



A Primer

Do I still have Coverage if I transfer my property to . . .

Who is an “Insured” under a standard Owner’s Title Insurance Policy?

Put another way, what if I decide to transfer the ownership of my real estate to my LLC, my Trust, my Partnership and so on? Will that original policy continue to cover that affiliated but new ownership of my real estate? Or, do I need a new policy to make sure I continue to have title insurance coverage? The answer to those questions will depend on when you purchased the real estate and what form of the Owner’s Title Policy was used (often dependent on date of the purchase).

Background:

Prior to 2006, the question of coverage with an affiliated ownership change was sometimes murky. Besides the original Insured, the definition cited included any subsequent owners of the property who took the title by “operation of law.” So, that clearly excluded any new purchaser of the property. But when transfers referenced above took place, did coverage continue or not? For brevity sake, many could argue that an affiliated transfer to an entity such as a Limited Liability Company, Trust, Partnership, Corporation, and so on did in fact terminate most coverages under the Owner’s Policy. Therefore, if you have an ALTA 1992 policy form or a 1987 form (as examples), you should contact us to discuss the need to secure an “additional Insured” endorsement to that original policy to be certain all coverages continues with that transfer of ownership. That (or a similar endorsement) is inexpensive and you can then be certain your coverage under the original policy will continue as-is.

With the introduction of the 2006 form, the definition itself was changed with greater specificity on continued coverage for an “Insured.” The following is an excerpt of the ALTA specimen Owner’s Policy highlighting that revised definition in that “Insured” also includes*:

- “(A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;
- (B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
- (C) successors to an Insured by its conversion to another kind of Entity;
- (D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
 - (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,
 - (2) if the grantee wholly owns the named Insured,
 - (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or
 - (4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.
- (ii) with regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.”

To break it down, the term “Insured” is clarified as:

- If the original owner(s) die, the coverages will continue to pass on through probate (or otherwise) to the heirs, devisees, survivors, personal representatives, or next of kin, if the property is in fact transferred through that operation of law.



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- Shareholder(s) of a corporation would be provided that coverage if the corporation itself was dissolved as an example. A corporate merger or reorganization would provide that coverage to the successor. Of course, that is not the same as the title to the property being conveyed to another person or entity via a purchase-sale transaction.
- Where allowed, it is now common that certain partnerships can be converted to limited liability companies through a conversion process supported by operation of law and the successor entity remains as the Insured.
- When looking at parent-subsidary corporate transfers, inter-subsidary transfers, and similar situations with a common parent entity, the transfer of ownership is again being done by operation of law and the successor owner remains the Insured. The same theory can apply to certain partnerships and limited liability companies.
- Estate planning accommodation is also contemplated in the new definition in that if the original Insured conveys the property to a trust and that original owner remains as a trustee or beneficiary to the trust, then the trust remains as the Insured.
- Caution: The effective date of the policy will not change by the above. Therefore, any subsequent matters adverse to title could be outside the coverage of the original policy.

The personal ownership transfer to my LLC scenario (It's not the same!):

That transfer of ownership, John and Sally Smith conveys (oftentimes through a Quit Claim deed) to a LLC they also own, is not a transfer done through operation at law. To ensure that title insurance coverage continues on the property, John and Sally should contact us to discuss obtaining an additional insured endorsement to the current policy and/or discuss obtaining a new policy depending on the facts and circumstances supporting the transfer. Without doing that, they risk terminating title insurance coverage on the property. Transfers to partnerships, corporations, and the like should also be treated in the same fashion as this LLC example. Prevent losing coverage by contacting us before the transfer.

Be careful out there:

Issues such as this, especially in the context of real estate, can be complicated. Regardless of the above, a best practice would always be contact us to discuss any contemplated transfers of ownership for your property that involves an "affiliate" transfer versus arm's length sale to a new purchaser. Taking that extra step will serve you well so you can affirmatively know you continue to have title insurance coverage on your property and that peace of mind.

Also, in the Colorado Mountain region, we have many requirements that conveyance of title may "trigger" a transfer tax, transfer fee, deed tax, or similar exposures unless the transfer qualifies for an exemption from such obligations. You should inquire (or call us) as to the exemption application and the process for obtaining the exemption before consummating the transfer of ownership. Also, if the property is pledged as collateral to a loan (Deed of Trust or Mortgage), you should consider if the transfer violates a "due on sale" clause associated with those instruments. Many lenders will grant a waiver of that clause in many of the scenarios described above.



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American Land Title Association

Owner's Policy
Adopted 6-17-06

OWNER'S POLICY OF TITLE INSURANCE

Issued by

***** TITLE INSURANCE COMPANY

Any notice of claim and any other notice or statement in writing required to be given to the Company under this Policy must be given to the Company at the address shown in Section 18 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, BLANK TITLE INSURANCE COMPANY, a Blank corporation (the "Company") insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

- 1. Title being vested other than as stated in **Schedule A**.

SCHEDULE A

- 1. Name of **Insured**:

CONDITIONS

1. DEFINITION OF TERMS

- (d) **"Insured"**: The Insured named in Schedule A.

- (i) **the term "Insured" also includes**

- (A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;
- (B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
- (C) successors to an Insured by its conversion to another kind of Entity;
- (D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
 - (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,
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 - (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or
 - (4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.

- (ii) with regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation 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 warranties in any transfer or conveyance of the Title. 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 obligation secured by a purchase money Mortgage given to the Insured.

Other definitions:

- (c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.
- (e) "Insured Claimant": An Insured claiming loss or damage.