

The New ALTA Commitment for Title Insurance

(Adopted 6-17-16, Revised 8-1-16)

Chicago Title
February 2017

CHANGES: COMPREHENSIVE!

- Commitment is *not* any assurance of title
- Commitment is an offer to provide insurance:
 - To the identified Proposed Insured Owner or Lender
 - For the identified Proposed Policy Amount
 - In accordance with its terms
 - Subject to compliance with all Requirements
 - Subject to the Conditions (mirroring the 2016 policy forms)
 - Subject to intervening matters between Commitment and closing
 - If within the term – 6 months from date of Commitment, unless extended in writing

**ONLY ITEMS IN
BRACKETS
[. . .]
CAN BE AMENDED OR
DELETED!***

*Highlighted throughout
this presentation in blue
for convenience.

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**COMMITMENT FOR TITLE INSURANCE
NOTICE
IMPORTANT—READ CAREFULLY:**

THIS COMMITMENT IS AN **OFFER TO ISSUE ONE OR MORE TITLE INSURANCE POLICIES**. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE **BASED SOLELY IN CONTRACT**.

THIS COMMITMENT IS **NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE**. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE **NO EXTRACTIONAL LIABILITY** TO ANY PERSON, INCLUDING A PROPOSED INSURED.

THE COMPANY'S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A **PROPOSED INSURED IDENTIFIED IN SCHEDULE A** IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT. THE COMPANY HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON.

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COMMITMENT TO ISSUE POLICY

Subject to the

- Notice;
- Schedule B, Part I—Requirements;
- Schedule B, Part II—Exceptions; and
- the Commitment Conditions,

Blank Title Insurance Company, a _____ (the “Company”), commits to issue the Policy according to the terms and provisions of this Commitment. This Commitment is effective as of the Commitment Date shown in Schedule A for each Policy described in Schedule A, **only when the Company has entered in Schedule A both the specified dollar amount as the Proposed Policy Amount and the name of the Proposed Insured.**

If all of the Schedule B, Part I—Requirements have not been met within [6 months] after the Commitment Date, this **Commitment terminates** and the Company’s liability and obligation end.

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FOOTER ON EVERY PAGE

This page is only a part of a 2016 ALTA® Commitment for Title Insurance[issued by _____]. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; [and] Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form].

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Commitment Schedule A

[Transaction Identification Data for reference only:

Issuing Agent:
Issuing Office:
ALTA® Universal ID:
Loan ID Number:
Commitment Number:
Issuing Office File Number:
Property Address:
[Revision Number:]

SCHEDULE A

1. Commitment Date: _____
2. Policy to be issued:
 - (a) [2006 ALTA® Owner's Policy][2006 ALTA® Loan Policy][____ ALTA® _____ Policy]
Proposed Insured: _____
Proposed Policy Amount: \$ _____
 - [(b) [2006 ALTA® Owner's Policy][2006 ALTA® Loan Policy][____ ALTA® _____ Policy]
Proposed Insured: _____
Proposed Policy Amount: \$ _____
 - [(c) [2006 ALTA® Owner's Policy][2006 ALTA® Loan Policy][____ ALTA® _____ Policy]
Proposed Insured: _____
Proposed Policy Amount: \$ _____
3. The estate or interest in the Land described or referred to in this Commitment is _____ (Identify estate covered, i.e., fee, leasehold, etc.)
4. Title to the [_____] estate or interest in the Land is at the Commitment Date vested in:
5. The Land is described as follows:

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

Commitment - Schedule A

Commitment – Schedule A

[*Transaction Identification Data for reference only:*

Issuing Agent:

Issuing Office:

ALTA® Universal ID:

Loan ID Number:

Commitment Number:

Issuing Office File Number:

Property Address:

[Revision Number:]

If / when available

*Insert if provided, or state
"Not Available" as done
for policies*

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Commitment – Schedule A-2

Policy to be issued:

(a) [2006 ALTA® Owner's Policy][2006 ALTA® Loan Policy][____ ALTA®
____ Policy]

Proposed Insured: _____

Proposed Policy Amount: \$ _____

[(b) [2006 ALTA® Owner's Policy][2006 ALTA® Loan Policy][____ ALTA®
____ Policy]

Proposed Insured: _____

Proposed Policy Amount: \$ _____]

[(c) [2006 ALTA® Owner's Policy][2006 ALTA® Loan Policy][____ ALTA®
____ Policy]

Proposed Insured: _____

Proposed Policy Amount: \$ _____]

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NO
“TBD”

Proposed Insured

Under basic contract law:

The party, i.e. the party to be insured (even if not yet specifically designated) must be identified.

For example:

- Company that contracted to purchase, even if forming a wholly owned SPE for actual purchaser – could add “or their nominee” or “or their assignee”
- Relocation companies – presumably their initial commitments will include the company itself “or its assigns”

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NO
“TBD”

Proposed Policy Amount &/or Estimates

Under basic contract law: A Proposed Policy Amount must be stated, even if it will later be adjusted.

NO “TBD”!

Estimates might be based on:

- Purchase price under contract of sale between the parties
- Loan amount from closing disclosure or lender’s loan commitment
- Prior loan amount, if this is for a refinance
- A “default” minimum until further information, such as \$20,000

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Proposed Policy Amount Replacing Estimates with Actual Amounts

- Sample requirement:

The Proposed Policy Amount(s) is(are) based on estimates. Attorney to provide the purchase price or owner's coverage amount of the Land and the loan amount or loan policy coverage amount for the respective policies to be issued, and Proposed Policy Amount(s) will be revised and premiums charged consistent therewith.

- *Coverage* must be based on statutory requirement, N.C.G.S. 58-26-1:
"the purchase price of the real estate being conveyed or the loan amount"

In case of
"estimate",
expect new
Requirement
for final
coverage
amounts

SUGGESTION: DO **NOT** INVOICE BASED ON ESTIMATED AMOUNT!!!
WAIT UNTIL A SPECIFIC AMOUNT IS REQUESTED.

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Commitment – Schedule A

The **estate or interest** in the Land described or referred to in this Commitment is _____ (*Identify estate covered, i.e., fee, leasehold, etc.*)

Title to the [_____] estate or interest in the Land is at the Commitment Date vested in:

***Must be the current vested owner(s) of
record as of Date of Commitment!***

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Commitment – Schedule A

- The **Land** is described as follows:

- Must be a reference adequate to identify the property, even if survey is being obtained to be more specific at closing.
- ***NO “TBD”!***
- Title to all must be certified by the certifying attorney
- Appurtenances must be real estate title interests, such as easements

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Commitment Schedules B-I and B-II

Schedule B, Part I - Requirements

All of the following Requirements must be met:

1. The Proposed Insured must notify the Company in writing of the **name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land**. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company.
4. **Documents** satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be **properly authorized, executed, delivered, and recorded** in the Public Records.

(Documents to be listed here)

(Additional Requirements may be listed here by number)

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Listing all documents to be recorded, in order

- All documents to be recorded must be listed, and should be in recording order
- This is *critical* to assure:
 - We need to underwrite around any intervening conveyances, and address concerns about warranties, flips or other risks
 - Include all interests to be insured – curative documents, memoranda of leases, etc.
 - Assure priority of easements and leases versus mortgages
 - Assure requirements for subordinations or other recorded matter

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Schedule B, Part II - Exceptions

THIS COMMITMENT DOES NOT REPUBLISH ANY COVENANT, CONDITION, RESTRICTION, OR LIMITATION CONTAINED IN ANY DOCUMENT REFERRED TO IN THIS COMMITMENT TO THE EXTENT THAT THE SPECIFIC COVENANT, CONDITION, RESTRICTION, OR LIMITATION VIOLATES STATE OR FEDERAL LAW BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN.

The Policy will not insure against loss or damage resulting from the terms and provisions of **any lease or easement identified in Schedule A**, and will include the following Exceptions unless cleared to the satisfaction of the Company:

[1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I—Requirements are met.]

(Additional Exceptions may be listed here by number)

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CRITICAL

Vesting and Interest to be Insured – Documents at closing

- EXAMPLES:
 - Vesting of fee, but designating if leasehold to Proposed Insured is the interest to be insured.
 - Vesting of fee, but designating if easement to Proposed Insured is the interest to be insured *and* added to description of Land to be insured.
- Requirement for identification of specific documents and order to be recorded
- *Specific* exception in Schedule B for terms and conditions of the specific easement and leasehold documents “(To be recorded at closing)”

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Commitment Conditions

Condition 1: Definitions

- Included, not just referencing policy
- Includes:
 - Actual or imputed knowledge
 - Land does not include appurtenances unless specified in Schedule A
 - Proposed Insured and Proposed Policy Amount must be specified
 - Public records are only records imparting constructive notice under state statutes

Condition 2: Termination

- “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.”
- The standard Commitment to Issue Policy (earlier section) time period is 6 months.
- NOTE: Automatic termination! Obtaining final policies timely is critical!
- This is a separate and distinct coverage from Closing Protection Letter.

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Condition 3: Must have Entire Commitment

The Company’s liability and obligation is limited by and this Commitment is not valid without:

- (a) the Notice;
- (b) the Commitment to Issue Policy;
- (c) the Commitment Conditions;
- (d) Schedule A;
- (e) Schedule B, Part I—Requirements; [and]
- (f) Schedule B, Part II—Exceptions; and
- (g) a counter-signature by the Company or its issuing agent that may be in electronic form].

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Condition 4: Company's Right to Amend

"The Company may amend this Commitment at any time. If the Company amends this Commitment to **add a defect, lien, encumbrance, adverse claim, or other matter recorded in the Public Records prior to the Commitment Date**, any liability of the Company is limited by Commitment Condition 5. The Company shall not be liable for any other amendment to this Commitment."

SUBJECT TO Condition #5 "Limitations of Liability":

No liability for changes between prior commitment and revision

No liability for matters Proposed Insured would have suffered anyway

No liability for amendments requested by Proposed Insured.

Liability no more than lesser of Proposed Insured's actual expenses in good faith or Proposed Policy Amount

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Condition #5(f): Compliance with Requirements

"In no event shall the Company be obligated to issue the Policy referred to in this Commitment unless all of the Schedule B, Part I—Requirements have been met to the satisfaction of the Company."

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Condition #6. LIABILITY OF THE COMPANY BASED ON COMMITMENT

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- (a) Only a **Proposed Insured identified in Schedule A**, and no other person, may make a claim under this Commitment.
- (b) Any claim must be based in contract and must be restricted solely to the terms and provisions of this Commitment.
- (c) Until the Policy is issued, this Commitment, as last revised, is the **exclusive and entire agreement** between the parties with respect to the subject matter of this Commitment and supersedes all prior commitment negotiations, representations, and proposals of any kind, whether written or oral, express or implied, relating to the subject matter of this Commitment.

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Condition #6. LIABILITY OF THE COMPANY BASED ON COMMITMENT

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- (d) The **deletion or modification of any Schedule B, Part II—Exception** does not constitute an agreement or obligation to provide coverage beyond the terms and provisions of this Commitment or the Policy.
- (e) Any **amendment or endorsement** to this Commitment must be in writing [and authenticated by a person authorized by the Company].
- (f) **When the Policy is issued**, all liability and obligation under this **Commitment will end** and the Company's only liability will be under the Policy.

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Condition #7: Issuing Agent

“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.**”

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Condition #8: Pro Forma Policy

“The Company may provide, at the request of a Proposed Insured, a pro-forma policy illustrating the coverage that the Company may provide.”

“**A pro-forma policy neither reflects the status of Title at the time that the pro-forma policy is delivered to a Proposed Insured, nor is it a commitment to insure.**”

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Condition #9: Arbitration

“[The Policy contains an arbitration clause. All arbitrable matters when the Proposed Policy Amount is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Proposed Insured as the exclusive remedy of the parties. A Proposed Insured may review a copy of the arbitration rules at <<http://www.alta.org/arbitration>>.]”