

**ALTA ENDORSEMENT – FORM 9 (RESTRICTION, ENDORSEMENTS, MINERALS)
USE OF ENDORSEMENT FOR LOAN POLICIES IN COMMERCIAL TRANSACTIONS**

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1. General comments.

The above referred to ALTA (American Land Title Association) endorsement can be used for residential as well as for commercial transactions. This article will focus on commercial transactions and when underwriting review is necessary. For residential transactions, the endorsement is usually attached on a risk basis without, for example, examination of restrictive covenants and at times without the benefit of a survey.

Set out in 2. below is the endorsement. Set out in 3. below is an outline of the grouping of the endorsement's coverage. Set out in 4. below is a detailed discussion.

A future article will discuss owner's coverage under ALTA 9.1 and ALTA 9.2 endorsements.

Below, the endorsement will be referred to simply as "ALTA 9."

2. ALTA 9.

The ALTA 9 is for a loan policy and reads as follows:

RESTRICTIONS, ENCROACHMENTS, AND MINERALS ENDORSEMENT (ALTA 9)

Attached to and forming a part of Policy No.:
of **[TITLE INSURER'S NAME]**

The Company insures the owner of the indebtedness secured by the insured mortgage against loss or damage sustained by reason of :

1. The existence, at Date of Policy, of any of the following:

- (a)Covenants, conditions or restrictions under which the lien of the mortgage referred to in Schedule A can be divested, subordinated or extinguished, or its validity, priority or enforceability impaired.
- (b)Unless expressly excepted in Schedule B:
 - (1)Present violations on the land of any enforceable covenants, conditions or restrictions, and any existing improvements on the land which violate any building setback lines shown on a plat of subdivision recorded or filed in the public records.
 - (2)Any instrument referred to in Schedule B as containing covenants, conditions or restrictions on the land which, in addition, (i) establishes an easement on the land; (ii) provides a lien for liquidated damages; (iii) provides for a private charge or assessment; (iv) provides for an option to purchase, a right of first refusal or the prior approval of a future purchaser or occupant.
 - (3)Any encroachment of existing improvements located on the land onto adjoining land, or any encroachment onto the land of existing improvements located on adjoining land.
 - (4)Any encroachment of existing improvements located on the land onto that portion of the land subject to any easement excepted in Schedule B.
 - (5)Any notices of violation of covenants, conditions and restrictions relating to environmental protection recorded or filed in the public records.

2. Any future violation on the land of any existing covenants, conditions or restrictions occurring prior to the acquisition of title to the estate or interest in the land by the insured, provided the violation results in:
 - (a) invalidity, loss of priority, or unenforceability of the lien of the insured mortgage; or
 - (b) loss of title to the estate or interest in the land if the insured shall acquire title in satisfaction of the indebtedness secured by the insured mortgage.
3. Damage to existing improvements, including lawns, shrubbery or trees:
 - (a) which are located on or encroach upon that portion of the land subject to any easement excepted in Schedule B, which damage results from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved;
 - (b) resulting from the future exercise of any right to use the surface of the land for the extraction or development of minerals excepted from the description of the land or excepted in Schedule B.
4. Any final court order or judgment requiring the removal from any land adjoining the land of any encroachment excepted in Schedule B.
5. Any final court order or judgment denying the right to maintain any existing improvements on the land because of any violation of covenants, conditions or restrictions or building setback lines shown on a plat of subdivision recorded or filed in the public records.

Wherever in this endorsement the words "covenants, conditions or restrictions" appear, they shall not be deemed to refer to or include the terms, covenants, conditions, or limitations contained in an instrument creating a lease.

As used in paragraphs 1(b)(1) and 5, the words "covenants, conditions or restrictions" shall not be deemed to refer to or include any covenants, conditions or restrictions relating to environmental protection.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

3. ALTA 9- an outline of where coverage is found.

- (a) Restrictive covenant coverage.
Items 1.(a), 1.(b)(1), 1.(b)(2), 1.(b)(5), 2., and 5.
- (b) Recorded plat setback coverage.
Items 1.(b)(1) and 5.
- (c) Encroachment coverage.
Items 1.(b)(3), 1.(b)(4), 3.(a) and 4.
- (d) Mineral rights coverage.
Item 3. (b)

4. ALTA 9 – a discussion.

The ALTA 9 is for a loan policy. Lender's counsel will inevitably require its attachment to a loan policy insuring a commercial loan deed of trust. The provisions of the endorsement are quoted in 2. above.

The endorsement, as well as the loan policy, refers to the term, "insured mortgage." Item 1 of the Conditions and Stipulations of the policy makes it clear that the term includes "deed of trust."

The endorsement can be used on the 1992 policy. A separate article will discuss the 2006 policy. (The North Carolina Land Title Association has obtained Department of Insurance approval for the 2006 forms effective November 7, 2006. 1992 forms will still be available for quite some time.) However, the ALTA states that the endorsement to be used with the 2006 policy is labeled an ALTA 9-06, virtually indistinguishable from an ALTA 9. The ALTA also points out that an ALTA 9.3 for the 1992 policy and an ALTA 9.3-06 for the 2006 policy will be available. These endorsements contain an additional insuring provision which insures against damage to future improvements (as opposed to improvements existing

at Date of Policy as are covered by the current ALTA 9 endorsement) caused by future exercise of the specified mineral rights. The additional endorsement coverage reads as follows:

Damage to improvements, including lawns, shrubbery or trees, located on the Land on or after Date of Policy resulting from the future exercise of any right to use the surface of the Land for the extraction or development of minerals excepted from the description of the Land or excepted in Schedule B.

The ALTA 9 endorsement insures the owner of the indebtedness secured by the insured mortgage against loss or damage sustained by reason of five enumerated circumstances quoted in Item 2. above and discussed below. (3. above of this article shows where coverage can be found in the endorsement.)

Item 1. (a) and Item 1(b): These matters are covered to the extent they exist at Date of Policy. "Date of Policy" corresponds to the date and time the insured mortgage is recorded, usually.

Item 1. (a): This gives coverage against contents of covenants, conditions or restrictions ("CCRs").

Item 1. (a) insures against loss or damage by reason of *the existence*, at Date of Policy, of covenants, conditions or restrictions under which the lien of the insured mortgage *can be* divested, subordinated or extinguished, or its validity, priority or enforceability impaired. (Emphasis added.) First, it would seem that the mere existence of such CCRs provisions causing unmarketability of title could be covered. The Conditions and Stipulations of the 1992 loan policy define "unmarketability of title" as follows:

(g) "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A or the insured mortgage to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

The Conditions of the 2006 loan policy define "unmarketable title" as follows:

(m) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title or a prospective purchaser of the Insured Mortgage to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

Unless removed by endorsement or exception, both policies insure, in the insuring provisions, against loss or damage due to unmarketability of title.

Further, actual divestiture, subordination, extinguishment, invalidity, loss of priority or unenforceability would be covered by Item 1. (a). Examples of CCRs provisions would be reversion or forfeiture provisions triggered by violations, or lien provisions granting liens with priority over the insured mortgage. Compare Item 1. (a) to Item 2. below. Item 2. insures against *future violations* of CCRs.

Item 1. (b): This insures against loss or damage by reason of *the existence*, at Date of Policy, of any or all of five matters, unless *expressly* excepted in Schedule B. (Emphasis added.) Items 1. (b)(1),(2), (3), (4) and (5) are discussed below.

Item 1. (b)(1): This covers present violations of any enforceable CCRs. Item 1.(b)(1) also covers existing improvements violating set back lines shown on the recorded plat. Note that unmarketability of title seems to be covered. An express Schedule B exception can negate coverage. If there is a survey, as there usually is in a commercial transaction, it should be examined. See below for a discussion of the differences in loss situations under a loan policy versus an owner's policy and a discussion of other risk factors including statutes of limitation.

Item 1. (b)(2): This covers any instrument in Schedule B that contains CCRs which, in addition, (1) establishes an easement; (ii) provides for a lien for liquidated damages; (iii) provides for charges or assessments; (iv) provides for an option to purchase, right of first refusal or the prior approval of a future purchaser or occupant. Note that unmarketability of title seems to be covered. The CCRs should be read to see if any of items (i) through (iv) are contained. Inevitably, commercial project CCRs will contain easements and charges or assessments and liens therefor. Less frequently included is an option to purchase or right of first refusal or a right to approve future purchasers or occupants . Liability under Item

1. (b)(2) can be negated by a Schedule B. exception for the existing matter(s) otherwise covered by Item 1. (b)(2). With respect to assessments and assessment liens, in most cases, the assessment lien provisions in the CCRs will expressly subordinate the assessment lien to the lien of any institutional mortgage lien. Sometimes, the subordination will be limited to first mortgages. If assessment liens exist and are expressly made subordinate to the lien of the insured mortgage, a Schedule B exception should be added to the Schedule B exception for CCRs, or blanket liability will exist under Item 1.(b)(2) and, arguably, under Item 2.(a), discussed below:

Notwithstanding the provisions of the ALTA 9 endorsement, this document contains provisions for assessments and assessment liens, which are hereby excepted to. However, the Company insures that this document expressly subordinates any assessment lien to the lien of the insured mortgage.

With the respect to a right of first refusal or an option to purchase contained in the CCRs, the provisions must be read carefully. A well drafted provision will make it clear exactly what event triggers the right of first refusal or option, including whether the right of first refusal or option is recurring and whether a lender's resale after acquisition of title at foreclosure triggers the right or option. A well crafted provision should make it clear that the right or option is subordinate to any mortgage. Depending upon the wording of the CCRs the right or option should be waived or subordinated to the lien of the insured mortgage. The waiver or subordination should be recorded.

As to validity of options to purchase or rights of first refusal, see E. Urban, G. Whitney and N. Ferguson, *North Carolina Real Estate*, §21:101 (options to purchase) and §21:102 (right of first refusal) (Thomson * West 2006 Supp.). See §21:58, §21:59; §21:61 and §21:80 of that book for a discussion of subordinations and G.S. 39-6.6.

Item 1. (b)(3) and of Item 1. (b)(4) contain certain encroachment coverage, which should be compared to encroachment coverage in Item 3. (a) and in Item 4., as well as in Item 5. with respect to setback lines. A Schedule B exception can eliminate Item 1.(b)(3) and/or Item 1.(b)(4) coverage.

Item 1 (b)(3): This insures against loss or damage sustained by reason of the existence, at Date of Policy, of (1) any encroachment upon adjoining land of existing improvements located on the insured land or (2) any encroachment onto the insured land by improvements located on adjoining land. Since loss or damage is a broad term and mere existence of the encroachment can trigger loss or damage if unmarketability of title occurs, unmarketability of title caused by such encroachments is apparently covered. Of course, the survey should be examined.

Because the definition of "Land" in Item 1 of the Conditions and Stipulations has always been tied to the exterior boundaries of the legally described land, an issue arose under the 1992 and prior policy forms as to whether, in the absence of a so-called "survey exception" in Schedule B, the base policy (i.e. without an endorsement like the ALTA 9.2 for an Owner's Policy or ALTA 9 for a Loan Policy) included coverage when an improvement mostly located on the insured "Land" encroached onto adjoining property (i.e. outside the "Land" as defined in the policy). A number of courts in numerous states have addressed this issue. Some courts have held that the title insurance policy did not provide coverage against this risk. Examples include *Havstad v. Fidelity Nat'l Title Ins. Co.*, 58 Cal. App. 4th 654 (1997), and *Transamerica Title Ins. Co. v. Northwest Building Corp.*, 54 Wn. App.289, 773 P. 2d 431 (1989). Other courts, relying on various theories, have held that the policy did provide coverage against this risk. A very recent example is *First American Title Insurance Company v. Dahlmann*, 2006 WI 65, 2006 Wisc. LEXIS 358 (June 7, 2006).

(It is noted that the 2006 policies have overcome this problem. Item 1 (g) of the Conditions of the 2006 Loan Policy does not eliminate the problem. Item 2 (c) of the Covered Risks insures against any encroachment that would be shown by an accurate and complete survey, including any encroachment upon adjoining land, or upon an easement, by improvements appurtenant to the insured land. Of course, a survey exception, particularly in an owner's policy, can eliminate this coverage.)

If encroachments covered by Item 1(b)(3) exist, then they should be excepted to in Schedule B. If the insured land's improvements are encroaching upon adjoining land, and the encroachments are deemed insurable by the title insurer, Schedule B affirmative coverage as follows can be given for the excepted to encroachment:

The Company insures against loss or damage caused by the entry of a final judgment requiring removal of all or any part of such encroachment(s) and the Company will pay attorneys' fees, costs and expenses, all in accord with the claims provisions of the Conditions and Stipulations of the policy.

It is noted that this affirmative coverage, which is routine, does not cover unmarketability of title due to the existence of the encroachment.

When the improvements located upon the insured land encroach upon adjoining land, the severity of the encroachment and the length of time the encroachment has existed are important factors in deciding whether affirmative coverage can be given.

As to the length of time an encroachment has existed, the statute of limitations should be considered.

If a structure appurtenant to the insured land encroaches upon an easement or upon adjoining land, a question can arise regarding whether the six year statute of limitations in G.S. 1-50(a)(3), "for injury to any incorporeal hereditament", is a defense in an action seeking removal of the encroachment. The answer probably depends upon the interest being encroached upon.

It has been held that an action to enforce a restrictive covenant is governed by G.S. 1-50(a)(3). A restrictive covenant is commonly referred to as a negative easement, and an easement is an incorporeal hereditament. G.S. 1-50 (a)(3) requires that an action for injury to a incorporeal hereditament be brought within six years. *Hawthorne v. Realty Syndicate, Inc.*, 43 N.C.App. 436, 259 S.E.2d 591 (1979), *aff'd*, 300 N.C. 660, 268 S.E.2d 494, rehearing denied, 301 N.C. 107, 273 S.E.2d 442 (1980). It seems that an action filed by the holder(s) of an easement to remove an encroachment upon an easement could be barred by the six year statute of limitations if the encroachment existed for the six year period. That does *not* mean that if the encroachment is destroyed that the owner of the encroachment would have the right to rebuild it, since it could be argued that any rebuilding would constitute a new encroachment.

An encroachment upon a neighbor's adjacent land (other than an easement interest) may present different problems. The statements in *Karner v. Flowers*, 134 N.C.App. 645, 518 S.E.2d 563 (1999), *rev. on other grounds*, 351 N.C. 433, 527 S.E.2d 40 (2000), are noted. The court said that an action over violated restrictive covenants was distinguishable from an encroachment upon adjoining land, citing *Bishop v. Reinhold*, 66 N.C.App. 379, 311 S.E.2d 298, *disc. rev. den.*, 310 N.C. 743, 315 S.E.2d 700 (1984):

Plaintiffs rely on *Bishop v. Reinhold*, 66 N.C.App. 379, 311 S.E.2d 298, *disc. review denied*, 310 N.C. 743, 315 S.E.2d 700 (1984), for this proposition. The defendant's home in *Bishop* was partially erected on the plaintiff's property in 1973 and plaintiffs sued in 1980 on the basis of continual trespass, seeking removal of the building from their property. The Court noted that in the case of an actual encroachment, a plaintiff "is limited to a single recovery of all damages." *Bishop*, 66 N.C.App. at 383, 311 S.E.2d at 300. The Court held that any claim for relief for actual removal of the structure as in an action for compensation for the easement or for the fee by adverse possession was not barred "until defendants had been in continuous use thereof for a period of twenty years so as to acquire the right by prescription." *Id.* at 384, 311 S.E.2d at 301... Plaintiff's novel argument, while provoking, lacks merit. The present case is distinguishable from *Bishop* in that a residential restrictive covenant is at issue rather than an encroachment and/or prescriptive easement.

In *Bishop*, G.S. 1-52(3), the three year statute of limitations for money damages, was construed. G.S. 1-50(a)(3), cited above, was not. While an action for money damages was deemed barred by G.S. 1-52(3), the case was remanded to grant a mandatory injunction for removal of the encroachment. The plaintiff bought his lot from the defendant in 1972. The encroachment occurred in 1973. A survey for the plaintiff discovered the encroachment in May 1980. The complaint was filed on September 11, 1980—probably seven years after the encroachment was constructed. There is no indication in the opinion that the defendant plead the six year statute of limitations in G.S. 1-50(a)(3). That is because the defendant was encroaching upon the plaintiff's fee interest and not upon any easement owned by the plaintiff.

As to when a cause of action accrues under G.S. 1-50(a)(3), *Karner v. Flowers*, 134 N.C.App. 645, 518 S.E.2d 563 (1999), points out that a plaintiff's cause of action begins running when the plaintiff first becomes aware or should have reasonably become aware of the violation. Therefore, reliance upon the six year statute of limitations, when otherwise appropriate, should take into consideration the rule on accrual.

Therefore, when an improvement on the insured land encroaches upon adjoining land as opposed to upon an easement, the twenty year adverse possession statutes in G.S. 1-39 and G.S. 1-40 would govern and not G.S. 1-50 (a)(3). This means that the severity of the encroachment can become critical. For example, if the encroachment is a fence or a

portion of a wall, the above quoted affirmative coverage can probably be given to a lender. That is because there are distinct differences between liability under a loan policy versus liability under an owner's policy. These differences are discussed in detail in E. Urban, *North Carolina Real Property Mechanics' Liens, Future Advances and Equity Lines-Including Title Insurance*, § 48-12 (Thomson * West, Supp. 2006), citing *CMEI, Inc. v. American Title Ins. Co.*, 447 So. 2d 427 (Fla. 5th D.C. A. 1984); *Goode v. Federal Title Ins. Co.*, 162 So. 2d 269 (Fla. 2d. D.C.A. 1964); *Ring v. Home Title Guar. Co.*, 168 So. 2d 580 (Fla. 3rd D.C.A. 1964); *First Commerce Realty Investors v. Pennin. Title Ins. Co.*, 355 So. 2d 570 (Fla. 1st D.C.A. 1978). Essentially, if a lender upon foreclosure receives all of its secured indebtedness, plus foreclosure costs, or if upon foreclosure, the lender acquires title to the land and it is worth an amount equal to or greater than the secured indebtedness and foreclosure costs, there is no compensable loss or damage payable even if the land would have been worth more without the title defect. This is the difference between a loan policy and an owner's policy. The 1992 and 2006 policies are not different in this regard.

However, if, for example, a major part of a major building encroaches upon adjoining land, a 20 year existence of the encroachment and a careful analysis by the title insurer of the facts surrounding the encroachment becomes critical. This must be approached on a case by case basis. For example, one negative factor is that the encroached upon area is probably still being assessed for taxes to the neighbor.

Item 1. (b)(3) also covers the neighbor's improvements encroaching upon the insured land, absent a Schedule B exception. Here, the above quoted affirmative coverage is inapplicable for obvious reasons. A minor fence or a wall encroachment can probably be insured against, due to the differences between an owner's policy and a loan policy cited above – if there is equity in the land above the amount of the insured mortgage. The Schedule B coverage, after citing the encroachment, might look like this:

The Company insures against loss or damage caused by the entry of a final judgment divesting the owner of the insured land as set forth in Schedule A of the title to the area covered by the encroachment. The Company will pay attorneys' fees, costs and expenses pursuant to the claims provisions of the Conditions and Stipulations of the policy.

The severity of the encroachment onto the insured land balanced against the possibility of loss or damage will govern whether more severe encroachments can be insured against.

Item 1. (b)(4): Absent a Schedule B exception, this insures against loss or damage sustained by the reason of the existence, at Date of Policy, of the encroachment by existing improvements onto any easement excepted in Schedule B. Once again, the way coverage is written, unmarketability of title seems to be covered. A survey should be examined for any such encroachments. The above discussion of the age of the encroachment and the six year statute of limitations in G.S 1-50(a)(3), which does apply, should be noted, for an encroachment upon an easement that has existed for at least six years is often insurable even if the encroaching structure is a substantial building. An exception might be if the building is way over into the easement and is over a line within the easement. Fence and wall encroachments are usually readily insurable. When the title insurer decides to insure against loss or damage due to such an encroachment, it is balancing the consideration of (1) the severity of the encroachment; (2) the statute of limitations; (3) the loan to value ratio and (4) the cases cited above indicating that loss or damage under a loan policy is less likely than loss or damage under an owner's policy.

When the survey shows an encroachment upon an easement excepted in Schedule B and the risk is deemed insurable, the basic approach is to except to the encroachment and insure as follows:

The Company insures against loss or damage caused by the entry of a final judgment requiring the removal of all or any part of the encroachment and the Company will pay attorneys' fees, costs and expenses pursuant to the claims provisions in the Conditions and Stipulations of the policy.

Item 1. (b)(5): This insures against loss or damage by reason of the existence, at Date of Policy, of any notices of violations of covenants, conditions and restrictions related to environmental protection recorded or filed in the public records. This coverage is similar to the policy coverage in the policy jacket that was thought to exist. See Insuring Provision 2 insuring against any lien upon the title, subject to the Exclusions From Coverage, Item 1(a)(iv) of which excludes environmental coverage except for recorded environmental liens. However, in our next article which will deal with the 2006 ALTA policies, we will address the "exclusion to the exclusion issue." Essentially, this is a case law doctrine that says that an exclusion to or exception in an exclusion cannot provide coverage not found in the insuring provisions.

See *Elysian Investment Group, LLC v. Stewart Title Guaranty Company*, 106 Cal.App. 4th 315, 129 Cal.Rptr. 2d 372 (2002).

Item 2. : This insures against loss or damage sustained by reason of any future violation on the land of any existing covenants, conditions or restrictions occurring prior to the acquisition of title to the estate or interest in the land by the insured, provided the violation results in: (a) invalidity, loss of priority, or unenforceability of the lien of the insured mortgage; or (b) loss of title to the estate or interest in the land if the insured shall acquire title in satisfaction of the indebtedness secured by the insured mortgage. Thus, the coverage is narrow for a future violation, as shown in 2. (a) and 2. (b). No other loss, such as unmarketability of title, is covered.

Item 3: Item 3. of the endorsement is quoted in 2. above of this article. Item 3. insures against loss or damage caused by reason of damage to existing improvements, including lawns, shrubbery or trees: (a) which are located on or encroach upon that portion of the land subject to any easement excepted in Schedule B, which damage results from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved and/or (b) resulting from the future exercise of any right to use the surface of the land for the extraction or development of minerals excepted from the description of the land or excepted in Schedule B. See above in 4. of this article for a discussion of additional coverage in the ALTA 9.3 and ALTA 9.3-06.

Item 3. (a) is encroachment coverage. It supplements, generally, encroachment coverage in Item 1. (b)(3) and Item 1. (b)(4) and specifically supplements Item 1. (b)(4). While Item 1. (b)(4) covers loss or damage in the traditional sense – diminution in value and unmarketability of title – Item 3(a) covers damage to existing improvements. Item 3(a) coverage exists even if the encroachment is excepted. Item 3(b) gives coverage even when the minerals are excepted.

In order to remove Item 3(a) or Item 3(b) coverage, an exception expressly doing so would have to be inserted into Schedule B.

Item 4: This insures against loss or damage sustained by reason of any final order or judgment requiring the removal from any land adjoining the land of any encroachment excepted in Schedule B. This is related to Item 1(b)(3) discussed above. Item 1(b)(3) covers loss even if the encroachment is unknown, to the extent set forth above. A Schedule B exception can eliminate Item 1(b)(3) coverage for an encroachment upon adjoining land. Even if there is a Schedule B exception for such an encroachment, Item 4 affirms limited coverage for the lender for a known encroachment unless, based on the factors listed above, the title insurer specifically deletes Item 4.

Item 5: This covers loss or damage caused by any final court order or judgment denying the right to maintain any existing improvements on the land because of any violation of covenants, conditions or restrictions or building setback lines shown on a plat of subdivision recorded or filed in the public records.

Item 5. is enforced removal coverage. Compare this to the Item 1(b)(1). If Schedule B excepts to the present violation of CCRs, Item 5 might provide coverage since it does not say, "unless excepted in Schedule B." Usually, a title insurer can provide coverage to a lender for a known violation. However, if the known violation is too severe to provide coverage, any exception must carefully and expressly override the endorsement.

As set forth in the reproduction of the endorsement in 2. above, the last unnumbered paragraphs define terms. The way the last paragraphs read, the policy Conditions and Stipulations for attorneys' fees, costs and expenses obligations for covered risks in the endorsement are maintained.