

**690-186.003 Title Insurance Rates.**

The following are risk rate premiums to be charged by title insurers in this state for the respective types of title insurance contracts. To compute any insurance premium on a fractional thousand of insurance (except as to minimum premiums), multiply such fractional thousand by the rate per thousand applicable, considering any fraction of \$100.00 as a full \$100.00.

**(1) Original Title Insurance Rates.**

(a) For owner and leasehold title insurance:

1.a. The Premium for the original owner's or for leasehold insurance shall be:

	<u>Per Thousand</u>	<u>Minimum Insurer Retention</u>
From \$0 to \$100,000 of liability written	\$5.75	30%
Over \$100,000 to \$1 million, add	\$5.00	30%
Over \$1 million to and up to \$5 million, add	\$2.50	35%
Over \$5 million and up to \$10 million, add	\$2.25	40%
Over \$10 million, add	\$2.00	40%

b. The minimum premium for all conveyances except multiple conveyances shall be \$100.

c. The minimum premium for multiple conveyances on the same property shall be \$60.

2. In all cases the owner's policy shall be issued for the full insurable value of the premises.

(b) For mortgage title insurance:

1.a. The premium for the original mortgage title insurance shall be:

	<u>Per Thousand</u>	<u>Minimum Insurer Retention</u>
From \$0 to \$100,000 of liability written	\$5.75	30%
Over \$100,000 to \$1 million, add	\$5.00	30%
Over \$1 million and up to \$5 million, add	\$2.50	35%
Over \$5 million and up to \$10 million, add	\$2.25	40%
Over \$10 million, add	\$2.00	40%

b. The minimum premium for all conveyances except multiple conveyances shall be \$100.

c. The minimum premium for multiple conveyances on the same property shall be \$60.

2. A mortgage title insurance policy shall not be issued for an amount less than the full principal debt. A policy may, however, be issued for an amount up to 25 percent in excess of the principal debt to cover interest and foreclosure costs.

(2) **Reissue Rates.**

(a)1. The reissue premium charge for owner's, mortgage, and leasehold title insurance policies shall be:

	<u>Per Thousand</u>
Up to \$100,000 of liability written	\$3.30
Over \$100,000 and up to \$1 million, add	\$3.00
Over \$1 million and up to \$10 million, add	\$2.00
Over \$10 million, add	\$1.50

2. The minimum premium shall be \$100.00.

(b) Provided a previous owner's policy was issued insuring the seller or the mortgagor in the current transaction and that both the reissuing agent and the reissuing underwriter retain for their respective files copies of the prior owner's policy, the reissue premium rates in paragraph (a) shall apply to:

1. Policies on real property which is unimproved except for roads, bridges, drainage facilities, and utilities if the current owner's title has been insured prior to the application for a new policy;
2. Policies issued with an effective date of less than 3 years after the effective date of the policy insuring the seller or mortgagor in the current transaction; or
3. Mortgage policies issued on refinancing of property insured by an original owner's policy which insured the title of the current mortgagor.

(c) Any amount of new insurance, in the aggregate, in excess of the amount under the previous policy shall be computed at the original owner's or leasehold rates, as provided in subsection (1).

(3) **New Home Purchase Discount.**

(a) Provided the seller has not leased or occupied the premises, the original premium of a policy on the first sale of residential property with a one to four family improvement that is granted a certificate of occupancy shall be discounted by the amount of premium paid for any prior loan policies insuring the lien of a mortgage executed by the seller on the premises.

(b) In the case of prior loan policies insuring the lien of a mortgage on multiple units or parcels, the discount shall be prorated by dividing the amount of the premium paid for the prior loan policies by the total number of units or parcels without regard to varying unit or parcel value.

(c) The minimum new home purchase premium shall be \$200. The new home purchase discount may not be combined with any other reduction from original premium rates provided for in this section.

(d) The insurer shall reserve for unearned premiums only on the excess amount of the policy over the amount of the actual or prorated amount of the prior loan policy.

(4) **Substitution Loan Rates.** The following risk premium for substitution loans shall apply:

(a) When the same borrower and the same lender make a substitution loan on the same property, the title to which was insured by an insurer in connection with the original loan.

<u>Age of Original Loan</u>	<u>Premium Rates</u>
3 years or under	30% of original rates
From 3 to 4 years	40% of original rates
From 4 to 5 years	50% of original rates
From 5 to 10 years	60% of original rates
Over 10 years	100% of original rates
Minimum premium	\$100.00

(b) At the time a substitution loan is made, the unpaid principal balance of the previous loan will be considered the amount of insurance in force on which the foregoing rates shall be calculated. To these rates shall be added the regular rates in the applicable schedules for any new insurance, that is, the difference between the unpaid principal balance of the original loan and the amount of the new loan.

(c) In the case of a substitution loan of \$250,000 or more, when the same borrower and any lender make a substitution loan on the same property, the title to which was insured by an insurer in connection with the previous loan, the premium for such substitution loans shall be the rates as set forth in paragraphs (a) and (b).

(5) **Simultaneous Issue Rates.** The risk premium for simultaneous issues shall be as follows:

(a) When an owner's and a mortgagee's policy or policies covering identical land are to be issued simultaneously the risk premiums applicable for the owner's policy shall be the regular owner's rate as provided for herein. The rate for the mortgage policy or policies so simultaneously issued will be a minimum \$25.00 for an amount of insurance not in excess of the owner's policy. The risk premium on the amount of the mortgage policy or policies in excess of the owner's policy shall be figured at the regular original title insurance rates for mortgage policies.

(b) The title must be examined to a date which includes the filing for record of both the deed to the mortgagor and the mortgage itself. Both policies must bear identical dates and the owner's policy must show the mortgage as an exception under Schedule "B" thereof. It is not essential that the property be acquired simultaneously with the giving of the mortgage, but this rate, where applicable, has reference to the simultaneous issuance of an owner's and mortgagee's policy or policies.

(c) When an owner's and leasehold policy covering identical land are to be issued simultaneously, the risk premium applicable for the owner's policy shall be the regular owner's rate as provided for herein. The rate for the leasehold policy will be 30% of the rate for the owner's policy with which it is being issued simultaneously up to the amount of said owner's policy. The risk premium on the amount of a leasehold policy in excess of the owner's policy will be figured at the regular rate for owner's policies in the applicable schedule.

(6) **Contract Purchaser – Lessee Rates.** If a contract purchaser, who has obtained a policy from an insurer insuring his contract and thereafter obtains a deed given in pursuance of the contract makes application for an owner's policy and surrenders the policy, insuring his contract; or a lessee who has obtained a leasehold policy of an insurer, insuring his lease and thereafter purchases the property, makes application for an owner's policy and surrenders such policy, the re-issue risk rate shall be:

Up to \$100,000 of liability written	25% of the rates set forth in subsection (1)
Over \$100,000 add	20% of the rates set forth in subsection (1)
Minimum premium shall be	\$100.00

(7) **Binders and Commitments.** A binder of title insurance, or a commitment to insure a title or risk, imposes certain obligations and liabilities upon a title insurer and agents with consequent benefits for an insured. Since such binders and commitments are being increasingly utilized in transactions involving title insurance, it is deemed necessary that in accordance with Section 627.7831,

Florida Statutes, a portion of the risk premium must be charged for such binder or commitment when it is issued, except for transactions involving residential properties. The risk premium charge for binders and commitments shall be credited to the risk premium due on the policy to be issued.

(8) **Construction Loans Secured by Revolving Notes and Mortgages.** When a mortgage policy is issued to insure a mortgage securing periodic advances of the loan proceeds to finance improvements on real property, an additional risk rate premium shall be charged for the value of each new parcel of real property added to the policy's coverage after its original issuance.

(9) **Minimum Retention of Premium by Insurer.**

- (a) A title insurer shall receive and retain at least 30% of the risk premium for policies sold by agents in accordance with Minimum Insurance Retention Schedule, including risk premium for endorsements, and it shall not be decreased, directly or indirectly, by an insurer providing services to any agent for less than actual cost.
- (b) Any retention of premium by an insurer in excess of 30% shall not be decreased, directly or indirectly, by providing services to an agent for less than actual cost.
- (c) The required retention of funds must be remitted to the insurer by the agent at least monthly, and until remitted these funds are "collected funds" subject to the accountability provisions of Rule 69O-186.009, F.A.C.

(10) **Effect of Amendments to Risk Premium.** Any change in the risk premium due to an amendment to this rule shall not affect policies for which a binder or commitment to issue a policy has been issued prior to the effective date of the amendment.

(11) **Unlawful Rebates or Abatement of Charges.**

- (a) No title insurer, title insurance agent or agency, including attorney agent, shall decrease the risk premium by an illegal rebate or abatement of charges for abstracting, examinations, or closing charges. At least actual cost must be charged for related title services in addition to the adopted risk premium.
- (b) Charges for related title services (title search, examination, and closing) shall be shown separately on the closing statement, and shall, at a minimum, show title search charges, examination fees, and closing charges. The risk premium as defined by Section 627.7711(2), Florida Statutes, and as provided in Section 627.780(1), Florida Statutes, shall be shown separately on the closing statement.
- (c) Any ongoing or standing offer of gifts, compensation or special services to the same person or customer on a continuing basis as an inducement to referring title insurance transactions is prohibited.

(12) Subsections (1) through (4) of this rule shall become effective July 1, 2002. The remainder of the rule shall become effective 20 days after adoption.

*Specific Authority 624.308(1), 626.9611, 627.782, 627.7825 FS. Law Implemented 624.307(1), 626.9541(1)(h)3.a., 627.777, 627.782, 627.7825, 627.783, 627.7831, 627.7841, 627.7845 FS. History—New 9-17-71, Amended 12-28-73, Repromulgated 12-24-74, Amended 4-12-82, 12-23-82, Formerly 4-21.03, Amended 6-25-86, 2-26-90, 7-26-90, 2-27-91, Formerly 4-21.003, Amended 2-13-95, 1-27-02, Formerly 4-186.003.*

**69O-186.004 Classification of "Certificates of Title" as a Respective Type of Title Insurance Contract and Promulgation of a Specific Rate Schedule Applicable Thereto.**

(1) The initial Title Insurance Rate Promulgation Order promulgated on March 7, 1967, pursuant to the provisions of Section 627.0956, Florida Statutes (Rule 69O-186.003, F.A.C.), did not recognize Certificates of Title (commonly identified as Department of the Army Engineers Form 903, dated December 1, 1963, and Department of the Army Engineers Form 1017, dated April 1, 1962)

and other substantially similar contracts used by governmental agencies, federal or state, in the acquisition of real property and easements for non-proprietary governmental uses and purposes, as “a respective type of title insurance contract” to which a specific rate schedule would be applicable.

(2) Such Certificates of Title and substantially similar contracts differ from “standard” title insurance contracts contemplated in the initial rate order in that the risk assumed is substantially confined to matters of record only and that in transactions with many such governmental agencies statutes of limitation constitute a bar to action for inverse condemnation.

(3) These distinctions warrant promulgation of a lesser risk premium applicable to such Certificates of Title and substantially similar contracts.

(4) Such a promulgation shall apply only to and be limited to those Certificates of Title and substantially similar contracts used by governmental agencies in the acquisition of real property and easements for a governmental or public purpose for public use as distinguished from such acquisitions by such agencies in the exercise of their proprietary functions.

(5) Transactions involving such Certificates of Title for such purposes usually involved the issuance of several interim title insurance certificates, sometimes referred to as title insurance binders, the cost factor of which should be recognized in the allowance of an interim certificate charge for each certificate issued subsequent to the initial certificate, sometimes referred to as the preliminary certificate, in addition to the risk premium charge.

(6) In recognition of the above factors the following risk premium schedule and interim binder or certificate charges are hereby promulgated as being applicable only to such Certificates of Title and substantially similar contracts when used by governmental agencies, state or federal, for the acquisition of real property and easements for a governmental or public purpose and use as distinguished from a proprietary purpose and use:

<u>Amount of Liability</u>	<u>Per Thousand</u>	<u>For Each Interim Certificate Subsequent to Initial Certificate</u>
\$0-50,000	2.25	Plus \$5.00
50,000-100,000	1.75	Plus \$5.00
100,000-500,000	1.50	Plus \$5.00
Over 500,000	1.25	Plus \$5.00

*Specific Authority 624.308(1) FS. Law Implemented 624.307(1), 627.782 FS. History—New 9-17-71, Amended 12-28-73, Repromulgated 12-24-74, Amended 4-12-82, 12-23-82, Formerly 4-21.04, Amended 6-25-86, 2-26-90, Formerly 4-21.004, 4-186.004.*

**690-186.005 Premium Schedule Applicable to “Truth in Lending” and Other Endorsements.**

(1) An additional risk exposure for title insurers has been created by the enactment into law of the Federal “Truth in Lending Act,” incorporated in Title 15, United States Code Annotated, Section 1601 et seq., effective May 29, 1968.

(2) Such additional risk exposure is specifically though not exhaustively manifest in the additional risks and expenses incident to the issuance of the “Truth in Lending Endorsement” as reflected in and confined to “Endorsement Number Two of the American Land Title Association” because of the following factors:

- (a) The title insurer must determine that a lien is being made for commercial purposes, other than agricultural purposes.
- (b) The title insurer must determine that the borrower falls within the category of entities as set forth in Regulation “Z” promulgated by the Federal Reserve.

- (c) The title insurer must determine that the home being purchased is or will be the residence of the borrower.
- (d) The title insurer must determine that the mortgage being insured by the policy to which the endorsement is being attached is a first lien on the land.
- (e) The title insurer must determine that proceeds of the mortgage are disbursed to the seller.
- (f) The title insurer may be legally obligated to legally refute the allegations in a foreclosure action against the mortgagor that the matters shown above were not accurately determined.
- (g) The penalty for failure to make such correct determination of the above factors may make the title insurer incur liability for the payment or settlement of claims thereon which would not otherwise be incurred in the absence of such Endorsement.

(3) The foregoing factors substantially increase the increment of risk, the expense, and the labor incident to the issuance of title insurance policies brought within the purview of the Truth in Lending Act by utilization of ALTA Endorsement Number Two. Such consequences have a significant potential effect on the fiscal stability of the respective title insurers and the business trust title insurer authorized to transact the business of title insurance in the State of Florida.

(4) Any potential adverse effect of such factors on the fiscal stability of said title insurers with consequent detriment to the title insuring public would be ameliorated or negated by the promulgation of a specific premium rate schedule applicable to such Truth in Lending Endorsement which would reasonably compensate the title insurers for such additional increments of risk.

(5) In recognition of the above findings and factors applicable to **Truth in Lending Endorsement** Number Two of the ALTA, the following premium schedule is hereby promulgated: **TEN PERCENT (10%) OF MORTGAGEE POLICY PROMULGATED RATE WITH A MINIMUM CHARGE OF TWENTY-FIVE DOLLARS (\$25.00) AND A MAXIMUM CHARGE OF ONE HUNDRED DOLLARS (\$100.00).**

(6)(a) In recognition of the increased risk in issuing the following endorsements on a mortgage or owner's policy, as such endorsements have been approved by the Office, the **minimum premium shall be \$25.00** for each endorsement on any mortgage or owner's policy issued. The endorsements shall be itemized on the closing statement furnished to the insured.

1. **ALTA 4/4.1 Condominium.**
2. **ALTA 5/5.1 Planned Unit Development.**
3. **ALTA 6 Renegotiable Rate.**
4. **ALTA 6.1 Variable Rate.**
5. **ALTA 6.2 Negative Amortization.**
6. **ALTA 7.0 Manufactured Housing.**
7. **ALTA 8.0/8.1 Environmental Protection Lien.**
8. **Revolving Credit Endorsement.**

(b) The language of the Revolving Credit Endorsement shall conform to the following endorsement language:

"1. Notwithstanding any terms or provisions in this policy to the contrary, the company hereby insures the insured that advances made subsequent to the Date of Policy, but within 20 years of the Date of Policy, pursuant to the terms of the mortgage described in Schedule A of this policy, shall be included within the coverage of this policy, even though the principal indebtedness may have been reduced from time to time preceding any such subsequent advances. The Company's liability under this policy shall be reduced hereafter by the filing for record by the mortgagor or his successors in title of a notice pursuant to Section 697.04(1), Florida Statutes, limiting the maximum principal amount that may be so secured to an amount not less than the amount actually advanced at the time of such filing.

2. The Company further assures the insured that such subsequent advances shall have the same priority over liens, encumbrances and other matters disclosed by the Public Records, as do advances secured by the insured mortgage as of the Date of Policy, except for the following matters, if any, arising subsequent to the Date of Policy:

a. Federal tax liens which may be recorded against the mortgagor(s) or their successor in title more than forty-five days prior to the making of any such subsequent advances.

b. Federal tax liens which may be recorded against the mortgagor(s) or their successor in title within forty-five days of making any such subsequent advances, the existence of which are actually known to the insured prior to the making of any such subsequent advances.

c. Ad valorem real estate taxes and assessments and other government liens which are on a parity with ad valorem real estate taxes pursuant to Florida Statutes.

d. Bankruptcies of the mortgagor(s) or their successors in title prior to the making of any such subsequent advances.

e. Defects, liens, encumbrances or other matters, the existence of which are actually known to the insured prior to the making of any such subsequent advances.

3. The total liability of the company under the policy and any endorsements therein shall not exceed, in the aggregate, the face amount of the policy and sums which the Company is obligated under the conditions and stipulations thereof to pay.

4. This endorsement is made a part of the policy. It is subject to all the terms of the policy and prior endorsements. Except as expressly stated on this endorsement, the terms, dates and amount of the policy and prior endorsements are not changed.”

(7)(a) Both endorsements and affirmative type coverages and their applicable risk rate premium must be approved by the Office prior to their issuance in this state. Accordingly, endorsements and affirmative type coverages are categorized as follows:

1. Permitted endorsements and/or affirmative type coverages,
2. Prohibited endorsements and/or affirmative type coverages,
3. Endorsements and/or affirmative type coverages with no specific Office approval required when there is no increased risk resulting to the insurer.

(b)1. With the exception of those endorsements listed in subsection (6) of Rule 69O-186.005, F.A.C., above, no endorsement or affirmative type coverage shall be issued except as set forth in this section.

2. If there is a change in a current adopted endorsement and the change results in a further limitation of coverage, the endorsement may be submitted to the Office for approval without an amendment to these rules.

(c) With the exception of policy forms and those endorsements listed in subsection (6) of Rule 69O-186.005, F.A.C., above, all approvals of endorsements given prior to the effective date of this rule are withdrawn. This section shall have no effect on the validity of those endorsements issued prior to the effective date of these rule amendments.

(d) All issued endorsements shall be itemized on the closing statement furnished to the insured with costs for each endorsement shown.

(e) Specific endorsements may be issued by reference to a master list of approved endorsements and have the same validity as if issued individually on each transaction so long as the language in the endorsement specifically conforms without any additions or deletions to the endorsement language as set forth in this section. Any such master list of approved endorsements shall only be issued in conjunction with a mortgage (mortgagee) title insurance policy.

(8) The following permitted endorsements and endorsement language are approved:

(a) **Florida Endorsement Form 9; (Restrictions, Easements, Minerals):**

1. This endorsement shall not be issued unless there has been a release of the right of entry of the mineral reservation, nor shall it be issued over any adverse matter or defect in title unless such adverse matter or defect has been removed or determined to be legally unenforceable.
2. The language of the Florida Endorsement Form 9 shall conform to the following endorsement language:

“The Company insures the owner of the indebtedness secured by the insured mortgage against loss or damage sustained by reason of:

1. Any incorrectness in the assurance that, at date of policy:
  - (a) There are no covenants, conditions or restrictions under which the lien of the mortgage referred to in Schedule A can be divested, subordinated or extinguished, or its validity, priority or enforceability impaired.
  - (b) Unless expressly excepted in Schedule B:
    - (1) There are no present violations on the land of any enforceable covenants, conditions or restrictions nor do any existing improvements on the land violate building setback lines shown on a plat of subdivision recorded or filed in the public records.
    - (2) Any instrument referred to in Schedule B as containing covenants, conditions or restrictions on the land does not, in addition, (i) establish an easement on the land; (ii) provide a lien for liquidated damages; (iii) provide for a private charge or assessment; (iv) provide for an option to purchase, a right of first refusal or the prior approval of a future purchaser or occupant.
    - (3) There is no encroachment of existing improvements located on the land onto adjoining land, nor any encroachment onto the land of existing improvements located on adjoining land.
    - (4) There is no encroachment of existing improvements located on the land onto that portion of the land subject to any easement excepted in Schedule B.
    - (5) There are no notices of violation of covenants, conditions, and restrictions relating to environmental protection recorded or filed in the public record.
2. Any future violation on the land of an existing covenant, condition or restriction occurring prior to the acquisition of title to the estate or interest in the land, provided the violation results in:
  - (a) Impairment or loss of the lien of the insured mortgage; or,
  - (b) Loss of title to the estate or interest in the land if the insured shall acquire title in satisfaction of the indebtedness secured by the insured mortgage.
3. Damage to existing improvements (excluding lawns, shrubbery or trees).
  - (a) Which are located on or encroach upon that portion of the land subject to any easement excepted in Schedule B, which damage results from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved.
  - (b) Which results from the future exercise of any right to use the surface of the land for the extraction or development of minerals excepted from the description of the land or excepted in Schedule B.
4. Any final court order or judgment requiring the removal from any land adjoining the land of any encroachment excepted in Schedule B.
5. Any final court order or judgment denying the right to maintain any existing improvement on the land because of any violation of covenants, conditions or restrictions or building setback lines shown on a plat or subdivision recorded or filed in the public records.

Wherever in this endorsement the words “covenants, conditions or restrictions” appear, they shall not be deemed to refer to or include the terms, covenants, conditions or limitations contained in an instrument creating a lease.

As used in subparagraph 1.(b)(1) and 5., the phrase, “covenants, conditions, or restrictions” shall not be deemed to refer to or include any covenants, conditions or restrictions relating to environmental protection.



This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.”

- (b) **Navigational Servitude** – The language of the Navigational Servitude Endorsement (Florida) shall conform to the following endorsement language:

“1. The Company hereby insures the insured against loss or damage, not exceeding the amount of insurance stated in Schedule A, and costs and attorney’s fees and expenses which the Company may become obligated to pay hereunder, sustained or incurred by the insured by reason of forced removal pursuant to a final judgment of a court of competent jurisdiction in favor of the United States Government requiring the removal of any improvements located on the land at date of policy resulting from the exercise of the rights of the United States Government with respect to control over navigable waters, or lands which formerly constituted navigable waters, for purposes of navigation and commerce.

2. This endorsement is made a part of the policy and is subject to all the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.”

- (c) **Shared Appreciation – The Shared Appreciation Endorsement** (Florida) shall conform to the following endorsement language:

“1. The Company hereby insures the Insured against loss or damage by reason of:

a. The invalidity or unenforceability of the lien of the insured mortgage resulting from the provisions therein which provide for a shared appreciation interest.

b. Loss of priority of the lien of the insured mortgage as security for (1) the unpaid principal balance of the loan; (2) the stated interest; and (3) the shared appreciation interest, which loss of priority is caused by the provisions in the insured mortgage for payment or allocation to the insured mortgagee of any shared appreciation interest.

c. “Stated Interest” as used in this endorsement shall mean only the per annum interest on the unpaid principal balance of the loan provided in the insured mortgage at date of Policy.

d. “Shared Appreciation Interest” as used in this endorsement shall mean only those amounts (calculated pursuant to the formula provided in the insured mortgage) payable or allocated to the insured mortgagee, out of the amount, if any, by which the land has appreciated in value as established pursuant to the provisions of the insured mortgage at date of Policy.

e. This endorsement does not insure against loss or damage based upon (a) usury, or (b) any consumer credit protection or truth in lending law, or (c) bankruptcy.

f. This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any endorsements, nor does it increase the face amount thereof.”

(d) **Additional Interest** – The language of the Additional Interest Endorsement (Florida) shall conform to the following endorsement language:

“1. The Company hereby insures against loss or damage by reason of:

a. The invalidity or unenforceability of the lien of the insured mortgage resulting from the provisions therein which provide for additional interest subsequent to date of Policy.

b. Loss of priority of the lien of the insured mortgage as security for (1) the unpaid principal balance of the loan; (2) the stated interest; (3) the additional interest, which loss of priority is by the provisions in the insured mortgage for payment or allocation to the insured mortgagee of any additional interest.

2. “Stated Interest” as used in this endorsement shall mean only the fixed percent per annum interest on the unpaid principal balance of the loan provided in the insured mortgage at date of Policy.

3. “Additional Interest” as used in this endorsement, shall mean only those amounts calculated pursuant to the formula provided in the insured mortgage payable or allocated to the insured.

4. This endorsement does not insure against loss or damage based upon (a) usury, or (b) any consumer credit protection or truth in lending law, or (c) bankruptcy.

5. This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.”

(e) **Option Endorsement** – The language of the Option Endorsement (Florida) shall conform to the following endorsement language:

“1. With respect to the option to purchase described in Schedule B, the option to purchase is hereby incorporated into Schedule A of the policy as an interest insured thereby, vested in the insured, and the Company insures against loss or damage sustained or incurred by the insured by reason of:

a. The unenforceability of the right to exercise the option to purchase except to the extent that such unenforceability or claim thereof is based on the failure of the insured to have fulfilled the terms and conditions of the option.

b. The priority over the option to purchase of any conveyance made of the fee simple estate in the land or of any liens or encumbrances created therein after the date of policy, excepting those liens or encumbrances created or consented to by the insured or created by statute in favor of or for the benefit of governmental bodies or public utilities (including without limitation real estate taxes, special assessments, demolition liens, drainage liens and water liens).

2. Nothing contained in this endorsement shall be construed as insuring the insured against loss or damage sustained or incurred by reason of:

a. Disaffirmance of the option under the provisions of the bankruptcy code or state insolvency law.

b. The effect of any condemnation proceeding including the failure of the optionee to receive all or part of an award entered in a condemnation proceeding unless failure to share in said award stems solely from a court order or judgment which constitutes a final determination and adjudges the option to be invalid.

c. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law.

3. Other than expenses necessary for a judicial determination or defense of the validity and priority of the option as described in subsections (1) and (2) above, loss under this endorsement does not include:

a. Expenses required to enforce the option and to obtain a transfer of title from the party or entity in whom title to any interest in the land is vested at the time of exercising the option, or

b. Expenses required to obtain valid conveyances or releases of any rights, interests or liens related to the land which appear of record or are known to the insured at the time of exercising the option.

4. The measure of the loss or damage sustained by the insured under this policy shall be:

a. The excess of the fair market value of the property at the time the insured attempts to exercise the option (or

when a law suit contesting the validity of the option is filed, if filed prior to the attempted exercise of the option) above the price at which the insured could acquire the property by exercise of the option, and

b. The unreimbursed portion of the consideration given by the insured to obtain the option.

5. This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.”

- (f) **Change of Partners** – The Change of Partners (Fairways) Endorsement (Florida) shall conform to the following endorsement language:

“1. The Company agrees that in the event of an occurrence of loss insured against by this policy, the Company will not deny liability hereunder on the ground that a dissolution of the partnership has occurred or a new partnership has been formed by reason of one or more of the general partners transferring their interest to another person or entity; by reason of a withdrawal of one or more of the general partners from the partnership; or by reason of the addition of one or more persons or entities as partners.

2. Nothing contained herein shall be construed as extending the insurance hereunder as to matters attaching or created subsequent to the date hereof; or insuring the status of the insured after the transfer of the partnership interest, the withdrawal of partners, or the addition of new partners.

3. This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.”

- (g) **Contiguity Endorsement** – The Contiguity Endorsement (Florida) shall conform to the following endorsement language:

“1. The Company insures the Insured herein against loss or damage by virtue of any inaccuracy in the following statement, to wit: Parcel \_\_\_ of the legal description and Parcel \_\_\_ of the legal description are contiguous to each other along the \_\_\_ line of Parcel \_\_\_ and \_\_\_ line of Parcel \_\_\_, and, taken as a tract, constitute one Parcel of land.

2. This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.”

- (h) **Survey Endorsement** – The language of the Survey Endorsement (Florida) shall conform to the following endorsement language:

“The Company hereby acknowledges the lands described in Schedule A are the same lands described in the survey prepared by \_\_\_\_\_ dated \_\_\_\_\_; however, the Company does not insure the accuracy or completeness of said survey.”

- (i) **Construction Loan Up-date** – The language of the Construction Loan Up-date Endorsement shall conform to the following endorsement language:

“1. The liability of the Company is increased by \$ \_\_\_\_\_ to include disbursements made pursuant to requisition(s) \_\_\_\_\_ for a cumulative total to date of \$ \_\_\_\_\_.

2. The Company insures there have been no instruments filed among the Public Records of \_\_\_ County, affecting title to the lands described in Schedule A from \_\_\_\_\_ through \_\_\_\_\_, other than the following:

3. The Company insures each of the foregoing is subordinate to the lien of the mortgage insured except:

4. This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any

prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.”

(j) **Foreign Currency Endorsement** – The language of the Foreign Currency Endorsement shall conform to the following endorsement language:

“1. The Company hereby insures against loss or damage by reason of:

a. The invalidity or unenforceability of the lien of the insured mortgage resulting from the provisions therein which provide for revaluation of the indebtedness secured thereby based upon changes in the conversion rate between U.S. dollars and the stated foreign currency.

b. Loss of priority of the lien of the insured mortgage as security for the unpaid principal balance of the loan, which loss of priority is caused by such changes in the conversion rate.

2. The Company acknowledges that changes from time to time in the conversion rate between U.S. dollars and the stated foreign currency may decrease or increase the dollar amount of the indebtedness secured by the insured mortgage. The Company hereby agrees that, so long as any portion of the indebtedness secured by the insured mortgage shall remain outstanding, any such increase in the dollar amount of indebtedness shall not be deemed by the Company to constitute additional principal indebtedness created subsequent to date of policy within the meaning of paragraph 8 of the Conditions and Stipulations of the policy; provided, however, that the total liability of the Company under the policy at any time shall not exceed, in the aggregate, the face amount of the policy and the costs which the Company is obligated to pay under the terms and provisions of the policy.

3. “Changes in the conversion rate” as used in this endorsement, shall mean only those changes in the conversion rate calculated pursuant to the formula provided in the insured mortgage at date of policy.

4. This endorsement does not insure against loss or damage based upon (a) the failure to pay any mortgage recording tax or similar charge applicable to the mortgage described in Schedule A at date of policy or as a result of increases in the amount of indebtedness resulting from changes in the conversion rate of U.S. dollars and the stated foreign currency, (b) usury, (c) any consumer credit protection or truth-in-lending law, (d) bankruptcy, or (e) any invalidity or unenforceability or loss of priority of the mortgage as to any indebtedness in amounts in U.S. dollars in excess of the amount stated in the policy.

5. This endorsement is made a part of the policy and is subject to all of the terms and conditions thereof and of any prior endorsements thereto, except that the insurance afforded by this endorsement is not subject to paragraph (3)(d) of the Exclusions from Coverage. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it increase the face amount thereof.”

(k) **Assignment of Mortgage** – The language of the Assignment of Mortgage Endorsement shall conform to the following endorsement language:

“Endorsement number \_\_\_\_\_

Name of original insured:

Original effective date:

Original amount of insurance \$ \_\_\_\_\_

Agent’s file reference: \_\_\_\_\_

The Company insures that the mortgage described in the above numbered and dated policy has been duly assigned to:

\_\_\_\_\_  
Assignee

\_\_\_\_\_  
Address

by an assignment dated the \_\_\_\_ day of \_\_\_\_, 19\_\_, and recorded the \_\_\_\_ day of \_\_\_\_, 19\_\_, in Official Records \_\_\_\_, Page \_\_\_\_, under Clerk’s File Number \_\_\_\_, of the Public Records of \_\_\_\_ County, Florida.

This endorsement is to be attached to and form a part of the above numbered and dated policy issued by \_\_\_\_\_”

- (l) **Balloon Mortgage Endorsement** – The language of the Balloon Mortgage Endorsement shall conform to the following endorsement language:

“1. The Company insures the insured mortgagee against loss or damage by reason of:

a. The invalidity or unenforceability of the lien of the insured mortgage resulting from the provisions therein which provide for a conditional right to refinance and a change in the rate of interest as set forth in the Mortgage Rider.

b. Loss of priority of the lien of the insured mortgage as security for the unpaid principal balance of the loan, together with interest thereon, which loss of priority is caused by the exercise of the conditional right to refinance and the extension of the loan term to the new maturity date set forth on the rider and a change in the rate of interest, provided that all the conditions set forth in paragraphs 2 and 5 of the Balloon Mortgage Rider have been met, and there are no other liens, defects, encumbrances, or other adverse matters affecting title recorded subsequent to the date of policy.

2. This endorsement does not insure against loss or damage based upon, (a) Usury or (b) any consumer credit protection or truth-in-lending law or (c) bankruptcy.

3. This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.”

(9) Recognizing that the endorsements listed in subsection 8 of this section and the affirmative language in a title policy imposes certain obligations and liabilities on a title insurer and agent and the issuance of endorsements and/or affirmative language in a title policy creates an additional risk and a considerable amount of work in addition to the initial search and examination of title required to write a basic policy, a minimum premium shall be charged and collected by an insurer or agent where coverage in the form of affirmative language and/or endorsements to a policy are required. Therefore, the risk rate premium for each of the endorsements listed in paragraph 8 of this section are as follows:

1-4 Family Unit Residential Risks	\$25 minimum per endorsement \$100 maximum per endorsement
Other Risks (commercial or greater than 1-4 family residential risk.)	\$100 Minimum per endorsement

except that the risk rate premium for the following approved endorsements shall be at minimum the percentage of the total policy premium as indicated; however, on a simultaneously issued mortgage policy, the endorsement charge shall be based on the underlying owner, and loan policy premium:

- (a) Florida Endorsement Form 9 – 10%.
- (b) Navigational Servitude – 10%.

(10) Additional risk premium must be charged if additional insurance is purchased.

(11) All loan policies and endorsements are subject to the 125% rule as set forth in paragraph (4)(b) of Rule 69O-186.003, F.A.C., except that a policy with a Shared Appreciation, or Additional Interest Endorsements may be issued for an amount up to 150% in excess of the principal debt.

(12) The applicable rate to be charged and collected for a loan policy after a mortgage balloons and is subsequently refinanced by

the same lender, and borrower on the same land shall be the rates as described in paragraph (5) of Rule 69O-186.003, F.A.C., substitution loan rates.

(13) The Substitution Loan Rate provided in subsection (5) of Rule 69O-186.003, F.A.C., shall apply to any endorsement which insures a modification of a mortgage which was insured by an outstanding policy where the modification agreement effects any change in the terms, conditions, priority, or security, other than:

- (a) An extension of the time for payment of the secured obligation;
- (b) Any decrease in the interest rate of the insured mortgage, provided the “cap” on a variable rate mortgage is not greater than the original “cap” and/or the “cap” is not greater than the original fixed rate;
- (c) Any increase in the interest rate of the insured mortgage, provided the endorsement contains an exception for the loss of priority occasioned by the increase;
- (d) Changes in an amortization schedule to extend the term of the insured mortgage;
- (e) A release of a portion of the secured property;
- (f) A correction to either perfect the lien of the insured mortgage or comply with the terms of the lender's original commitment;
- (g) Future advances made pursuant to Section 697.04, Florida Statutes; or
- (h) Encumbrances of additional parcels under a revolving construction loan agreement contained in the original mortgage and contemplated by subsection 69O-186.003(10), F.A.C.

(14) The retention rate for an insurer shall be the same as set forth in subsection (11) of Rule 69O-186.003, F.A.C.

(15)(a) The following are prohibited endorsements and affirmative coverages that shall not be issued in this state:

- 1. Doing Business Endorsement.
- 2. Non Imputation Endorsement (Imputation of knowledge).
- 3. Access.
- 4. Location.
- 5. Expanded Insured Endorsement.
- 6. Street Assessment Endorsement.
- 7. Zoning Endorsement.
- 8. Usury.

(b) The extension of special affirmative coverage by indirect means is prohibited.

(16) The following endorsements can be issued or affirmative language is permitted with no specific approval required from the Office:

- (a) Endorsements correcting mistakes.
- (b) Future Insurance (continuing liability under existing policies).
- (c) Endorsements deleting exceptions which no longer affect title to the land.
- (d) Endorsements insuring future advances.

- (e) Changes in effective dates (loan policies only).
- (f) Gap coverage endorsement.
- (g) Insurance against the attempted enforcement of known claims for ascertainable sums of money in reliance on security commensurate with such risk.
- (h) Deletion of General Exceptions.
- (i) Endorsements modifying the standard owner's and mortgagee policy to convert to a leasehold policy previously approved by the Office.
- (j) Tie-in Spreader (Intra Florida properties only).

*Specific Authority 624.308, 627.777, 627.782 FS. Law Implemented 624.307(1), 627.777, 627.782, 697.04(1) FS. History—New 9-17-71, Repromulgated 12-24-74, Formerly 4-21.05, Amended 6-25-86, 2-26-90, 2-27-91, Formerly 4-21.005, Amended 2-13-95, Formerly 4-186.005, Amended 11-3-05.*

### **690-186.007 Title Insurance Limited to Coverage of Real Property.**

Section 624.608, Florida Statutes, which declares that “Title insurance is insurance of owners of real property or others having an interest in real property or contractual interest derived therefrom, or liens or encumbrances on real property, against loss by encumbrance, or defective titles, or invalidity, or adverse claim to title” shall be construed to confine the scope of coverage of title insurance to real property and contractual interests derived therefrom.

*Specific Authority 624.308 FS. Law Implemented 624.307(1), 624.608 FS. History—New 4-18-73, Formerly 4-21.09, Amended 6-25-86, Formerly 4-21.009, 4-186.007.*

### **690-186.008 Escrow Requirements.**

(1) A title insurance agent or title insurer may not use, endanger, or encumber money held in trust without the permission of the owner of such money, given after full disclosure of the circumstances. Accordingly, except as hereinafter provided, a title insurance agent or title insurer may not disburse funds unless the funds are collected funds. For purposes of this provision, “collected funds” means funds deposited, finally settled and credited to the title insurance agent’s or title insurer’s trust account. Notwithstanding that a deposit made by a title insurance agent or title insurer to the trust account has not been finally settled and credited to the account, the title insurance agent or title insurer may disburse funds from the trust account in reliance on such deposits under any of the following circumstances:

- (a) The deposit is made by a certified check, cashier’s check, or money order;
- (b) The deposit is made by a check representing loan proceeds issued by a federally- or state-chartered bank, savings bank, savings and loan association, credit union, mortgage broker licensed under Chapter 494, Florida Statutes, or other duly licensed or chartered lender;
- (c) The deposit is made by a bank check, cashier’s check, official check, treasurer’s check, or other such official instrument issued by a bank, savings and loan association, or credit union when the instrument is drawn by the bank on itself, or on another bank whether or not the check is “payable through” or “payable at” a bank and the title insurance agent or title insurer has reasonable and prudent grounds to believe the instrument will clear and constitute collected funds in the title insurance agent’s or title insurer’s trust account within a reasonable period of time. Such instruments are considered by the Federal Reserve Board, under Federal Regulation CC, otherwise cited as 12 C.F.R. 229, to be “next day” payable items. A check drawn by a corporation on a bank or a draft drawn by a corporation on itself whether or not the check or draft is “payable at” or “payable through” a bank and is not a “next day” payable item under Regulation CC unless the depository bank chooses to treat it as such, and may not be disbursed on until collected.
- (d) The deposit is made by a check drawn on the trust account of a lawyer licensed to practice in the State of Florida or on the escrow or trust account of a real estate broker licensed under Chapter 475, Florida Statutes, or on the account of a mortgage

broker licensed under Chapter 494, Florida Statutes, or on the escrow trust account of a title insurance agent or title insurer licensed under the Florida Insurance Code, when the title insurance agent or title insurer has a reasonable or prudent belief that the deposit will clear and constitute collected funds in the trust account within a reasonable period of time;

- (e) The deposit is made by a check issued by the United States Government, the State of Florida or any agency or political subdivision of the State of Florida;
  - (f) The deposit is made by a check issued by an insurance company authorized to do business in the State of Florida and the title insurance agent or title insurer has a reasonable and prudent belief that the instrument will clear and constitute collected funds in the trust account within a reasonable period of time;
  - (g) The deposit is made by a personal check in an amount not to exceed \$500 when the title insurance agent or title insurer has a reasonable and prudent belief that the instrument will clear and constitute collected funds in the trust account within a reasonable period of time.
- (2) For purposes of this provision, disbursement of funds shall only be made on such negotiable instruments as enumerated above which contain the following elements:
- (a) Are signed by the drawer; and
  - (b) Contain an unconditional order to pay; and
  - (c) Are payable on demand; and
  - (d) Are payable to order or to bearer.

(3) Funds received by a licensed title insurance agent or insurer pursuant to a real estate closing transaction involving the issuance of a title insurance binder, commitment, policy of title insurance, or guaranty of title shall not be deposited or transferred to an interest-bearing trust account without the written consent of the buyer and seller.

(4) Funds received from depositors in excess of the insured amount must be deposited in a financial institution that has a rating not less than the minimum standards established by Government National Mortgage Association (GNMA).

*Specific Authority 624.308 FS. Law Implemented 624.307(1), 626.8473, 628.151 FS. History--New 6-25-86, Amended 2-26-90, Formerly 4-21.010, Amended 2-13-95, 1-27-02, Formerly 4-186.008.*

#### **690-186.009 Reconciliation of Escrow Accounts.**

(1) Every licensed title insurance agent shall maintain a monthly reconciliation of every escrow account required to be maintained pursuant to Section 626.8473, Florida Statutes, and shall, on a monthly basis, report such reconciliation together with appropriate supporting documentation to each title insurer which licensed the agent during the reconciliation period. The reconciliation shall be supported by appropriate documentation, including a monthly bank statement, a list of all outstanding checks as of the date of the reconciliation which are not shown on the monthly bank statement, and a trial balance of the escrow ledger records required to be maintained by subsection (2). Licensed title insurance agents and title insurers shall provide a copy of the monthly escrow account reconciliation to the Office upon its request. Such records shall be maintained by the title insurer for a period of five years.

(2) Every licensed title insurance agent shall maintain a separate ledger card for each real estate closing transaction for which funds are received in escrow. The ledger card shall contain chronological entries of dates and amounts of moneys received and disbursed including the name of the remitter and payee and each check number issued on such escrow account. Such records shall be maintained by the title insurance agent for a period of three years. The ledger card required by this rule may be maintained in



computer storage with a print-out available upon request of a title insurer or the Office.

*Specific Authority 624.308 FS. Law Implemented 624.307(1), 626.8473, 627.776(1)(m), 628.151 FS. History—New 2-26-90, Formerly 4-21.0105, 4-186.009.*

**690-186.013 Title Insurance Statistical Gathering: Licensed Title Insurance Agencies and Florida Retail Offices of Direct-Writing Title Insurance Underwriters.**

(1) By the day designated in Section 627.782(8), F.S. of 2015 and the same day of each year after 2015, licensed title insurance agencies and Florida retail offices of direct-writing title insurance underwriters must electronically submit statistical data to the Office. The submittal shall be accomplished by electronically completing OIR form OIR-EO-2087 “Title Insurance Experience Reporting – Agents and Retail Offices of Direct-Writing Title Insurance Underwriters”, <http://www.flrules.org/Gateway/reference.asp?No=Ref-03461> as adopted and incorporated by this reference. The aforementioned form may be obtained from the Office's web site located at <http://www.flair.com/iportal>.

(2) OIR form OIR-EO-2087 (New 01/14) “Title Insurance Experience Reporting – Agents and Retail Offices of Direct-Writing Title Insurance Underwriters” shall be completed by title insurance agencies and retail offices of direct-writing title insurance underwriters in accordance with the instructions for each submittal year. The initial submittal shall reflect data for the prior five years ending December 31, 2014. For each year after 2014, the submittal shall, in addition to the data for the current year, include a certificate re-certifying the accuracy and completeness of the prior four years’ data. If significant changes have been discovered in the data submitted in any of the four prior years, a corrected submittal shall be made for that year. Pursuant to Section 627.782, F.S., the statistical data is collected for the purposes of analyzing premium rates, retention rates, and the condition of the title insurance industry.

(3) All submittals shall be submitted to the Office at <http://www.flair.com/iportal>, the industry portal to the Office’s I-File System, as a data filing. A filing shall be considered received by the Office when its arrival in the Office is shown electronically to be on business days between the hours of 8:00 a.m. and 5:00 p.m. eastern standard time. Filings received after 5:00 p.m. shall be considered to be received the next business day.

*Rulemaking Authority 624.308 FS. Law Implemented 624.307(1), 627.782 FS. History—New 2-13-95, Formerly 4-186.013, Amended 6-13-14.*

**690-186.015 Title Insurance Agency Collateral Substitution.**

When a title insurance agency substitutes a surety bond in place of its deposit of securities pursuant to Section 626.8418(2), Florida Statutes, the bond must secure performance by the agency of its responsibilities relating to the title policies issued through the agency, including performance during the time period in which the deposit was in place, prior to the issuance of the bond. All claims made after issuance of the bond based on liability incurred prior to the issuance of the bond, must be covered by the bond.

*Specific Authority 624.308 FS. Law Implemented 624.307(1), 626.8418 FS. History—New 4-29-96, Formerly 4-186.015.*