

ALTA FORMS COMMITTEE

ALTA Leasehold Policy Changes

Background

NB The following appeared in the in the Fall 2000 issue of *the TLA Newsletter*.

The ALTA previously published an article by Matthew J. Cholewa in its March/April 1999 issue of the ALTA Title News entitled: *Leasehold Policies: Title Insurance's Neglected Child*. ALTA Adopted its leasehold and leasehold loan policy forms in 1975 to insure lessees and their lenders in conventional operating lease transactions where the lessee's investment in the leased space was minimal. If the lessee were dispossessed by a title defect, compensable loss payable under the policy was for the differential between the rent it would have paid for the old space, and the rent it must pay for replacement space, including some specified 'miscellaneous items of loss'. The leasehold policy did not compensate the insured for its investment in building improvements it made to the leased property.

Leasing has become more sophisticated since 1975 and title insurance consumers have come to expect more from their title insurance coverage. Shortly after Mr. Cholewa's article appeared in title news the ALTA Forms Committee began work on providing new leasehold coverage. In the spring of 2000 Joe Bonita, Chief Underwriting Counsel of Chicago Title, led a discussion on the subject at the April ACREL Workshop. That May Bob Bozarth, Major Transactions Counsel of LTIC/Landamerica, posted a notice on DIRT asking assistance from those members of the Real Estate Bar whose practice includes a substantial amount of leasing transactions. The post was one of many solicitations made by members of the ALTA Forms Committee for ideas to improve the leasehold policy coverage. The issue was also discussed at the July 2000 meeting of The Title Insurance and Surveys Committee of the ABA RPPT Law Section held at the Waldorf Astoria.

The project had not developed as much interest as was expected until Harris Ominsky of Blank Rome Comisky and McCauley, Philadelphia, wrote an article on the subject that appeared in the Summer 2000 ACREL Newsletter. Initial changes were

presented at the October 2000 ACREL meeting in Boston.

Result

Over the past year and a half the ALTA Forms Committee has met to discuss both the creation of leasehold endorsements for use with the standard owner's and loan policies to cover leasehold issues and to recommend that the ALTA decertify the leasehold policies when and if the new endorsements are accepted by the ALTA as a body.

On October 13 the ALTA adopted the following leasehold endorsements at the 2001 ALTA Annual Convention in Palm Desert, CA.

- **Endorsement 13.1 (Leasehold-Loan)**
Adopted 10/13/01
- **Endorsement 13 (Leasehold-Owners)**
Adopted 10/13/01

These endorsements may be found on the ALTA website located at www.alta.org.

NB The ALTA Leasehold Loan and Leasehold Owner's Policies were withdrawn, effective October 13, 2001 as approved forms.
