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To: All Clients and Friends

From: Cliff Bernstein

Re: 2006 ALTA Policies Approved for New York

**TITLE INSURANCE BULLETIN – NEW YORK
CURRENT DEVELOPMENTS**

On June 17, 2006 the American Land Title Association (“ALTA”) approved a 2006 ALTA Owner’s Policy, a 2006 ALTA Loan Policy, and a 2006 ALTA Short Form Residential Loan Policy (One-to-Four Family). As of February 1, 2007 the new ALTA Policies were being issued by First American in approximately twenty-five states.

Title insurers in New York currently issue the 1992 ALTA forms of Owner’s and Loan Policies, as modified by the New York Standard Endorsements, and the 1992 ALTA Short Form Residential Loan Policy with Title Insurance Rate Service Association, Inc. (“TIRSA”) amendments. As of May 1, 2007 these forms will no longer be issued in New York. The 2006 ALTA Owner’s Policy and 2006 ALTA Loan Policy, as amended by revised forms of Standard Endorsements, and the ALTA’s 2006 Short Form Residential Loan Policy with TIRSA Amendments, have been approved by the State Insurance Department and will be the default policies in New York on May 1. Other TIRSA Policy Endorsements have been revised, effective May 1, to correspond their text to the new Policies.

Some of the changes in the 2006 ALTA Owner’s and Loan Policies are the following:

The 2006 ALTA Owner’s Policy, as amended by a revised form of New York Standard Endorsement, has eleven Covered Risks; the 1992 ALTA Owner’s Policy in New York has five Insuring Clauses. The 2006 ALTA Loan Policy has fourteen Covered Risks; the 1992 ALTA Loan Policy in New York has eight Insuring Clauses. One of the Covered Risks in each Policy is the addition of Gap Coverage, as limited in an Exclusion From Coverage set forth in the Standard New York Endorsements. Another Covered Risk in each Policy is coverage against loss resulting from a claim that a transfer of all or any part of the title to or any interest in the Land

occurring *prior to* the transaction vesting Title, in the case of an Owner's Policy, or prior to the transaction creating the lien of the Insured Mortgage, in the case of a Loan Policy, was a fraudulent or preferential transfer.

In the 2006 ALTA Owner's and Loan Policies the Amount of Insurance will increase by 10% if the Insurer pursues its rights under Policy Condition 5 ["Defense and Prosecution of Actions"] and is unsuccessful in establishing the Title or the lien of the Insured Mortgage, as insured. In addition, in such an event, the Insured will have the right to have the loss determined either as of the date the claim was made or as of the date the claim is settled and paid.

In the 2006 ALTA Owner's and Loan Policies the threshold up to and including which either the insured or the Company can require arbitration has been increased to \$2,000,000, from \$1,000,000 in the 1992 ALTA Policies. In addition, the ALTA's Title Insurance Arbitration Rules, instead of the Title Insurance Arbitration Rules of the American Arbitration Association, as in the 1992 ALTA Policies, will apply to a matter in arbitration.

In the 2006 ALTA Owner's and Loan Policies the definition of the Insured has been expanded. In the Owner's Policy the expanded definition enables the continuation of coverage as of the original Date of Policy in the circumstances set forth. The TIRSA Limited Liability Company and Limited Liability Partnership Endorsement is not necessary and that Endorsement will not be issued with a 2006 ALTA Owner's Policy.

The 2006 ALTA Loan Policy includes a Coverage Risk affording survey coverage as limited by a New York Standard Endorsement to vacant Land and Land improved by a one-to-four family dwelling. When there is no survey reading or survey exception raised in the Policy, this Covered Risk eliminates the need to purchase a TIRSA Survey Endorsement (Loan Policy) (1-4 Family), and that Endorsement will therefore not be issued with a 2006 ALTA Loan Policy. An appropriate affidavit and underwriting review may be required for this Policy coverage. The Covered Risk affording survey coverage in the 2006 ALTA Owner's Policy has been deleted by a New York Standard Endorsement.

The Coinsurance and the Apportionment provisions of the 1992 ALTA Owner's Policy are not included in the 2006 ALTA Owner's Policy. The "last dollar" provision ("payment in part by any person of the principal of the indebtedness, or any other obligation secured by the insured mortgage...shall reduce the amount of insurance pro tanto") and the Liability Non-Cumulative provision in the Conditions and Stipulations of the 1992 ALTA Loan Policy are not included in the Conditions of the 2006 ALTA Loan Policy. "Last dollar" text may, however, be required for a mortgage to comply with the requirements of New York State's mortgage recording tax.

Lastly, for this Bulletin, the 2006 ALTA Loan Policy includes a new definition of "Indebtedness". Under Section 8(a) of the Conditions of the 2006 ALTA Loan Policy, Policy liability shall not exceed the least of (i) the Amount of Insurance, (ii) the Indebtedness, (iii) the difference between the value of the Title as insured and as subject to the risk insured against, or (iv) if a governmental agency or instrumentality is the Insured the amount it paid to acquire the Title or the Insured Mortgage in satisfaction of its insurance contract or guaranty.

A detailed comparison of the 1992 and 2006 ALTA Owner's Policies and of the 1992 and 2006 ALTA Owner's Policies, noting the changes made to the 2006 Policies for New York by the revised forms of New York Standard Endorsements, a copy of the 2006 ALTA Owner's and Loan Policies, and a copy of the revised forms of New York Standard Endorsements can be found at:

https://www.cbtitlegroup.com/documents/ALTA_Comparison.pdf

<https://www.cbtitlegroup.com/documents/2006OwnersPolicy.pdf>

<https://www.cbtitlegroup.com/documents/2006LoanPolicy.pdf>

<https://www.cbtitlegroup.com/documents/2006StandardOwners.pdf>

<https://www.cbtitlegroup.com/documents/2006StandardLoan.pdf>

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