

## ISSUING GUIDELINES

### ALTA Endorsement: 32.1-06 (Construction Loan – Loss of Priority Direct Payment)

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#### **Explanation:**

The ALTA 32-06, 32.1-06 and 32.2-06 are designed for loan policies issued during construction of improvements on the insured land where the insured mortgage has lost priority to mechanic's liens (e.g., due to "early start" - commencement of work prior to the recording of the mortgage). However, these endorsements may also be used when the mortgage has priority over mechanic's liens.

The ALTA 32-06, 32.1-06 and 32.2-06 insure against loss or damage by reason of:

- (a) the invalidity or unenforceability of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage;
- (b) the lack of priority of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage, over any lien or encumbrance on the Title recorded in the Public Records and not shown in Schedule B; and
- (c) the lack of priority of the lien of the Insured Mortgage, as security for each Construction Loan Advance made on or before the Date of Coverage over certain Mechanic's Liens, if notice of the Mechanic's Lien is not filed or recorded in the Public Records.

The ALTA 32-06, 32.1-06 and 32.2-06 are subject to the Exclusions from Coverage in the Policy, the provisions of the Conditions, and the exceptions contained in Schedule B of the policy, including such matters as failure to withhold funds as required by law, any other failure to comply with applicable law, failure to pay retainage, approval of extras resulting in additional costs, disputes over services, failure to provide adequate funds, failure to fully disburse or to disburse to lien claimants, and failure to require lien waivers from lien claimants.

The ALTA 32-06, 32.1-06 and 32.2-06, however, differ as follows:

#### **ALTA Endorsement 32-06 (Construction Loan - Loss of Priority):**

ALTA 32-06 insures only to the extent that the charges for the services, labor, materials or equipment for which the Mechanic's Lien is claimed were designated for payment in the documents supporting a Construction Loan Advance disbursed by or on behalf of the Insured on or before Date of Coverage.

ALTA 32-06 does not insure against loss or damage by reason of any mechanic's lien arising from services, labor, material or equipment:

- A. furnished after Date of Coverage; or
- B. not designated for payment in the documents supporting a Construction Loan Advance disbursed by or on behalf of the Insured on or before Date of Coverage

***ALTA 32-06 does not require that the Company or its agent will be involved in disbursement of funds.***

ALTA 32-06 is the form of construction loan endorsement required by Section 3.2.C (page 53) of the Department of Housing and Urban Development Federal Housing Administration Multifamily Program Closing Guide dated September 1, 2011.

**ALTA Endorsement 32.1-06 (Construction Loan - Loss of Priority - Direct Payment):**

ALTA 32.1-06 insures only to the extent that direct payment to the Mechanic's Lien claimant for the charges for the services, labor, materials or equipment for which the Mechanic's Lien is claimed has been made by the Company or by the Insured with the Company's written approval.

ALTA 32.1-06 does not insure against loss or damage by reason of any mechanic's lien arising from services, labor, material or equipment:

- A. furnished after Date of Coverage; or
- B. to the extent that a Mechanic's Lien claimant was not directly paid by the Company or by the Insured with the Company's written approval.

***ALTA 32.1-06 contemplates that the Company or its agent will be involved in the direct payment to specific mechanic's lien claimants - either by making the payment or by approving it.***

**ALTA Endorsement 32.2-06 (Construction Loan - Loss of Priority - Insured's Direct Payment):**

ALTA 32.2-06 insures only to the extent that direct payment to the Mechanic's Lien claimant for the charges for the services, labor, materials or equipment for which the Mechanic's Lien is claimed has been made by the Insured or on the Insured's behalf on or before Date of Coverage.

ALTA 32.2-06 does not insure against loss or damage by reason of any mechanic's lien arising from services, labor, material or equipment:

- A. furnished after Date of Coverage; or
- B. To the extent that the Mechanic's Lien claimant was not directly paid by the Insured or on the Insured's behalf.

ALTA 32.2-06 does not require that the Company or its agent will be involved in disbursement of funds.

**Underwriting Requirements:**

1. ***This endorsement requires prior Dakota Homestead Underwriter approval.***
2. This endorsement should be used only for a loan policy prior to or during the construction of improvements on the insured land.
3. Prior to issuing this endorsement, review and comply with the applicable Dakota Homestead "Early Start" - Mechanic's Lien Coverage During Construction" requirements. This may require, among other requirements, documenting the current status of construction or absence thereof, proof of payment of all work performed to date, and credit enhancements, e.g., indemnities and financial statements, acceptable to Dakota Homestead, etc.

4. In order to remove a general mechanic's lien exception from a loan policy issued prior to and during construction, either of the following must appear in the policy: (a) an applicable Dakota Homestead Pending Disbursement Clause, inserted as an exception or added as an endorsement, or (b) an ALTA 32-06, 32.1-06 or 32.2-06 Construction Loan Endorsement, unless approved by a Dakota Homestead Underwriter.
5. The ALTA 32-06, 32.1-06 and 32.2-06 Endorsements may be used instead of applicable Dakota Homestead's Pending Disbursement Clauses. The ALTA endorsements are not precisely comparable to the Dakota Homestead Pending Disbursement Clauses. In general, you may use the following ALTA Construction Loan endorsements, where available and where approved by an underwriter, as follows:
  - A. You may generally use ALTA 32-06 (Construction Loan - Loss of Priority) in lieu of Dakota Homestead PDCX06.
  - B. You may use generally either ALTA 32.1-06 (Construction Loan - Loss of Priority - Direct Payment) or ALTA 32.2-06 (Construction Loan - Loss of Priority - Insured's Direct Payment) in lieu of Dakota Homestead PDCX07.
  - C. You may generally use any ALTA 32-06, 32.1-06 or 32.2-06 Construction Loan Endorsement in lieu of Dakota Homestead PDCX08, if requested.
6. You should not delete the general mechanic's liens exception for "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 Records" without underwriter approval.
7. The ALTA 32-06, 32.1-06 and 32.2-06 Construction Loan Endorsements are designed to be used solely with ALTA Endorsement 33-06 (Disbursement). If the policy contains an ALTA 32-06, 32.1-06 or 32.2-06 Construction Loan Endorsement, do not use any other form of date down endorsement without underwriter approval. You must comply with the applicable guidelines for issuance of the ALTA 33-06 Disbursement Endorsement. Among other requirements, issuance of the ALTA Endorsement 33-06 will require a continuation of title and proof of payment to mechanic's lien claimants. Such proof is usually provided by paid bills, receipts, lien waivers, etc. Refer to the Guidelines for the ALTA Endorsement 33-06 (Disbursement).
8. ***The underwriting guidelines contained herein have been provided for general reference. The facts, circumstances, and location of the subject property should be considered when determining the issuance of the requested form or endorsement.***
9. ***Compliance with the underwriting guidelines contained herein in no way obligates Dakota Homestead to issue any form or endorsement.***

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**Issuing guideline applies to the following Endorsement(s):**

ALTA 32-06 Construction Loan - Loss of Priority

**ALTA 32.1-06 Construction Loan - Loss of Priority - Direct Payment**

ALTA 32.2-06 Construction Loan - Loss of Priority - Insured's Direct Payment

2006 ALTA Loan Policy