



MAY I PLEASE HAVE AN ALTA 9 WITH MY TITLE COMMITMENT?

By Benjamin Ipock, Title Counsel

Often, when a new title order comes in to one of our eight offices, there is a request within the application section of the preliminary title opinion (PTO) for various ALTA endorsements. For a residential transaction, the request is usually for the ALTA 5, 8.1 and 9 endorsements. Because of this, most attorneys have formatted their PTO templates to include these endorsements automatically. This makes it easy because, more likely than not, those are the endorsements that will be requested by a residential lender. However, for commercial transactions, it becomes a little less clear since there may be numerous additional endorsements requested by proposed insured(s). Some PTOs keep the standard boilerplate request for the residential endorsements (5, 8.1, and 9), others might include a copy of the owner or lender "title requirement" with a laundry list of endorsements, some may include language such as "you choose what is best or standard" and yet others might leave the question of endorsement unanswered at the time of application. Needless to say, requests for endorsements come in an array of different forms. Regardless of how or when the requests come in, we are here to assist to make sure our mutual clients get the title coverages they desire.

One of the most common and diverse endorsement series is the ALTA 9. Did you know there are 10, yes TEN, different variations of ALTA 9 coverage for both owner's and loan policies? Below is a summary of the various ALTA 9 endorsements available, and where they might fit in on your next transaction. It is best to divide the endorsement series into two parts - Owner Policy endorsements and Loan Policy endorsements - and determine which is appropriate for your transaction.

Loan Policy ALTA 9 Endorsements:

- **ALTA 9-06 – Restrictions, Encroachments, Minerals – Loan Policy**
 - This is the most common form of the ALTA 9 series that is requested by lenders and is appropriate for improved and unimproved properties. The 9-06 can be thought of as the sort of central pillar of the 9 series from which other coverages are based in one form or another. The coverages afforded by the ALTA 9-06 are very broad and include existing violations of covenants, conditions and restrictions, environmental protection covenant violations, existing encroachment of improvements, setback violations, and the exercise of easement rights or mineral interests.
- **ALTA 9.3-06 – Covenants, Conditions and Restrictions – Loan Policy**
 - This endorsement is similar to the 9.2-06 (for Owners, see below) in that it expands the definition of "Improvements" (as defined in the endorsement) and affords additional coverage related to violations resulting in the invalidity, unenforceability or lack of priority of the Insured Mortgage or due to "Covenant" (as defined in the endorsement) violations that cause a loss of the title acquired in full or partial satisfaction of the indebtedness.
- **ALTA 9.6-06 – Private Rights – Loan Policy**
 - The 9.6-06 is often requested by lenders and provides coverage against loss or damage resulting from the enforcement of "Private Rights" such as: options to purchase, rights of first refusal, rights of prior approval of would-be purchasers or occupants or private charges or assessments as contained within the Covenants (as defined in the endorsement).

- The 9.6-06 is expanded upon in the ALTA 9.6.1-06, which provides additional assurances to a lender regarding residential owners' association assessment liens in states where such liens may have priority over the Insured Mortgage. Coverage is afforded under the 9.6.1-06 for private charges or assessments due and payable at the date of the policy.
- **ALTA 9.7-06 – Restrictions, Encroachments, Minerals – Land Under Development – Loan Policy**
 - The ALTA 9.7-06 has coverage similar to the ALTA 9-06, but the coverage is modified to provide coverage for “Future Improvements” as based upon the “Plans” (as defined in the endorsement). The endorsement is most commonly requested for transactions involving construction loans to either develop unimproved property or to add improvements to an existing improved property. “Plans” typically mean approved site plans, elevations, and surveys prepared by architects, engineers and surveyors. The 9.7-06 is part of the “Land Under Development” family of endorsements including the 3.2, 9.7, 9.8, 28.3 and a few others.
- **ALTA 9.10-06 – Restrictions, Encroachments, Minerals – Current Violations – Loan Policy**
 - The 9.10-06 is similar to the ALTA 9-06, except that coverage is limited to violations in existence at the Date of Policy and does not extend to any future violations. There is not a similar current violations endorsement available for the owner's policy.

Owner's Policy ALTA 9 Endorsements:

- **ALTA 9.1-06 – Covenants, Conditions and Restrictions – Unimproved Land – Owner's Policy**
 - This endorsement affords coverage to the insured owner of Unimproved Land for violations of covenants, conditions and restrictions that occur prior to the Date of Policy and for environmental protection liens which are not otherwise excepted to in Schedule B.
- **ALTA 9.2-06 – Covenants, Conditions and Restrictions – Improved Land – Owner's Policy**
 - Coverage is essentially the same as the ALTA 9.1-06, but affords coverage for Improved Land. The 9.2-06 adds additional coverage related to the enforced removal of certain “Improvements” (as defined in the endorsement) due to violations of setback lines on recorded plat maps, unless there is an exception on Schedule B that identifies the violation.
- **ALTA 9.8-06 - Restrictions, Encroachments, Minerals – Land Under Development – Owner's Policy**
 - The ALTA 9.8-06 has coverages similar to the ALTA 9.2-06, but the coverage is modified to provide coverage for “Future Improvements” as based upon the “Plans” (as defined in the endorsement). The endorsement is most commonly requested for transactions involving construction to either develop unimproved property or to add additional improvements to an existing improved property. This endorsement would be most common when there is a construction loan and an ALTA 9.7-06 is also being requested for the Lender. “Plans” typically mean approved site plans, elevations, and surveys prepared by architects, engineers and surveyors. The 9.8-06 is part of the “Land Under Development” family of endorsements including the 3.2, 9.7, 9.8, 28.3 and a few others.
- **ALTA 9.9-06 – Private Rights – Owner's Policy**
 - The ALTA 9.9-06 is the Owner's version of the 9.6-06 Private Rights endorsement. It is important to note that “Private Right” is limited to options to purchase, rights of first refusal or rights of prior approval of would-be purchasers or occupants, all as contained in “Covenants” (as defined in the endorsement), unless excepted to in Schedule B. Unlike the 9.6-06, there is no coverage for assessments or owner's association dues.

Attorneys Title is always ready to assist with any endorsement questions or requests that you have. We work with attorneys, paralegals, lenders and clients each day to help ensure the endorsement requests can be met. Our experienced team can help explain coverage options, explain issuance requirements and offer our assistance to help get your transaction to the closing table.