

PROCEDURAL BULLETIN

August, 2011

The New CATIC Expanded Protection Policies

Highlights of the 2010 ALTA Expanded Coverage Policy Forms

Jonathan S. R. Anderson

INTRODUCTION

The American Land Title Association (ALTA) has approved three new expanded coverage title insurance policy forms: the Homeowner's Policy of Title Insurance for a One-to-Four Family Residence (hereinafter also referred to as the "Homeowner's Policy"), the Expanded Coverage Residential Loan Policy (hereinafter also referred to as the "Expanded Loan Policy"), and the Short Form Expanded Coverage Residential Loan Policy (hereinafter also referred to as the "Short Form Expanded Loan Policy"). The Homeowner's Policy bears a revision date of February 3, 2010, while the Expanded Loan Policy and the Short Form Expanded Loan Policy bear a revision date of July 26, 2010.

CATIC has adopted all of these policy forms. The ALTA Homeowner's Policy is CATIC's new Expanded Protection Owner Policy and the ALTA Expanded Loan Policy is CATIC's new Expanded Protection Mortgagee Policy. These new policy forms replace the existing expanded policy forms, effective immediately.

The following material summarizes the new CATIC Expanded Protection Policies.

I. THE NEW EXPANDED PROTECTION OWNER POLICY

COVERED RISKS

The most obvious differences between the existing CATIC Expanded Owner Policy (which is not an ALTA form) and the new CATIC Expanded Protection Owner Policy are:

- The new policy includes an Owner's Information Sheet summarizing the different

sections of the policy. The new form also includes a Table of Contents describing where these different sections are located within the policy.

- The new policy has 32 Covered Risks, while the existing form has 20. Some of the additional provisions result from the fact that the new policy subdivides some Covered Risks contained in the existing form.

For example, in the existing Expanded Owner Policy, Covered Risk 3, subsection (a)

*Rocky Hill, CT
(800) 842-2216*

*Norwalk, CT
(800) 324-4797*

*Holyoke, MA
(800) 552-2842*

*Wellesley, MA
(877) 502-2842*

*Bedford, NH
(866) 595-5559*

*West Warwick, RI
(800) 652-6155*

*Williston, VT (VATC)
(800) 649-3366*

Visit our web site at www.CaticAccess.com.

insures against loss resulting from forgery, fraud, duress, incompetency, incapacity or impersonation, while Covered Risk 3, subsection (b) insures against loss caused by forgery after the Policy Date. In the new policy, Covered Risk 3 insures against loss due to forgery and impersonation, Covered Risk 7 insures against certain risks (including forgery) occurring after the Policy Date, and Covered Risk 10 insures against loss due to fraud, duress, incompetency or incapacity.

- The Covered Risks have been revised to incorporate the improvements and additional coverage available in the 2006 Standard Owner Policy.

One such improvement is the transfer of coverage that was previously “hidden” as exceptions in the policy’s Exclusions to various provisions in the Covered Risks. There is now express coverage for loss caused by violations of public regulations, enforcement of governmental police power, and takings by condemnation when there is notice in the Public Records. Another improvement taken from the 2006 Standard Policy is the reference to specific risks in the coverage provision insuring against defects in title.

Additional coverage provisions shared with the 2006 Standard Owner Policy include insurance over any lien for taxes and assessments imposed by a governmental authority that are due but unpaid at Date of Policy.

- There are four Covered Risks that are subject to Deductible Amounts and Maximum Dollar Limits of Liability. These include:
 - Covered Risk 16 (loss due to existing violation of a subdivision law or regulation);
 - Covered Risk 18 (loss caused by forced removal or remediation of an existing structure, other than a boundary wall or

fence, because any portion of the structure has been built without a building permit);

- Covered Risk 19 (loss caused by forced remediation of an existing structure because any portion of the structure violates zoning laws or regulations); and
- Covered Risk 21 (loss due to the forced removal or remediation of a boundary wall or fence because it encroaches onto a neighbor’s land).

The existing CATIC Expanded Owner Policy has similar coverage but there are some notable differences:

- While the existing CATIC EOP has coverage against the forced removal of existing structures that have been built without the requisite building permit or that violate zoning, the new CATIC Expanded Protection Owner Policy covers loss if the Insured is forced to *correct* the problem in order to bring the structure into compliance.
- The new CATIC Expanded Protection Owner Policy covers loss if the Insured is forced to remove an existing structure that encroaches onto a neighbor’s property, even if that structure is a boundary wall or fence.
- There is coverage if the Insured’s structure is damaged because of the exercise of a right to maintain an easement even though the easement is excepted in Schedule B. There is also protection against the attempted enforcement of a discriminatory covenant or restriction based upon race, religion, sex, handicap or national origin.
- The policy covers loss when the residence having the address referred to in Schedule A is not located on the property, or if any map attached to the policy does not show the correct location of the property.

- The remaining Covered Risks offer protection similar to the extensive coverage provided by the existing CATIC Expanded Owner Policy.

As noted on the Owner's Information Sheet and the Owner's Coverage Statement in the new policy, the insurance is limited by the policy's Exclusions and Conditions, as well as any Deductible Amounts and Maximum Dollar Limits of Liability for certain losses covered by Covered Risks 16, 18, 19 and 21 shown in the policy's Schedule A, and the Exceptions in the policy's Schedule B.

EXCLUSIONS

The Exclusions in the new Expanded Protection Owner Policy resemble those in previous owner title insurance policy forms, but these Exclusions reflect the improvements made to the 2006 Standard Owner Policy forms. For example, the exceptions to the Exclusions in earlier forms have been transferred to the Covered Risks. Many of the Exclusions also include specific carve-out language to clarify that their provisions do not limit the insurance given elsewhere in the policy by certain Covered Risks. There is a creditors' rights exclusion.

CONDITIONS

The Conditions also have an effect on the policy coverage. The Conditions in the new Expanded Protection Owner Policy resemble those in previous owner title insurance policy forms, but these Conditions reflect the improvements made to the 2006 Standard Owner Policy forms. For example, there is a Condition providing for a ten percent increase in the Policy Amount, along with the right of the Insured to choose either the date the claim was made or the date the claim is finally settled and paid when determining the actual loss, when the title insurer tries unsuccessfully to clear the title in the event of a claim.

SCHEDULE A

The Schedule A of the new Homeowner's Policy contains the information that one would expect to see in the Schedule A of any title insurance policy. It provides the Policy Amount and the

Policy Date. It identifies the Insured, the insured interest, and the Land covered by the policy.

This new Expanded Protection Owner Policy's Schedule A contains a listing of Deductible Amounts and Maximum Dollar Limits of Liability for the four Covered Risks referred to earlier.

SCHEDULE B

The Schedule B contains the exceptions from coverage. Existing interests and encumbrances disclosed in a title search of the property are listed here, along with any standard exceptions that CATIC requires. For the most part, standard Exceptions in the new expanded Protection Owner Policy will resemble those in the 2006 Standard Owner Policy. Agents will be able to omit or endorse out standard Exceptions if the agents meet certain underwriting guidelines.

II. THE NEW EXPANDED PROTECTION MORTGAGEE POLICY

COVERED RISKS

The new Expanded Protection Mortgagee Policy contains basic coverage provisions, but these include the updated Covered Risks that first appeared in the 2006 Standard Loan Policy. As a result, these provisions not only clarify and improve the coverage, but also outline the risks insured against in a plain language format shared with the other new policy forms.

- The new Expanded Protection Mortgagee Policy insures against loss resulting from any defect, lien or encumbrance on the title that is not otherwise excluded or excepted.

For example, one of the Covered Risks, in language matching the corresponding coverage provision in the 2006 Standard Loan Policy, lists some of the title defects insured against, including: forgery and fraud; unauthorized transfers; ineffective execution of documents; invalid powers of attorney; improper creation or filing of electronic documents; and defective judicial or administrative proceedings. In a related provision, the policy insures against the

invalidity or unenforceability of the Insured Mortgage, and any impairment of the mortgage caused by defects identical to those listed in the preceding sentence.

- The policy shares other coverage provisions with the 2006 Standard Loan Policy, including one insuring against liens for delinquent real estate taxes or assessments, and another giving affirmative survey coverage. The 2010 Expanded Loan Policy also transfers the coverage previously hidden as exceptions in certain Exclusions to the Covered Risks.
- The policy provides post-policy coverage and coverage against certain events occurring in the future.

There is, for example, coverage against loss caused when the dwelling has been constructed without a valid building permit, and there is also coverage against loss caused when the dwelling cannot be used for one-to-four family residential purposes because that use violates a restriction shown in the policy's Schedule B. These provisions apply to the existing structure, of course, but also apply to any future modification or replacement.

- The remaining Covered Risks are essentially the same as those that appear in the existing (2001) Expanded Coverage Residential Loan Policy. Some of this coverage is available for a standard policy when revised with the addition of certain endorsements, but the 2010 Expanded Loan Policy incorporates this coverage and thereby makes these additional endorsements unnecessary.

In addition, the policy incorporates specific ALTA Endorsements by reference. The 2010 Expanded Loan Policy includes the coverage provided by the following endorsements when these apply: ALTA Form 4.1-06 (Condominium); ALTA Form 5.1-06 (Planned Unit Development); ALTA Form 6-06 (Variable Rate Mortgage); ALTA Form 6.2-06 (Variable Rate – Negative Amortization); ALTA Form 8.1-06 (Environmental Protection Lien); and ALTA Form 9.3-06 (Restrictions, Encroachments, Minerals).

EXCLUSIONS

Most of the Exclusions in the new Expanded Protection Mortgagee Policy contain carve-out language stating that the particular Exclusion does not limit the coverage provided in certain Covered Risks.

The Exclusions resemble those in both the 2006 Standard Loan Policy and the 2001 Expanded Coverage Residential Loan Policy.

There is an Exclusion, for example, for loss resulting from the violation of governmental laws and regulations or the exercise of governmental police power. There is an express carve-out, however, stating that the Exclusion does not limit the coverage provided under those Covered Risks that insure against loss when a notice of such violation or enforcement has been recorded in the Public Records.

The new Expanded Protection Mortgagee Policy also includes an Exclusion for any loss resulting from a claim that the transaction creating the Insured Mortgage is a fraudulent or preferential transfer under bankruptcy, insolvency or creditors' rights laws.

CONDITIONS

The 17 numbered Conditions in the new Expanded Protection Mortgagee Policy are almost exactly the same as those appearing in the 2006 Standard Loan Policy.

Like Condition 1 of the Standard Loan Policy, Condition 1 of the Expanded Loan Policy contains the Definition of Terms. Amount of Insurance, for example, is 125% of the Policy Amount stated in Schedule A. The remaining Sections deal with traditional issues regarding the Defense and Prosecution of Actions (Condition 5); Duty of the Insured Claimant to Cooperate (Condition 6); Options to Pay or Otherwise Settle Claims (Condition 7); Determination and Extent of Liability (Condition 8); and Rights of Recovery Upon Payment or Settlement (Condition 12). There is also a Condition 16 regarding Choice of Law and Choice of Forum.

SCHEDULE A

The Schedule A of the new Expanded Protection Mortgagee Policy contains the information that traditionally appears in the Schedule A of any title insurance policy insuring a mortgage interest. The Schedule A provides the Policy Amount and the Date of Policy. It also identifies the Insured and the estate or interest that is encumbered by the Insured Mortgage. As in other loan policies, this Schedule A also identifies the person or entity in whom the mortgaged estate or interest is vested. The Schedule A also describes the Land covered by the policy.

Because this is a loan policy, the Schedule A necessarily identifies the Insured Mortgage. If there are any assignments of the Insured Mortgage known at the Date of Policy, the Expanded Loan Policy also describes those assignments.

SCHEDULE B

The Schedule B Part I contains the Exceptions from Coverage. Existing interests and encumbrances disclosed in a title search of the property and having priority over the Insured Mortgage appear here, along with any standard exceptions that CATIC requires. Agents will be able to omit or endorse out standard Exceptions if the agents meet certain underwriting guidelines.

III. 2010 SHORT FORM EXPANDED COVERAGE RESIDENTIAL LOAN POLICY

The Schedules A and B for the 2010 Short Form Expanded Loan Policy are almost identical to the schedules for the existing version. The main difference is that the new Short Form Expanded Loan Policy incorporates all of the terms, Exclusions and Conditions contained in the 2010 Expanded Loan Policy.

IV. UNDERWRITING AND CONCLUSION

CATIC's new Expanded Protection Owner Policy and Expanded Protection Mortgagee Policy can be used when insuring property improved with either a one-to-four family dwelling or a residential condominium unit. The Expanded Protection Policies cannot be used for unimproved land or commercial properties, and are not available when the seller or owner is unable to complete a CATIC Owner's Affidavit. The Expanded Protection Policies cannot be used to insure a leasehold interest. The insured under an Expanded Protection Owner Policy must be a Natural Person. In all other respects, the underwriting for the Expanded Protection Policies is the same as that for CATIC's Standard Policy forms.

The new CATIC Expanded Protection Owner Policy and Expanded Protection Mortgagee Policy update coverage provisions, as well as other terms and conditions, to take advantage of improvements first introduced in the 2006 ALTA Standard Policy forms. More importantly, these policies offer new and enhanced coverage, and are now the best alternative when insuring improved, residential property.

Jonathan Anderson is a Senior Title Counsel at CATIC.
He is a member of the Forms Committee of the American Land Title Association.
