



TO: Delaware Agents  
FROM: Underwriting Department  
DATE: September 18, 2013  
RE: ALTA Endorsement Form and Rate Filing Effective October 01, 2013

As you know from our September webinar announcement, many of the forms approved by ALTA in April, 2012 will be effective for use in Delaware on October 01, 2013. This memo will review both those endorsements which have been revised and those new endorsements which are approved for use as of October 01, 2013. The new endorsement forms will be on our Delaware endorsement page and are in the process of being included in ezJacket.

### **ALTA 9 SERIES OF ENDORSEMENTS**

The ALTA 9 series of endorsements have been revised as the result of recent court decisions and the increase of activity in areas where there is shale activity.

The following are highlights of the endorsements approved for use in Delaware as of October 01, 2013. Those endorsements which are being filed for the first time in Delaware are marked "New in DE".

### **DTIRB-18 - ALTA 9-06 (Restrictions, Encroachments, Minerals-Loan Policy)**

This endorsement provides a lender with indemnification against any covenant which divests, extinguishes or subordinates the lien of an insured mortgage, renders the lien of an insured mortgage unenforceable, or can cause a loss of an insured lender's title after foreclosure. In addition, it also provides coverage for the following:

- a. Violations of any enforceable covenants, enforced removal of improvements because of encroachments over setback lines shown on a plat filed of record and notice of a violation of environmental protection laws **if** notice of the violation is recorded in the public records;
- b. Loss as a result of encroachments of improvements located on the land insured onto adjoining land, or from adjoining land onto the land insured, any encroachment of improvements on the land onto any easement, or a court order requiring the removal from any land adjoining the insured land of an encroaching improvement from the insured land onto the adjoining land; and
- c. Damage to improvements located on the insured land, including lawn, shrubbery or trees which arise from the exercise of any easement rights or from the future exercise of mineral rights.

All such coverages are effective **only if no specific exception for those items appears in Schedule B of the policy.**

The rate for this endorsement is \$50.00 when issued on a one-to-four family dwelling; when issued in connection with other property, the rate is 10% of premium with a minimum charge of \$75.00.

**DTIRB-19 - ALTA 9.1-06 Endorsement (Covenants, Conditions and Restrictions Owner's Policy- Unimproved Land)**

The 9.1-06 provides limited coverage to a purchaser of unimproved real property. It indemnifies a buyer against violations of Covenants in effect at Date of Policy unless the violation is specifically excepted in Schedule B of the policy. Coverage is provided for covenants relating to environmental protection only if notice of the violation of the covenant is recorded in the Public Records at Date of Policy.

The filed rate remains 10% of the premium with a minimum charge of \$75.00.

**DTIRB-20 - ALTA 9.2-06 (Covenants, Conditions and Restrictions Owner's Policy-Improved Land)**

**PRIOR UNDERWRITING APPROVAL IS REQUIRED**

This endorsement is the owner's equivalent of the ALTA 9-06 discussed above. It provides coverage for violations of any enforceable covenants, removal of improvements because of encroachments over setback lines disclosed on a recorded plat, and notice of a violation of environmental protection liens if notice of the violation is recorded in the public records. As in the 9-06, all coverages are effective **only if no specific exception for those items appears in Schedule B of the policy.**

The filed rate is 10% of the premium with a minimum charge of \$75.00.

**DTIRB-63 - ALTA 9.6-06 (Private Rights-Loan Policy) NEW IN DE**

**PRIOR UNDERWRITING APPROVAL IS REQUIRED**

This endorsement contains two defined terms. "Private Right" is defined in Section 2. b. to mean (i) a private charge or assessment; (ii) an option to purchase; (iii) a right of first refusal; or (iv) a right of prior approval of a future purchaser or occupant. Section 3 of the endorsement provides coverage in the event that a Private Right contained in a Covenant (defined as a covenant, condition, limitation or restriction contained on a document or instrument in effect at Date of Policy) results in the invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage or causes a loss of the Insured's Title acquired in satisfaction of the lien of the Insured Mortgage, subject to any exceptions in Schedule B of the Policy.

Excluded in Section 4 of the Endorsement is loss arising from any covenant, condition, limitation or restriction: (a) contained in an instrument creating a lease; (b) relating to obligations to perform maintenance, repair or remediation on the Land; or (c) relating to environmental protection of any kind, including hazardous or toxic matters, conditions, or substances.

The filed rate for this endorsement is \$500.00.

**DTIRB-64 - ALTA 9.7-06 Restrictions, Encroachments, Minerals-Land Under Development-Loan Policy**  
**NEW IN DE**

**PRIOR UNDERWRITING APPROVAL IS REQUIRED**

Understanding the definitions in Section 2 is key to understanding the coverages in this endorsement and the DTIRB-52/ALTA 9.8-06. "Covenant" has the same definition as set forth for the DTIRB-63/ALTA 9.6-06, above (and in the rest of the ALTA endorsements).

"Future Improvement" is defined as "a building, structure, road, walkway, driveway, curb, lawn, shrubbery or trees to be constructed on or affixed to the Land in the locations according to the Plans and that by law constitute real property."

"Improvements" means an improvement, including any lawn, shrubbery or trees, affixed to either the Land or adjoining land at Date of Policy that by law constitutes real property.

"Plans" means the survey, site and elevation plans or other depictions or drawings prepared by \_\_\_\_\_, dated \_\_\_\_\_, last revised \_\_\_\_\_, designated as \_\_\_\_\_, consisting of \_\_\_\_\_ sheets." The first blank should contain the name of the architect or engineer who/which prepared the Plans. The next to last blank should contain the project name or project number as designated in the Plans.

Coverage is provided as the result of the violation of any Covenant which divests, subordinates or extinguishes the lien of the Insured Mortgage, results in the invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage, or causes a loss of the Insured's Title acquired in satisfaction of the Indebtedness.

Coverage is also provided as to the violation of an enforceable Covenant by an Improvement or a Future Improvement unless a Schedule B exception identifies the violation. Coverage is provided as to the enforced removal of an Improvement or Future Improvement as the result of a violation of a building setback line shown on a recorded plat of subdivision unless an exception in Schedule B identifies the violation. Coverage is provided as to a **recorded** notice of violation of an enforceable Covenant relating to environmental protection describing the Land, unless an exception for the notice of violation appears in Schedule B.

Coverage is provided as to encroachments of Improvements or Future Improvements located on the Land onto an easement located on the Land or onto adjoining Land and as to improvements located on adjoining land onto the Land. Coverage is provided as to damage to an Improvement or Future Improvement that encroaches onto a portion of the Land subject to an easement if the damage results from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved. Coverage is provided as to damage to an Improvement or Future Improvement resulting from the right to extract or develop minerals or other subsurface substances excepted in the policy.

The endorsement excludes coverage as to loss or damage arising from (a) any Covenant contained in an instrument creating a lease; (b) any Covenant relating to obligations to perform maintenance, repair or remediation on the Land; or (c) any Covenant relating to environmental protection of any kind, including loss arising from hazardous or toxic matters, except as provided in Section 3.d of the endorsement; (d) loss arising from contamination, explosion, fire, vibration, fracturing, earthquake or subsidence; and (e) negligence by a person or an Entity exercising a right to extract or develop minerals or other subsurface substances.

The charge for this endorsement is 15% of the premium with a minimum charge of \$75.00.

**DTIRB-52 - ALTA 9.8-06 (Covenants, Conditions and Restrictions-Land Under Development-Owner's Policy) NEW IN DE**

**PRIOR UNDERWRITING APPROVAL IS REQUIRED**

This endorsement contains the same definitional phrases as the 9.7-06. It provides an owner of property that is being developed and for which specific Plans (as identified in Section 2.d. of the endorsement) have been provided, coverage against loss or damage caused by: a) a violation of an enforceable Covenant by an Improvement or Future Improvement, unless a Schedule B exception identifies the violation; b) enforced removal of an Improvement or a Future Improvement as a result of violation of a building setback line shown on a plat of subdivision recorded at Date of Policy; and c) a recorded notice of violation at Date of Policy of an enforceable Covenant relating to environmental protection describing the Land and referring to the Covenant, but only to the extent of the violation referred to in the recorded notice. No coverage is provided if a Schedule B exception identifies the notice of violation.

The endorsement does not cover loss resulting from:

- a. a Covenant contained in an instrument creating a Lease;
- b. a Covenant imposing an obligation to perform maintenance, repair or remediation on the Land;
- c. a Covenant relating to environmental protection, except to the extent coverage is provided as to a recorded notice of violation (described above); or
- d. contamination, explosion, fire, vibration, fracturing, earthquake or subsidence.

The charge for this endorsement is 20% of the premium with a minimum charge of \$135.00.

**DTIRB-13 and DTIRB-14 - ALTA 13 Series Endorsements**

Minor modifications were made to the DTIRB-13-ALTA 13-06 and DTIRB-14-ALTA 13.1-06 endorsements. The definition of the term "Personal Property" was revised in a manner to make it consistent with the definition of "Severable Improvements" in the Severable Improvement endorsement (DTIRB-65/ALTA 31-06) and in the new energy endorsements. The term "Tenant Leasehold Improvements" was modified to limit it to the extent the Insured has rights in such improvements.

The valuation provisions were clarified to state that valuation occurs only as to that portion of the Land from which there is an Eviction. Section 3 was clarified to make clear that the insurance provided in that Section does not allow duplication of recovery, nor is duplication of recovery possible through any other endorsement or by computation pursuant to Section 8 (a) (ii) of the Conditions. An additional element of recovery was added to Section 3.a., namely costs incurred by the Insured to restore the Land to the extent of damage caused as a result of removal and relocation of Personal Property and required solely as a result of the Eviction from the Land.

Coverage is not provided as to loss, damage or costs of remediation which result from environmental damage or contamination.

The charge for these endorsements is as set forth in Section 3.4 of the Rate Manual.

**DTIRB-53 (Loan Policy only) and DTIRB-54 (Owner's Policy only) ALTA 28.1-06 (Encroachments-Boundaries and Easements) NEW IN DE**

**PRIOR UNDERWRITING APPROVAL IS REQUIRED**

These endorsements provide limited coverage for certain encroachments. Section 2 of each endorsement defines "Improvement" as a building located on the Land insured in the policy or located on adjoining land. They provide coverage as to loss or damage arising because of an encroachment of an Improvement onto adjoining land or from adjoining land onto the Land unless an exception in Schedule B identifies the encroachment. Each endorsement also covers encroachments of Improvements onto an easement unless Schedule B identifies the encroachment.

Coverage is also provided as to enforced removal of any Improvements located on the Land because of encroachments onto an easement if the owner of the easement compels removal of the Improvement in order to exercise the right to use or maintain the easement.

Section 4 of each endorsement allows the insurer to list encroachments to which it has taken exception in Schedule B for which the Insurer is **not** willing to provide any of the coverages of the 28.1-06.

The charge for Endorsement DTIRB-53 (loan policy only) is 10% of the premium.

The charge for Endorsement DTIRB-54 (owner's policy only) is 25% of the premium.

**DTIRB-65 - ALTA 31-06 (Severable Improvements) NEW IN DE**

**PRIOR UNDERWRITING APPROVAL IS REQUIRED**

This endorsement indemnifies against loss occasioned by the forced removal or relocation of improvements which may be severable from the land (those items which may not constitute fixtures under Delaware law). This endorsement may only be given when the costs of the improvements are included in the amount of insurance in Schedule A of the Policy.

The charge for this endorsement is \$500.00.

**ALTA 36 Series Endorsements – Energy Projects**

The ALTA 36 series endorsements have been developed for use on energy projects. The endorsements generally combine elements of the ALTA 9 series, ALTA 13 series and ALTA 31 (Severable Improvement) endorsements. Alternative energy projects have become much more numerous in recent years. These projects almost always entail aggregations of several parcels of land and this area, perhaps more than any other, has seen customers and title insurers craft specific endorsements unique to the sorts of issues presented by the projects. Many provisions in the ALTA 36 series are identical to provisions in the 9, 13 and 31 endorsements. Each endorsement is discussed below.

**DTIRB-61 - ALTA 36-06 Endorsement (Energy Project-Leasehold/Easement-Owner's) NEW IN DE**

**PRIOR UNDERWRITING APPROVAL IS REQUIRED**

There are 12 defined terms in the 36-06. These definitions are necessary because, for the most part, they are terms of art which are used throughout the endorsements. The rights which are granted for developing and maintaining energy projects and facilities can be comprised of fee simple interests, leasehold interests or easement interests. For that reason, six of the defined terms are "Easement, Easement Interest, and Easement Term" and "Lease, Leasehold Estate and Leasehold Term." The endorsement introduces the term "Electricity Facility". It is defined comprehensively to include the terms of art which are used in describing the unique, individual components of electricity facilities. The term "Plans" is the same as in the other endorsements described in this Bulletin. The definition of "Severable Improvement" is patterned after that appearing in the DTIRB-65/ALTA 31-06.

Section 3 is the valuation section of the endorsement. If the Insured is evicted from any part of the Land it is entitled to be compensated for the value of the interest insured for its remaining term and the value of any Electricity Facility located on the property at that time. Any eviction also includes loss in value to the integrated project caused by the eviction. The endorsement allows the Insured to have any interest insured under the policy valued either as a whole or separately in computing loss. The Insured's recovery is reduced by any rent or use payments no longer required to be paid because of an eviction. The endorsement does not diminish the Insured's rights under any other endorsements, but duplication of recovery under any other endorsements or the policy itself is specifically not allowable.

Recovery for Severable Improvements is allowable to the same extent and using the same formula as in the DTIRB-65/ALTA 31-06.

Section 5 details additional items of loss covered by the endorsement. This section covers the same items of loss as and is specifically tailored after Section 3 of the DTIRB-13/ALTA 13.1 Leasehold endorsement.

Excluded from coverage is loss, cost or damage relating to remediation resulting from environmental damage or contamination.

The charge for this endorsement is \$500.00. Note: the full value of the leasehold estate and the severable improvements must be included in the amount of the insurance.

**DTIRB-62 - Endorsement 36.1-06 (Energy Project-Leasehold/ Easement –Loan) NEW IN DE**

**PRIOR UNDERWRITING APPROVAL IS REQUIRED**

This is the loan counterpart to the DTIRB-61/ALTA 36-06. It contains an additional defined term, "Tenant", which is defined as the tenant under a lease, the grantee under an Easement, or the Insured, if it acquires the Title in accordance with the policy. The balance of the endorsement reads as the DTIRB-61/ALTA 36-06 does.

The charge for this endorsement is \$500.00. Note: the full value of the leasehold estate and the severable improvements must be included in the amount of the insurance.

**DTIRB-59 - Endorsement 36.2-06 (Energy Project-Leasehold-Owner's) NEW IN DE**

**PRIOR UNDERWRITING APPROVAL IS REQUIRED**

This endorsement is identical to the DTIRB-61/ALTA 36-06 in all particulars except that it does not contain any insurance pertaining to easements. It is in all other respects identical to the DTIRB-61/ALTA 36-06. It is intended for energy projects in which there are no easements among the interests insured under the policy.

The charge for this endorsement is \$500.00. Note: the full value of the leasehold estate and the severable improvements must be included in the amount of the insurance.

**DTIRB-60 - Endorsement 36.3-06 (Energy Project-Leasehold-Loan) NEW IN DE**

**PRIOR UNDERWRITING APPROVAL IS REQUIRED**

This endorsement is the loan policy counterpart to the DTIRB-59/ALTA 36.2-06. It is identical to the DTIRB-59/ALTA 36.2-06, except for the inclusion of the definition of "Tenant", which is identical to the definition in the DTIRB-62/ALTA 36.1-06.

The charge for this endorsement is \$500.00. Note: the full value of the leasehold estate and the severable improvements must be included in the amount of the insurance.

**DTIRB-55 - Endorsement 36.4-06 (Energy Project-Covenants, Conditions and Restrictions-Land Under Development-Owner's) NEW IN DE**

**PRIOR UNDERWRITING APPROVAL IS REQUIRED**

This endorsement is tailored after the DTIRB-52/ALTA 9.8-06. It differs in that the definitions of improvements in this endorsement are "Electricity Facility" and "Severable Improvement." Coverages and exclusions are the same as in the DTIRB-52/ALTA 9.8-06, except that, appropriate for energy projects, they apply to Electricity Facilities and Severable Improvements and not Improvements and Future Improvements.

The charge for this endorsement is 25% of the premium.

**DTIRB-56 - Endorsement 36.5-06 (Energy Project-Covenant, Conditions and Restrictions-Land Under Development-Loan) NEW IN DE**

**PRIOR UNDERWRITING APPROVAL IS REQUIRED**

This is the loan counterpart to the DTIRB-55/ALTA 36.4-06, discussed above, and is tailored after the DTIRB-64/ALTA 9.7-06.

The charge for this endorsement is 15% of the premium.

**DTIRB-58 (Owner's Policy only) and DTIRB-57 (Loan Policy only) - ALTA 36.6-06 (Energy Project-Encroachments) NEW IN DE**

**PRIOR UNDERWRITING APPROVAL IS REQUIRED**

These endorsements provide coverage as to encroachments of improvements located on adjoining land onto the land, encroachments of Electricity Facilities or Severable Improvements onto adjoining land, enforced removal of or damage to any Electricity Facility or Severable Improvement as a result of its encroachment onto an easement in the event the owners of the easement force the removal of the Electricity Facility or Severable Improvement pursuant to a right of use or maintenance contained in the easement.

Section 3.e. of the endorsement specifically allows the insurer to except from the scope of the endorsement's coverage any identified encroachment appearing in Schedule B of the underlying policy. Section 4 of the endorsement excludes from the scope of coverage loss or damage arising from contamination, explosion, fire, vibration, fracturing, earthquake, or subsidence.

The charge for the DTIRB-58/ALTA 36.6-06 (Owner's policy only) endorsement is 25% of the premium.

The charge for the DTIRB-57/ALTA 36.6-06 (Loan policy only) endorsement is 15% of the premium.

Note: these endorsements may only be issued when the amount of insurance includes the aggregate of full value of the land, leasehold, or easement and all severable improvements on the property insured.

Finally, the U.S. Policy Form has been modified to bring it into conformity with the other ALTA policies by including a Creditors' Rights Exclusion as Exclusion Number 5. All Federal agencies should be aware of and accepting this policy form.

If you were unable to participate in the webinar, a recorded version is available on our Delaware website – [www.oldrepublictitle.com/de](http://www.oldrepublictitle.com/de). We are updating our "DE Endorsements and Charges" card which will be posted on the Delaware website.

If you should have any questions with regard to the foregoing, please contact the Underwriting Department.

DEE/sb