However, Kathryn explained that VA CLE is unable to host us because of ongoing Covid restrictions in their building. Kathryn found an office, the Charlottesville Realtors Association, that can accommodate us at $350. Details to be provided. The likely date is Friday, 9/17. Jeremy Root has offered a VBA reception that afternoon after our meeting. Kathryn will get out the notice for the meeting.

Other upcoming meetings are as follows:

Thursday, January 20 – winter meeting – expect at Williamsburg Lodge
Friday, March 4 – spring meeting – coincide with Advanced CLE in Williamsburg at 10 am
Friday, June 17 – Virginia Beach annual meeting and Steinhilber's dinner

Other news:

Steve Gregory congratulated Susan Pesner and Jane Rouche for inclusion in the Virginia Lawyers Weekly Hall of Fame and said that Jim, Traver Award recipient, will be featured in the Fall Issue.

Jim said he is happy to help with any CLE programs where we need ethics.

Bill thanked Lori for her leadership in a challenging year.

The meeting adjourned at approximately 12:10.

BOARD OF GOVERNORS
REAL PROPERTY SECTION
VIRGINIA STATE BAR
(2021-2022)

[Note: as used herein, a Nathan[1] (*) denotes a past Chair of the Section, and a dagger (†) denotes a past recipient of the Courtland Traver Scholar Award]

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[1] Named after Nathan Hale, who said "I only regret that I have but one asterisk for my country." –Ed.

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AREA REPRESENTATIVES

Area Representatives are categorized by six (6) regions: Northern (covering generally Loudoun County in the west to Prince William County in the east); Tidewater (covering generally the coastal jurisdictions from Northumberland County to Chesapeake); Central (covering generally the area east of the Blue Ridge Mountains, south of the Northern region, west of the Tidewater region and north of the Southside region); Southside (covering generally the jurisdictions west of the Tidewater region and south of the Central region which are not a part of the Western region); Valley (covering generally the jurisdictions south of the Northern region, west of the Central region and north of Botetourt County); and Western (covering generally the jurisdictions south of Rockbridge County and west of the Blue Ridge Mountains).

Central Region

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Virginia State Bar Real Property Section
Membership Application

1. Contact Information

Please provide contact information where you wish to receive the section's newsletter and notices of section events.

Name: .....

VSB Member Number: .....

Firm Name/Employer: .....

Official Address of Record: .....

.....

.....

Telephone Number: .....

Fax Number: .....

E-mail Address: .....

2. Dues

Please make check payable to the Virginia State Bar. Your membership will be effective until June 30 of next year.

l $25.00 enclosed

3. Subcommittee Selection

Please indicate any subcommittee on which you would like to serve.

Standing Committees

- l Fee Simple Newsletter
- l Programs
- l Membership
- l Technology

Substantive Committees

- l Commercial Real Estate
- l Creditors Rights and Bankruptcy
- l Residential Real Estate
- l Land Use and Environmental
- l Ethics
- l Title Insurance
- l Eminent Domain
- l Common Interest Community
- l Law School Liaison

4. Print and return this application with dues to

Dolly C. Shaffner, Section Liaison Real Property Section
Virginia State Bar
1111 East Main Street, Suite 700
Richmond, VA 23219-0026