

Endorsements 101



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- Associate Senior Underwriter

Definition of Endorsement

"An endorsement to a title insurance policy is an amendment of that policy, altering some of its terms, expanding or reducing coverage, or otherwise clarifying the treatment of the Insured or the obligations of the parties."

--Gosdin, James L., *Title Insurance A Comprehensive Overview of the Law and Coverage*, Fourth Edition American Bar Association, 2015

Title Insurance

A Comprehensive Overview of the Law and Coverage

Fourth Edition

James L. Gosdin



THE PARTY.







Endorsements...

- Amend or modify the policy
- May increase the liability of the company under the policy
- Narrow one or more exceptions or exclusions to coverage
- Eliminate exceptions
- Add coverage beyond the standard insuring clauses
- Add exceptions/exclusions
- Increase the dollar amount of coverage
- Change the typical policy time scope, from past to future issues
- Provide affirmative coverages



Sources of Endorsement Forms

- American Land Title Association, aka "ALTA" a national association that standardizes products
- California Land Title Association, aka "CLTA" Forms created by California, but adopted in other states
- State Rating Associations for example, Oregon Title Insurance Rating Organization, aka "OTIRO"



10.217 ACCESS AND ENTRY

(ALTA ENDORSEMENT FORM 17-06, 6/17/06, OTIRO END. No. 217-06)

INDIRECT ACCESS AND ENTRY

(ALTA ENDORSEMENT FORM 17.1-06, 6/17/06, OTIRO END. NO. 217.1-06)

UTILITY ACCESS

(ALTA ENDORSEMENT FORM 17.2-06, ADOPTED 10/16/08, OTIRO END. No. 217.2-06)

These endorsements may be issued for owner's and Loan Policies.

The charge for the ALTA 17-06 (OTIRO End. 217-06) is \$125.

The charge for the ALTA 17.1-06 (OTIRO End. 217.1-06) is \$150.

The charge for the ALTA 17.2-06 (OTIRO End. 217.2-06) is \$125 plus \$25 for each utility included.

Any charge for inspection shall be made in accordance with Section 1.008.





[10.224] [RESERVED]

10.225 SAME AS SURVEY ENDORSEMENT
(ALTA ENDORSEMENT FORM 25-06, REVISED 10/16/08; OTIRO END. No. 225-06)

SAME AS PORTION OF SURVEY ENDORSEMENT
(ALTA ENDORSEMENT FORM 25.1, REVISED 10/16/08; OTIRO END. No. 225.1-06)

This endorsement may be issued for owner's and Loan Policies.

The charge for this endorsement is \$100.00.

[10.226] [RESERVED]





10.080 ACCESS ENDORSEMENT - LAND ABUTS EXISTING STREET (OTIRO END. No. 80)

This endorsement may be issued for owner's and Loan Policies.

The charge for this endorsement is \$50.00

Any charge for inspection shall be made in accordance with Section 1.008.

See Section 10.217 for Access and Entry End. (ALTA 17-06) and Indirect Access and Entry End. (ALTA 17.1-06).

40 004 Dr. Dr. copperso European reserve



Beware when Lender requests "all customary Endorsements"

We can tell them what Endorsements we typically issue on a Loan policy, but we cannot advise them what they should order. It's best to send them sample endorsement forms and let them make the determination. The Lender must instruct us as to what coverages they will require.





CHANGES IN 2021 POLICY FORMS THAT AFFECT ENDORSEMENTS

• OTIRO 239 Policy Authentication is <u>obsolete</u> with the 2021 policy because coverage is now included in the policy jacket.

This policy, when issued by the Company with a Policy Number and the Date of Policy, is valid even if this policy or any endorsement to this policy is issued electronically or lacks any signature.

AND

Covered Risk 2a(viii): the repudiation of an electronic signature by a person that executed a document because the electronic signature on the document was not valid under applicable electronic transactions law.



10.001 ENDORSEMENTS

This Chapter and the Schedule of Endorsements (Schedule Four) contain the endorsements that may be issued by the Company. Where applicable, these forms are referenced by an OTIRO or ALTA number. In this Chapter, "OLTA" means the Oregon Land Title Association.

The insuring provisions of a policy or guarantee may be supplemented solely by endorsement as permitted in this Chapter; however, the Company is not precluded from writing exceptions that it considers prudent in the schedule of exceptions for a policy or guarantee. In situations where the coverage of an endorsement is not appropriate, the Company may delete portions to limit the endorsement's coverage. Nothing in this Manual shall be construed as permitting or requiring the issuance of an endorsement when, at issuance of the endorsement, the insurer or its agent knows that its coverage is contrary to the Oregon Insurance Code.

For purposes of this Chapter, the term "mortgage" means mortgage, deed of trust, trust deed or other security instrument.



Residential Transactions

Commercial Transactions

Fewer Endorsement Requests

Fewer Complex issues

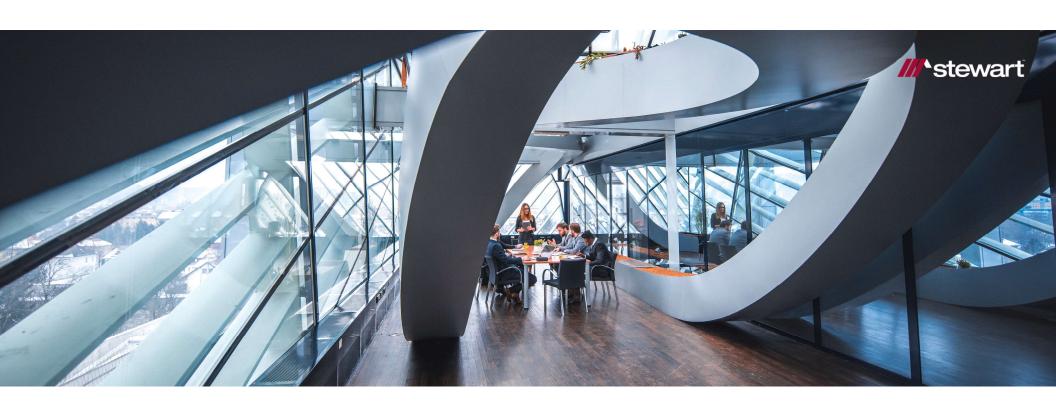
Many Endorsement Requests

Multiple Parcels

Multiple Complex Issues

Large Tracts of land





"Basic" Endorsements



OTIRO Endorsement 208.1 (Residential Environmental Protection Lien) and OITRO 208.2 (Commercial Environmental Protection Lien)

These endorsements insure against loss or damage sustained due to any **recorded environmental liens** not otherwise shown as exceptions to title in Schedule B of the policy. Endorsement 208.1 is available only for loan policies that cover residential property. Endorsement 208.2-06, on the other hand, is available for loan **or** owner policies, and applies only to land other than residential.

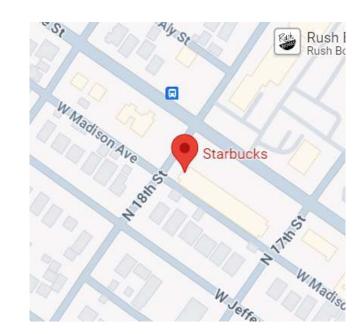




OTIRO Endorsement 222-06 (location)

The Company insures against loss or damage sustained by the Insured by reason of the failure of a (description of improvement), known as (street address), to be located on the Land at Date of Policy.

- Refer to the principal or basic improvement on the Land (e.g., a residence, an apartment building, an office building), and do not mention additional structures such as pools.
- Do not mention other details about the improvements, such as square footage, number of floors, or quality of improvement.
- Determine the address and improvements by review of survey, inspection, or other reasonable and objective means that establish the improvements and address. Do not rely solely on a representation by a party to the transaction, such as the borrower or seller.





- OTIRO 209.1-06 (Covenants, Conditions and Restrictions Unimproved Land - Owners Policy)
- OTIRO 209.2-06 (Covenants, Conditions and Restrictions Improved Land - Owners Policy)
- OTIRO 209.3-06 (Covenants, Conditions and Restrictions Loan Policy)
- OTIRO 209.6.1-06 Private Rights Current Assessments Loan Policy)
- OTIRO 209.7-06 (Restrictions, Encroachments, Minerals Land Under Development – Loan Policy)
- OTIRO 209.8-06 (Covenants, Conditions and Restrictions Land Under Development – Owner Policy
- OTIRO 209.9-09 (Private Rights Owners Policy)
- OTIRO 209.10-06 (Restrictions, Encroachments, Minerals Current Violations – Loan Policy)

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ALTA 9 vs OTIRO 209.10 (ALTA 9.10)

ALTA 9

- 3. The company insures against loss or damage sustained by the insured by reason of:
- (a) A violation of a covenant that:
- (i) divests, subordinates, or extinguishes the lien of the Insured Mortgage

OTIRO 209.10 (ALTA 9.10)

- 3. The company insures against loss or damage sustained by the insured by reason of:
- (a)A violation at Date of Policy of a covenant that:
- (i) divests, subordinates, or extinguishes the lien of the Insured Mortgage



OTIRO Endorsement No. 209.10-06 Restrictions, Encroachments, Minerals - Current Violations -Loan Policy Endorsement

- 1. The insurance provided by this endorsement is subject to the exclusions in Section 5 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
- 2. For the purposes of this endorsement only:
- a. "Covenant" means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.
- b. "Improvement" means an improvement, including any lawn, shrubbery, or trees, affixed to either the Land or adjoining land at Date of Policy that by law constitutes real property.



OTIRO Endorsement No. 209.10-06 Restrictions, Encroachments, Minerals - Current Violations - Loan Policy Endorsement





OTIRO Endorsement No. 209.10-06 – Violation of Covenants

- 3. The Company insures against loss or damage sustained by the Insured by reason of:
- a. A violation at Date of Policy of a Covenant that:
- i. divests, subordinates, or extinguishes the lien of the Insured Mortgage, iii. results in the invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage, or iii. causes a loss of the Insured's Title acquired in satisfaction or partial satisfaction of the Indebtedness;
- b. A violation on the Land at Date of Policy of an enforceable Covenant, unless an exception in Schedule B of the policy identifies the violation;
- c. **Enforced removal of an Improvement** located on the Land **as a result of a violation**, at Date of Policy, of a building setback line shown on a plat of subdivision recorded or filed in the Public Records, unless an exception in Schedule B of the policy **identifies the violation**; or
- d. A notice of a violation, recorded in the Public Records at Date of Policy, of an enforceable Covenant relating to environmental protection describing any part of the Land and referring to that Covenant, but only to the extent of the violation of the Covenant referred to in that notice, unless an exception in Schedule B of the policy identifies the notice of the violation.

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OTIRO Endorsement No. 209.10-06 – Encroachments

4. The Company insures against loss or damage sustained by reason of:

a. An encroachment of:

i. an Improvement located on the Land, at Date of Policy, onto adjoining land or onto that portion of the Land subject to an easement; or

ii. an Improvement located on adjoining land onto the Land at Date of Policy unless an exception in Schedule B of the policy **identifies the encroachment otherwise insured against in Sections 4.a.i.** or **4.a.ii.**;

- b. A final court order or judgment requiring the removal from any land adjoining the Land of an encroachment identified in Schedule B; or
- **c. Damage to an Improvement l**ocated on the Land, at Date of Policy:
- i. that is located on or encroaches onto that portion of the Land subject to an 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; or

ii. resulting from the future exercise of a right to use the surface of the Land for the extraction or development of minerals or any other subsurface substances excepted from the description of the Land or excepted in Schedule B.



OTIRO Endorsement No. 209.10-06 - Exclusions

- 5. This endorsement **does not insure against loss or damage** (and the Company will not pay costs, attorneys' fees, or expenses) **resulting from**:
- a. any Covenant contained in an instrument creating a lease;
- b. any Covenant relating to **obligations of any type to perform maintenance, repair, or remediation on the Land;**
- c. **except as provided in Section 3.d., any Covenant relating to environmental protection** of any kind or nature, including hazardous or toxic matters, conditions, or substances;
- d. contamination, explosion, fire, flooding, vibration, fracturing, earthquake, or subsidence; or e. negligence by a person or an Entity exercising a right to extract or develop minerals or other subsurface substances.



OTIRO Endorsement No. 209.10-06 Restrictions, Encroachments, Minerals - Current Violations - Loan Policy Endorsement



OTIRO Endorsement 209.6.1 (Private Rights – Loan Policy)

The Company insures against loss or damage sustained by the Insured under this Loan Policy if enforcement of a Private Right in a Covenant affecting the Title at Date of Policy (a) results in the invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage, or (b) causes a loss of the Insured's Title acquired in satisfaction or partial satisfaction of the Indebtedness.





OTIRO Endorsement 209.9 (Private Rights – Owner's Policy)

The Company insures against loss or damage sustained by the Insured under this Owner's Policy **if enforcement of a Private Right in a Covenant** affecting the Title at Date of Policy based on a transfer of Title on or before Date of Policy **causes a loss of the Insured's Title.**





Both define a covenant the same way:

a. "Covenant" means: a covenant, condition, limitation or restriction in a document or instrument recorded in the Public Records at Date of Policy





They vary slightly on the definition of Private Right, (a) below is only the 209.6.1 for the Loan Policy.

- b. "Private Right" is:
- (a) a private charge or assessment;
- (b) an option to purchase;
- (c) a right of first refusal; or,
- (d) a right of prior approval of a future purchaser or occupant.







- 4. This endorsement does not insure against loss or damage (and the Company will not pay costs,
 - attorneys' fees, or expenses) resulting from:
 - (a) Any Covenant contained in an instrument creating a lease;
 - (b) Any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land; [or]
 - (c) Any Covenant relating to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances[; or
 - (d) Any Private Right in an instrument identified in Exception(s) _____ in Schedule B].





Less "Basic" Endorsements

Fairway Endorsement?





OTIRO 98 – Successor Insured (Fairway) Endorsement

The *Fairway* case suggests that the ALTA Owner's Policy does not continue "by operation of law" to cover a partnership after dissolution, even if the business continues. As a result, our insureds requests a Fairway Endorsement on many commercial transactions where the insured owner is a partnership.



OTIRO 98 – Successor Insured (Fairway) Endorsement

The Company hereby agrees with the insured partnership that the policy and the coverage provided to the insured partnership hereunder shall not be deemed to have lapsed, or to have been forfeited, or to have terminated because of the occurrence, subsequent to the Date of Policy, of either of the following events (provided that, subject to the next paragraph, the insured partnership has not been dissolved or discontinued by reason of the following events pursuant to applicable state law):

- 1. the admission or withdrawal of any individual or Entity as a partner in the insured partnership, or
- 2. a change in any partner's interest in capital or profits of, or as limited or general partner in, the insured partnership.

"Land Under Development" Endorsements

- 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 Pollicy in the locations according to the Plans and that by law constitutes real property:
 - 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.



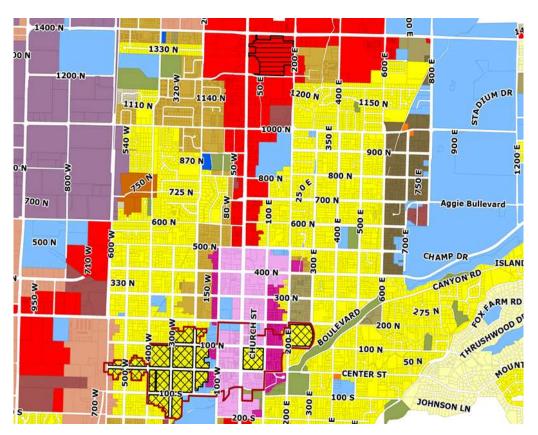
OTIRO 203 Series (Zoning)

OTIRO 203 Zoning (Unimproved Land)

OTIRO 203.1 Zoning – Completed Structure

OTIRO 203.2 Zoning – Land Under Development

OTIRO 203.3 Zoning – Completed Improvement
-Non-Conforming



OTIRO Endorsement 203 (Zoning – Unimproved Land)



- 1. For purposes of this endorsement, "Zoning Ordinance" means a zoning ordinance or zoning regulation of a political subdivision of the State that is in effect and applicable to the Land at the Date of Policy.
- 2. The Company insures against loss or damage sustained by the Insured in the event that, at the Date of Policy:
 - a. According to the Zoning Ordinance, the Land is not classified Zone _____;
 - b. The following use or uses are not allowed under that classification: ______.
- 3. There is no liability under this endorsement based on:
 - a. The lack of compliance with any condition, restriction, or requirement contained in the Zoning Ordinance, including but not limited to the failure to secure necessary consents or authorizations as a prerequisite to the use or uses. Section 3.a. does not modify or limit the coverage provided in Covered Risk 5.
 - b. The invalidity of the Zoning Ordinance until after a final decree of a State or federal court having jurisdiction adjudicating the invalidity, the effect of which is to prohibit the use or uses described in Section 2.b.
 - c. The refusal of any person to purchase, lease, or lend money on the Title covered by this policy.



OTIRO Endorsement 203.1 (Zoning – Completed Structure)

to the use of uses. Section 2.6. uses not moving of firmit the coverage provided in covered risks.

- 3. The Company further insures against loss or damage sustained by the Insured by reason of a final decree of a State or federal court having jurisdiction either prohibiting the use of the Land, with any existing structure, as specified in Section 2.b. or requiring the removal or alteration of the structure because, at the Date of Policy, the Zoning Ordinance has been violated with respect to any of the following matters:
 - a. The area, width, or depth of the Land as a building site for the structure;
 - b. The floor space area of the structure;
 - c. A setback of the structure from the property lines of the Land;
 - d. The height of the structure; or
 - e. The number of parking spaces.

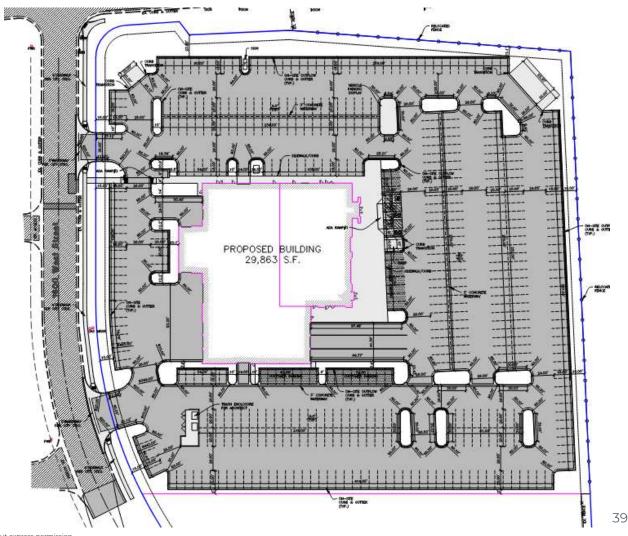
///stewart

OTIRO Endorsement 203.2 (Zoning – Land Under Development)

This endorsement is designed for issuance on an improved property or land on which plans have been approved but work has either not yet begun or is in process.

Requirements:

Same as the OTIRO 203.1 however you will need to obtain a copy of the site plans.





OTIRO Endorsement 203.2 (Zoning - Land Under Development) #* stewart (7-1-21)

- 1. For purposes of this endorsement:
 - a. "Improvement": A building, structure, road, walkway, driveway, curb, subsurface utility, or water well existing at the Date of Policy or to be built or constructed according to the Plans that is or will be located on the Land, but excluding crops, landscaping, lawns, shrubbery, or trees.
 - b. "Plans": Those site and elevation plans made by ______ dated ____, last revised _____, designated as _____ consisting of __sheets.
 - c. "Zoning Ordinance": A zoning ordinance or zoning regulation of a political subdivision of the State that is in effect and applicable to the Land at the Date of Policy.
- 2. The Company insures against loss or damage sustained by the Insured in the event that, at the Date of Policy:
 - a. According to the Zoning Ordinance, the Land is not classified Zone _____;
 - b. The following use or uses are not allowed under that classification: ______;
 - c. There is no liability under Section 2.b. if the use or uses are not allowed as the result of any lack of compliance with any condition, restriction, or requirement contained in the Zoning Ordinance, including but not limited to the failure to secure necessary consents or authorizations as a prerequisite to the use or uses. Section 2.c. does not modify or limit the coverage provided in Covered Risk 5.

OTIRO Endorsement 203.3 (Zoning – Completed Improvement — stewart Non-Conforming use) (7-1-21)

- 1. For purposes of this endorsement only, the following terms mean, all as of the Date of Policy:
 - a. "Improvement": An existing building located on the Land.
 - b. "Non-Conforming Use": The use of the Land, which use is described in Section 2.b. and is not allowed in the Zoning Ordinance.
 - c. "Non-Conforming Improvement": An Improvement that violates the Zoning Ordinance with respect to any of the matters set forth in Section 2.c.
 - d. "Zoning Ordinance": A zoning ordinance or zoning regulation of a political subdivision of the State that is in effect and applicable to the Land.
- 2. The Company insures against loss or damage sustained by the Insured resulting from:
 - The Land not being classified Zone ____ according to the Zoning Ordinance at the Date of the Policy.
 - b. The following Non-Conforming Use not being allowed by the governing political subdivision of the State because the Non-Conforming Use violates the Zoning Ordinance at the Date of the Policy:

[Drafting Instruction: Describe the existing Non-Conforming Use], or if there is not a Non-Conforming Use, insert "NOT APPLICABLE".]

A final decree of a State or federal court having jurisdiction either prohibiting the Non-



ALTA Endorsement 212 (Aggregation)

Explanation:

- Also known as a "tie-in," "cluster," or "spreader" endorsement.
- In multi-site loan transactions and it is impractical to issue a single Loan Policy for all the covered sites.
- Aggregates the Amounts of Insurance of each Loan Policy listed in the Endorsement into one Aggregate Amount of Insurance







OTIRO Endorsement 215 Series (Nonimputation)

OTIRO 215 Nonimputation – Full Equity Transfer

OTIRO 215.1 Nonimputation – Additional Insured

OTIRO 215.2 Nonimputation – Partial Equity Transfer



The endorsements limits the applicability of Exclusions 3(a), (b) or (e) to incoming partners/members because of the inaction or knowledge of the owner/insured.

- Exclusion 3(a) "created, suffered, assumed or agreed to by the insured claimant"
- Exclusion 3(b) "not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy"
- Exclusion 3(e) "resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy"

CONTACT UNDERWRITER FOR GUIDELINES



Nonimputation Affidavit



Access Endorsements

OTIRO 217-06 – Access and Entry & OTIRO 217.1-06 – Indirect Access and Entry OTIRO 80 – Access – Land Abuts Existing Street





OTIRO Endorsement 217 (Access and Entry)

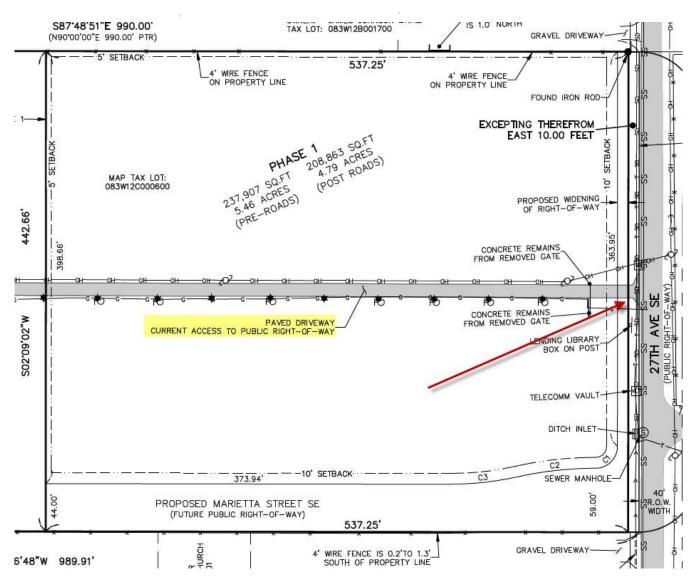
The Endorsement insures:

- (1) that the land abuts a named Street,
- (2) that the Street is physically open and publicly maintained,
- (3) that the land has actual pedestrian and vehicular access, and
- (4) that the insured has a right to use existing curb cuts along the abutting Street.

Things to look for prior to issuing:

- 1. Verify by examination, survey, review of available maps, or inspection that the <u>land abuts the</u> Street.
- 2. Verify by survey, review of available maps, or inspection that the Street appears to be <u>physically</u> <u>open and publicly maintained</u>.
- 3. Verify by survey, review of available maps, or inspection that existing curb cuts provide actual access for the land to the Street.







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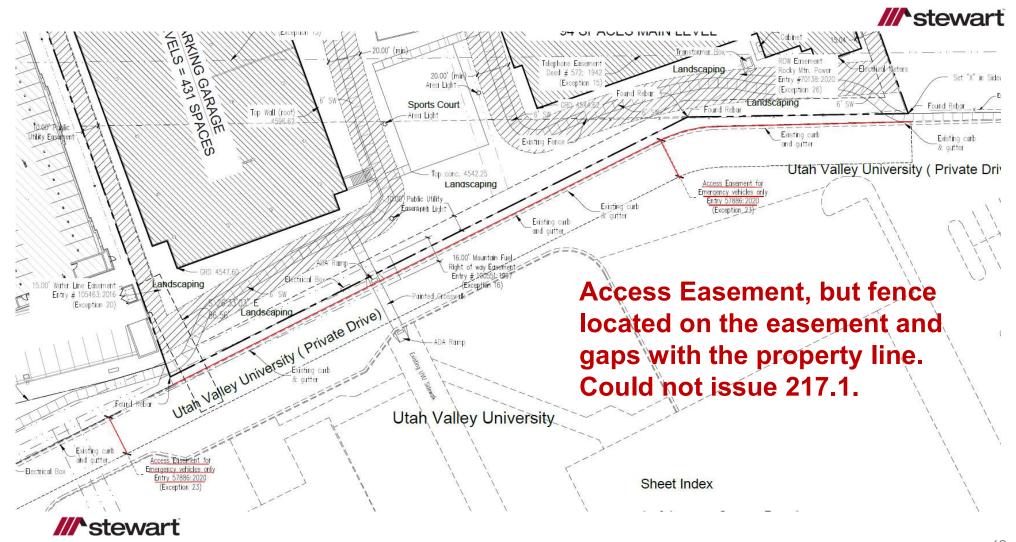
OLTA Endorsement 217.1-06 (Indirect Access and Entry) (6-17-06)

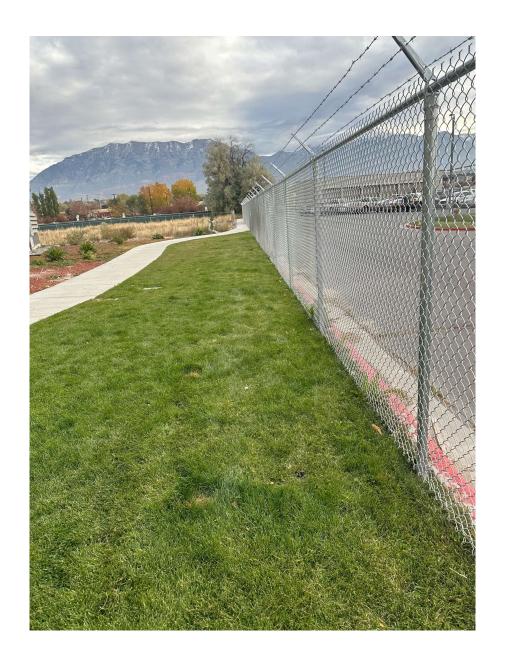
The Company insures against loss or damage sustained by the Insured if, at Date of Policy

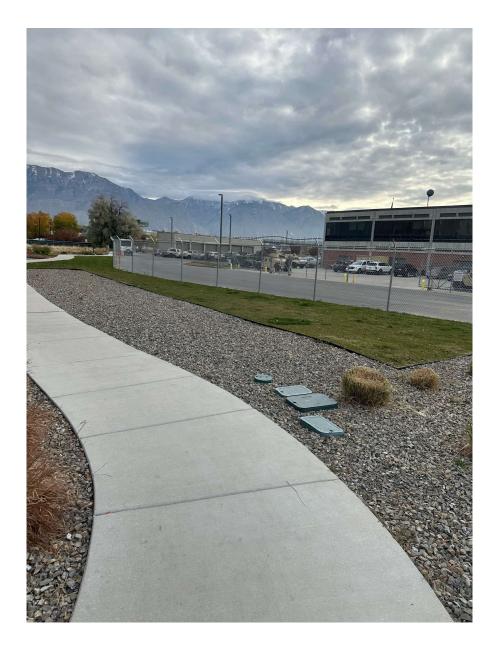
- (i) the easement identified [as Parcel _____] in Schedule A (the "Easement) does not provide that portion of the Land identified [as Parcel _____] in Schedule A both actual vehicular and pedestrian access to and from [insert name of street, road, or highway] (the "Street),
- (ii) the Street is not physically open and publicly maintained, or
- (iii) the Insured has no right to use existing curb cuts or entries along that portion of the Street abutting the Easement.











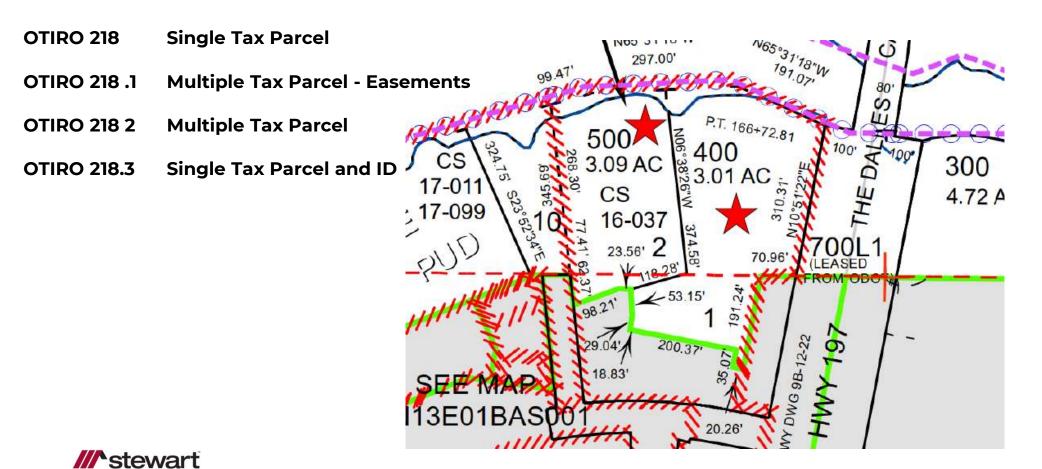


OTIRO No. 80 Access - Land Abuts Existing Street Endorsement (9-4-23)

The Company insures against loss or damage sustained by the Insured by reason of the failure of the Land to abut upon a physically open street know as _____.



OTIRO Endorsement 218 Series (Tax Parcel)



Guideline: OTIRO Endorsement 218 Series (Tax Parcel)

OTIRO 218 (Single Tax Parcel)

It insures against loss if <u>the Land is taxed as part of a larger parcel</u> or <u>fails to constitute a separate tax parcel</u>.

OTIRO 218.1 (Multiple Tax Parcel – Easement)

It insures against loss if:

- (1) the <u>parcels are not assessed</u> for real estate tax purposes as the Tax Identification <u>Numbers</u>,
 - (2) the <u>parcels are taxed with any other land</u>, or
- (3) the <u>easements</u>, if any, described <u>in Schedule A can be cut off by non-payment</u> of real estate taxes or assessments against the servient estate.



Warning OTIRO 218.1 (Multiple Tax Parcel – Easement)

The Company insures against loss or damage sustained by the Insured by reason of:

1. those portions of the Land identified below not being assessed for real estate taxes under the listed tax identification numbers or those tax identification numbers including any additional land:

Parcel: Tax Identification Numbers:

Parcel A R547567 Parcel B R547668

the easements, if any, described in Schedule A being cut off or disturbed by the nonpayment of real estate taxes assessed against the servient estate.



Guideline: OTIRO Endorsement 218 Series (Tax Parcel) con't

OTIRO 218.2 (Multiple Tax Parcel)

Explanation:

Insures against loss or damage sustained by the Insured by reason of those portions of the <u>Land identified below not being assessed for real estate taxes under the listed Tax Identification Numbers or those Tax Identification Numbers including any additional land.</u>

OTIRO 218.3 (Single Tax Parcel and ID) Explanation:

It insures against loss if:

- (1) the Land is <u>taxed as part of a larger parcel</u> of land or <u>if the Land fails to constitute a separate tax parcel</u> for real estate taxes; or
- (2) <u>any portion of the Land is not being assessed</u> for real estate taxes <u>under the specified tax identification number.</u>





OTIRO Endorsement 218.2-06 (Multiple Tax Parcel)

The Company insures against loss or damage sustained by the Insured by reason of those portions of the Land identified below not being assessed for real estate taxes under the listed Tax Identification Numbers or those Tax Identification Numbers including any additional land:

Parcel: Tax Identification Numbers:

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.



OTIRO Endorsement 225 Series (Survey)

OTIRO 225 Same as Survey

Explanation:

This endorsement insures that <u>the description of the land</u> shown in Schedule A is the <u>same as the land</u> shown on the mentioned survey.

OTIRO 225.1 Same as a Portion of Survey Explanation:

This endorsement insures that the description of the land shown in Schedule A <u>is the</u> <u>same</u> as the land shown on <u>a defined parcel</u> of the mentioned survey.

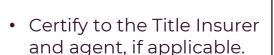
What do you need?

- (a) A <u>survey of the land</u> prepared by a licensed surveyor or registered engineer.
- (b) Verify that the survey is sufficient and consistent with regard to the establishment of record boundaries, controls, closure, etc.; and
- (c) Based on a review of the land shown on <u>the survey</u> and <u>the description of the land</u> <u>you are insuring</u>, verify that the description of the land in your policy <u>is identical</u>.

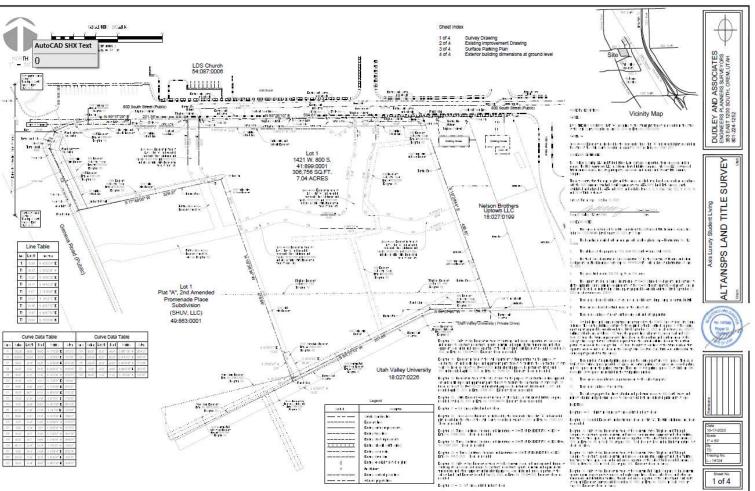


ALTA/NSPS SURVEY

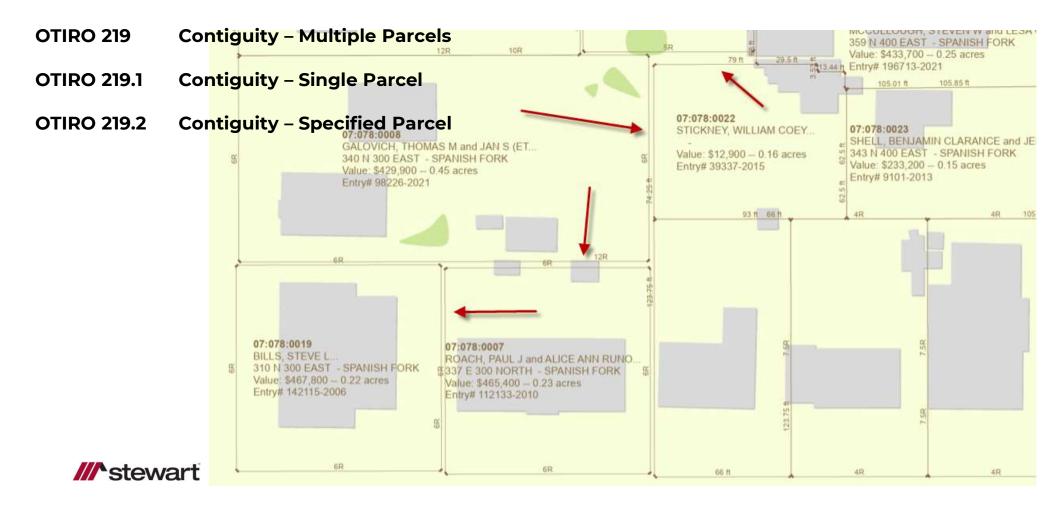




 What if they want to use an old survey? How old is too old?



OTIRO Endorsement 219 Series (Contiguity)



Guideline: OTIRO Endorsement 219 Series (Contiguity)

OTIRO 219 (Contiguity – Multiple Parcels) Explanation:

This endorsement insures that two or more insured parcels are <u>contiguous along defined</u> <u>lines or boundaries</u>. The endorsement also insures (to the same effect) that <u>there are no gaps separating the insured contiguous boundary lines</u>.

OTIRO 219.1 (Contiguity – Single Parcel) Explanation:

This endorsement insures that the **insured parcel** is contiguous to another, **uninsured parcel of land** along defined lines or boundaries. The endorsement also insures (to the same effect) that there are no gaps separating the insured parcel and the other, uninsured parcel. Typically, both parcels would be owned by the same owner, but would not have been acquired simultaneously.



Guideline: OTIRO Endorsement 219 Series (Contiguity)

OTIRO 219.2 (Contiguity – Multiple Parcels) Insuring Clause:

The Company insures against loss or damage sustained by the Insured by reason of there being any gaps, strips, or gores lying within or between [Example: Parcel A, B, C or Tract 1, 2, 3] of the Land[except as depicted on the survey made by _______ dated ______, and designated Job No. _____].



Construction Loans – OTIRO 232 series and OTIRO 233





OTIRO Endorsement 232 Series (Construction)

- 1. Covered Risk 11.a. of this policy is deleted.
- 2. The insurance for Construction Loan Advances added by Section 3 of this endorsement is subject to the exclusions in Section 4 of this endorsement and the Exclusions from Coverage in the Policy, the provisions of the Conditions, and the exceptions contained in Schedule B. For the purposes of this endorsement and each subsequent Disbursement Endorsement:
- a. "Construction Loan Advance": An advance that constitutes Indebtedness made on or before the Date of Coverage for the purpose of financing in whole or in part the construction of improvements on the Land.
- b. "Date of Coverage": ______, unless the Company sets a different Date of Coverage by an ALTA 33-06 Disbursement Endorsement issued at the discretion of the Company.
- c. "Mechanic's Lien": Any statutory lien or claim of lien under State law, affecting the Title, that arises from services provided, labor performed, or materials or equipment furnished.



Covered Risk 11a from the Loan Policy

- 11. The lack of priority of the lien of the Insured Mortgage upon the Title:
- a. as security for each advance of proceeds of the loan secured by the Insured Mortgage over any statutory lien for service, labor, material, or equipment arising from construction of an improvement or work related to the Land when the improvement or work is:
- i. contracted for or commenced on or before the Date of Policy; or
- ii. contracted for, commenced, or continued after the Date of Policy if the construction is financed, in whole or in part, by proceeds of the loan secured by the Insured Mortgage that the Insured has advanced or is obligated on the Date of Policy to advance; and
- b. over the lien of any assessments for street improvements under construction or completed at the Date of Policy

OTIRO Endorsement 232 Series (Construction)

- 2. The insurance for Construction Loan Advances added by Section 3 of this endorsement is subject to the exclusions in Section 4 of this endorsement and the Exclusions from Coverage in the Policy, the provisions of the Conditions, and the exceptions contained in Schedule B. For the purposes of this endorsement and each subsequent Disbursement Endorsement:
- a. **"Construction Loan Advance**": An advance that constitutes Indebtedness made on or before the Date of Coverage for the purpose of financing in whole or in part the construction of improvements on the Land.
- b. **"Date of Coverage":** ______, unless the Company sets a different Date of Coverage by an ALTA 33-06 Disbursement Endorsement issued at the discretion of the Company.
- c. "**Mechanic's Lien":** Any statutory lien or claim of lien under State law, affecting the Title, that arises from services provided, labor performed, or materials or equipment furnished.

BONUS SLIDE... THESE ARE THE DEFINITIONS CREATED BY THE 232

OTIRO Endorsement 232 Series (Construction)

- 3. The Company insures against loss or damage sustained by the insured by reason of:
- (a) the <u>invalidity or unenforceability of the lien</u> of the Insured Mortgage as security <u>for each Construction Loan Advance</u> made on or before the Date of Coverage;
- (b) the <u>lack of priority of the lien</u> of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage, <u>over any lien or encumbrance</u> on the Title recorded in the Public Records and not shown in Schedule B; and
- (c) the <u>lack of priority of the lien</u> of the Insured Mortgage, as security for each Construction Loan Advance made on or before the Date of Coverage <u>over certain</u> <u>Mechanic's Liens if notice of the Mechanic's Lien is not filed or recorded</u> in the Public Records.



OTIRO Endorsement 232 (Construction Loan)

OTIRO 232 insures only to the extent that the <u>charges</u> for the services, labor, materials, or equipment for which the Mechanic's Lien is claimed <u>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.</u>

OTIRO 232 <u>does not insure against loss or damage because of any mechanic's lien arising from services, labor, materials, or equipment</u>:

A. furnished after Date of Coverage; or

B. <u>not designated for payment in the documents supporting a Construction Loan</u> <u>Advance disbursed by or on behalf of the Insured on or before Date of Coverage</u>

OTIRO 232 <u>does not require</u> that the <u>Company or its agent be involved in the disbursement</u> of funds.



OTIRO Endorsement 232.1 (Construction Loan-Direct Payment)

OTIRO 232.1 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.

OTIRO 232.1 <u>does not insure</u> against loss or damage by reason of any mechanic's lien arising from services, labor, materials, or equipment:

A. <u>furnished after Date of Coverage</u>; 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.

OTIRO 232.1 <u>contemplates that the Company or its agent will be involved in the direct</u> <u>payment</u> to specific mechanic's lien claimants - either by making the payment or by approving it.



OTIRO Endorsement 232.2 (Construction Loan-Insured Direct Payment)

OTIRO 232.2 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.

OTIRO 232.2 <u>does not insure</u> against loss or damage because of any mechanic's lien arising from services, labor, materials, or equipment:

A. <u>furnished after Date of Coverage</u>; or

B. to the extent that the Mechanic's Lien claimant was not directly paid by the Insured or on the Insured's behalf.

OTIRO 232.2 <u>does not require that the Company or its agent be involved in the disbursement</u> of funds.



OTIRO Endorsement 232 Series Summary (who controls disbursements)

OTIRO 232 – Does not require the title company or agent to be involved in disbursements.

OTIRO 232.1 – Requires direct payment to the potential mechanic's lien claimants by the title company or agent, or payment must be approved by the title company or agent.

OTIRO 232.2 – Requires the insured to make direct payment to potential mechanic's lien claimants.





OTIRO Endorsement 233 (Disbursement)

The OTIRO 233 Disbursement Endorsement <u>contains several blanks and optional [bracketed] sections</u>, which may be completed as follows:

- A. Date of Coverage: The Date of Coverage will be determined as instructed by an underwriter. The Date of Coverage will likely be dependent upon the specific aspects of the transaction, including, for example, indemnities. Depending upon the transaction, the Date of Coverage may be amended from time to time to be the date of the current disbursement, the date of the prior disbursement, or the date for which satisfactory proof of payment or lien waivers have been received.
- B. Current Disbursement / Aggregate Amount: The Current Disbursement and Aggregate Amount will be determined as instructed by an underwriter. In general, if requested by the Insured, these amounts can be inserted upon receipt by the Company of satisfactory proof of payment, pursuant to the applicable form of ALTA Construction Loan Endorsement.
- C. Part I: Additional Schedule B, Part I Exceptions: You should use this section to add additional exceptions, if any, disclosed by your continuation, using the following text: "Schedule B is hereby amended to add the following exceptions:".
- D. Part II: Additional Schedule B, Part II Exceptions: You may use this section to add additional subordinate matters, if any, disclosed by your continuation, using the following text: "Schedule B-II is hereby amended to add the following exceptions:". You should not use this section for any mechanic's liens without underwriter approval.

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OTIRO Endorsement 233 (Disbursement)

- OTIRO Endorsement 233-06 (Disbursement) is designed to be used with OTIRO Construction Loan Endorsements 232, 232.1, and 232.2.
- OTIRO Endorsement 233-06 (Disbursement) <u>extends the Date of Coverage</u> as defined in the OTIRO 232, 232.1, and 232.2 Construction Endorsements, but it <u>does not alter the</u> <u>Date of Policy</u>.

Note: Do not include borrower contribution in the current disbursement or aggregate amount.







OTIRO Endorsement 228 Series (Encroachments)

OTIRO 228 Encroachments – Damage or Enforced Removal

OTIRO 228.1 Encroachments – Boundaries and Easements

OTIRO 228.2 Encroachments – Boundaries and Easements (Described Improvements)

OTIRO 228.3 Encroachments – Boundaries and Easements (Land Under Development)







OTIRO Endorsement 228 (Encroachment – Damaged or Enforced Removal)

Explanation:

The Endorsement insures against loss in the event that <u>a specific</u> <u>easement holder</u> shall

(1) cause damage to a building located on the land at date of policy, or

(2)<u>compel the removal or alteration of an existing building</u> located on the land at date of policy.





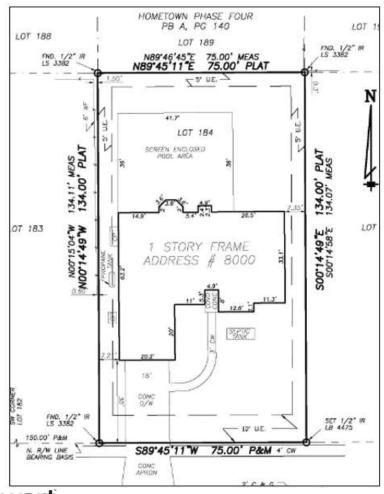
OTIRO Endorsement 228 (Encroachment – Damaged or Enforced Removal)

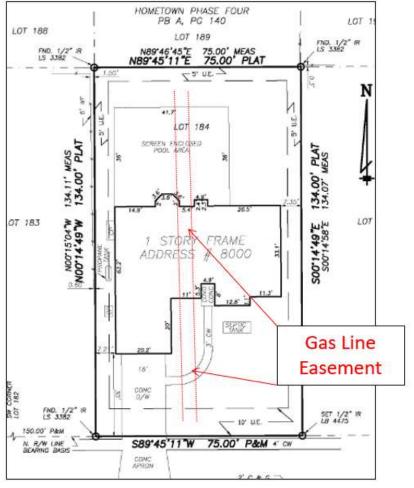
What might I need?

- (1) Examination of the survey to <u>ensure that existing buildings are not</u> <u>impacted by the easement</u>. *Or*
- (2) Approval or <u>consent of the easement holder</u> in order to be able to offset damage from the exercise of the easement rights, or
- (3) An <u>abandonment of said easement</u>.









///stewart

Good to Go!

We have issues...



OTIRO Endorsement 228.1 (Encroachment – Boundaries and Easement)

Explanation:

This endorsement provides coverage against loss or damage sustained by the Insured by reason of an <u>encroachment of any Improvement</u> on the Land

- (1) onto adjoining land, or
- (2) onto that portion of the Land subject to an easement.

In addition, the endorsement provides coverage against loss by reason of any <u>Improvement located on adjoining land encroaching</u> onto the Land.

Note: "Improvement" is defined as an existing building.





OTIRO Endorsement 228.2 (Encroachment – Boundaries and Easements-Described Improvements)

Explanation: (same coverage as 228.1)

This endorsement provides coverage against loss or damage sustained by the Insured by reason of an <u>encroachment of any Improvement</u> on the Land

- (1) onto adjoining land, or
- (2) onto that portion of the Land subject to an easement.

In addition, the endorsement provides coverage against loss by reason of any <u>Improvement located on adjoining land encroaching</u> onto the Land.





OTIRO Endorsement 228.2 (Encroachment – Boundaries and Easement-Described Improvements)

Difference:

1. Itemize in Section 2 those Improvements on the Land and improvements on adjoining land to be included as an "Improvement" in the endorsement





OTIRO Endorsement 228.3 (Encroachment –Boundaries and Easements-Land Under Development)

Explanation: (same coverage as 228.1)

- The endorsement defines <u>Improvements</u> as "a <u>building, structure, or paved area, including any</u> <u>road, walkway, parking area, driveway, or curb</u> located on the surface of the Land or the surface of adjoining land.
- The endorsement defines "<u>Future Improvement"</u> as "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 <u>building</u>;
 - (ii) a <u>structure</u>; or
 - (iii) a paved area, including any road, walkway, parking area, driveway, or curb."

Note: Paragraph 2.c of the endorsement requires site plans be submitted and reviewed:

(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.



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If you want to email me, <u>Dulce.Phelps@Stewart.com</u>

