

I. ALTA OWNER POLICY (OPA): INSURING PROVISIONS

The ATG Owner Policy (OPA) currently in use was created by the American Land Title Association (ALTA) in 1970 and then revised in 1987, 1990, and 1992. The first page of the OPA contains the Insuring Provisions.

- **NOTE:** Policy language (or a paraphrased version of it) appears in italics throughout this section, unless otherwise noted. The essential elements of the policy, Insured, Date of Policy, etc., are in bold. The numbers that precede the Insuring Provisions below (e.g., “Paragraph 1”) correspond to the order in which the paragraphs appear on the first page of the policy. Other numbers and letters (that serve to label the text) correspond to the numbers and letters that appear on the subject document itself.

Paragraph 1

Subject to the Exclusions from Coverage, the exceptions from coverage contained in Schedule B, and the Conditions and Stipulations, the title company insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the Insured by reason of:

This preamble paragraph sets forth several limitations or conditions to the coverage provided under the Insuring Provisions: (1) each Insuring Provision is limited by the provisions of the Exclusions from Coverage, the Exceptions on Schedule B, and the Conditions and Stipulations; (2) coverage is afforded only for matters arising or existing as of the Date of Policy set forth in Schedule A and not thereafter; and (3) coverage is limited to the Amount of Insurance set forth on Schedule A (plus the costs of defense).

These limitations can be significant, and may completely negate coverage of a title matter based upon the nature of the claim (a building or zoning violation existing prior to the Date of Policy but for which no notice was recorded would be excluded under Exclusion from Coverage 1(a)), or the Insured’s knowledge (a suit for specific performance by a prior defaulted buyer could be excluded under Exclusion from Coverage 3(b) for matters known to the Insured but not known by the insurer and not recorded in the public records). Prudent counsel for the Insured should review all significant aspects of the transaction, the parties, the property, and the intended use to ensure that any matters that need special coverage are addressed with the title company.

1. *Title to the estate described in Schedule A being vested other than as stated on Schedule A (except as limited by the Exclusions from Coverage, the Exceptions from Coverage, and the Conditions and Limitations).*

This first insuring clause insures against loss if title is not vested in the Insured as stated in Schedule A of the policy. This involves both the estate (fee simple, leasehold, life estate, etc.) and the “quantity” of the title (whole estate, one-half interest, etc.). Examples of this would include the title company’s failure to discover in the public records the interest of someone other than the Insured in title because of a missed deed, omitted heir, tax deed, partial interest, or, if extended coverage is given, adverse possession.

Many title companies are unwilling to expand their liability under this clause by including affirmative assurance as to the quantity or type of joint estate of co-owner insureds. Thus, Schedule A may identify that fee title is vested in *A*, *B*, and *C*, but will not affirmatively state that each holds a one-third interest as joint tenants. This is especially true in the case of the Illinois estate of tenancy by the entirety, since creation of the estate depends upon facts outside the land

2. *Any defect in or lien or encumbrance on title (except as limited by the Exclusions from Coverage, etc.).*

This provision is generally concerned with defects in the conveyancing instrument itself or in how it was executed, or by some other matter (judgment or tax liens against the grantor, prior unreleased mortgages, etc) that makes the Insured's title defective.

The coverage under this clause differs from the first clause (title not vested as shown on Schedule A) in that under the first clause, title to all or a portion of the land was *never* vested in the Insured due to failure to obtain a conveyance from a titleholder, whereas, in this clause, there is an instrument that at least purports to convey title to the Insured, but due to fraud, forgery, insufficient authority, etc., the title in the Insured is defective in some way.

3. *Unmarketability of the title.*

A clause is a specific assurance to the Insured that:

- the title company will indemnify the Insured according to the terms of the policy if there is a problem with the title, or if defects, liens, or encumbrances exist that are not raised on Schedule B; and
- the Insured has title that may be sold to a buyer without these problems making the title unmarketable and allowing a buyer to get out of a contract with the Insured if there is a provision in the contract requiring the Insured to deliver “marketable title.”

Thus, if there is an insured title problem, the title company will attempt to cure the defect. If the title company is unable to cure the defect so that the property can be sold without a loss because of the defect, then the title company pays that loss, too.

This clause deals with the unmarketability of the *title*, not the property, a significant source of confusion for insureds. The insured may be unable to sell the property because of some defect in the property (e.g., the lack of working sewer and water facilities) but have perfectly marketable *title*. Thus, the Insured may have “perfect legal title, worth nothing.” Burke, *Law of Title Insurance*, (N.Y., Aspen Publishers, 2005), § 3.04[A], page 3-58. The fact that a title insurer is willing to insure a defect does not make the title marketable, since “a buyer cannot be compelled to buy a lawsuit.” *Nelson v. Anderson*, 286 Ill.App.3d 706, at 709, 676 N.E.2d 735, at 737 (5th Dist., 1997).

4. *Lack of right of access to and from the land.*

The title company insures that the Insured has *legal* (as opposed to physical) access to and from the property either by means of a public way or a private easement.

This provision does not insure that a road exists or that the road is passable; only that the Insured has an unobstructed unabridged legal right to get from a public way or private easement to the property. This clause also does not insure access by a specific means. This may be of concern to an insured who wants or needs access by a specific way or to a specific portion of the insured land. If such is the case, the Insured should request that an Access Endorsement be issued with the policy insuring that the land has access by a specified way that is physically open and available.

Paragraph 2 (after the four Insuring Provisions)

The title company agrees not only to indemnify the Insured against the title defects set forth in the Insuring Provisions, but will also pay attorneys' fees and other expenses incurred in connection with defense of the title.

The insurer has two duties to the Insured: the duty to defend the Insured in an action affecting an insured defect, and the duty to indemnify the Insured for covered losses due to that defect. Consistent with the concept that the policy indemnifies the Insured against loss but does not guarantee title to the Insured, the insurer's duty to defend is greater than its duty to indemnify, i.e., the insurer may have to incur the expense of defending the Insured in litigation even though eventually the insurer may be able to deny any liability for the Insured's losses.

Paragraph 3

In order to bind the title company, the policy, which is signed by the title company's President, must be countersigned on Schedules A and B by an issuing agent.

II. EXCLUSIONS FROM COVERAGE (THE FINE PRINT)

Certain matters are not covered, because, while they affect title to the real estate, they are beyond the control of the title company, and often unascertainable from the land records available to the title company.

The title company will not indemnify nor pay to defend title to real estate by reason of loss due to:

1. (a) *Any governmental regulation, law, or ordinance that restricts or regulates:
 - (i) occupancy, use, or enjoyment of the land (building and zoning);
 - (ii) character or dimensions of structures thereon (zoning);
 - (iii) separation in ownership or changes in area or dimensions of the land (platting and zoning); or
 - (iv) environmental protection.*

However, if a notice of violation or a lien for any of the foregoing matters is recorded at Date of Policy and that notice or lien is not raised on Schedule B, then the title company is liable for the violation.

- (b) *Other exercise of governmental police power is also excluded from coverage; however, if a notice of such exercise is recorded and that notice is not raised on Schedule B, then the title company is liable for any loss from the exercise of governmental police power.*

This is different from eminent domain (notably, no right to compensation by the landowner from the government), and would include matters such as a loss of title due to drug forfeiture seizures.

2. *Rights of governmental units in eminent domain.*

Again, there is no coverage for governmental takings by eminent domain unless a notice thereof is recorded and that notice is not raised on Schedule B. Not excluded from coverage are previous eminent domain actions in which constructive notice has been given in the public records.

3. *Defects, liens, encumbrances, adverse claims, or other matters:
 - (a) created, suffered, assumed, or agreed to by the Insured; or
 - (b) not known by the insurer, not recorded at Date of Policy, and known to the Insured; or*

If the Insured (or an agent of the Insured) knew about a non-record defect, lien, etc., and failed to disclose it to the insurer, the insurer has no liability for that matter. Note that any notification by the Insured of a defect must be in writing.

- (c) *Resulting in no loss; or*
- (d) *Attaching after the Date of the policy; or*
- (e) *Resulting in loss or damage that would not have been sustained if the Insured claimant had paid value for the insured estate.*

This is generally directed at “donees,” i.e., persons who acquire title by gift or inheritance.

- **NOTE:** this exclusion does not conflict with the definition of “Insured” in Paragraph 1(a), below, of the Conditions and Stipulations; an heir of the Insured is included in the definition of Insured, but is subject to any claims that the heir failed to pay value.

- 4. *Any claim by reason of the operation of the federal bankruptcy laws or any similar state insolvency or creditors’ rights laws in which the insured transaction is deemed a fraudulent conveyance or preferential transfer, except claims in which the preferential transfer is due to the failure to timely record the deed or due to the failure of the recording to constitute notice to third parties.*

This exclusion was added in 1990 to exclude coverage for claims based upon, among others, fraudulent transfer (11 U.S.C. § 548), equitable subordination (11 U.S.C. § 510(c)), or a preferential transfer (11 U.S.C. § 547) under the federal bankruptcy law, but did not include the exceptive clause. The exclusion does not apply to exclude claims arising out of a prior transaction in the chain of title, but only the current transaction involving the Insured. Many lenders and owners objected to the new exclusion because errors by the title company (such as failure to timely record the deed) were also excluded. The 1992 ALTA policy forms added the exceptive clause.

III. CONDITIONS AND STIPULATIONS (THE VERY FINE PRINT)

- **TIP TO READER:** Because most of the text in the following section is Policy language, for the sake of easy reading it is not italicized.

The previous sections have described the affirmative coverages and the specific Exclusions from Coverage. The remainder of the policy contains the Conditions and Stipulations. The Conditions and Stipulations provide a place for the title company to state its understanding of certain terms, conditions, options, and limitations, particularly regarding the handling of any claims.

1. Definition of Terms

- a. *Insured* is the person/entity named in Schedule A of the policy. It also includes successors-in-interest by operation of law and not by purchase (e.g., heirs, devisees, etc.).
- b. *Insured claimant* is the person claiming loss.
- c. *Knowledge or known* means actual knowledge as opposed to constructive knowledge.
- d. *Land* is described as the four corners of the legal description in Schedule A, with the improvements thereon, and nothing else.
- e. *Mortgage* is any security instrument such as a mortgage, deed of trust, or trust deed.
- f. *Public records* are those records (the various indices in our Recordors’ Offices) established by state statutes for the purposes of giving constructive notice to purchasers of real estate. The definition of public records was clarified and limited to the above, necessitated by some judicial interpretations that had

included such diverse records as the Federal Register as part of the “public records” for title insurance purposes.

- g. *Unmarketability of the title* is an apparent or alleged defect in title, not excluded or excepted from the policy, which, under the law of the state, would allow a buyer to avoid his/her obligation to purchase.

2. Continuation of Insurance after Conveyance of Title

The policy will remain in force as long as the Insured: (1) retains an interest in the land; or (2) holds a purchase money mortgage from a purchaser from the Insured.

Coverage will continue to the Insured even after conveyance to a purchaser if the Insured’s liability is based upon a breach of covenants of warranty. There is no coverage to new purchaser.

3. Notice of Claim to be given by the Insured

To file a claim, the Insured must notify the company promptly in writing. The Insured should file a claim when one of the following situations arises:

- i. The Insured is involved in litigation involving an insured matter;
- ii. The Insured acquires knowledge (as defined in Paragraph 1, above) of an adverse matter affecting title; and/or
- iii. The title is rejected as unmarketable.

If the Insured fails to promptly notify the company of matters requiring prompt notice (e.g., tax sale), the company’s liability terminates, but only as to that matter for which prompt notice is required. The Insured still has rights under the policy as long as the company is not prejudiced by the Insured’s failure to notify.

4. Defense and Prosecution of Actions; Duty of Insured Claimant to Cooperate

- a. In cases in which the title company has a duty to defend title according to the terms of the policy, the Insured must request such a defense in writing.
- b. The title company has the right to choose the lawyers to defend the Insured, subject to the Insured’s rights to object to those lawyers for good cause.
- c. The title company has the right to sue, defend, or compromise any claim, and to appeal any adverse decision.
- d. At the company’s expense, the Insured must assist in the prosecution or defense of a claim by performing the following functions:
 - i. Securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement; and
 - ii. Providing any other assistance that may be necessary to establish the title to the estate or interest as insured.

If the Insured does not cooperate, the title company reserves the right to deny liability.

5. Proof of Loss or Damage

In addition to the Notice of Claim, the Insured claimant must submit a proof of loss statement, signed and sworn to within 90 days after claimant becomes aware of the loss. The proof of loss must state the lien or defect in question, the amount of loss, and how that loss amount was calculated.

The title company may require the Insured to submit to an examination under oath as to the facts of the loss. Also, the title company has the option of reviewing the Insured’s documents, records, books, etc. that are relevant to the claim.

If the Insured fails to submit the appropriate proof of loss or to fully cooperate with the investigation of the claim, the title company may deny liability.

6. Options to Pay or Otherwise Settle Claims; Termination of Liability

In the event of a claim, the title company reserves the following rights:

- a. To pay or tender payment to the Insured the Amount of Insurance together with any costs, attorneys' fees, and expenses incurred by the Insured. Upon payment, the company's obligations (including the duty to defend) terminate.
- b. Pay or settle with a third party, who is not the Insured, or pay or settle directly with the Insured.
 - i. The company may pay the third party whose lien or encumbrance created the claim and thus "fix" the problem for the benefit of the Insured; or
 - ii. The company may pay to the Insured the amount it would pay to the third party above, but leave to the Insured the option of paying the third party or not.

Once the title company pays the third party or the Insured, its liability for the matter – including its duty to defend – ceases.

7. Determination, Extent of Liability, and Coinsurance

- a. The greatest amount of liability due the Insured, in any case, is the lesser of: (1) The Amount of Insurance shown in Schedule A; or (2) The difference between the value of the interest with and the value of the interest without the defect.
- b. If Amount of Insurance on Schedule A is less than 80% of value of the property (or consideration paid) on the Date of Policy, then the Insured is liable as a co-insurer (i.e., Insured pays proportionate share of any claim).
 - i. Co-insurance also applies if the Insured makes improvements after the Date of Policy that increases the value of the property in excess of 20% over the Amount of Insurance in Schedule A. If this occurs, the company pays any claim based upon the following formula:

$$\text{Amount of Loss} \times \frac{\text{120\% of Insurance on Schedule A}}{\text{(Amount of Insurance + Costs of Improvements)}}$$

- c. The title company will pay only those costs, attorneys' fees, or expenses incurred in defense of the claim pursuant to paragraph 4 of the Conditions and Stipulations.
 - In the preamble, the title company uses this paragraph to stress that this contract is one of indemnity and not a guarantee of title. The distinction is subtle, but certain risks are inherent in any title review. After reviewing the risks, the title company agrees that it will pay the actual loss only for these risks if they, or any one of them, result in loss to the Insured. The title company intends to exculpate itself from any consequential damages that may stem from a risk that turns into a loss to the Insured.
 - The policy forms promulgated by ALTA since 1987 are an attempt to make this clear to courts that interpret these policies. Courts have shown a desire to ignore this distinction, and find liability against the insurance company because, they reason, the Insured had a "reasonable expectation" that the risk and all of the things that follow would be insured.

8. Apportionment

If more than one parcel is insured, and the parcels are not a single site, then the Amount of Insurance will be apportioned between the two parcels based upon the value of each at the Date of Policy. This can be changed at the time of issuance of the policy by agreement of the Insured and the insurer.

9. Limitation of Liability

- a. If the title company cures the problem in a diligent manner, its liability to the Insured on that problem ends.
- b. In litigation cases, the title company pays only when the litigation is complete (after trial and appeals are concluded).
- c. The title company will not be responsible for any liability voluntarily assumed by the Insured without the title company's assent.

10. Reduction of Insurance; Reduction or Termination of Liability

As payments are made under the policy for any claim (except payments for costs and attorneys' fees paid in defense of title or estate), the Amount of Insurance is reduced *pro tanto*.

11. Liability Noncumulative

Any amounts paid by the insurer under any concurrent loan policy, or on any other mortgage agreed to or assumed by the Insured that is a lien on the property, reduces coverage under this policy.

12. Payment of Loss

- a. The Insured must produce the original policy and endorsements prior to any payment being made.
- b. Once the title company's liability has been fixed, the title company must make payment to the Insured within 30 days of that determination.

13. Subrogation upon Payment or Settlement

- a. When the title company pays a loss, the title company is subrogated to the rights of the Insured (i.e., steps into the shoes of the Insured), and may try to gain reimbursement from the wrongdoer who created the loss.

If the Insured causes the loss, the company need pay only that part that exceeds the amount of the lost subrogation rights (i.e., the Insured is responsible for part of a claim for which the company is unable to seek reimbursement through subrogation).

- b. The company may also seek reimbursement under other policies (e.g., construction bonds, indemnities, etc.), under which the Insured has rights.

14. Arbitration

In order to save litigation costs and expenses, either the Insured or the title company, may seek to have the claim decided by an arbitrator. If the Amount of Insurance is \$1,000,000.00 or less, arbitration is available at the option of either the company or the Insured; if the Amount of Insurance is over \$1,000,000.00, arbitration is allowed only when both parties agree.

Some Insureds want this provision deleted or modified to allow arbitration only upon agreement by both parties, no matter what the Amount of Insurance.

15. Liability Limited to This Policy; Policy Entire Contract
 - a. Once again, the title company stresses the nature of its responsibility: this policy is a contract of indemnity, not a guarantee of title.
 - b. All losses, in tort or otherwise, are to be governed and limited by the terms and amounts stated in the policy.
 - c. Any coverage, basic or additional by endorsement, must be authorized by the title company.
16. Severability

If a provision or clause of the contract is determined to be unlawful, the policy shall be deemed to be without it, and the balance of the contract shall control.
17. Notice, Where Sent

Send all notices, including claims, to the title company at the address listed.

IV. SCHEDULE A

The Owner Form Schedule A sets forth the specific details of the transaction and of the real estate and identifies the Insured, the Amount of Insurance, and the description of the insured land that are referred to in the policy. Schedule A includes the following essential elements:

- **Policy Number**

The policy number imprinted on the cover of the policy jacket.

- **Date of Policy**

Generally, this is the date on which the insured interest was placed (recorded) in the public records, although a later date may be required for certain transactions. This date determines the extent of the insurer's liability, since, with some exceptions, only matters appearing in the public records prior to this date are insured.

- **Amount of Insurance**

Generally, this is the sales price or other consideration paid for the interest, but could be any amount. It is incumbent upon the Insured to determine the Amount of Insurance it requires, since this amount also determines the extent of the insurer's liability.

- **Name of Insured**

The name(s) of the buyer(s)/grantee(s) or other person/entity for whom the insurer has agreed may be a named insured under the policy.

- **The estate ... is at the Date of Policy ... vested in**

The name(s) of the party(ies), who, at the Date of Policy, are the owners of the insured interest as indicated in the public records.

- **The land referred to ... is described as follows**

The full legal description of the premises being insured.

- **Issued by**

The issuing agent's firm name, member number, authorized signature, and address.

V. SCHEDULE B

The Owner Form Schedule B also relates specifically to the real estate in question and sets forth matters for which no coverage is given to the Insured, and for which the title company has no duty to defend.

- **Policy Number**

The policy number imprinted on the cover of the OPA jacket.

- **Standard Exceptions**

The five Standard Exceptions from the Commitment are reprinted on Schedule B. In order to give “full ALTA” or “extended” coverage for residential property, the underwriting guidelines described in Chapter 4 must be met and the appropriate Standard Exception Waiver Endorsement (ATG Form 2038 for residential property or ATG Form 2047 for commercial property) must be attached to the Owner Policy.

- **Special Exceptions**

Specific title matters that relate to the specific real estate, the parties, and the transaction, such as the lien of taxes, mortgages, other liens or restrictions, easements, etc. that represent encumbrances on or defects in title to the property are set forth in the remainder of Schedule B.

- **Issued by**

The issuing agent’s member number and authorized signature are on the bottom of the form.

VI. CLOSE OUT FILE

You must record the release deed of any previous mortgage before closing out your file. Upon receipt of the release deed, it is necessary to have it recorded. Your search company will record the release for only the cost of the county’s recording fee.

The following is a list of documents that should be forwarded to the ATG Champaign office:

- **Chicago-Area Agency Closing**

- Copy of the Schedules A and B of the OPA, copy of any endorsements issued with the OPA.
- The completed Accounting Information Schedule.
- Copy of the signed ALTA Statement.
- Copy of the Personal Undertaking, if required.
- Copies of any other Affidavits, if required.

- **Chicago-Area Non-Agency Closing**

- All of the above and;
- Copies of the OMC, MPA, and endorsements.
- Check for the underwriting fee.
- Copy of the prior title policy, if available

- **Downstate**

- All of the above.

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ATG ATG

OPA

Serial No.

SAMPLE



ATTORNEYS' TITLE GUARANTY FUND, INC.

CHAMPAIGN, ILLINOIS

OWNER TITLE INSURANCE POLICY

American Land Title Association Owner Policy - amended October 17, 1992

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS AND STIPULATIONS, Attorneys' Title Guaranty Fund, Inc., an Illinois corporation, herein called ATG®, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the Insured by reason of:

- 1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land.

ATG will also pay the costs, attorneys' fees, and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.

This policy shall become effective and binding when Schedule A and Schedule B and any endorsements are signed by a title insurance agent or other authorized signatory of ATG.

[Signature]

Peter J. Birnbaum
President

ATG FORM 1010
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ATG ATG

SAMPLE

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and ATG will not pay loss or damage, costs, attorneys' fees, or expenses, which arise by reason of:

1. (a) Any law, ordinance, or governmental regulation (including, but not limited to, building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting, or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions, or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances, or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien, or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien, or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain, unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy, which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
 - (a) created, suffered, assumed, or agreed to by the insured claimant;
 - (b) not known to ATG, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to ATG by the insured claimant prior to the date the insured claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage, which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the Insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
 - (a) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
 - (b) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (i) to timely record the instrument of transfer; or
 - (ii) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

CONDITIONS AND STIPULATIONS

1. DEFINITION OF TERMS.

The following terms when used in this policy mean:

- (a) "Insured": the Insured named in Schedule A, and, subject to any rights or defenses ATG would have had against the named Insured, those who succeed to the interest of the named Insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.
- (b) "insured claimant": an Insured claiming loss or damage.
- (c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice, which may be imputed to an Insured by reason of the public records, as defined in this policy or any other records that impart constructive notice of matters affecting the land.
- (d) "land": the land described or referred to in Schedule A, and improvements affixed thereto, which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.
- (e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.
- (f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a)(iv) of the Exclusions from Coverage, "public records" shall also include environmental protection liens filed in the records of the clerk of the United States district court for the district in which the land is located.
- (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 to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE.

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured only so long as the Insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of covenants of warranty made by the Insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT.

The Insured shall notify ATG promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, (ii) in case knowledge shall come to an Insured hereunder of any claim of title or interest, which is adverse to the title to the estate or interest, as Insured, and which might cause loss or damage for which ATG may be liable by virtue of this policy, or (iii) if title to the estate or interest, as insured, is rejected as unmarketable. If prompt notice shall not be given to ATG, then as to the Insured all liability of ATG shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify ATG shall in no case prejudice the rights of any Insured under this policy unless ATG shall be prejudiced by the failure and then only to the extent of the prejudice.

4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE.

(a) Upon written request by the Insured and subject to the options contained in Section 6 of these Conditions and Stipulations, ATG, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien, or encumbrance or other matter insured against by this policy. ATG shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. ATG will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.

(b) ATG shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act, which in its opinion may be necessary or desirable to establish the title to the estate or interest, as insured, or to prevent or reduce loss or damage to the Insured. ATG may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If ATG shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever ATG shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, ATG may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires ATG to prosecute or provide for the defense of any action or proceeding, the Insured shall secure to

EXHIBIT 6-1: OWNER POLICY (OPA) – ATG® FORM 1010 (page 3 of 4)

ATG the right to prosecute or provide defense in the action or proceeding, and all appeals therein, and permit ATG to use, at its option, the name of the Insured for this purpose. Whenever requested by ATG, the Insured, at ATG's expense, shall give ATG all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act, which in the opinion of ATG may be necessary or desirable to establish the title to the estate or interest as insured. If ATG is prejudiced by the failure of the Insured to furnish the required cooperation, ATG's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

5. PROOF OF LOSS OR DAMAGE.

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided ATG, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to ATG within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy, which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If ATG is prejudiced by the failure of the Insured claimant to provide the required proof of loss or damage, ATG's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of ATG and shall produce for examination, inspection, and copying, at such reasonable times and places as may be designated by any authorized representative of ATG, all records, books, ledgers, checks, correspondence, and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of ATG, the insured claimant shall grant its permission, in writing, for any authorized representative of ATG to examine, inspect, and copy all records, books, ledgers, checks, correspondence, and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to ATG pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of ATG, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information, or grant permission to secure reasonably necessary information from third parties, as required in this paragraph, shall terminate any liability of ATG under this policy as to that claim.

6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY.

In case of a claim under this policy, ATG shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the Amount of Insurance under this policy, together with any costs, attorneys' fees, and expenses incurred by the insured claimant that were authorized by ATG up to the time of payment or tender of payment and that ATG is obligated to pay.

Upon the exercise by ATG of this option, all liability and obligations to the Insured under this policy, other than to make the payment required, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

(b) To Pay or Otherwise Settle with Parties Other than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant, any claim insured against under this policy, together with any costs, attorneys' fees, and expenses incurred by the insured claimant that were authorized by ATG up to the time of payment and that ATG is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the insured claimant that were authorized by ATG up to the time of payment and that ATG is obligated to pay.

Upon the exercise by ATG of either of the options provided for in paragraphs (b)(i) or (ii), ATG's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

7. DETERMINATION, EXTENT OF LIABILITY, AND COINSURANCE.

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of ATG under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A; or,

(ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the Amount of Insurance stated in Schedule A at the Date of Policy is less than 80 percent of the value of the insured estate or interest or the full consideration paid for the land, whichever is less, or if subsequent to the Date of Policy an improvement is erected on the land, which increases the value of the insured estate or interest by at least 20 percent over the Amount of Insurance stated in Schedule A, then this Policy is subject to the following:

(i) where no subsequent improvement has been made, as to any partial loss, ATG shall only pay the loss pro rata in the proportion that the Amount of Insurance at Date of Policy bears to the total value of the insured estate or interest at Date of Policy; or

(ii) where a subsequent improvement has been made, as to any partial loss, ATG shall only pay the loss pro rata in the proportion that 120 percent of the Amount of Insurance stated in Schedule A bears to the sum of the Amount of Insurance stated in Schedule A and the amount expended for the improvement.

The provisions of this paragraph shall not apply to costs, attorneys' fees, and expenses for which ATG is liable under this policy, and shall only apply to that portion of any loss that exceeds, in the aggregate, 10 percent of the Amount of Insurance stated in Schedule A.

(c) ATG will pay only those costs, attorneys' fees, and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

8. APPORTIONMENT.

If the land described in Schedule A consists of two or more parcels, which are not used as a single site, and a loss is established affecting one or more of the parcels but not all, the loss shall be computed and settled on a pro rata basis as if the Amount of Insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each parcel by ATG and the Insured at the time of the issuance of this policy and shown by an express

statement or by an endorsement attached to this policy.

9. LIMITATION OF LIABILITY.

(a) If ATG establishes the title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by ATG or with ATG's consent, ATG shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title as insured.

(c) ATG shall not be liable for loss or damage to any Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of ATG.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY.

All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of the Insurance pro tanto.

11. LIABILITY NONCUMULATIVE.

It is expressly understood that the Amount of Insurance under this policy shall be reduced by any amount ATG may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is hereafter executed by an Insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.

12. PAYMENT OF LOSS.

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of ATG.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

13. SUBROGATION UPON PAYMENT OR SETTLEMENT.

(a) ATG's Right of Subrogation.

Whenever ATG shall have settled and paid a claim under this policy, all right of subrogation shall vest in ATG unaffected by any act of the insured claimant.

ATG shall be subrogated to and be entitled to all rights and remedies that the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by ATG, the insured claimant shall transfer to ATG all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit ATG to sue, compromise, or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, ATG shall be subrogated to these rights and remedies in the proportion that ATG's payment bears to the whole amount of the loss.

If loss should result from any act of the insured claimant, as stated above, that act shall not void this

EXHIBIT 6-1: OWNER POLICY (OPA) – ATG® FORM 1010 (page 4 of 4)

policy, but ATG, in that event, shall be required to pay only that part of any losses insured against by this policy that shall exceed the amount, if any, lost to ATG by reason of the impairment by the insured claimant of ATG's right of subrogation.

(b) ATG's Rights against Non-Insured Obligors.

ATG's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that provide for subrogation rights by reason of this policy.

14. ARBITRATION

Unless prohibited by applicable law, either ATG or the Insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between ATG and the Insured arising out of or relating to this policy, any service of ATG in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is \$1,000,000 or less shall be arbitrated at the option of either ATG or the Insured. All arbitrable matters when the Amount of Insurance is

in excess of \$1,000,000 shall be arbitrated only when agreed to by both ATG and the Insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the Insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from ATG upon request.

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT.

(a) This policy, together with all endorsements, if any, attached hereto by ATG, is the entire policy and contract between the Insured and ATG. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of ATG.

16. SEVERABILITY.

In the event any provision of the policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

17. NOTICES, WHERE SENT.

All notices required to be given ATG and any statement in writing required to be furnished ATG shall include the number of this policy and shall be addressed to ATG at 2408 Windsor Place, P.O. Box 9136, Champaign, Illinois 61826-9136.


**ATTORNEYS'
 TITLE
 GUARANTY
 FUND,
 INC.**
 CHAMPAIGN, ILLINOIS
**OWNER TITLE
 INSURANCE POLICY**

ATG FORM 1010
 © ATG (REV. 9/05)

EXHIBIT 6-2: OWNER FORM SCHEDULE A – ATG® FORM 1011

SAMPLE

ATTORNEYS' TITLE GUARANTY FUND, INC.

ATG® OWNER FORM - SCHEDULE A

Policy No.:

Date of Policy:

State Issued:

File Name:

Amount of Insurance: \$

1. Name of Insured:

2. The estate or interest in the land described herein and which is covered by this policy is, at the effective date hereof, vested in the named insured and is fee simple (if other specify same):

3. The land referred to in this policy is described as follows:

ISSUED BY

ATG FORM 1011
© ATG (REV. 12/98)

Member No.

Signature of Member or Authorized Signatory

FOR USE IN: ALL STATES

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EXHIBIT 6-3: OWNER POLICY SCHEDULE B – ATG® FORM 1012

SAMPLE

ATTORNEYS' TITLE GUARANTY FUND, INC.

ATG® OWNER FORM - SCHEDULE B

Policy No.:

Date of Policy:

State Issued:

File Name:

This policy does not insure against loss or damage (and ATG will not pay costs, attorneys' fees, or expenses) that arise by reason of the following exceptions:

Standard Exceptions

1. Rights or claims of parties in possession not shown by the public records.
2. Encroachments, overlaps, boundary line disputes, and any matters that would be disclosed by an accurate survey and inspection of the premises.
3. Easements, or claims of easements, not shown by the public records.
4. Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law, and not shown by the public record.
5. Taxes or special assessments that are not shown as existing liens by the public records.

Special Exceptions

1. The lien of taxes for the year _____ and thereafter.

ISSUED BY

Member No.

Signature of Member or Authorized Signatory

ATG FORM 1012
© ATG (REV. 9/05)

FOR USE IN: IL, IN

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SAMPLE

ATTORNEYS' TITLE GUARANTY FUND, INC.

ACCOUNTING INFORMATION SCHEDULE

Illinois Indiana Wisconsin

General Information

Member No.: _____ County: _____ File Name: _____
(County Name or Code) (Optional)

OPA No.: _____ OPA Amount: _____ OPA Eff. Date: _____
 MPA No.: _____ MPA Amount: _____ MPA Eff. Date: _____
 OMC No.: _____ OMC Eff. Date: _____

Premium Information

\$ _____ Owner	\$ _____ Check attached; ck # _____
\$ _____ Mortgagee (see list below)	\$ _____ Premium withheld by ATG
\$ _____ Endorsement fees	\$ _____ Premium sent with OMC
\$ _____ Agent registration fee (Illinois)	# _____ Special rate confirmation
\$ _____ Total	# _____ Closing confirmation

If confirmation no. is not referenced, policies will be billed at the basic rate.
 (Chicago area agency closings only)

When attaching one check for several policies, be sure that the total of the individual transactions agrees with the amount of the check.

Policy Information

MPA Insured's Name(s): _____
 OPA Insured's Name(s): _____
 Buyer's Name(s) (if different): _____
 Seller's Name(s) (or Owner's Name(s) if refinance): _____
 PIN: _____ Property County: _____
(County Name or Code)

Prior Title Policy Reference

Please attach if non-ATG. Mid America Title Insurance Company's policies and commitments will not be accepted as prior title evidence.

Company: _____
 Date: _____ Policy No.: _____ Amount: \$ _____

Endorsement Information

Listed below are endorsements for which a fee is due. Please check the items that apply to the subject policies. If a fee is due for the endorsement, transfer the total amount to the "Endorsement fees" line of the "Premium Information" section above. **Remit the endorsement premium to ATG.**

- | | |
|--|---|
| <input type="checkbox"/> Not applicable | <input type="checkbox"/> Special Risk Endorsements: |
| <input type="checkbox"/> ABI (call ATG for rate on any ABI) | _____ |
| <input type="checkbox"/> Assumption Certificate No.: _____ | _____ |
| <input type="checkbox"/> Environmental Protection Lien (residential) | _____ |
| <input type="checkbox"/> Other: _____ | _____ |

Please complete and attach to front of each OPA and each MPA. Thank you.