The Basics...

- **What is an endorsement?**
  - Separate attachment pages that may be issued with an owner and/or loan policy.

- **What does an endorsement do?**
  - At its most basic, amends or modifies the terms of the policy being issued.
  - Policy jackets set forth the covered risks, exclusions from coverage, conditions, etc.
  - Endorsement allows for those basic terms to be modified, additional coverages provided, or specific issues addressed.
  - Endorsements may be used to make routine corrections to an existing policy.
  - Correct typos, recording information, etc.
  - Endorsements may be issued to reflect post-policy changes to title.
  - Modification of deed of trust/mortgage.

The Basics...

- **Who creates the endorsements?**
  - Most endorsements are pre-printed, standard forms created and adopted by the American Land Title Association (ALTA).
  - ALTA Forms Committee responsible for reviewing existing forms, proposing revisions to forms and suggesting new forms.
  - Forms are approved by ALTA Board of Governors.
  - Forms are commonly known by their ALTA numbers (ALTA 3, ALTA 22, etc.).
  - As of August 2016, the ALTA endorsements run from 1 through 46.
  - Underwriters may also create their own endorsement forms to address specific issues not covered by the ALTA endorsements.

- **Ability to Issue Endorsements:**
  - Kansas is a filed form state. See K.S.A. 40-952.
  - Endorsement forms must be filed and approved by Commissioner of Insurance prior to use (same with commitment forms and policy forms).
  - Most ALTA endorsements are filed for use in Kansas.
  - Contact your underwriter if you don’t see a specific endorsement.
Commonly Requested Endorsements

**ALTA 3 Series**

**Zoning Endorsements**

- The impact of government regulations, including building and zoning ordinances, are specifically excluded from coverage under our standard Owner’s and Loan policies pursuant to Paragraph 1(a) of the Exclusions From Coverage section.

- Endorsements provides assurance that the land described in the policy is zoned in a specific classification, and lists one or more of the uses allowed in that classification.

**ALTA 3 Series**

**Zoning Endorsements**

- **ALTA 3-06** is used for vacant land or land where construction is currently taking place.

- **ALTA 3.1-06** is used only for land with completed structures.

- **ALTA 3.2-06** is intended for use in an ongoing or contemplated construction project where improvements have not yet been completed, but where we have been provided existing plans and specifications which depict the contemplated improvements.
2. The Company insures against loss or damage sustained by the Insured in the event that, at Date of Policy
   a. according to applicable zoning ordinances and amendments, the Land is not classified Zone R-2,
      residential single-family;
   b. the following use or uses are not allowed under that classification: Multi-family residential, as a non-
      conforming use. In the event the property is partially damaged or destroyed the coverage afforded in this endorsement shall terminate.

a. “Improvement” means a building, structure, road, walkway, driveway, curb, subsurface utility or water well existing at Date of Policy or to be built or constructed according to the Plans that is or will be located on the Land, but excluding crops, landscaping, lawns, shrubbery, or trees.

b. “Plans” means those site and elevation plans made by __dated __ last revised __, designated as ______consisting of ___ sheets.

1. Common elements are part of the condominium.
2. Condominium is properly created to the extent that failure would affect title.
3. Present violations of restrictive covenants that restrict the use of the unit and its common elements
4. Assessments (4 absolute priority, 4.1 current priority)
5. Failure of common element to be entitled by law to be assessed for real property taxes as a separate parcel
6. Any obligation to remove any improvements that exist at Date of Policy because of any present encroachments or because of any future unintentional encroachment of the common elements upon any unit or of any unit upon the common elements or another unit.
7. The failure of the Title by reason of a right of first refusal to purchase the unit and its common elements which was exercised or could have been exercised at Date of Policy.
ALTA 5 and 5.1

PUD

1. Present violations of any restrictive covenants referred to in Schedule B that restrict the use of the Land or the forfeiture or reversion of Title by reason of any provision contained in the restrictive covenants.
2. Assessments. 5 insures absolute priority, 5.1 insures priority at date of closing.
3. The enforced removal of any existing structure on the Land (other than a boundary wall or fence) because it encroaches onto adjoining land or onto any easements.
4. The failure of the Title by reason of a right of first refusal to purchase the Land that was exercised or could have been exercised at Date of Policy.

ALTA 6 and 6.2

Variable Rate Endorsement

- Endorsement series insures the lender against the invalidity, unenforceability, or loss of priority of the lien of the insured mortgage as a result of changes in the rate of interest, interest on interest, or increases in the unpaid principal balance of the loan resulting from the addition of unpaid interest.

- Language in the deed of trust that the interest rate can vary from time to time.

- 6.2 is for reverse mortgages only.

ALTA 8.1 and 8.2

Environmental Protection Lien

- 8.1: Insures a residential lender against loss of priority due to a federal or state environmental protection lien filed in the public records as defined in the endorsement at the date of policy.
  - “The insurance afforded by this endorsement is only effective if the Land is used or is to be used primarily for residential purposes.”
  - Also provides coverage over state “super lien” statutes which create an environmental lien priority in effect at time of policy. (But note, endorsement allows for specific exception for any such liens).

- 8.2: The Company insures against loss or damage sustained by the insured by reason of an environmental protection lien that, at Date of Policy, is recorded in the Public Records or filed in the records of the clerk of the United States district court for the district in which the Land is located, unless the environmental protection lien is set forth as an exception in Schedule B.
  - May be used in connection with owner’s or loan policy;
  - Commercial transactions;
  - Coverage limited to matters of record.
ALTA 9 Important Definitions

a. “Covenant” means a covenant, condition, limitation or restriction in a
document or instrument in effect at Date of Policy.
b. “Improvement” 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.

• Old 9 Form: (b) Unless expressly excepted in Schedule B...

• New 9 Form: b. A violation on the Land at the Date of Policy of an
enforceable Covenant, unless an exception in Schedule B of the
policy identifies the violation;

ALTA 9 Forms

Those intended for a loan policy:
ALTA 9-06 (Restrictions, Encroachments, Minerals–Loan Policy)
ALTA 9.3-06 (Covenants, Conditions & Restrictions–Loan Policy)
ALTA 9.6-06 (Private Rights–Loan Policy)
ALTA 9.6.1-06 (Private Rights–Current Assessments–Loan Policy)
ALTA 9.7-06 (Restrictions, Encroachments, Minerals–Land Under Development–
Loan Policy)
ALTA 9.10-06 (Restrictions, Encroachments, Minerals–Current Violations–Loan
Policy)

• ALTA 9 series endorsements insure over certain matters specified on the face
of the endorsements, unless matters are “expressly excepted in Schedule B.”
• Case law indicates that a blanket exception with a reference to a
document generally (e.g., Declaration of Conditions, Covenants and
Restrictions recorded 1/1/09 at Book 123 Page 345) will not suffice when
an ALTA 9 series endorsement has been issued because those
endorsements extend affirmative and expansive coverage over
restrictions, encroachments and mineral interests.

ALTA 9 Forms

Those intended for an owner’s policy:
ALTA 9.1-06 (Covenants, Conditions & Restrictions–Unimproved Land–
Owner’s Policy)
ALTA 9.2-06 (Covenants, Conditions & Restrictions–Improved Land–Owner’s
Policy)
ALTA 9.8-06 (Covenants, Conditions & Restrictions–Land Under
Development–Owner’s Policy)
ALTA 9.9-06 (Private Rights–Owner’s Policy)
b. “Private Right” means
   (i) a private charge or assessment; [not provided in the 9.9-06]
   (ii) an option to purchase;
   (iii) a right of first refusal; or
   (iv) a right of prior approval of a future purchaser or occupant.

Exclusions:
4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys’ fees, or expenses) resulting from:
   a. any Covenant contained in an instrument creating a lease;
   b. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land;
   c. any Covenant relating to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances; or
   d. any Private Right in an instrument identified in Exception(s) in Schedule B.

Additional Endorsement Created

Fallout from amending ALTA 9 series

9.6 and 9.9 private rights coverage separate

Encroachments coverage now in Covered Risk 2c (as to setback lines only) and ALTA 28 series

Minerals coverage in ALTA 35 series
**ALTA 14**

*Future Advance Endorsements*

- Provides assurance that the property insured in the policy contains a designated improvement located at a specified street address.
  - Needs to be improved land to issue endorsement.
  - Review survey, tax records.

- ALTA 14.06 and 14.1.06
  - Identical endorsements, except that the 14.1.06 excludes coverage of liens, encumbrances or other matters actually known to the insured and occurring subsequent to the date of policy and prior to the date of a subsequent advance.

- ALTA 14.2.06
  - This endorsement insures future advances made where the insured mortgage secures a letter of credit.

- ALTA 14.3.06
  - Insures future advances made in the context of reverse mortgages.

**ALTA 22**

*Location Endorsements*

- ALTA 22-06 and 22.1-06
  - Virtually identical, except 22.1 includes added assurance that the property location and dimensions are accurately shown on an attached map, if one is available.

**ALTA 22**

*Location Endorsements*

**ALTA 22-06**

“The Company insures against loss or damage sustained by the Insured by reason of the failure of a [ ] , known as [ ], to be located on the Land at Date of Policy.”

**ALTA 22.1-06**

“The Company insures against loss or damage sustained by the Insured by reason of the failure of (i) a [ ] , known as [ ], to be located on the Land at Date of Policy; or (ii) the map, if any, attached to this policy to correctly show the location and dimensions of the Land according to the Public Records.”
ALTA 25

Same as Survey Endorsement

- Provides coverage against loss or damage in the event the land insured in the policy is not the same as that delineated on a designated survey bearing a specific date.
- ALTA 25-06 and 25.1-06
  - Functionally identical, but 25.1-06 provides coverage against loss or damage in the event that the land insured in the policy is not the same as a designated portion of the land delineated in the survey.
  - “The Company insures against loss or damage sustained by the Insured by reason of the failure of the Land as described in Schedule A to be the same as that identified on the survey made by ____ dated ____________, and designated Job No. ________.”

Less Commonly Requested Endorsements

Manufactured Home Endorsements

Definition of Land in Policy Jacket:

- The land described in Schedule A, and affixed improvements that by law constitute real property.
- Manufactured homes considered personal property until affixed.
  - Not an affixed improvement constituting real property.
  - MH not included in definition of land.
  - Exception for MH required.
ALTA 7 Series
7. Owner or Lender

ALTA 7-06: The term “Land” includes the manufactured housing unit located on the Land described in Schedule A at Date of Policy (vs. definition of Land in policy jacket).

ALTA 7 Series
7.1 Lender Only
(a) A manufactured housing unit is not located on the Land described in Schedule A.
(b) The manufactured housing unit located on the Land is not real property under the law of the state where the Land described in Schedule A is located.
(c) The owner of the Land is not the owner of the manufactured housing unit.
(d) Any lien is attached to the manufactured housing unit as personal property, including (i) a federal, state, or other governmental tax lien, (ii) a UCC security interest, (iii) a motor vehicular lien, (iv) other personal property lien.
(e) The lien of the Insured Mortgage is not enforceable against the Land.
(f) The lien of the Insured Mortgage is not enforceable in a single foreclosure procedure.

ALTA 7 Series
7.2 Owner Only
(a) A manufactured housing unit is not located on the Land described in Schedule A.
(b) The manufactured housing unit located on the Land is not real property under the law of the state where the Land described in Schedule A is located.
(c) The owner of the Land is not the owner of the manufactured housing unit.
(d) Any lien is attached to the manufactured housing unit as personal property, including (i) a federal, state, or other governmental tax lien, (ii) a UCC security interest, (iii) a motor vehicular lien, (iv) other personal property lien.
Requirements to Convey a Manufactured Home as Real Estate

• To convert a manufactured home to real property in Kansas, the manufactured home must be permanently affixed to the real property by being placed on a permanent foundation. In addition, the certificate of title must be eliminated in accordance with K.S.A. 58-4214(b). To cancel the certificate of title, the owner must apply with the Department of Revenue, Division of Vehicles and submit the following:
  1. An affidavit, in the form prescribed by the Division, signed by all owners and lienholders with an interest in the home;
  2. The certificate of title for the manufactured home or, in the case of a new manufactured home, the manufacturer's statement of origin;
  3. Where one or more parties have a security interest in the manufactured home or mobile home, a release of each such secured party's security interest;
  4. Proof of payment of all applicable fees and taxes; and
  5. Any other information the division may reasonably require pursuant to duly adopted rules and regulations.

• The application, once approved, is then recorded in the office of the register of deeds. Upon recording, the manufactured home is deemed converted to real property.

ALTA 10
Assignment Endorsement

1. The name of the Insured at Date of Endorsement and referred to in this endorsement as the “Assignee” is amended to read: __________________.

2. The Company insures against loss or damage sustained by the Assignee by reason of:
   a. The failure of the following assignment to vest title to the Insured Mortgage in the Assignee:
   b. Any modification, partial or full reconveyance, release, or discharge of the lien of the Insured Mortgage recorded on or prior to Date of Endorsement in the Public Records other than those shown in the policy or a prior endorsement, except:
   c. Lack of priority of the lien of the Insured Mortgage over defects, liens, or encumbrances other than those shown in the policy or a prior endorsement, except:
   d. Notices of federal tax liens or notices of pending bankruptcy proceedings affecting the Title and recorded subsequent to Date of Policy in the Public Records and on or prior to Date of Endorsement, except:
   e. Any modification, partial or full reconveyance, release or discharge of the lien of the Insured Mortgage recorded on or prior to Date of Endorsement in the Public Records other than those shown in the policy or a prior endorsement, except:

ALTA 10.1
ALTA 11 Series

Modification Endorsements

• Issued in those cases where a mortgage is modified after its original date by agreement of the parties.

• ALTA 11-06:
  – The endorsement insures against loss or damage due to invalidity or unenforceability of the mortgage as a result of the terms of the modification agreement.
  – It also insures that priority of the mortgage, as modified, continues over any defects, liens and encumbrances on the title, other than those listed as exceptions in either the policy or the endorsement.

ALTA 11 Series

Modification Endorsements

• ALTA 11.1-06:
  – Issued when an intervening lien appears in the title search and is made subordinate by agreement to the insured mortgage.

• ALTA 11.2-06:
  – Issued when a mortgage is being modified or amended and the amount of the mortgage is being increased.
  – Section 1(a) of the endorsement requires the title insurer or agent to insert the name and recording information pertaining to the document which modifies the insured mortgage.
  – In Section 1(b) the date the modification is recorded should be inserted.
  – Section 2 states the new amount of insurance.

ALTA 11.2

1. For purposes of this endorsement only:
   a. "Modification" means the agreement between ___ and dated ___ and recorded as document number _______.
   b. "Date of Endorsement" means _____.
   2. The Amount of Insurance is increased to $_____.

1/31/20
3. Subject to the exclusions in Section[s] 4 and 5 of this endorsement, the Exclusions from Coverage, the Exceptions contained in Schedule B, and the Conditions contained in the policy, and any exclusion or exception in any prior endorsement, the Company insures as of Date of Endorsement against loss or damage sustained by the Insured by reason of any of the following:
   a. The invalidity or unenforceability of the lien of the Insured Mortgage upon the Title as a result of the Modification;
   b. The lack of priority of the lien of the Insured Mortgage over defects in or liens or encumbrances on the Title, except:
   c. The failure of the following matters to be subordinate to the lien of the Insured Mortgage:

ALTA 12

Aggregation Endorsement

• Intended for use in the situation in which policies insuring mortgages in more than one state are being aggregated for liability purposes in the amount of the combined sum of all mortgages.

• Section 1 of the endorsement sets forth the identifying information for each of the individual policies being aggregated, indicating policy number, state in which the real property is located and the individual policy amount.

• Section 3 sets forth the aggregate amount of insurance for all policies.

• When the ALTA 12-06 is used it should be attached to each of the individual policies being issued on the transaction

ALTA 12

Aggregation Endorsement

1. The following policies are issued in conjunction with one another:
   POLICY NUMBER:
   STATE:
   AMOUNT OF INSURANCE:

2. The amount of insurance available to cover the Company's liability for loss or damage under this policy at the time of payment of loss shall be the Aggregate Amount of Insurance defined in Section 3 of this endorsement.

3. Subject to the limits in Section 4 of this endorsement, the Aggregate Amount of Insurance under these policies is $
ALTA 17 Series

Access Endorsements

- Generally, expands the coverage given under traditional access endorsements by giving an assurance of both vehicular and pedestrian access.
- Also give assurances with respect to the right to use existing curb cuts or other entries along that portion of the public right of way abutting the property insured.
- ALTA 17-06:
  - Insures direct vehicular and pedestrian access to a public right of way abutting the property insured.
- ALTA 17-1-06:
  - Insures indirect vehicular and pedestrian access to a public right of way pursuant to an easement identified in Schedule A of the policy.
  - Note: Must be both an easement present and a roadway constructed.
- ALTA 17.2-06:
  - Insures the right of access to specific utilities or services over, under or upon rights-of-way or easements because of:
    - a gap or gore between the boundaries of the Land and the rights-of-way or easements;
    - a gap between the boundaries of the rights-of-way or easements; or
    - a termination by a grantor, or its successor, of the rights-of-way or easements.

ALTA 26

Subdivision Endorsement

- Provides coverage against loss or damage in the event that the land insured under the policy has not been lawfully created under state statutes and/or local ordinances relating to the subdivision of real property.

ALTA 39-06

Policy Authentication Endorsement

- Also referred to as “electronic signature endorsement.”
- States that when a policy is issued by the Company with a policy number and Date of Policy that the Company will not deny liability solely because the policy or any endorsement was issued electronically or lacks signatures in accordance with the Conditions.
SURVEY ISSUES

Survey Coverage, Generally

- Older versions of title insurance policies did not give survey coverage.
- By nature, survey matters generally cannot be determined solely from review of the public records.
- Inspection of the property is required.
- “Survey coverage” not a defined term in policies.
- “Survey coverage” refers only to coverage that comes from the Covered Risks of the policy and removal of the standard exception for survey matters.

Survey Coverage, Generally

- 2006 Owner’s Policy and Loan Policy – Covered Risk 2(c):

  “Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land.”

  The term “encroachment” includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
Survey Coverage, Generally

• “Survey Coverage” is given by removing the standard exception for survey matters from the policy leaving the Covered Risk 2(c) in effect to give such coverage.

• Whether this coverage is given varies depending on the customer and market.

• This coverage is typically required by the lender. Particularly true for large lenders and/or lenders who will sell their loan on the secondary market.

Survey Coverage, Generally

• Practice varies as to whether to identify in the commitment what is required in order for the survey exception (or any other standard exception) to be removed from the policy.

• Sample Requirement: “Survey coverage will not be provided [or “The standard exception for survey will not be removed from the Policy”] unless the Company is furnished with a current survey of the land and improvements, certified in a manner acceptable to the Company. That survey must be provided to the Company prior to closing.”

• Always contact your underwriter if you have questions or concerns about providing survey coverage.
  – Survey coverage without a survey?
  – Plot plans, spot surveys, etc.?

Surveys

• What is a Survey?
  – Measuring of a tract of land and its boundaries and content with a map indicating the results of such measurements.
  – Surveys can vary greatly in regard to details.

• The American Land Title Association (ALTA) and the National Society of Professional Surveyors (NSPS) published the Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys.
  – Explains standards for what is acceptable to title companies.
  – Generally should show boundaries, easements, improvements and access.
Surveys

- Commercial transactions warrant closer review.
- Specific endorsements require reviewing a survey in order to issue them.
  - ALTA 3, 9, 17, 19, 22, 25 and 28 series endorsements.
- General Considerations:
  - Certified to Underwriter and/or Agent;
  - Surveyor certificate showing surveyor’s name, signature and license;
  - Check date of survey (how recent is the survey field work?);
  - Does the street address and legal description match?
  - Are the commitment Schedule B-2 exceptions shown on the survey?

Surveys

- Why do we need to review the survey?
  - Checking for title issues that would, by default, be covered under the policy.
  - Issues appearing on the survey should be added as special exception on Schedule BII of a commitment, or addressed as a Schedule B I requirement.
- What title issue would be excluded from coverage by including the survey exception?
  - Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land.

Primary Issues Revealed by Surveys

- Overlaps
- Gaps
- Encroachments
- Boundary line disputes
- Adverse possession
- Prescriptive Easements
Thank You!