



PART II

THE TITLE INSURANCE RATE MANUAL (TIRSA) REVISED EFFECTIVE OCTOBER 1, 2024: A CONTINUING OVERVIEW OF MAJOR CHANGES IN POLICIES, ENDORSEMENTS AND COVERAGES

Hosted by All New York Title Agency, Inc.

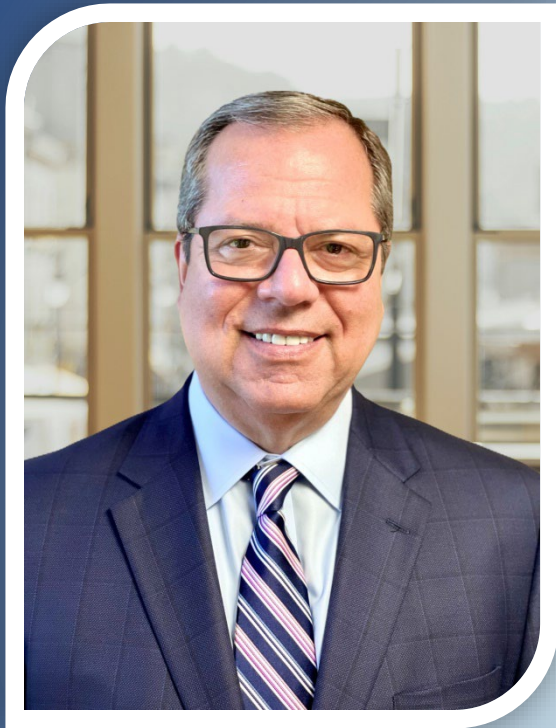
Presenters:

Joseph S. Petrillo, Esq.

John M. Martin, Esq.

Tyler H. Gablenz, Esq.





JOSEPH S. PETRILLO, ESQ.

**President
All New York Title Agency**

With over 40 years of legal experience in title insurance and real property law, Joe has coordinated, cleared, and closed many complex, sophisticated transactions.

In addition to being a principal of All New York Title, Joe has held positions in the title industry as VP Regional Counsel, as Claims Counsel and Vice President/New York area manager for a major title insurance underwriter. Joe was active in the formation of the Title Insurance Rate Service Association (TIRSA) of NY State serving as its first President and contributed to developing the policies and procedures in the current TIRSA rate manual.

Prior to his involvement with the title industry, Joe was involved in preparing and submitting condominium and cooperative offering plans, bank closings, real estate acquisitions, construction financing and many other real property matters including multi-state and shopping center transactions.

He is a member of the Bar Associations of New York and Virginia, is a former Vice President and Executive Committee member of the New York State Land Title Association (NYSLTA) and currently sits on the Board of Directors of the New York State Association For Affordable Housing (NYSFAFH)



JOHN M. MARTIN, ESQ.

**VP & General Counsel
All New York Title Agency**

John M. Martin, Esq. is vice president and general counsel at All New York Title Agency, Inc. He has over 38 years legal experience in title insurance and real property matters. His responsibilities involve the legal operation of the company from review of routine title issues to closing the most complex commercial transactions.

Mr. Martin has handled the title insurance for numerous affordable housing matters involving the City of New York, including HPD, HDC, and NYCHA, the State of New York, including HFA, HCR and SONYMA, as well as many local and county housing agencies throughout New York. These affordable housing transactions involved non-profits, faith-based organizations as well as for-profit developers totaling hundreds of millions of dollars resulting in many thousands of new or rehabilitated housing units across the City and State of New York. Most of these matters involved complex financing including tax credits and state or city agency bonds and regulatory agreements.

John has chaired the Law Committee of New York State Land Title Association and served for 10 years as Chair of the Westchester County Bar Association's Real Property Section. Prior to All New York Title, Mr. Martin held positions in the title industry as claims counsel, New York and New Jersey state counsel and vice president of operations for a major title insurance underwriter.



TYLER GABLENZ, ESQ.

Vice President

**Senior Underwriting Counsel
All New York Title Agency**

Since joining All New York Title in 2015, Tyler has focused his work on identifying and resolving title issues for both the residential and commercial branches of the business. His responsibilities include preparing and reviewing title reports, assisting clients and attorneys with clearing title issues and serving as escrow agent for complex commercial closings.

Prior to joining All New York, Tyler gained experience in real estate transactions working for a top real estate law firm in Connecticut, while attending Quinnipiac University School of Law.

Tyler earned a law degree from Quinnipiac University School of Law in 2015 and was admitted to the New York State Bar in 2016.

INTRODUCTION

- If you did not attend our first program in September please register under the *Member* section of our website (www.allnyt.com) to access a video replay.
- Reminder on the notable changes:
 - Section 2 of the Rate Manual, specifically Section (C) (2) prohibiting freeform affirmative coverage.
 - New voluminous list of endorsements available.
- Re-visit the ALTA 28 and ALTA 9 Series
- Further discussion on other notable and new endorsements

Section 2 of the TIRSA Rate Manual

SECTION 2: RULES

- (A) All charges, fees and premiums set forth in this manual, pursuant to Section 2314 of the Insurance Law, are mandatory upon each Company upon approval by the Superintendent of the Department of Financial Services, and cannot be waived, reduced or increased, except as provided in Section 2339 of the Insurance Law.
- (B) Any rate, premium, fee or other charge set forth in this manual shall apply to any transaction closed on or after the effective date of any change in such rate, premium, fee or other charge, even though application may have been made prior to the effective date of this manual.
- (C)
 - (1) No form of Policy, Endorsement, or other coverage may be issued which varies the covered risks, conditions, or exclusions of a Policy unless first approved by the Superintendent of the Department of Financial Services. Approved Policies and Endorsements are set forth in [Part IV](#) below. No form of Policy not approved by the Department of Financial Services may be issued or updated by Endorsement or otherwise. Notwithstanding the above, nothing herein shall limit a Company from deleting or limiting a covered risk.
 - (2) Except by Endorsement set forth in Part IV of this Rate Manual and as expressly authorized in this Rate Manual, no affirmative coverage, no additional insurance or no express insurance may be added to or provided in the Policy, whether on Schedule B, by Endorsement or otherwise.

List of Endorsements Available

SECTION 2: CURRENT APPROVED TITLE INSURANCE ENDORSEMENTS

For use with policy forms set forth in Section 1 above.

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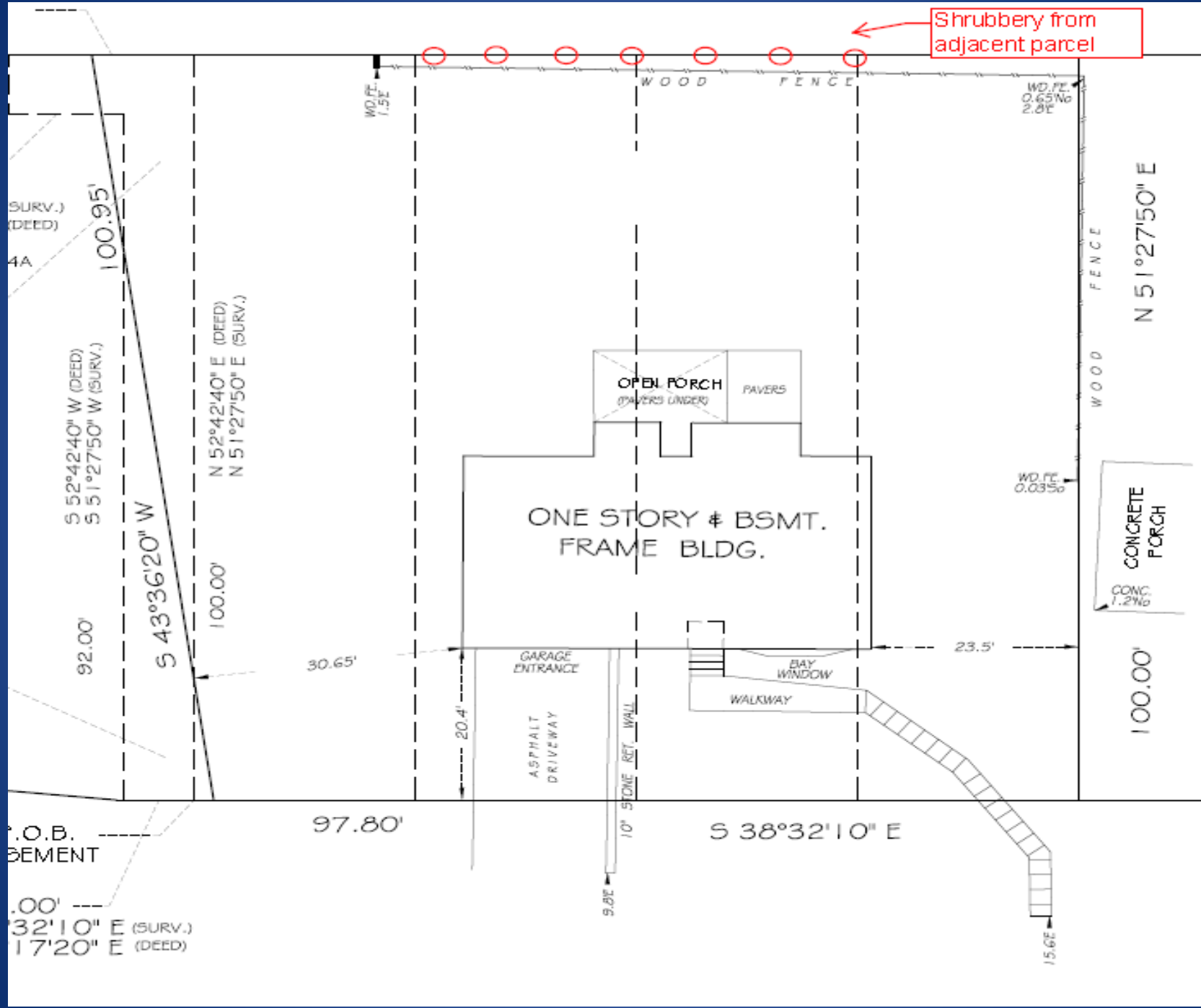
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ALTA 28 SERIES ENDORSEMENTS RE-VISITED

- ALTA 28 SERIES ENDORSEMENTS
 - ALTA 28.1-06 Endorsement – Boundaries and Easements Encroachment
 - ALTA 28.2-06 Endorsement – Boundaries and Easements – Described Improvements
 - ALTA 28.3-06 Endorsement – Boundaries and Easements – Land Under Improvement
 - ALTA 28-06 Endorsement – Easement – Damage or Enforced Removal Endorsement
- What have we learned since the endorsements went into effect on October 1, 2024?

ALTA 28 SERIES ENDORSEMENTS RE-VISITED

- Recommended handling of fence/wall misplacements shown on a survey – *See sample survey enclosed.*
- Discussion of the Gugliotta v. First American case.
- ALTA 28.3-06 Endorsement for Land Under Development – handling of easements with broad definition of “Improvements” and “Future Improvements” in the Endorsement.



ALTA 28 SERIES ENDORSEMENTS RE-VISITED

2. For purposes of this endorsement only:
 - a. “Improvement” means a building, structure, or paved area, including any road, walkway, parking area, driveway, or curb located on the surface of the Land or the surface of adjoining land at Date of Policy that by law constitutes real property.
 - b. “Future Improvement” means any of the following to be constructed on the Land after Date of Policy in the locations according to the Plans and that by law constitutes real property:
 - i. a building;
 - ii. a structure; or
 - iii. a paved area, including any road, walkway, parking area, driveway, or curb.
 - c. “Plans” mean the survey, site and elevation plans, or other depictions or drawings prepared by (insert name of architect or engineer) dated (insert date prepared), last revised (insert date last revised), designated as (insert name of project or project number) consisting of (insert number of sheets) sheets.
3. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. An encroachment of any Improvement or Future Improvement located on the Land onto adjoining land or onto that portion of the Land subject to an easement, unless an Exception in Schedule B of the policy identifies the encroachment;
 - b. An encroachment of any Improvement located on adjoining land onto the Land at Date of Policy, unless an Exception in Schedule B of the policy identifies the encroachment;
 - c. Enforced removal of any Improvement or Future Improvement located on the Land as a result of an encroachment by the Improvement or Future Improvement onto any portion of the Land subject to any easement, in the event that the owners of the easement shall, for the purpose of exercising the right of use or maintenance of the easement, compel removal or relocation of the encroaching Improvement or Future Improvement; or
 - d. Enforced removal of any Improvement or Future Improvement located on the Land that encroaches onto adjoining land.
4. Sections 3(c) and 3(d) of this endorsement do not insure against loss or damage (and the Company will not pay costs, attorneys’ fees, or expenses) resulting from the following Exceptions, if any, listed in Schedule B:

ALTA 9 SERIES ENDORSEMENTS RE-VISITED

- ALTA 9 SERIES ENDORSEMENTS
 - ALTA 9.7 – Restrictions, Encroachments, Minerals – Land Under Development – Loan Policy
 - ALTA 9.8-06 – Covenants, Conditions and Restrictions – Land Under Development – Owner’s Policy
 - ALTA 9.1-06 – Covenants, Conditions and Restrictions – Unimproved Land – Owner’s Policy
 - ALTA 9.2-06 – Covenants, Conditions and Restrictions – Improved Land – Owner’s Policy
 - ALTA 9.3-06 – Covenants, Conditions and Restrictions - Loan Policy
- What have we learned since the endorsements went into effect on October 1, 2024?

TIRSA 3 ZONING ENDORSEMENT

- Available for Owner's and Loan Policies (including construction loan), but only on commercial property.
- Cost:
 - Owner's Policy – the greater of \$500 or 5% of the owner's policy premium.
 - Loan Policy (issued simultaneous with Owner's Policy) – the greater of \$250 or 5% of the applicable loan policy premium.
 - Loan Policy (no simultaneously issued Owner's Policy) – the greater of \$500 or 5% of the applicable loan policy premium.
- *See form endorsement and sample zoning search enclosed.*
- What does the third-party zoning search provide and what coverage is included in the endorsement?

TIRSA 3 ZONING ENDORSEMENT

Attached to and made a part of policy number: _____

1. 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 _____;
 - b. The following use or uses are not allowed under that classification:
2. There shall be no liability under this endorsement based on
 - a. Lack of compliance with any conditions, restrictions, or requirements contained in the zoning ordinances and amendments, including but not limited to the failure to secure necessary consents or authorizations as a prerequisite to the use or uses. This paragraph 2.a. does not modify or limit the coverage provided in Covered Risk 5.
 - b. The invalidity of the zoning ordinances and amendments until after a final decree of a court of competent jurisdiction adjudicating the invalidity, the effect of which is to prohibit the use or uses.
 - c. The refusal of any person to purchase, lease or lend money on the Title covered by this policy.

ALTA 27-06 USURY ENDORSEMENT

- Applicable to loan policies (including construction loans) and only commercial property.
- Cost - \$250
- NY General Obligations Law 5-501(6)(b)

“No law regulating the maximum rate of interest which may be charged, taken or received, including [section 190.40](#) and [section 190.42 of the penal law](#), shall apply to any loan or forbearance in the amount of two million five hundred thousand dollars or more. Loans or forbearances aggregating two million five hundred thousand dollars or more which are to be made or advanced to any one borrower in one or more installments pursuant to a written agreement by one or more lenders shall be deemed to be a single loan or forbearance for the total amount which the lender or lenders have agreed to advance or make pursuant to such agreement on the terms and conditions provided therein.”

ALTA 27-06 USURY ENDORSEMENT

Attached to and made a part of policy number: _____

The Company insures against loss or damage sustained by the Insured by reason of the invalidity or unenforceability of the lien of the Insured Mortgage as security for the Indebtedness because the loan secured by the Insured Mortgage violates the usury law of the State where the Land is located.

The Land covered by the loan policy to which the endorsement is affixed is not Residential Real Property.

The Insured Mortgage secures a loan in the principal amount of \$2.5 million or more (NY GOL Section 5-501(6)(b)).

ALTA 35 SERIES – MINERAL RIGHTS ENDORSEMENTS

- Available for Owner's and Loan Policies (including construction loan) and either residential or commercial property.
- Series of Endorsements structured similarly to the ALTA 28 and ALTA 9 Series
 - ALTA 35-06 – Minerals and Other Subsurface Substances – Buildings Endorsement - \$50 (Residential) / \$250 (Commercial)
 - ALTA 35.1-06 – Minerals and Other Subsurface Substances – Improvements Endorsement - \$50 (Residential) / \$250 (Commercial)
 - ALTA 35.2-06 – Minerals and Other Subsurface Substances – Described Improvements Endorsement - \$50 (Residential) / \$250 (Commercial)
 - ALTA 35.3-06 – Minerals and Other Subsurface Substances – Land Under Development Endorsement
 - Owner's Policy – the greater of \$500 or 5% of the owner's policy premium.
 - Loan Policy (issued simultaneous with Owner's Policy) – the greater of \$250 or 5% of the applicable loan policy premium.
 - Loan Policy (no simultaneously issued Owner's Policy) – the greater of \$500 or 5% of the applicable loan policy premium.

GENERAL ENDORSEMENT, PARTY WALL COVERAGE AND ROFR/OPTION COVERAGE

- No cost and available on all types of policies
- General Endorsement can be used for the following purposes:
 - To amend or correct a previously issued policy.
 - Affirmative Coverage for a Party Wall:

The Company insures against loss or damage sustained by the Insured by reason of the enforced removal of the party wall shown on the survey made by _____ dated ___/___/___ and identified as Exception _____. [identify the exception number taken for the party wall on Schedule B or the survey reading]

GENERAL ENDORSEMENT, PARTY WALL COVERAGE AND ROFR/OPTION COVERAGE CONTINUED

- Affirmative Coverage for Right of First Refusal/Option:

(1) For Loan Policies:

The Company insures against loss or damage sustained by the Insured in the event the exercise or the right to exercise the [INSERT THE SPECIFIC OPTION OR RIGHT OF FIRST REFUSAL BEING COVERED] in Exception _____ of Schedule B at or before the Date of Policy

(a) results in the invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage, or

(b) results in a loss of the Insured's Title acquired in satisfaction or partial satisfaction of the Indebtedness.

(3) For Owner's Policies

The Company insures against loss or damage sustained by the Insured in the event the exercise or the right to exercise the [INSERT THE SPECIFIC OPTION OR RIGHT OF FIRST REFUSAL BEING COVERED] in Exception _____ of Schedule B at date or before the Date of Policy results in a loss of the Insured's Title.

CONSTRUCTION LOAN ADVANCE ENDORSEMENT

- Construction Loan Endorsement
 - First 5 endorsements included in the cost of the policy premium.
 - After the first 5 endorsements, cost is \$200 per endorsement, unless there are multiple parcels requiring additional search costs.
 - General structure of the endorsement form is not changed, but notable change is the handling of liens returned on title, tax or water search continuations.
 - Handling of taxes accruing during construction that will be retroactively exempt.
 - Mechanic's Liens

IDENTIFIED RISK ENDORSEMENT

- Cost:
 - Residential - \$150
 - Commercial - \$250
- Endorsement to insure against the successful outcome of a specific identified risk – *See coverage provisions.*
- Can be issued in connection with Construction Loan Endorsements, but also in connection with Owner's or Loan Policies.

IDENTIFIED RISK ENDORSEMENT CONTINUED

1. As used in this endorsement “Identified Risk” means: [insert description of the title defect, restriction encumbrance or other matter] described in Exception _____ of Schedule B.
2. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. A final order or decree enforcing the Identified Risk in favor of an adverse party;
or
 - b. The release of a prospective purchaser or lessee of the Title or a lender on the Title from the obligation to purchase, lease, or lend, as a result of the Identified Risk, but only if
 - i. there is a contractual condition requiring the delivery of marketable title;
and
 - ii. neither the Company nor any other title insurance company is willing to insure over the Identified Risk with the same conditions as in this endorsement.
3. This endorsement does not obligate the Company to establish the Title free of the Identified Risk or to remove the Identified Risk, but if the Company does establish the Title free of the Identified Risk or remove it, Section 9(a) of the Conditions applies.

Q & A