



**2021 ALTA Owner's and Loan Policies:
What You Need to Know**

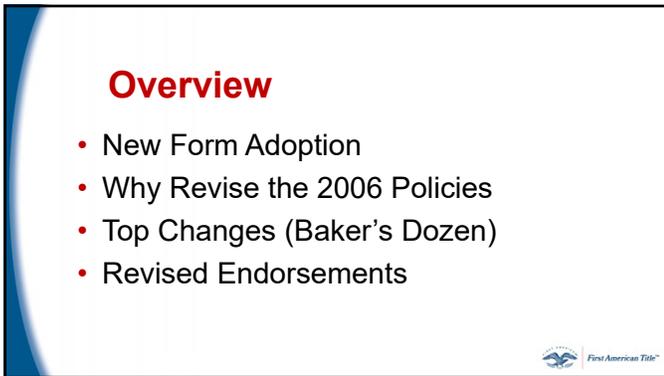
MLTA Fall Education Seminar
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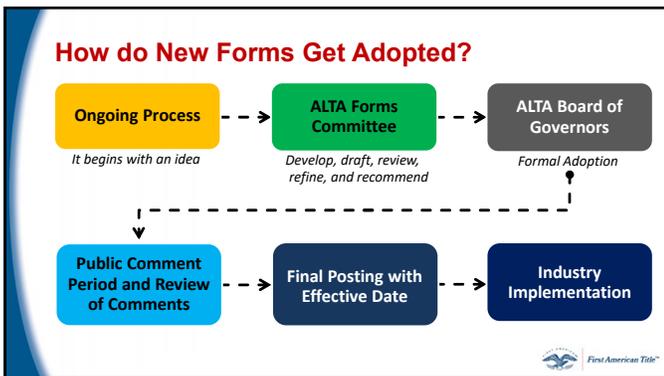
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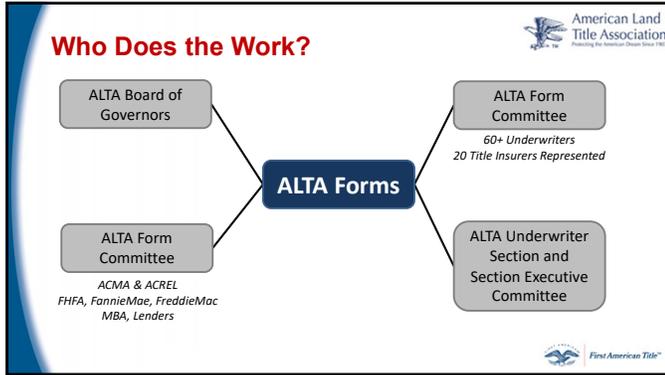
Overview

- New Form Adoption
- Why Revise the 2006 Policies
- Top Changes (Baker's Dozen)
- Revised Endorsements

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Why Revise the 2006 Policies?

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A Significant Event – The McGirt Case

McGirt convicted of a serious crime

- Oklahoma Court – 140S.Ct.2452 (July 9, 2020)

SCOTUS held the state of Oklahoma could not prosecute a member of the Muscogee (Creek) Nation

- Based on a 1933 treaty
- Treaty never disestablished
- Continuing existence of reservation established
- Other sovereign nations similarly situated

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Ramifications of McGirt

McGirt v. Oklahoma, 140S.Ct. 2452 (July 9, 2020)

- Oklahoma Court – 140S.Ct.2452 (July 9, 2020)
- The challenge of “new” regulatory authority
- Decision not just an issue of jurisdiction

Muscogee (Creek) reservation exists as recognized

- For all purposes
- Decision does not affect ownership of land within reservation
- Tribal government may be governing authority within reservation

Oklahoma v. Castro-Huerta did not help ___ U.S. ___ (6-29-22)



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“Baker’s Dozen”
Top Changes to the
2021 ALTA Policy Forms



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1 Implementation

The new forms were adopted on July 2, 2021. The existing 2006 forms will be decertified by ALTA on December 31, 2022.



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2 "Affiliate"

New Definition: An entity (1) that is wholly owned by the Insured; (2) that wholly owns the Insured or (3) the Entity and the Insured are both wholly owned by the same person or Entity.



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3 "Discriminatory Covenant"

New Definition: 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 Preamble to Schedule B



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4 "PACA/PSA Trust"

New Definition: A trust under the federal Perishable Agricultural Commodities Act or the federal Packers and Stockyards Act or a similar State or federal law.

New Exclusion: New Exclusions carve out coverage for PACA-PSA Trust risk and eliminates the need for a Schedule B exception.



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5 "State"

New Definition: 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 Condition (16 OP and 15 LP): The Choice of Law and Choice of Forum provisions now use the defined term "State" instead of "jurisdiction" to address one of the concerns arising from the SCOTUS *McGirt* decision.



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6 "Insured"

Revised Definition = extends to a spouse of an Insured, whether by divorce decree, settlement agreement, or deed in connection with the dissolution of marriage. It also includes a beneficiary under a Transfer on Death Deed or other transfer that is effective on the death of the Insured.



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7 "Public Records"

Revised Definition: modifies the definition of "Public Records" to distinguish those records that are Public Records for the purposes of title insurance policies from other governmental records that have never been intended, and are generally not construed as, within the scope of Public Records for the limited purposes of our title insurance contracts. "Public Records" is also a key component of the defined term "Enforcement Notice," and "State" is a key component of the "Public Records" definition.



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8 Incorporates ALTA 39 - Preamble

The new policies acknowledge that the insurer will not deny liability because the policy is issued electronically or lacks any signature.



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9 Incorporates "Terms and Conditions" of Insured Lease or Easement

The **preamble** to the Schedule B exceptions in the Owner's Policy now includes a general exception addressing the terms and conditions of any lease or easement being insured in Schedule A. Includes a general exception, making a separate exception on Schedule B no longer necessary.



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10 Boundary Line Overlap

Covered Risk 2(c): New policies now expressly reference the risk of boundary line overlaps.



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11 Discrepancy in Quantity of Area covered in Exclusion 7

Exclusion 7 of the Owner's Policy and Exclusion 9 of the Loan Policy have been added to address any discrepancy in the quantity of the area, square footage, or acreage of the Land.



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12 "Fair market value"

Condition 8 (OP) adds "fair market" to the phrase "value of the Title."



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13 Covered loss – dates for calculation

Condition 8 (OP 8.b. and c.) Specified dates which covered loss is calculated.



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Other Forms and Endorsements



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Other Policy Forms – ALTA 2021

- Commitment for Title Insurance (and short form version)
- ALTA Homeowner’s Policy
- Expanded Coverage Residential Loan Policy (and short form version)
 - Assessments Priority / Current Assessments
- Short Form Residential Loan Policy
 - Assessments Priority / Current Assessments



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Modified Endorsements

- ALTA 3 – Zoning
- ALTA 4 – Condominium
- ALTA 6 – Variable Rate Mortgage
- ALTA 7.1 – Manufactured Housing
- ALTA 8.1 – Environmental Protection Lien
- ALTA 10 – Assignment
- ALTA 11 – Mortgage Modification
- ALTA 12 – Aggregation – Loan Policy
- ALTA 14 – Future Advance – Priority
- ALTA 26 – Subdivision
- ALTA 27 – Usury
- ALTA 28.1 – Encroachments – Boundaries and Easements
- ALTA 30 – Shared Appreciation Mortgage
- ALTA 32 – Construction Loan
- ALTA 34.1 – Identified Exception & Identified Risk Coverage




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