

Date: April 19, 2017

To: All Florida Agents

From: Underwriting Department, John N. Redding, Esq.

RE: Review of the Approved ALTA 2016 (with Florida modifications) Commitment

I have been asked to address the revisions in the newest version of the American Land Title Association (hereinafter "ALTA") commitment form which has been approved and was released by the Florida Office of Insurance Regulation effective on April 17, 2017. Generally, I am against change and subscribe to the old adage, "if it's not broken, don't fix it." However, I find the revisions to be, a move in the right direction with only a few minor reservations.

The first revision that is of note is that unlike prior versions, the ALTA 2016 (with Florida modifications) commitment contains a notice provision in all caps which serves to clearly explain that the commitment "is not an abstract of title, report on the condition of title, legal opinion, opinion of title, or other representation of the status of title." Much of this language was contained in the ALTA 2010 (with Florida modifications) commitment in the conditions provisions contained therein. This notice provision clearly outlines that the company's only liability is to the proposed insured, and that there is no liability to any other person. Furthermore, the only obligation under the commitment is to issue a policy or policies of title insurance in accordance with the terms of the commitment.

The limitation of liability under the notice provision of the ALTA 2016 (with Florida modifications) commitment, was not as clearly drafted and previously located in the Conditions provisions of the Current Approved Form.

This notice provision is interesting in that, from experience, commitments have been used for a number of purposes other than insuring a proposed insured. For example, commitments have been used for litigation in foreclosure, partition, and quiet title actions. This then would lend itself to the need for an expanded Ownership and Encumbrance report for these purposes.

The next revision in the order of appearance, is a restatement of some of the prior commitment jacket language. Here the changes are again largely a clarification of the prior language. As is the case on the Current Approved Form, the commitment is not effective until the identity of the proposed insured and the policy amount are added to Schedule A. This was already there, it is now just more distinct. Unlike the Current Approved Form, the ALTA 2016 (with Florida modifications) commitment provides a blank for the insertion of the termination date. We no longer have the automatic six-month

termination and now one may either lengthen or shorten this time period. This is both good and bad. Should this be missed, one may attempt to argue the commitment does not expire.

The Conditions provisions have been significantly expanded.

1. The Conditions contain a definitions portion. Some of these seem to be a bit redundant.
2. Condition 2 provides that *if all of the Schedule B, Part I - Requirements have not been met within the time period specified in the Commitment to Issue Policy, this Commitment terminates and the Company's liability and obligation end.* This is nothing new. Instead, this is a clarification and simplification of the language on the Current Approved Form.
3. Condition 3 is a statement that the commitment as a whole is effective, and that pages removed therefrom would arguably serve to invalidate same. This is undoubtedly in response to recent litigation, and an attempt to keep the contractual limitations of liability both known, and abundantly clear. This statement is repeated in the footer of each page.
4. Condition 4 addresses the Company's right to amend the commitment. We all know that this right has always existed, and it was set out in the conditions on the Current Approved Form. However, this brings it to the forefront, and is another clarification. This provision also provides that if an amendment includes the addition of an exception for a defect, lien, encumbrance, adverse claim, or other matter which existed and was recorded prior to the original effective date, the liability of the Company is limited to the actual expense incurred by proposed insured, as is set out in Condition 5(c), *infra*. This is another good change.
5. Condition 5 addresses the limitations of liability. This too was previously addressed on the Current Approved Form, but again has been clarified.
6. Condition 6 again addresses liability of the Company. The six subparts are all clearly written and need not be explained.
7. Condition 7 addresses the relationship between the underwriter and agent, and recites *the issuing agent is the Company's agent only for the limited purpose of issuing title insurance commitments and policies. The issuing agent is not the Company's agent for the purpose of providing closing or settlement services.* This

clearly identifies and limits the relationship between the issuing agent and underwriter. For the litigator, this is problematic as it is a common belief that the underwriter is responsible for all actions of their issuing agent, including those germane to the providing of closing and settlement services. This then will not solve the problem of the foreclosure of mortgages not properly paid off at closing, but it should relieve a great amount of litigation against the underwriter for actions related to its agent's providing closing and settlement services.

8. Condition 8 provides that the Company may issue a pro-forma policy, and clarifies that neither a commitment, nor a statement of the status of title when delivered to the proposed insured.
9. Condition 9 addresses arbitration, this was previously addressed in the Current Approved Form. This is further clarification.

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