

Welcome to the Title Insurance (C) Task Force Meeting

- All audio will be muted upon entry
- Prior to speaking, unmute both **Webex** & cell phone
- If joined by phone, press*6 to mute/unmute your line
- Use “Chat” for questions, comments or assistance
- Tech Help: MeetingTechHelp@naic.org or 866-874-4905
- The meeting is being recorded



NATIONAL ASSOCIATION OF
INSURANCE COMMISSIONERS



NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

Date: 11/11/21

Virtual Meeting (In Lieu of the Fall National Meeting)

TITLE INSURANCE (C) TASK FORCE

Tuesday, Nov. 16, 2021

2:00 – 3:30 p.m. ET / 1:00 – 2:30 p.m. CT / 12:00 – 1:30 p.m. MT / 11:00 a.m.– 12:30 p.m. PT

ROLL CALL

Judith L. French, Chair	Ohio	Troy Downing	Montana
David Altmaier, Vice Chair	Florida	Bruce R. Ramge	Nebraska
Lori K. Wing-Heier	Alaska	Barbara D. Richardson	Nevada
Peni Itula Sapini Teo	American Samoa	Marlene Caride	New Jersey
Karima M Woods	District of Columbia	Russell Toal	New Mexico
Colin M. Hayashida	Hawaii	Mike Causey	North Carolina
Vicki Schmidt	Kansas	Jessica K. Altman	Pennsylvania
James J. Donelon	Louisiana	Raymond G. Farmer	South Carolina
Kathleen A. Birrane	Maryland	Larry D. Deiter	South Dakota
Grace Arnold	Minnesota	Michael S. Pieciak	Vermont
Chlora Lindley-Myers	Missouri	Scott A. White	Virginia

NAIC Support Staff: Anne Oberstadt/Aaron Brandenburg

AGENDA

1. Consider Adoption of its Oct. 19, 2021, Minutes —*Director Judith L. French (OH)* Attachment 1
2. Discuss Comments Received on the Proposed 2022 Charges — *Director Judith L. French (OH)* Attachment 2
3. Consider the Proposed 2022 Charges for Adoption— *Director Judith L. French (OH)*
4. Hear a Presentation on how the Robust Housing Market Drove Historic Title Industry Performance—*Ann Modica and Kourtnie Beckwith (AM Best)* Attachment 3
5. Hear a Presentation on Changes to American Land Title Association’s Homeowners Policy and Endorsements— *Steve Gottheim (ALTA); Mary Thomas (Stewart Title) and Dan Buchanan (First American Title)* Attachment 4
6. Discuss Any Other Matters Brought Before the Task Force — *Director Judith L. French (OH)*

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Consider Adoption of its Oct. 19, 2021 Meeting Minutes

—*Judith L. French (OH)*

Attachment 1



NATIONAL ASSOCIATION OF
INSURANCE COMMISSIONERS

Draft: 10/29/21

Title Insurance (C) Task Force
Virtual Meeting
October 19, 2021

The Title Insurance (C) Task Force met Oct. 19, 2021. The following Task Force members participated: Judith L. French, Chair, represented by Michelle Brugh Rafeld (OH); David Altmaier, Vice Chair, represented by Anoush Brangaccio (FL); Lori K. Wing-Heier represented by Sian Ng-Ashcraft (AK); Karima M. Woods represented by Angela King (DC); Colin M. Hayashida represented by Paul Yuen (HI); James J. Donelon represented by Warren Byrd (LA); Grace Arnold represented by Paul Hanson (MN); Chlora Lindley-Myers represented by Marjorie Thompson (MO); Troy Downing (MT); Mike Causey represented by Timothy Johnson (NC); Marlene Caride represented by Randall Currier (NJ); Russell Toal and Mark Marquez (NM); Barbara D. Richardson represented by Erin Summers (NV); Larry D. Deiter represented by Maggie Dell (SD); Scott A. White represented by Mike Beavers (VA); and Michael S. Pieciak represented by Kevin Gaffney (VT). Also participating were: Jennifer Welch (DE); and Michael Walker (WA).

1. Adopted its Summer National Meeting Minutes

The Task Force met July 13 and took the following action: 1) adopted its June 7 minutes; 2) adopted revisions to the *Title Insurance Consumer Shopping Tool Template* (Shopping Tool); and 3) heard a presentation on business email compromises.

Mr. Byrd made a motion, seconded by Mr. Currier, to adopt the Task Force's July 13 minutes (*see NAIC Proceedings – Summer 2021, Title Insurance (C) Task Force*). The motion passed unanimously.

2. Discuss it 2022 Proposed Charges

Ms. Rafeld recommended removing the Task Force's fourth charge to "[c]onsider the effectiveness of changes in financial reporting by title insurance companies, and identify further improvements and clarifications to blanks, instructions, Statement of Statutory Accounting Principles (SSAPs), solvency tools, and other matters, as necessary. Coordinate efforts with the Statutory Accounting Principles (E) Working Group." This charge has been included in the list of charges for some time, as it was tied to work being done by the Title Insurance Financial Reporting (C) Working Group, which was disbanded once it completed this task. There are no requests for assistance at this time from the Statutory Accounting Principles (E) Working Group, and any future requests can be handled under the first charge. Ms. Rafeld also recommended removing the fifth charge to "[r]evise the *Title Insurance Consumer Shopping Tool Template* to include questions and answers about title insurance-related fraud topics, including but not limited to, [closing protection letters] CPLs and wire fraud." The Task Force updated the Shopping Tool to include information about wire fraud, and it was adopted by the Property and Casualty Insurance (C) Committee during the Summer National Meeting. In addition, based upon all the presentations held over the past year regarding the impact the pandemic has had on the title industry, Ms. Rafeld recommended removing the seventh charge to "[e]xplore short-term and long-term issues and solutions from the pandemic." She stated that Ohio had a consumer from Florida contact them about just realizing his title insurance carrier had been liquidated more than a decade ago. Unfortunately, Ohio does not have a guaranty association, so there was nowhere for this consumer to turn. There may be the need for the Task Force to create some type of guideline or best practice stating that policyholders should be notified that they no longer have coverage in the rare case that an underwriter liquidates as well as what their next steps should be if they have a claim. The Task Force may want to also consider looking into whether guaranty associations should be a best practice.

Mr. Byrd stated his support for removing the fourth, fifth, and seventh charges. He stated that he would like to be educated on why some states do not have title guaranty associations.

Birny Birnbaum (Center for Economic Justice—CEJ) stated that the *Life and Health Insurance Guaranty Association Model Act* (#520) specifically excludes title insurance. He believes this is an important issue to look into. At the time of the financial crisis, one of the largest title insurers was failing and was ultimately purchased by another title insurer. Had it failed, it would have created significant problems for consumers and the banks who rely upon title insurance to protect their loans. The issue extends not just to informing the consumers, but lenders too. However, there have been failures covered by the Texas guaranty fund.

Steve Gottheim (American Land Title Association—ALTA) stated that the Task Force set up a Working Group at one time to look into guaranty funds. The financial difficulty of the title company that struggled during the financial crisis was due to some

of their investments, not its insurance. As stated previously, the insurance was purchased by another licensed insurer, which is common practice. ALTA can connect consumers inquiring about their liquidated insurer to where they need to make a claim or how they should request additional information on getting a new policy.

Aaron Day (Texas Land Title Association—TLTA) stated that Texas has a complex system, and its guaranty fund is completely consumer-funded. The underwriters front the immediate needs through assessments, and those assessments are recouped by the underwriter through a subsequent fee. There is also an independent board whose members are appointed by the Texas Department of Insurance (DOI) and consist of public members, industry members, and staff.

Ronald J. Blitenthal (Old Republic Title) stated that he would send NAIC staff a copy of the January 2013 minutes he has of the Task Force's prior Working Group that looked into guaranty fund issues.

Ms. Rafeld asked that additional comments or revision suggestions for the Task Force's 2022 proposed charges be emailed to NAIC staff. The Task Force will review comments to the proposed charges for potential adoption on its Nov. 16 call.

3. Heard a Presentation on Demotech's *Regional Title Underwriter Escrow Theft and Defalcation Prevention Measures Report*

Joseph L. Petrelli Jr., Paul Osborne, and Douglas Powell (Demotech) discussed Demotech's observed and reported impacts of defalcations and escrow theft on the title industry. Demotech requests title underwriters for which it assigns Financial Stability Ratings to submit information on their current agent review process, defalcation prevention procedures, and any other mitigation procedures. Each title underwriter is requested to submit a questionnaire, detailed summary, and any additional supporting documentation. Demotech recently released its latest aggregated results of 40 regional underwriters for 2020. The results are largely consistent with 2019, with only four defalcations for title underwriters writing 2.6 million policies that year. This indicates that the processes and procedures currently in place are mitigating defalcation activity.

Mr. Currier asked what the highest amount was on the summary results for 2020. Mr. Powell stated that the total amount was \$817 million in 2020. In 2019, claims were \$2 million for two claims. Given the number of transactions, the mitigation measures put in place by title insurers seem to be doing a good job.

4. Heard a Presentation on ALTA's New Policy Forms

Mr. Gottheim, Mary Payne Thomas (Stewart Title), and Dan Buchanan (First American Title) provided an overview of ALTA's new forms of Commitment, Owner's Policy, and Loan Policy, effective July 1, 2021.

The changes align the updated language of the 2016 Commitment to the Policy Forms, moving some exceptions that became commonplace to the jacket as Exclusions. They also make punctuation and grammatical refinements, revise amendments based on how courts have treated the prior policy language and add language for some new coverages and exclusions for both the insured and insurer. More specifically, the changes include: 1) the coverages of the electronic policy/signature endorsement are now included in the Policy Jacket; 2) there is now clarification on the treatment of the Perishable Agricultural Commodities Act (PACA) exception; 3) the term "insured" is defined to allow coverage under the Owner's Policy to continue when the Land is conveyed to an affiliate, even when money changes hands; 4) Remote Online Notarization (RON) is now part of the covered risk, as traditional in-person notarization is; 5) the "Enforcement Notice" term is introduced, defining a document that is a lien but governmental in nature; 6) the Loan Policy's Covered Risk adds language to clarify and confirm for lenders that the coverage is for certain enumerated components of the Indebtedness; 6) Covered Risk on Mechanics Liens now confirms that the coverage relates to services and equipment in addition to labor and materials; 7) the new forms reference "voidable transfer" instead of "fraudulent transfer" to be consistent with the Uniform Voidable Transactions Act (UVTA); 8) the Transaction Identification Data is now formatted into Schedule A of the new policies for consistency; 9) standard exceptions to illegal covenants in Schedule B were created; and 10) a new Condition is added that gives an insured a choice of valuing a loss at either the date a notice of claim was received by the company or the date of a foreclosure sale. This addresses prior confusion created under the old policies' lack of specificity on when a loss should be valued, which led to several legal disputes during the great recession.

Ms. Rafeld stated that the comparisons between the old and new policies on ALTA's website are very helpful.

Mr. Currier stated that he believes it would be helpful if ALTA presented at a deeper level on changes to its endorsements during the Task Force's Nov. 16 meeting. Ms. Rafeld stated that she would invite ALTA to present during the meeting. She

stated that the Task Force would also hear a presentation from AM Best on how the housing market has driven title industry performance.

Having no further business, the Title Insurance (C) Task Force adjourned.

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Discuss and Consider Proposed 2022
Charges for Adoption — *Director Judith L.
French (OH)*



NATIONAL ASSOCIATION OF
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Mission

The mission of the Title Insurance (C) Task Force is to study issues related to title insurers and title insurance producers.

2022 Proposed Charges

The **Title Insurance (C) Task Force** will:

1. **Discuss and/or** monitor issues and developments ~~occurring~~ **impacting** in the title insurance industry, and provide support and expertise to other NAIC committees, task forces and/or working groups, or outside entities, as appropriate.
2. Review and assist various regulatory bodies in combating fraudulent and/or unfair real estate settlement activities. Such efforts could include working with the Antifraud (D) Task Force and other NAIC committees, task forces and/or working groups to combat mortgage fraud and mitigating title agent defalcations through the promotion of closing protection letters (CPLs) and other remedies. ~~Report results at each national meeting.~~
3. Consult with the Consumer Financial Protection Bureau (CFPB) and other agencies responsible for information; education; and disclosure for mortgage lending, closing and settlement services about the role of title insurance in the real estate transaction process.
4. ~~Consider the effectiveness of changes in financial reporting by title insurance companies, and identify further improvements and clarifications to blanks, instructions, Statement of Statutory Accounting Principles (SSAPs), solvency tools, and other matters, as necessary. Coordinate efforts with the Statutory Accounting Principles (E) Working Group.~~
5. ~~Revise the Title Insurance Consumer Shopping Tool Template to include questions and answers about title insurance-related fraud topics, including but not limited to, CPLs and wire fraud.~~
6. Evaluate ~~the effectiveness of CPLs including but not limited to, intent,~~ **to ensure compliance** with state regulation and requirements, consumer protections offered and excluded, and potential alternatives for coverage.
7. ~~Explore short term and long term issues and solutions from the pandemic.~~

Hear a Presentation on how the Robust Housing Market led to Historic Title Industry Performance

Attachment 3



NATIONAL ASSOCIATION OF
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Robust Housing Market Drives Historic Title Performance

Kourtnie Beckwith – Financial Analyst II, AM Best
Ann Modica – Associate Director, Credit Rating Criteria

NAIC Title Insurance Task Force Meeting
November 16, 2021

Presenters

Kourtnie Beckwith is a Financial Analyst, with the Property and Casualty ratings division responsible for the analysis and financial ratings of captive insurers and title organizations in the United States. Kourtnie is also a contributing author to various Best's Special Reports. Kourtnie holds a degree in business management from the University of Phoenix, and as a veteran in the insurance profession with more than two decades of experience, she is committed to ongoing professional development, holding the Chartered Property and Casualty (CPCU), Associate in Underwriting (AU) and Associate in Marine Insurance Management (AMIM) designations.

- Contact: Kourtnie.Beckwith@ambest.com



Ann Modica is an Associate Director, Senior Economist with the credit rating criteria, research and analytics division. Ann is the head of the country risk team, which assesses the economic, political and financial system risks that insurance companies encounter when operating in the more than 140 domiciles that impact insurers rated by AM Best. In addition, Ann is responsible for the creation and distribution of economic analysis and research in support of AM Best's credit ratings and criteria and for the purposes of publication. Ann is a graduate of the University of Chicago Booth School of Business with an MBA in finance and economics, and a BA in economics from the University of Chicago.

- Contact: Ann.Modica@ambest.com

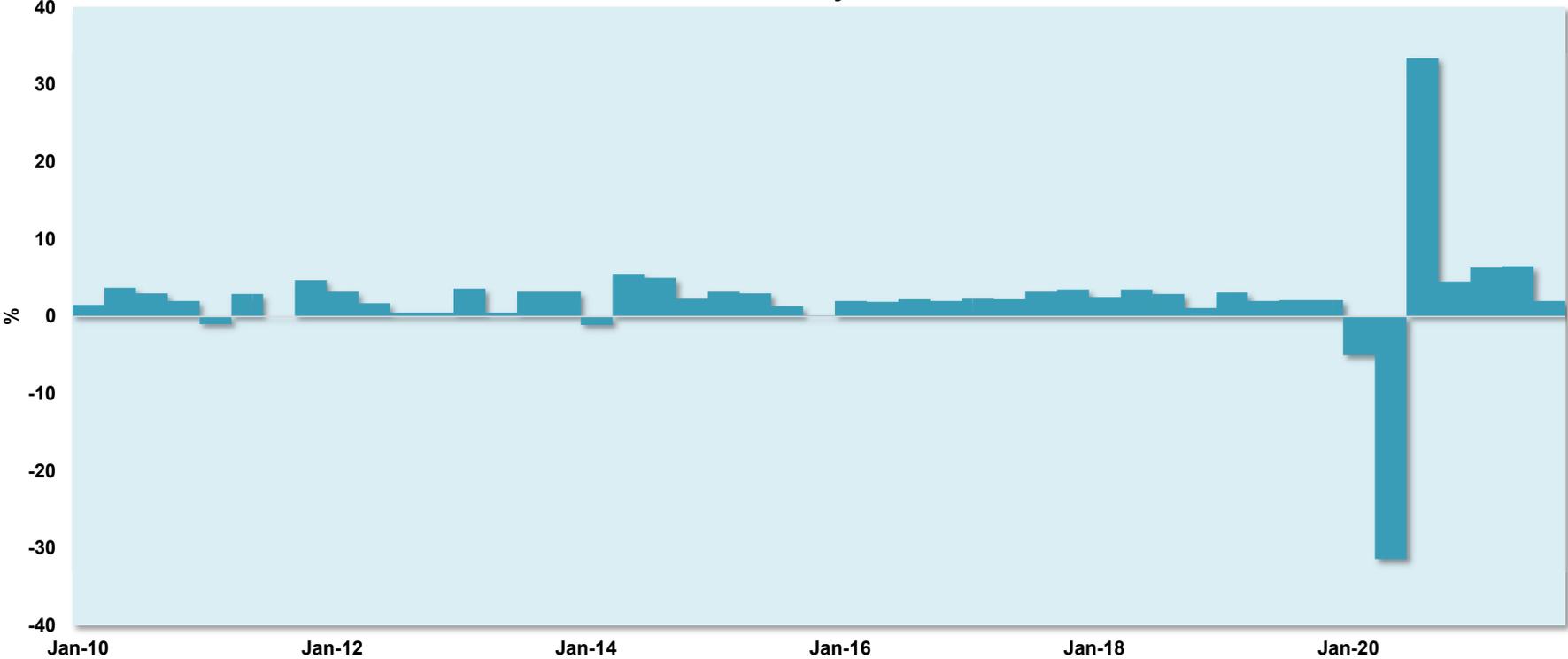


Agenda

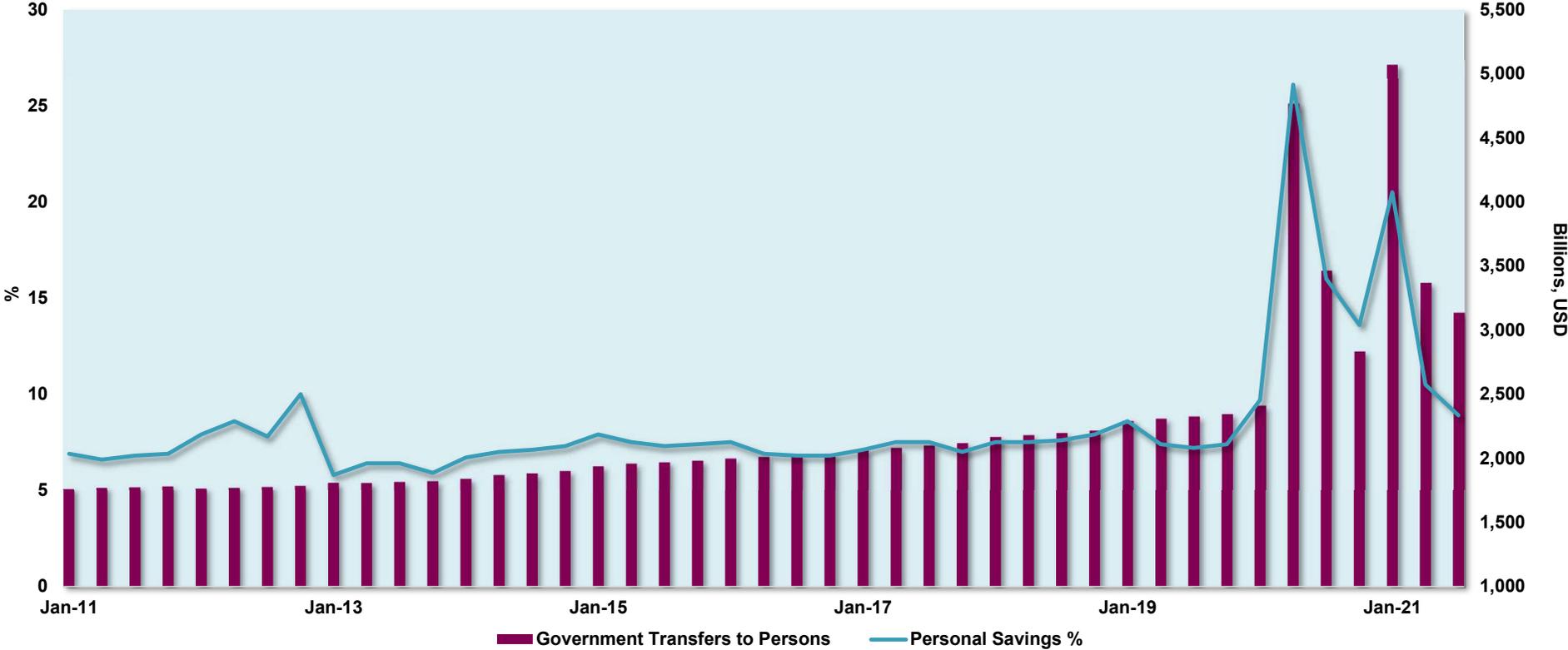
- Introduction
 - Current Economic Factors
 - Housing Market
 - Housing pricing, appreciation and affordability
 - Inventory
 - Monetary Policy
 - US Title Insurance Market Segment Report
 - Record Performance for Title Insurers
 - Real Estate Trends and Issues
 - RON and Insurtech Startups

Economic Activity Slowed in the Third Quarter

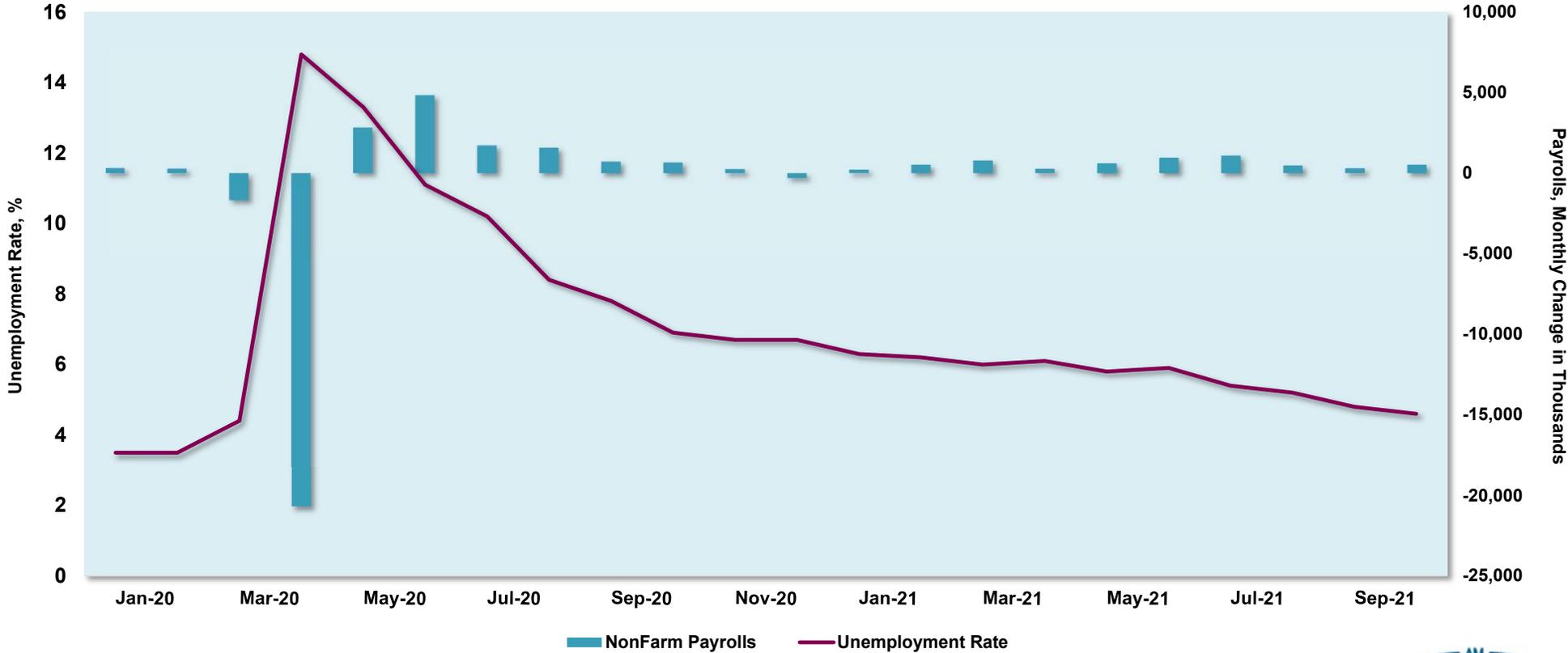
Quarterly GDP



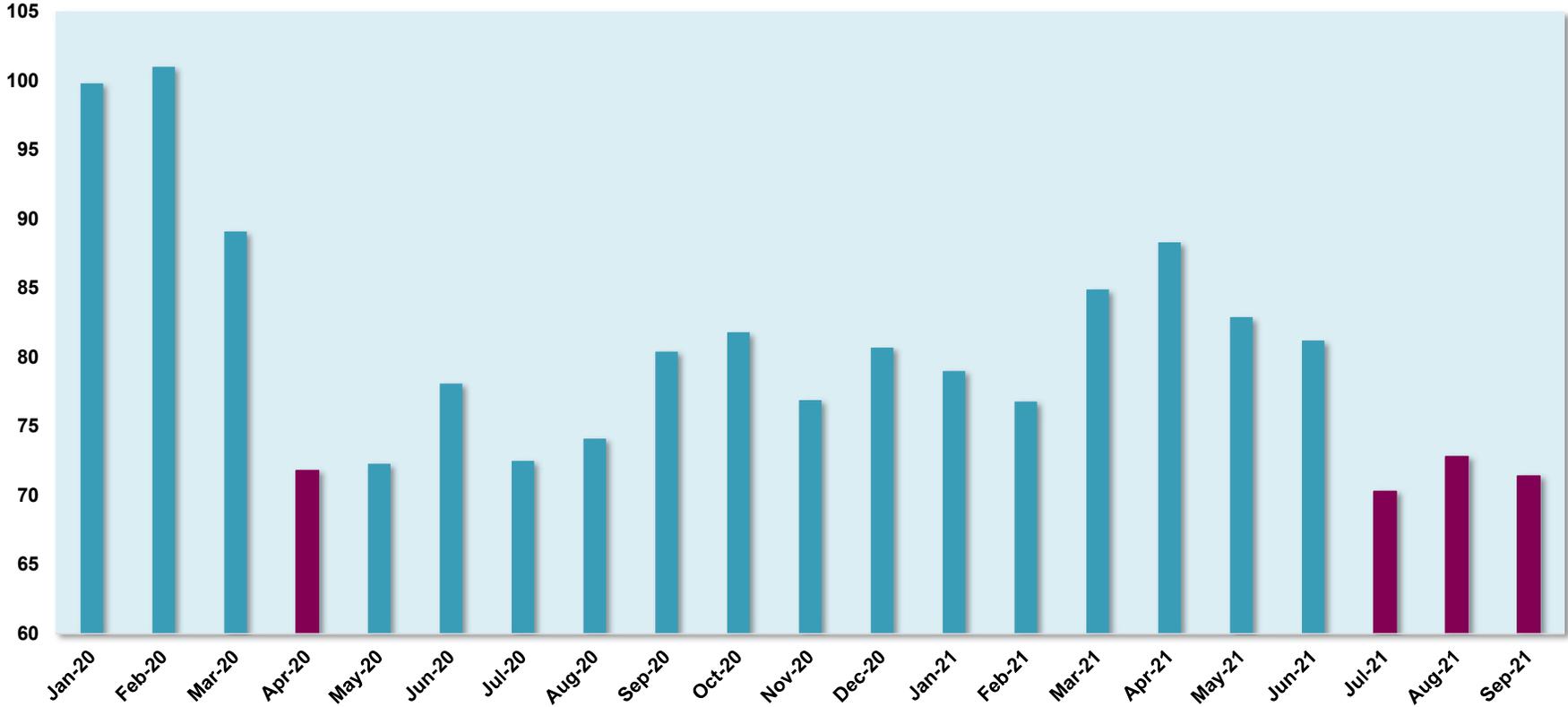
Personal Saving Still High Despite Pullback in Govt. Benefits



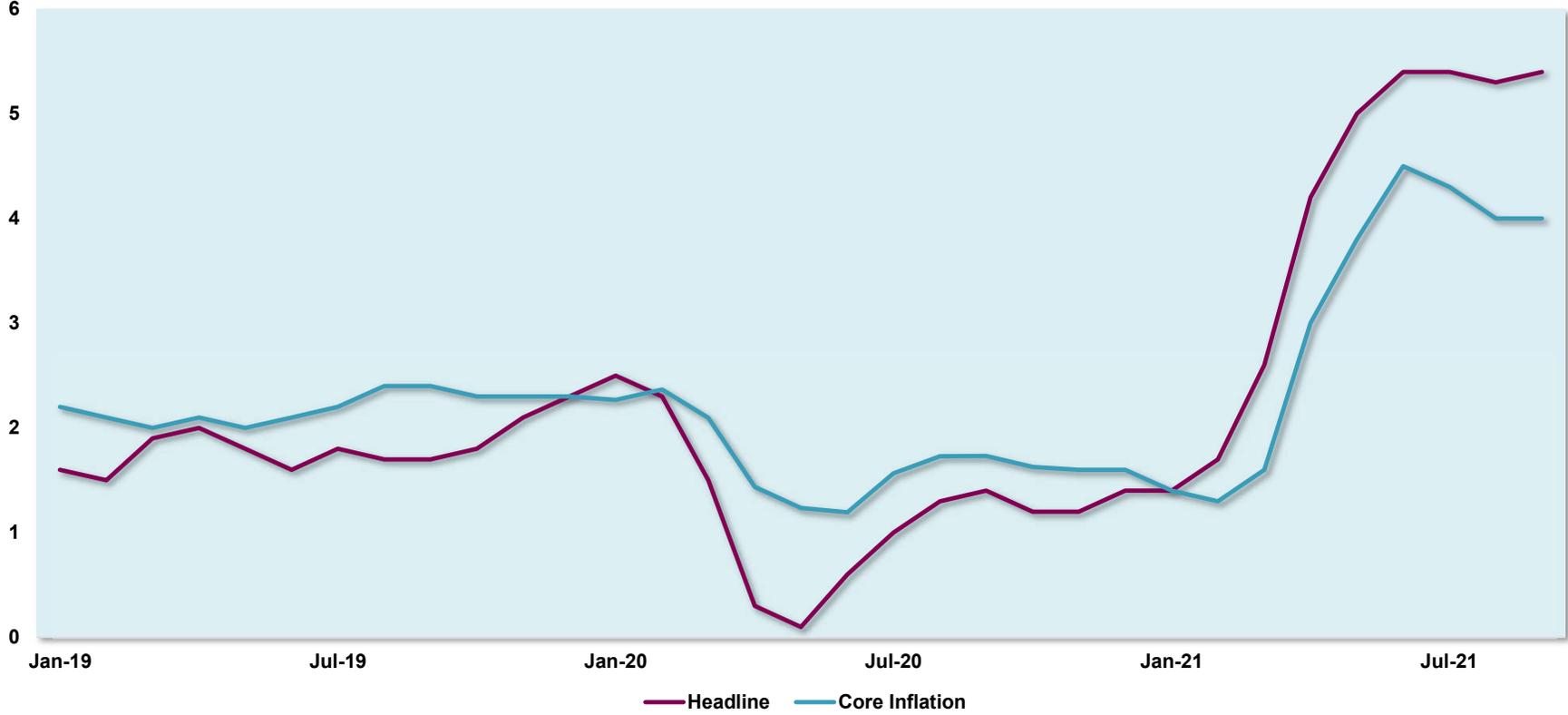
Unemployment Rate has Steadily Ticked Down



Sentiment at Lows Seen during Early Pandemic

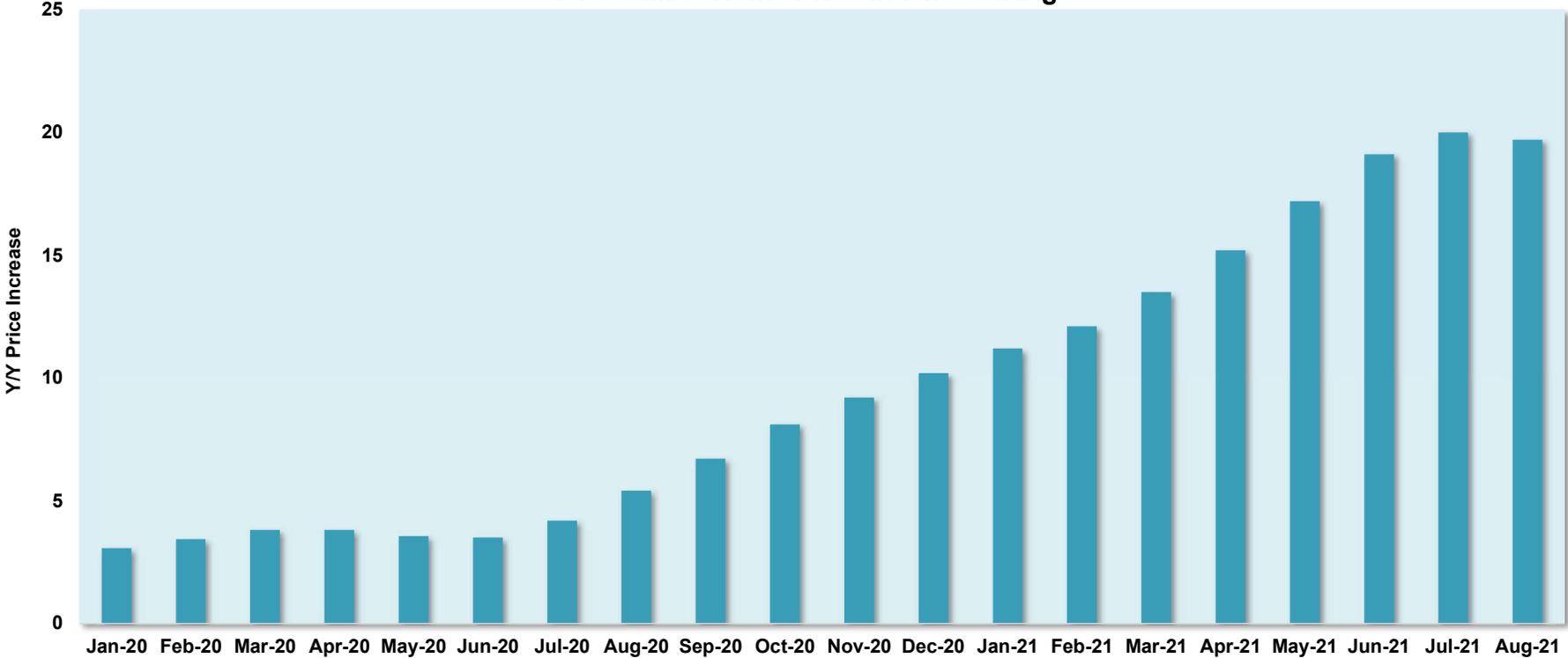


Inflation – Transitory to Troublesome?

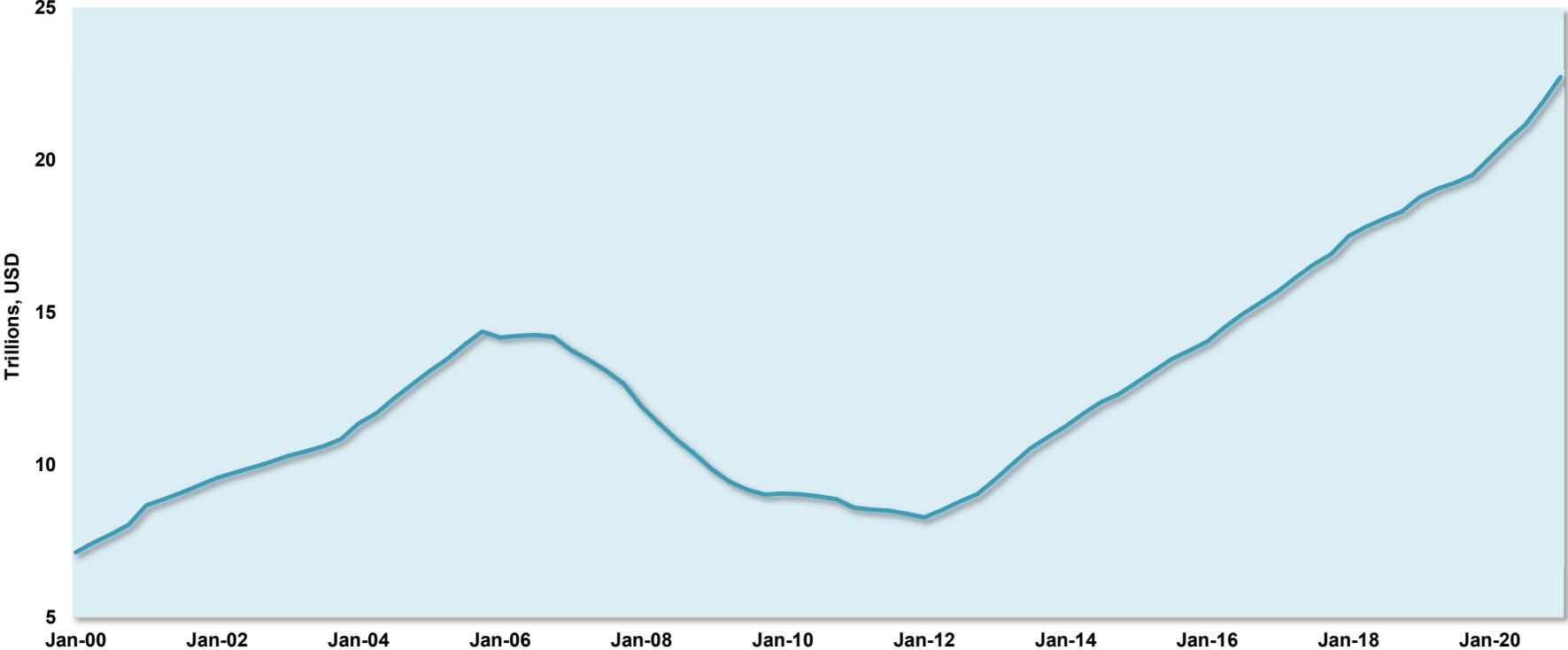


Housing Price Appreciation

Case Shiller Home Price Index % change

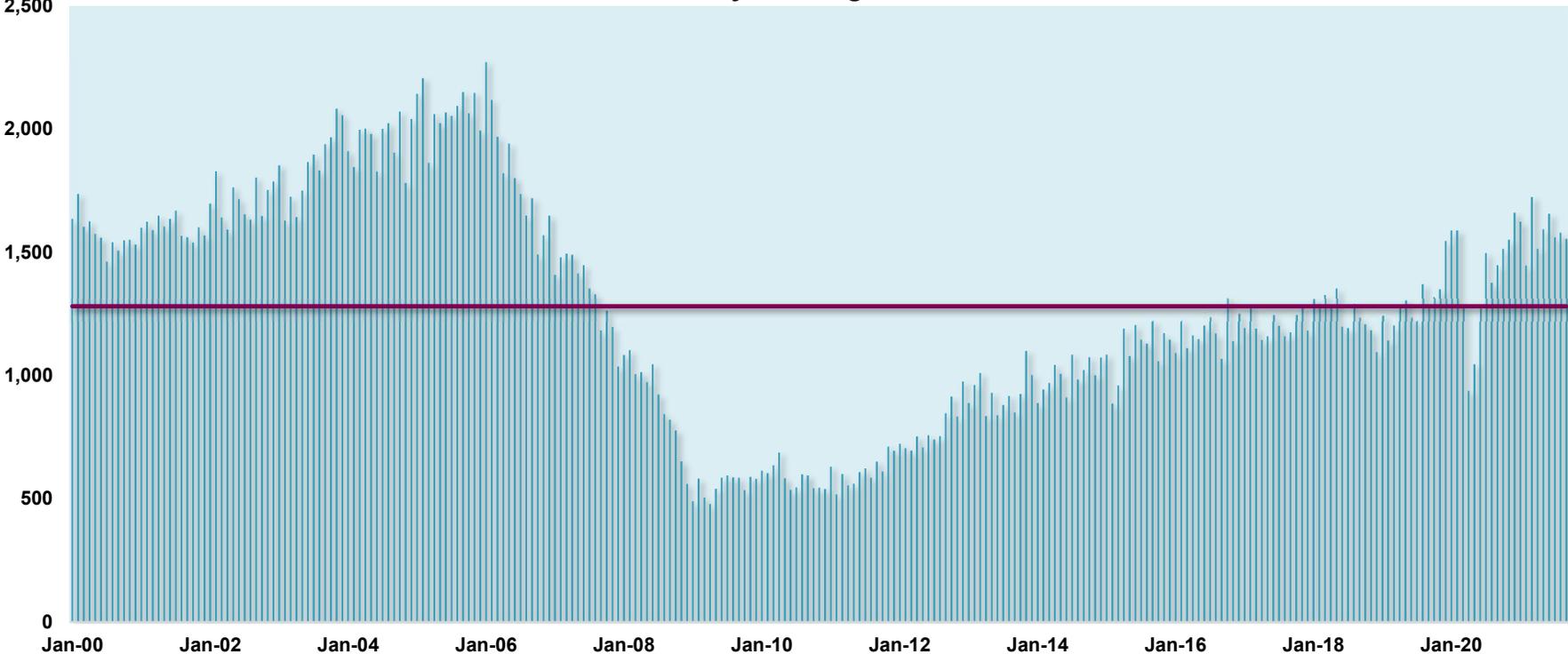


Increase in Homeowners' Equity

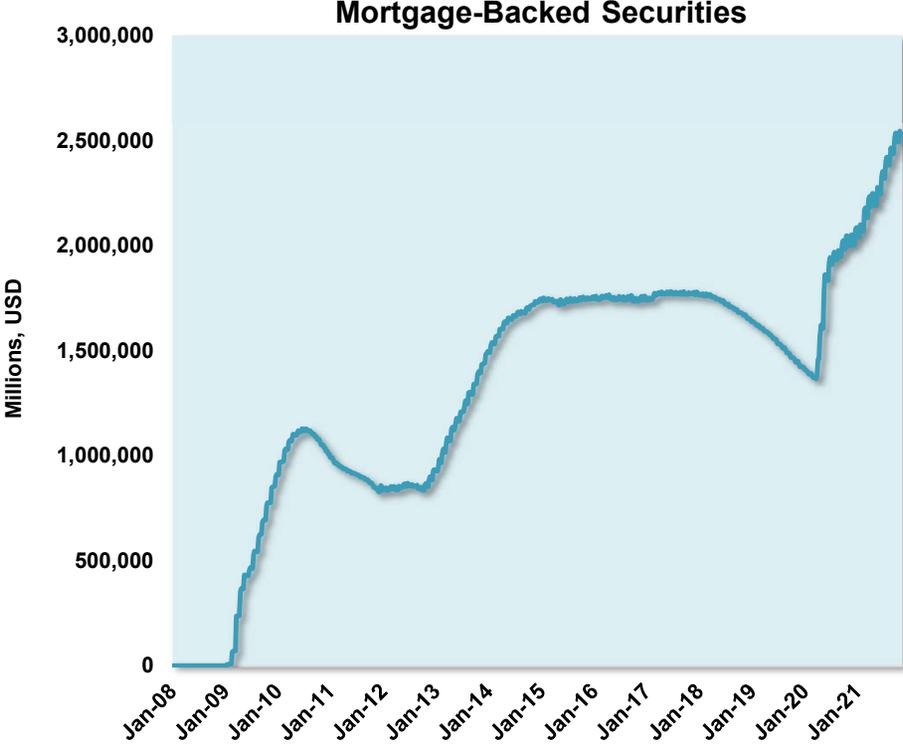
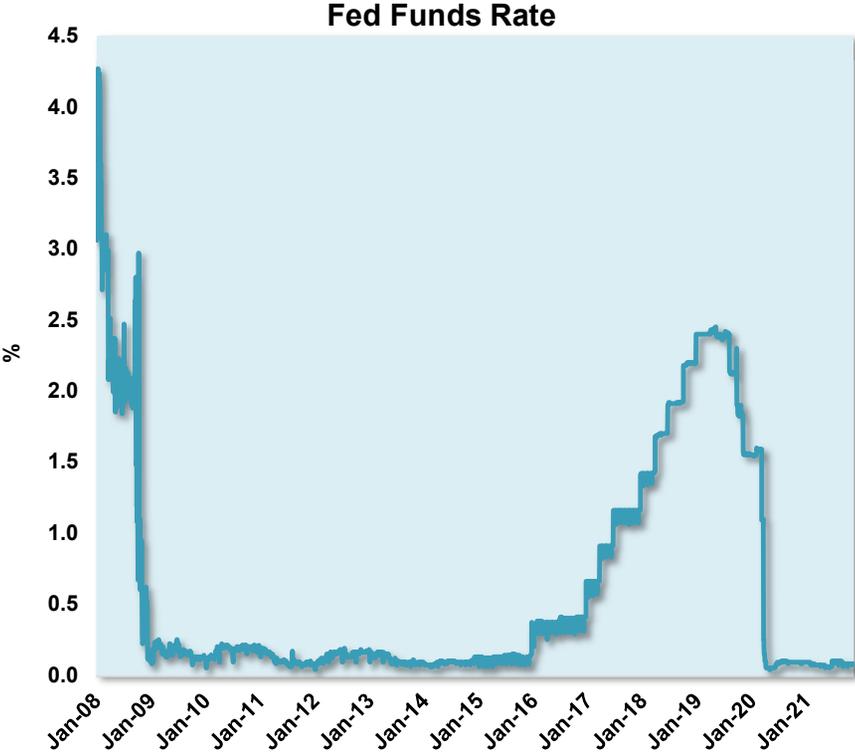


Low Supply of Housing

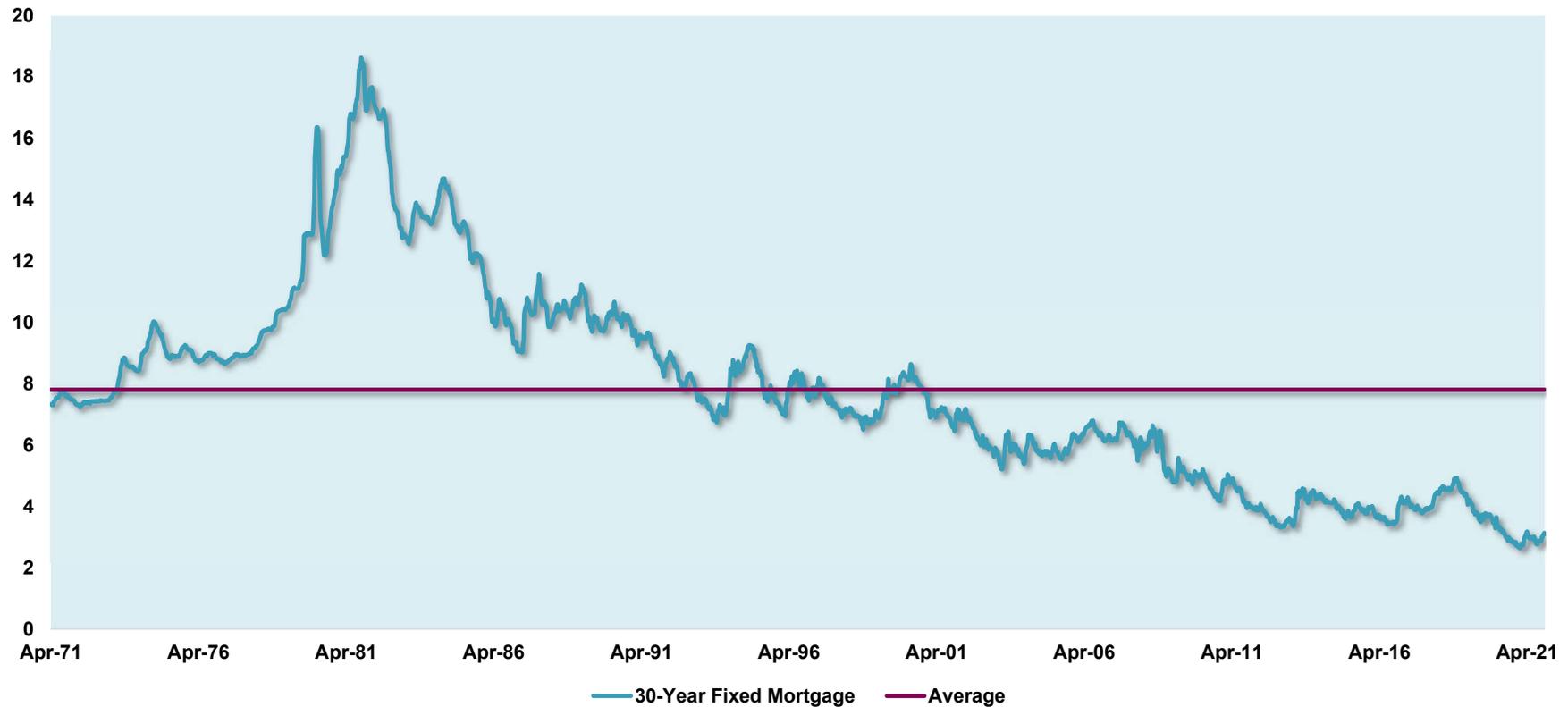
Monthly Housing Starts



Monetary Policy



30 Year Fixed Mortgage – Close to Historical Lows



Record Performance for Title Insurers

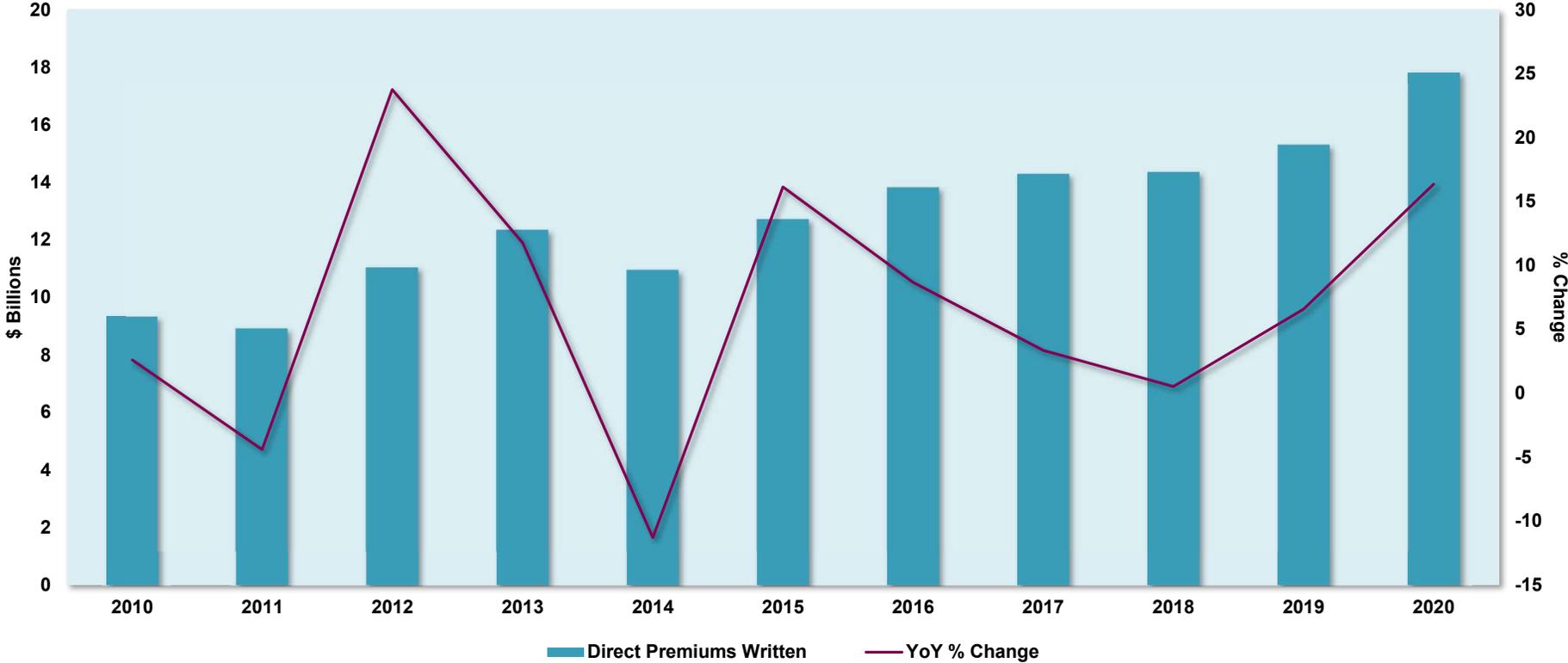


AM Best 2021 – Title Market Segment Report

- Record performance for title insurers:
 - Rising housing market
 - Elevated demand
 - Loan refinance activity

US Title DPW from 2010 – 2020

US Title Industry - Direct Premiums Written, 2010-2020 (\$ billions)



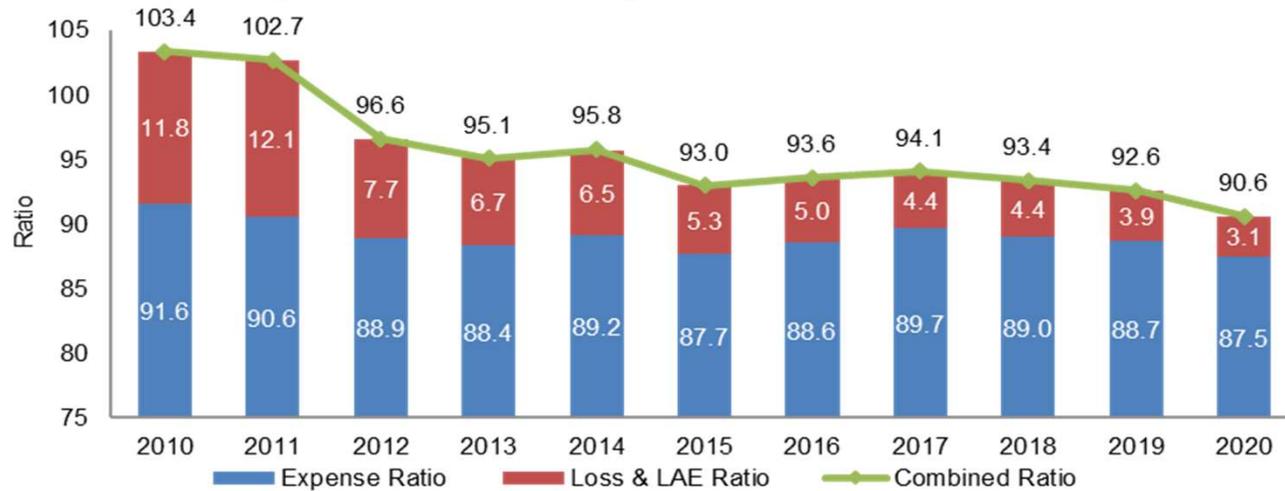
Source: AM Best data and research

Our Insight, Your Advantage™



Record Performance for Title Insurers

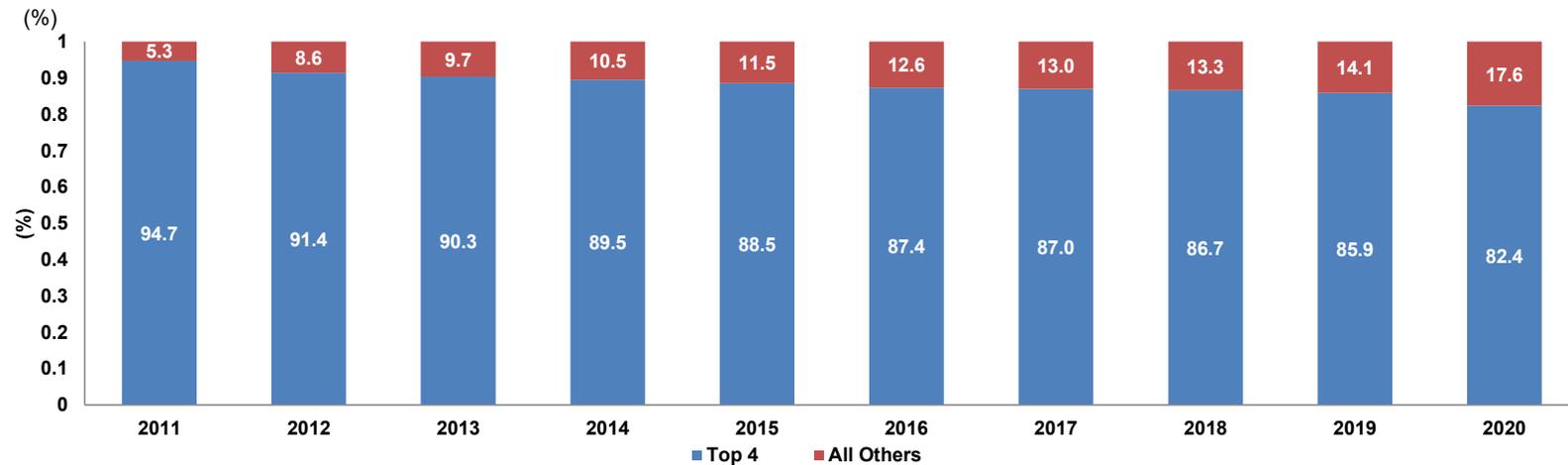
US Title Industry - Combined Ratio, 2010-2020



- Overall improved underwriting metrics
- Average combined ratio of 92.4 over the past 5 years / 93.9 over past 10 years
- Aggregate expense ratio remains below 90.0 since 2012

Title Marketplace

US Title Direct Premiums Written, 2011-2020 – Top 4 Companies vs. All Others



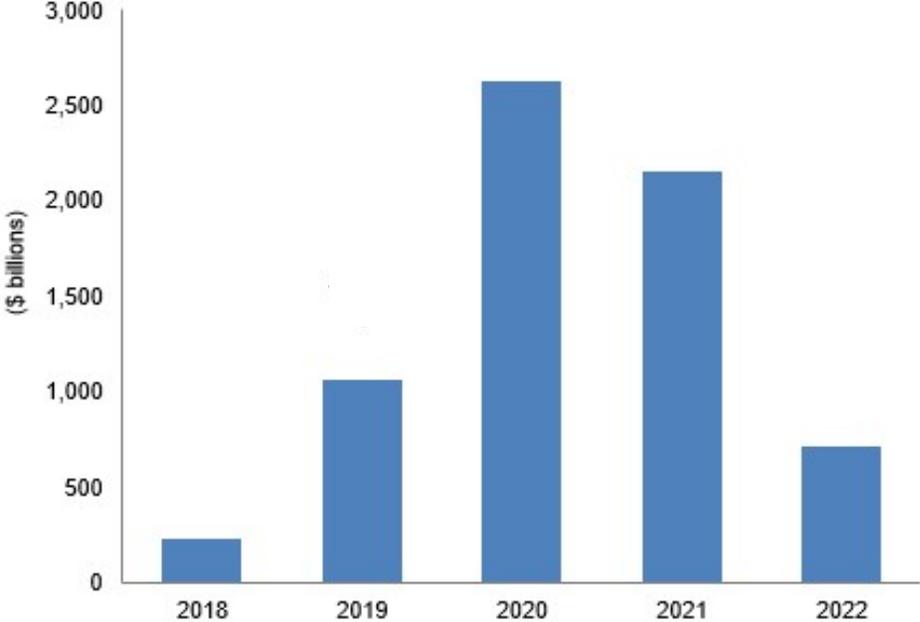
- Title Marketplace
 - The Big 4 (Fidelity National, First American, Old Republic and Stewart)
 - DWP was 84% shared by The Big 4
- Smaller/new entrants
 - 17.6% market share in 2020
 - Incrementally making inroads to diversifying the title market
 - Regional carrier preference by customers

Major Themes for Title Operating Performance

- Major themes impacting the operating performance of AM Best's rated Title Insurance companies in 2021:
 - Refinance activity decreased Q2 2021
 - High demand for home purchases which will keep home loan originations steady through 2022
 - New residential construction expected to increase through 2022
 - Federal Reserve to keep rates close to net zero as the goal is to boost the economy
- Title acquisitions
 - Appraisals, other title companies, on-line brokers, etc.

Refinance Activity 2018 - 2022

US Refinance Originations, 2018-2022



Source: Freddie Mac



AM Best US Rated Title Insurance Companies

AM Best Title Composite - Financial Indicators, 2011-2020

(\$ millions)

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Net Premiums Written	8,924.1	11,017.4	12,316.5	10,918.3	12,689.6	13,801.7	14,263.6	14,336.2	15,281.3	17,776.7
Underwriting Income / (Loss)	-29.0	496.1	665.2	788.9	848.1	853.7	874.5	1,091.6	1,207.7	1,686.5
Net Investment Income	336.1	298.2	244.9	202.0	242.3	231.0	239.2	286.1	339.5	282.5
Other Income / (Loss)	1.4	-8.3	3.8	4.0	14.8	4.8	2.9	6.2	2.3	8.8
Pretax Operating Income / (Loss)	308.4	786.0	913.9	994.9	1,105.2	1,089.4	1,116.5	1,383.9	1,549.4	1,977.7
Realized Capital Gains / (Losses)	1,051.1*	35.8	25.7	0.4	9.1	161.2	140.6	-74.9	74.0	-40.8
Federal Income Taxes	45.5	125.4	212.8	207.5	323.8	347.9	358.3	160.3	339.5	419.5
Net Income / (Loss)	1,314.0**	696.5	726.9	787.7	790.6	902.6	898.8	1,148.7	1,284.0	1,517.5

- AM Best rated title universe contributes 55.6% of the overall NPW for YE 2020
- AM Best pre-tax operating income and net income contributes 58% to the title universe
- AM Best rated companies added 61% of surplus to the overall industry in 2020

RON & Insurtech Startups



Proliferation of Remote Online Notarizations

- Notaries witness and authenticate millions of R.E. transactions annually
- Historically performed face to face
- Remote Online Notarization gaining momentum
 - 1st state approved in 2011
 - 38 states approved as of October 2021
 - CA & NY pending and Federal legislation
 - Changing home buyers process by fully online real estate closing process
 - Operational changes
 - Computer based questions for verification
 - May 13, 2021, Senate Bill 1625: Securing and Enabling Commerce Using Remote and Electronic Notarization Act of 2021 (the SECURE Notarization Act)

Insurtech Startups Increase Influence

- Influencing, challenging and disruption
- Technological advancements
 - Internet of Things (IOT)
 - Artificial Intelligence
- Cost savings
- Customer experience
- Digital transformation
 - Cybersecurity
 - Cultural change

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Q&A



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Hear a Presentation on Changes to ALTA's Homeowners Policy and Endorsements

Attachment 4



NATIONAL ASSOCIATION OF
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Key Changes to the Homeowner's Policy of Title Insurance, and Key Changes to ALTA Endorsements

Today's Presenters

Dan Buchanan – First American Title

Steve Gottheim – ALTA

Mary Thomas – Stewart Title

Summary of Key Policy Changes:

As presented last month with respect to the Owner and Loan policies, many of those same changes have also been made in the revised Homeowner's Policy of Title Insurance

This presentation will focus on changes unique to the Homeowner's Policy

Owner's Information Sheet and Table of Contents have been removed

Policy now begins with the statement that the policy is valid if issued electronically

Also includes instruction for submitting a claim

American Land Title Association

Homeowner's Policy of Title Insurance
[2021 v. 01.01 (07-01-2021 TC 09-21-2021)]

ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE
issued by
BLANK TITLE INSURANCE COMPANY

This policy, when issued by Us 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.

As soon as You Know of anything that might be covered by this policy, You must notify Us promptly in writing at the address shown in Condition 3.

Owner's Coverage Statement



Non-Substantive revisions to improve readability and clarity

The term “actual loss” is revised to “loss or damage”

2013

2021

American Land Title Association

Homeowner's Policy
Adopted 10-17-98

Revised 10-22-03 01-01-08 02-03-10 12-02-13

HOMEOWNER'S POLICY OF TITLE INSURANCE

For a one-to-four family residence

Issued By

BLANK TITLE INSURANCE COMPANY

OWNER'S INFORMATION SHEET

Your Title Insurance Policy is a legal contract between You and Us.

It applies only to a one-to-four family residence and only if each insured named in Schedule A is a Natural Person. If the Land described in Schedule A of the Policy is not an improved residential lot on which there is located a one-to-four family residence, or if each insured named in Schedule A is not a Natural Person, contact Us immediately.

The Policy insures You against **actual loss** resulting from certain Covered Risks. These Covered Risks are listed beginning on page of the Policy. The Policy is limited by:

American Land Title Association

Homeowner's Policy of Title Insurance
[2021 v. 01.01 (07-01-2021 TC 09-21-2021)]

ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE
issued by
BLANK TITLE INSURANCE COMPANY

This policy, when issued by Us 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.

As soon as You Know of anything that might be covered by this policy, You must notify Us promptly in writing at the address shown in Condition 3.

COVERAGE STATEMENT

SUBJECT TO THE PROVISIONS SET FORTH BELOW, We insure You against **loss or damage** resulting from one or more of the Covered Risks if the matter creating the risk exists on the Date of Policy or, to the extent expressly stated in any Covered Risk, after the Date of Policy. We will also pay the costs, attorneys' fees, and expenses provided for under this policy.

Your insurance is effective on the Date of Policy.

Covered Risks

Covered Risk 6 (previously 5) no longer given post-policy effect

Covered Risk 6 - 2021 HOP

6. Someone else has a right to enforce a Covenant to limit Your use of the Land.

Covered Risk 5 - 2013 HOP

5. Someone else has a right to limit Your use of the Land.

Covered Risk 7 - 2013 HOP

7. Any of Covered Risks 1 through 6 Occurring after the Policy Date.

Covered Risks, continued

Covered Risk 7 (previously Covered Risk 6) no longer given post-policy effect

Covered Risk 7 - 2021 HOP

7. Your Title is defective. Some examples of title defects are:
 - a. someone else's failure to have authorized a transfer or conveyance of Your Title.
 - b. a defective judicial or administrative proceeding.
 - c. a document, including an electronic document, on which Your Title is based:
 - i. was signed using a falsified, expired, or otherwise invalid power of attorney;
 - ii. was not properly authorized, executed, created, signed, witnessed, sealed, acknowledged, notarized (including by remote online notarization), or delivered; or
 - iii. was not properly filed, recorded, or indexed in the Public Records.
 - d. 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.

Covered Risks, continued

Coverage for enforcement of governmental police power has been expanded to include forfeiture, regulatory and national security powers, and incorporates the defined term “Enforcement Notice”

Covered Risk 15 - 2021 HOP

COVERED RISKS

- 15.** An enforcement of a governmental forfeiture, police, regulatory, or national security power, but only to the extent of the enforcement described by the enforcing governmental authority in an Enforcement Notice.

Covered Risks, continued

Coverage for surface damage arising from subsurface extraction has an expanded list of subsurface materials

Covered Risk 25 - 2021 HOP

COVERED RISKS

- 25.** Your existing improvements (or a replacement or modification made to them after the Date of Policy), including lawns, shrubbery, or trees, are damaged because of the future exercise of the right to use the surface of the Land for the extraction or development of **oil, gas**, minerals, **groundwater**, or any other subsurface substance, even if those rights are excepted or reserved from the description of the Land or excepted in Schedule B.

Covered Risks, continued

The defined term “Discriminatory Covenant” is now used in Covered Risk 26, which provides coverage for any attempted enforcement

Covered Risk 26 - 2021 HOP

COVERED RISKS

- 26.** Someone else tries to enforce a Discriminatory Covenant that they claim affects Your Title.

Covered Risks, continued

New Covered Risk for matters arising after Date of Policy but prior to recording of the deed

Covered Risk 32 - 2021 HOP

COVERED RISKS

- 32.** Any defect in or lien or encumbrance on the Title that has been created or attached or has been filed or recorded in the Public Records subsequent to the Date of Policy and prior to the recording of the deed or other instrument vesting the Title in the Public Records.

Two New Exclusions from Coverage



Exclusion 9

- 9.** Any lien on Your Title for real estate taxes or assessments imposed or collected by a governmental authority that becomes due and payable after the Date of Policy. Exclusion 9 does not modify or limit the coverage provided under Covered Risk 8.a. or 27.

Exclusion 10

- 10.** Any discrepancy in the quantity of the area, square footage, or acreage of the Land or of any improvement to the Land.

Condition 1, Definitions

Several new defined terms:

- Amount of Insurance
- Covenant
- Date of Policy
- Discriminatory Covenant
- Enforcement Notice
- Insured
- Municipal
- State

Condition 1, Definitions, Continued

As with the Owner's Policy and Loan Policy, the definitions of "Land" and "Public Records" have been revised

- j. "Land": The land or condominium unit described in Item 3 of Schedule A and improvements located on that Land at the Date of Policy that by State law constitute real property. The term "Land" does not include any property beyond that described in Schedule A, nor any right, title, interest, estate, or easement in any abutting street, road, avenue, alley, lane, right-of-way, body of water, or waterway, but does not modify or limit the extent that a right of access to and from the Land is insured by this policy.

- n. "Public Records": The recording or filing system established under State statutes in effect at the Date of Policy under which a document must be recorded or filed to impart constructive notice of matters relating to the Title to a purchaser for value without Knowledge. The term "Public Records" does not include any other recording or filing system, including any pertaining to environmental remediation or protection, planning, permitting, zoning, licensing, building, health, public safety, or national security matters.

Condition 2, Continuation of Coverage

Clarified the scope of continued coverage in Condition 2.a

Condition 2.a. - 2021 HOP

2. CONTINUATION OF COVERAGE

- a. Your coverage under this policy continues as of the Date of Policy, so long as You:
 - i. own Your Title;
 - ii. own an obligation secured by a purchase money Mortgage given by a purchaser from You; or
 - iii. have liability for warranties of title given by You in any transfer or conveyance of Your Title.

Condition 2.a. - 2013 HOP

2. CONTINUATION OF COVERAGE

- a. This Policy insures You forever, even after You no longer have Your Title. You cannot assign this Policy to anyone else.

Condition 2, Continuation of Coverage, continued

Added continued coverage for a named Insured who acquires the Title of another Insured

Condition 2.b. - 2021 HOP

- b. This policy also insures:
 - i. anyone who receives Your Title by operation of law upon Your death;
 - ii. Your spouse who receives Your Title because of a dissolution of Your marriage;
 - iii. Your Estate Planning Entity to which You transfer Your Title after the Date of Policy;
 - iv. any beneficiary or distributee of Your Estate Planning Entity who receives Your Title;
 - v. anyone who receives Your Title by a transfer effective upon Your death as provided by law; or
 - vi. another Insured named in Item 1 of Schedule A.

Condition 6, Contract of Indemnity; Determination and Extent of Liability



As with the Owner's Policy and Loan Policy, the Homeowner's Policy now includes a provision making clear that the policy is contract of indemnity and not an abstract or representation of the condition of the Title

Condition 6 - 2021 HOP

6. CONTRACT OF INDEMNITY; DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by You by reason of matters insured against by this policy. This policy is not an abstract of the Title, report of the condition of the Title, legal opinion, opinion of the Title, or other representation of the status of the Title. All claims asserted under this policy are based in contract and are restricted to the terms and provisions of this policy. We are not liable for any claim alleging negligence or negligent misrepresentation arising from or in connection with this policy or the determination of the insurability of the Title.

Condition 6, Continued

The phrase “actual loss” has been replaced with a more precise measure of loss, and provisions for determining the date on which the loss is calculated

Condition 6 - 2021 HOP

- a. After subtracting Your Deductible Amount, if it applies, Our liability for Your loss or damage is limited to the least of:
 - i. the difference between the fair market value of Your Title, as insured, and the fair market value of Your Title subject to the matter insured against by this policy;
 - ii. Our Maximum Dollar Limit of Liability then in force for the particular Covered Risk, for claims covered only under Covered Risk 16, 18, 19, or 21; or
 - iii. the Amount of Insurance then in force.
- b. Except as provided in Condition 6.c. or 6.d., the fair market value of Your Title in Condition 6.a.i. is calculated using the date You discover the defect, lien, encumbrance, adverse claim, or other matter insured against by this policy.
- c. If, at the Date of Policy, the Title to all of the Land is void by reason of a matter insured against by this policy, then You may, by providing Us written notice, elect to use the Date of Policy as the date for calculating the fair market value of Your Title in Condition 6.a.i.

Condition 6, Continued

As we did in the Owner's Policy and Loan Policy, the Amount of Insurance is now increased by 15%, rather than 10%, if we are unsuccessful in pursuing an effort to establish the Title as insured, and the policy now provides the Insured the ability to elect alternative dates for calculating loss

Condition 6 - 2021 HOP

- d. If We pursue Our rights under Conditions 4.a.iii. and 4.a.viii. and are unsuccessful in establishing Your Title, as insured:
 - i. the Amount of Insurance then in force will be increased by 15% of the Amount of Insurance shown in Schedule A; and
 - ii. You may, by providing Us written notice, elect, as an alternative to the dates set forth in Condition 6.b. or, if it applies, 6.c., to use either the date the settlement, action, proceeding, or other act described in Conditions 4.a.iii. and 4.a.viii. is concluded or the date the notice of claim required by Condition 3 is received by Us as the date for calculating the fair market value of Your Title in Condition 6.a.i.

Condition 6, Continued

The Homeowner's Policy includes rental reimbursement and relocation of personal property when a covered claim renders the property unusable. The distance for transportation of personal property has been increased from 25 miles to 50 miles

Condition 6 - 2021 HOP

- e. In addition to the extent of liability for loss or damage under Conditions 6.a.:
 - i. We will also pay the costs, attorneys' fees, and expenses incurred in accordance with Conditions 4 and 5; and
 - ii. if You are unable to use the Land because of a claim covered by this policy:
 - (a). You may rent a reasonably equivalent substitute residence and We will repay You for the actual rent You pay, until the earlier of:
 - (1). the cause of the claim is removed; or
 - (2). We pay You the amount required by this policy. If Your claim is covered only under Covered Risk 16, 18, 19, or 21, that payment is the Amount of Insurance then in force for the particular Covered Risk.
 - (b). We will pay reasonable costs You pay to relocate any personal property You have the right to remove from the Land, including transportation of that personal property for up to **fifty (50) miles** from the Land, and repair of any damage to that personal property because of the relocation. The amount We will pay You under Condition 6.e.ii.(b). is limited to the value of the personal property before You relocate it.

Condition 12, Choice of Law and Choice of Forum

This Condition uses the new defined term “State,” and makes clear that the state law and courts of the state where the property is located apply to the policy

Condition 12 - 2021 HOP

12. CHOICE OF LAW AND CHOICE OF FORUM

The State law of the State where the Land is located, or to the extent it controls, federal law, applies to this policy. A court or arbitrator must not apply conflict of law principles to determine the applicable law. Any litigation or other proceeding brought by You against Us must be filed only in a State or federal court having jurisdiction.

Condition 13, Class Action

This Condition is based on the unique nature of each property and each real estate transaction and prohibits class proceedings with respect to the policy

Condition 13 - 2021 HOP

13. CLASS ACTION

ALL CLAIMS AND DISPUTES ARISING OUT OF OR RELATING TO THIS POLICY, INCLUDING ANY SERVICE OR OTHER MATTER IN CONNECTION WITH ISSUING THIS POLICY, ANY BREACH OF A POLICY PROVISION, OR ANY OTHER CLAIM OR DISPUTE ARISING OUT OF OR RELATING TO THE TRANSACTION GIVING RISE TO THIS POLICY, MUST BE BROUGHT IN AN INDIVIDUAL CAPACITY. NO PARTY MAY SERVE AS PLAINTIFF, CLASS MEMBER, OR PARTICIPANT IN ANY CLASS, REPRESENTATIVE, OR PRIVATE ATTORNEY GENERAL PROCEEDING.

Condition 14, Arbitration

The prior version of the policy provided that either the Insured or the company could require binding arbitration (if permitted under state law). This policy now includes the same arbitration provision as the Owner's Policy and Loan Policy, where arbitration must be a mutual decision where the Amount of Insurance is over \$2 million

Condition 14 - 2021 HOP

[14. ARBITRATION

- a. All claims and disputes arising out of or relating to this policy, including any service or other matter in connection with issuing this policy, any breach of a policy provision, or any other claim or dispute arising out of or relating to the transaction giving rise to this policy, may be resolved by arbitration. If the Amount of Insurance is \$2,000,000 or less, any claim or dispute may be submitted to binding arbitration at the election of either You or Us. If the Amount of Insurance is greater than \$2,000,000, any claim or dispute may be submitted to binding arbitration only when agreed to by both You and Us. Arbitration must be conducted pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("ALTA Rules"). The ALTA Rules are available online at www.alta.org/arbitration. The ALTA Rules incorporate, as appropriate to a particular dispute, the Consumer Arbitration Rules and Commercial Arbitration Rules of the American Arbitration Association ("AAA Rules"). The AAA Rules are available online at www.adr.org.
- b. ALL CLAIMS AND DISPUTES MUST BE BROUGHT IN AN INDIVIDUAL OR PRIVATE ATTORNEY GENERAL PROCEEDING IN ANY STATE OR FEDERAL COURT. THE ARBITRATOR DOES NOT HAVE AUTHORITY TO CONDUCT ANY ATTORNEY GENERAL ARBITRATION, OR ARBITRATION INVOLVING JOINT OR CONSOLIDATED CLAIMS OR DISPUTES. THE ARBITRATOR IS NOT BOUND BY RULINGS IN PRIOR ARBITRATIONS INVOLVING DIFFERENT PARTIES. THE ARBITRATOR IS BOUND BY RULINGS IN PRIOR ARBITRATIONS INVOLVING THE SAME PARTIES TO THE EXTENT REQUIRED BY LAW. THE ARBITRATOR MUST ISSUE A WRITTEN DECISION SUFFICIENT TO EXPLAIN THE FINDINGS AND CONCLUSIONS ON WHICH THE AWARD IS BASED. JUDGMENT UPON THE AWARD RENDERED BY THE ARBITRATOR MAY BE ENTERED IN ANY STATE OR FEDERAL COURT HAVING JURISDICTION.
- c. *If there is a final judicial determination that a request for particular relief cannot be arbitrated in accordance with this Condition 14, then only that request for particular relief may be brought in court. All other requests for relief remain subject to this Condition 14.*
- d. [We will pay all AAA filing, administration, and arbitrator fees of the consumer when the arbitration seeks relief of \$100,000 or less. Other fees][Fees] will be allocated in accordance with the applicable AAA Rules. The results of arbitration will be binding upon the parties. The arbitrator may consider, but is not bound by, rulings in prior arbitrations involving different parties. The arbitrator is bound by rulings in prior arbitrations involving the same parties to the extent required by law. The arbitrator must issue a written decision sufficient to explain the findings and conclusions on which the award is based. Judgment upon the award rendered by the arbitrator may be entered in any State or federal court having jurisdiction.]

Schedule B, Exceptions from Coverage

The preamble to Schedule B now begins with a statement repudiating discriminatory covenants and deleting any from the documents referenced in Schedule B. This preamble uses the new defined term “Discriminatory Covenant.”

SCHEDULE B

EXCEPTIONS FROM COVERAGE

Policy Number:

Some historical land records contain Discriminatory Covenants that are illegal and unenforceable by law. This policy treats any Discriminatory Covenant in a document referenced in Schedule B as if each Discriminatory Covenant is redacted, repudiated, removed, and not republished or recirculated. Only the remaining provisions of the document are excepted from coverage.

In addition to the Exclusions from Coverage, this policy does not insure You against loss or damage and We will not pay costs, attorneys' fees, or expenses resulting from the terms and conditions of any lease or easement identified in Schedule A, and the following matters:

(Insert Schedule B exceptions here)

- d. “Discriminatory Covenant”: Any covenant, condition, restriction, or limitation that is unenforceable under applicable law because it illegally discriminates against a class of individuals based on personal characteristics such as race, color, religion, sex, sexual orientation, gender identity, familial status, disability, national origin, or other legally protected class.

New and Revised Endorsements



New Endorsements

ALTA 34.1

ALTA 47 Series

ALTA 34.1



American Land
Title Association
Protect your property rights

Very similar to the existing ALTA 34, but designed to facilitate a more precise description of the insured risk

American Land Title Association
Endorsement 34-06 (Identified Risk Coverage)
Adopted 08-01-11

ENDORSEMENT
Attached to Policy No. _____
Issued by
BLANK TITLE INSURANCE COMPANY

_____ "Identified Risk" means: [insert description of the title defect, restriction
_____ of Schedule B.

1. As used in this endorsement "Identified Risk" means: *[insert description of the title defect, restriction encumbrance or other matter]* described in Exception _____ of Schedule B.

_____ neither the Company
Identified Risk with the same consequences.

3. The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of the Insured by reason of the Identified Risk insured against by Paragraph 2 of this endorsement, but only to the extent provided in the Conditions.
4. This endorsement does not obligate the Company to establish the Title free of the Identified Risk or to remove the Identified Risk, but if the Company does establish the Title free of the Identified Risk or removes it, Section 9(a) of the Conditions applies.

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) extend the Date of Policy, or (iii) 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.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

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1. As used in this endorsement, the following terms mean:
 - a. "Identified Exception": Exception _____ of Schedule B.
 - b. "Identified Risk": The consequences specified below that may result from the exercise or enforcement of the matter described in the Identified Exception:

(DRAFTING INSTRUCTION: Insert the specific consequences potentially arising out of the Identified Exception (e.g., enforcement of a specific covenant in a set of covenants described in the Identified Exception or foreclosure of a lien described in the Identified Exception) against which you intend to insure)

American Land Title Association
Identified Exception & Identified Risk Coverage
Endorsement 34.1
[2021 01 00 (07-01-2021)]

ALTA 34.1 IDENTIFIED EXCEPTION & IDENTIFIED RISK COVERAGE ENDORSEMENT
This endorsement is issued as part of
Policy Number _____
Issued by
BLANK TITLE INSURANCE COMPANY

1. As used in this endorsement, the following terms mean:
 - a. "Identified Exception": Exception _____ of Schedule B.
 - b. "Identified Risk": The consequences specified below that may result from the exercise or enforcement of the matter described in the Identified Exception:

2. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. the exercise or enforcement of an Identified Risk specified in Section 1.b. by an adverse party; or
 - b. the release of a prospective purchaser or lessee of the Title or a lender on the Title from the obligation to purchase, lease, or lend, as a result of the Identified Risk arising out of the Identified Exception, but only if:
 - i. there is a contractual condition requiring the delivery of marketable title; and
 - ii. neither the Company nor any other title insurance company will insure over the Identified Risk with the same coverage as in this endorsement.
3. This endorsement does not obligate the Company to establish the Title free of the Identified Risk or to eliminate the Identified Risk. The Company does not assume any liability for loss or damage arising out of the Identified Exception other than the Identified Risk. If the Company establishes the Title free of the Identified Risk, Condition 9.a. of the policy applies.

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) increase the Amount of Insurance, or (iii) increase the Date of Policy. 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.

ALTA 47 series

These endorsements were created to address the choice of law and related issues related to the US Supreme Court decision in *McGirt vs Oklahoma*, when using the “pre-2021” policies

American Land Title Association
Operative Law—2006 Loan Policy
[2006 v. 01.00 (04-02-2021)]

Endorsement 47.1
Operative Law—2006 Loan Policy
[2006 v. 01.00 (04-02-2021)]

[DATE]

BLANK TITLE INSURANCE COMPANY

By: _____
[Authorized Signatory]

American Land Title Association
Operative Law—2006 Loan Policy
[2006 v. 01.00 (04-02-2021)]

Endorsement 47.1
Operative Law—2006 Loan Policy
[2006 v. 01.00 (04-02-2021)]

ALTA 47.1 OPERATIVE LAW—2006 LOAN POLICY ENDORSEMENT

This endorsement is issued as part of
Policy Number _____
issued by
BLANK TITLE INSURANCE COMPANY

1. The following definitions are added to Condition 1:

(n) “State” and “state”: The state or commonwealth of the United States within whose exterior boundaries the Land is located. The terms “State” and “state” also include the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and Guam.

(o) “Tribe”: Any federally or State-recognized Indian tribe, band, nation, community, or other organized group having a government-to-government relationship with the United States or a State.

2. Condition 16 is deleted and replaced with the following:

16. CHOICE OF LAW, FORUM

(a) Choice of Law: The Insured acknowledges that the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property under the law of the State and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the State. Therefore, the court or an arbitrator shall apply the law of the State, or to the extent it controls, federal law, to determine the validity of claims against the Title or the lien of the Insured Mortgage that are adverse to the Insured and to interpret and enforce the terms of this policy. In no case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law, nor shall the court or arbitrator apply the law of a Tribe.

(b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a State court or a United States federal court having appropriate jurisdiction.

3. The following [are][s] added as [an] Exclusion[s] from Coverage:

8. [Defects, liens, encumbrances, adverse claims, notices, or other matters not appearing in the Public Records but that would be disclosed by an examination of any records maintained by or on behalf of a Tribe or on behalf of its members.]

9. Any claim of invalidity, unenforceability, or lack of priority of the lien of the Insured Mortgage based on the application of a Tribe’s law resulting from the failure of the Insured Mortgage to specify State law as the governing law with respect to the lien of the Insured Mortgage.]

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.

[Witness clause]

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Revised Endorsements

- Thirty existing endorsements were revised as part of the 2021 forms package
- Most of these revisions were to incorporate terms that are now defined within the new policy forms
- Some endorsement revisions were to address the applicable law issues that might arise when property is within a Native American reservation

Q&A



NATIONAL ASSOCIATION OF
INSURANCE COMMISSIONERS

Any Other Matters



NATIONAL ASSOCIATION OF
INSURANCE COMMISSIONERS