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Abstracting and Examination Seminar

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I. Duties

- **Search and examination** is the process where documents indexed in the abstract plant are found to affect property. Part of the process is to decide the *insurability* of property. Searching title is the same for title insurance and non-insurance transactions. Title examination is different. A title insurer may decide a title matter is worth taking a risk. An independent attorney may find the same risk unacceptable. The reverse is also true. When title insurance is involved, the Texas Insurance Department makes rules and defines duties. See Art. 9.02 now 2501.003, Insurance Code and Rule P-1 e, f, q and i attached.

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Texas insurance rules require title insurance premiums to cover search and examination of title, closing the transaction and insuring the risk. See Art. 9.07 now 2703.001 and P-1w and P-1f. No additional charges are allowed.

- When a title company lists the title of a document and the place where it's recorded, the company fulfills its duty to the insured. The insured has the duty to review the document and to understand it. **It is not the duty of the title company to tell, insure or warrant the effect of a document.** See the cases of Stewart Title v. Cheatham 764 SW2d 315 and Houston Title v. DeToca 733 SW2d 325

Title policies insure certain things. They insure the insured has title of sufficient quality that no one can take the land away. The policy contains coverage limitations. Limitations are either **exclusions or exceptions**. *Exclusions* are printed in the policy and apply to all properties. *Exceptions* are shown on Schedule B and apply to the insured property. **Requirements** are matters to be addressed before the title insurer agrees to take a risk. Title companies don't cure title. See Rule P-1f. **Curing title is the job of the seller or the buyer.**

Title insurance was founded on *loss prevention* principles. By searching and examining documents affecting title to property, the title insurer could price its product to spread the risk of loss throughout its book of business. Title companies invest in title plants. Title plants, being geographically indexed, provide more secure records than a name based record system.

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Over the years, competition made escrow functions to take on increased importance. Closers generate most business. A closer's job is to close deals. The plant's job is to prevent loss. When a closer makes an escrow error, the loss is usually less than \$5,000. Escrow losses include mis-figured payoffs, mis-figured tax proration and the like. Plant losses are much larger. When an abstractor misses a restriction, the value of the property may be greatly affected. When we miss a Deed of Trust, the unpaid balance could be \$100,000 or more.

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A tension between the functions of the plant and of the closer exists. It's the nature of the business. As an insurer, we see the pressures on both groups. The closer is the front line person. The customers see the closer as representing the title company. If a customer even knows the plant exists, he is an exception. Plant people want to do the job right the first time, every time. Sometimes "right" takes time. Parties want their money. They want the property -- now. They pressure the closer. She pressures the plant. *Don't take it personally.*

9

When the plant makes a mistake, at any level, the closer tells the parties. Few things in life are as personal as your property. Humans are territorial creatures. We protect our den, our cave, our home. People can affect a title without knowing they did so. They surely don't know how to fix the problem. They get frustrated, angry. They lash out. They attack the closer. The closer calls the plant. *Don't take it personally.* Find the problem. Explain what happened. Tell how to fix it. Learn from the error. *Don't take it personally.*

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II. Parties to the transaction

- A. Owner
 - The owner of property, seller or borrower, is a critical player. For the owner to give a valid deed or mortgage, we must decide his **identity** and his **authority** to act. An *individual* has authority to sell or mortgage property if he is over 18 years old and has not been found incompetent by a court. Many factors can arise causing the title company to question *competency*. Factors include: extremely shaky handwriting, only one spouse signing the sales contract or irrational demands as to the location of closing.

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We are also concerned with the type of *entity* the seller is. If the seller is not a person, the proper founding documents must be examined. If the seller is a corporation, limited partnership or limited liability company, it requires a certificate from the Secretary of State. If a general partnership or trust, it requires a copy of the agreement. If a sole proprietorship, ask for tax returns and require an assumed name certificate.

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Homestead is always a concern. Not so much for a seller as a borrower. Art. 16, Section 50 allows these liens:

1. Purchase money
2. Improvements
3. Property taxes
4. Federal tax lien refinances
5. Owey liens
6. Home Equity Loans (HEL) (including revolving credit features after 1-1-2003)
7. Reverse mortgages
8. MHU conversions

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Any time a borrower wants cash out of a deal, you must make a homestead requirement and determine if a home equity loan is required. Any time the borrower wants to make improvements, you must require a properly created mechanic's lien contract . For more information on items 4 and 5, see Bulletin Tx-34.

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Texas law states all property acquired during marriage is presumed to be **community property**. Community property is owned equally by husband and wife. *Exceptions* to the rule are property acquired by *gift or inheritance* or by funds coming from *assets owned prior to marriage*. Merely reciting on a deed that property "is not part of my homestead" doesn't remove the property from community property. Joinder of the spouse is still required.

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We live in an increasingly mobile world. People move and travel frequently, sometimes to remote areas. We are often called to accept **powers of attorney**. In a POA, the principal gives another the right to sign papers for him. The principal entrusts his *attorney-in-fact* with grave duties. Buying property or mortgaging property is a major activity. When we are asked to insure these actions, we must be sure of the attorney's powers. We accept the *Texas statutory POA*, properly filled out. This form doesn't require a legal description. **Any other form requires a specific legal description or specific insurer approval.** For more information, see Section 15.48 V.U.

16

To avoid questions about handling a file, the title company should require a **contract** for sale. The contract should call for a title insurance policy. Handling a deal without a title policy can be the *unauthorized practice of law*. It is also risky since you will not have adequate instructions as to how the parties wish to take title, how to distribute funds, how to prorate taxes and other important issues.

Although this is a business decision for the office to make since our agency agreements do not make agents our agents for escrow matters, it is our opinion that this is a practice to avoid.

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B. Buyer

- We have the same basic concerns about the buyer as the seller. We must be sure of the buyer's authority to act. In a cash deal, buyer's authority is important but not critical. In a loan deal, authority is critical. For example, a borrower can't use his partnership interest as collateral for an insurable loan. His interest is personal property. The partnership must place the property as collateral.
- Buyers/borrowers also like POAs. You must review the POA to see if the attorney can make the deal or only sign papers.

18

Although not a search and exam issue, Texas requires **good funds** before paying the proceeds of the deal. This requirement is often put in commitments. This is a good idea. Using uncollected funds means the title company uses other people's money to fund a deal. Such payment violates the idea of escrow. **Good funds mean cash, cashiers' checks, tellers' checks credit union checks and governmental checks.** *More than \$10,000 cash or a series of acceptable checks each less than \$10,000 must be reported to the IRS on form 8300. See P-27, Bulletins NL 15, 31 & 45 and V.U. Forms Section T-37.*

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C. Lender

- A Loan policy insures **validity and priority** of the lien. See Loan Policy policy attached. **Validity** goes to the *authority of the people to sign* the documents. It also deals with whether the lien is valid against *homestead property*. **Priority** goes to the lien's *position in time*. Texas follows the race theory of liens. *First in time is first in right*. Foreclosure of a prior lien cuts off each subsequent lien. **Releasing prior liens** affects the *validity* of the lien insured. We must be sure the release is gotten from the right party and signed by someone with authority.

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III. Property

- Since we insure title to a property, the **description of the property** is critical. Each property must be described in a way to set it apart from all other property. **Descriptions** are to lots and blocks in subdivisions or to metes and bounds. Descriptions should be created by a surveyor. Other descriptions can be dangerous. See §18.40 V.U.

21

Title companies and surveyors frequently debate the certification for the survey. Title policies except to certain things, such a *boundary lines and improvements and easements*. To amend the exception, we must have an *acceptable survey* or evidence of a survey to be acceptable, the survey must address the issues set out in the exception. A survey that says "this survey based on commitment" is not acceptable. *The surveyor must do enough independent work to know if the boundaries have integrity. See §18.40 V.U.*

22

For **refinance** deals, you **must** use a *survey no older than 7 years* if no changes have been made to the improvements. The owner must sign an *affidavit* to this effect. On all deals, you **may** use a survey or evidence of a survey of any age if you get an affidavit bringing it current. See bulletins Tx-62 and Tx-64 for details.

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Old Surveys

- Use of old surveys of any age brought current by affidavit of someone knowledgeable of the property. Ok for them to correct T-47 affidavit.
- If no improvements can possibly affect a boundary (external or internal) , marked up survey can be ok
- Newest rules allow for not using a survey at all on LPs. But beware, if you are giving A&B amendment on OTP and review survey, you should also review for LPs.

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Internal v. External Boundaries

- Every property has 2 sets of boundaries
- External: sets our property from adjoining properties
- Internal: establishes the rights of third parties to use part of our property ie, an easement

25

Often, examiners raise concerns when metes and bounds calls are reversed. By itself, the reversal isn't a problem. But, surveyors sometimes make minute corrections to each call and accumulate them in the final call. If this was done, *reversing the calls* makes the survey not close and be invalid. A requirement for the surveyor to explain reversed calls is appropriate.

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Texas law requires a surveyor to call to **monuments**. A *point isn't a monument*. See §18.40 V.U. Texas law has preferences as to monuments. Natural monuments are best. Followed by artificial monuments, calls to roads, and calls for distance. *A call to a monument prevails over a call for distance*. Each surveyor must *honor the footsteps* of the original surveyor. The monuments placed by the first surveyor should not be moved. The courses and distances can be different but the monuments must be honored.

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IV. Realistic Requirements

- A difficult task for the examiner is making **realistic requirements**. Most examiners want to make the title perfect. Since part of title insurance is loss prevention, this desire is justified. However, part of title insurance is taking reasonable risk. So, careful use of statutes of limitations and other rules lessen the risk to acceptable levels.

28

Powers Of Attorney, discussed above, make examiners cautious. This caution is good. Once the POA has been reviewed for legality, the next issue is **durability**. Most POAs are now durable. That is, they are still good if the maker becomes incompetent. The Texas statutory form allows for the POA to only come into play upon incompetence. *Even a durable power ends on the death of the maker.* A requirement when using a POA is to *determine that the maker is alive* when the POA is used. If the maker is traveling to remote areas, this requirement can be hard to meet. It's reasonable, though. The attorney-in-fact must arrange for the maker to be available to speak with the closer at closing. In war time, this requirement is hard to meet. Someone connected with the makers base must be contacted to determine to their best knowledge that the maker is alive.

29

An area where requirements can be onerous is **acknowledgments**. Examiners tend to require correction of an acknowledgment from 25 years ago. This requirement is unnecessary. *An acknowledgment older than 4 years is not defective.* See Sec. 16.033 Civil Practices & Remedies Code. *Some states may allow notaries to acknowledge papers without using a seal.* If so, a new Texas law recognizes the validity of the acknowledgment. See HB 677, Sec. 12.001 Property Code.

30

Quit Claim Deeds present many examination problems. The basic rule is that a QCD *does not pass title only claims of title*. Case law holds that a QCD given as a correction may not pass title. See Simonds v. Stanolind 114 SW2d 226. A person claiming under a QCD cannot be a BFP. It doesn't matter how remote the QCD is, title still does not pass. We will now (as of 2003) accept QCD's in many situations. See bulletin Tx-65.

31

We generally do not accept a QCD in the current deal between 3rd parties. A QCD more than 25 years old and apparently given by children to a parent is an acceptable risk. The children are unlikely to return and claim title. We will accept a QCD from related parties in the current transaction. Deeds without warranty are ok. Special warranty deeds are always acceptable in commercial deals and usually in residential deals (call an underwriter for approval in residential situations).

32

Examiners require releases of **barred liens**. Texas recognizes many *limitations statutes*. An examiner must keep them in mind. The following limitations statutes are important:

- Contracts : 4 years after termination
- Liens: 4 years Sec. 16.004 Civil Practices and Remedies Code, ("CivP&R") Notes: 6 years (effect.1-1-96 see HB 1728, Sec. 3.118 Business & Commerce Code) for federal agencies
- AJs: 10 years (Sec. 52.006 Property Code)
 - 2 years to reinstate a dormant judgment (Sec. 31.006 CivP&R)
 - 20 years if AJ in favor of USA or State of Texas
 - Property Code Sec 52.001 allows affidavit of homestead to prove that lien does not attach. See bulletin Tx2007002

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- Release of homestead property mandated by Tarrant Bank v. Miller, 833 SW 2d 666, 1983 -- see Bulletin 93-1 .
- Federal Tax Liens: 10 years. See Bulletin NL-12 attached.
- Financing Statements: 5 years.

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Tax sales: 3 years. See Shaw v. Ball 23 SW2d 291, 1930 and Jones v. Harrison, 773 SW2d 759. Includes 6 mo. redemption for homestead property and 2-years redemption for non-homestead. But after 9-1-97, statute changed to provide for 1 year statute of limitations. (2yrs. for homestead property).

Texas Workforce Commission Lien: super lien with priority over vl and no limitations

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Executions: 3 years see tax sales

- Foreclosures: 4 years see Sec. 16.004 CivP&R.
- State Taxes: no limitations but not enforceable after 3 years. Sect. 111.202 & 151.60, Tax Code.
- Child Support lien: new May, 1995. Sec. 157.311, Family Code. Not enforceable vs. hs; no limitations period Sec.157.3171 FC. RELEASE OF LIEN ON HOMESTEAD PROPERTY. (a)An obligor who believes that a child support lien has attached to real property of the obligor that is the obligor's homestead, as defined by Section 41.002, Property Code, may file an affidavit to release the lien against the homestead in the same manner that a judgment debtor may file an affidavit under Section 52.0012, Property Code, to release a judgment lien against a homestead.

. (d)The claimant under the child support lien may dispute the obligor's affidavit by filing a contradicting affidavit in the manner provided by Section 52.0012(e), Property Code

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6. Owelty Liens

- To be owelty, *the parties must be co-tenants*. If one owner has been divested of title, owelty will not work.
- If the divorce decree needs to be amended to correct this error, the proper procedure is an order nunc pro tunc. Some judges are reluctant to issue such orders as they require the judge to admit that (s)he made a mistake.

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V. Exceptions.

1. Avoiding DTPA claims.

- To protect your assets, you must avoid DTPA claims. Doing so requires some thought. A title company needs to identify the documents affecting title. You shouldn't provide *too much detail*. The insured can read an easement. He can see how wide the easement is. He can look at the plat. He can see what easements affect the lot and where they are.
- The same analysis is true for *marital status*. How do we know who's married to whom? We can show marital status in the insuring section of the policy or in an exception. We don't want to show it in the title vesting.

38

The same logic applies to *mineral interests*. Minerals are complicated. Our duty is to report the existence of the document. We can say "a stated 1/8th royalty" if the documents say so. We shouldn't say "an 1/8th royalty".

39

2. Racial Restrictions

- **Restrictions** on land use or ownership based on *race, religion, sex or disability* are not enforceable. Some people are offended by such language. The federal government insists such language should be struck from documents before handing them over. We should be attuned to such sensitivities. Insuring forms should contain a statement that any illegal restrictions are not excepted. Cover letters sending documents should have similar wording.

40

*Be careful not to write an exception that **negates all coverage**.* Such exception is too broad. It may not be enforceable. An example would be, "all documents recorded or unrecorded that affect the property". What have we insured?

41

VI. Express Insurance

- *Express insurance* has been used in the rest of the country for many years. It's a good way to inform the insured of potential problems while still giving insurance. The Texas Insurance Department allows 3 basic express coverages. One coverage is for *survey* matters. One coverage is for *title defects*. One coverage is for *liens*. See Rule P-39 and §5.30 V.U., attached.

42

Express insurance is now only available by T-19 endorsement to the Loan Policy for *minor encroachments into easements and setback lines* as well as violations of restrictions and damage to the surface by mineral owners. Attached is our checklist for determining whether to give the T-19 endorsement.

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Some *title defects* may be expressly insured. A missing probate from 1903 is an example. Except to the rights of the heirs and give P-39b2 coverage. The odds are the family considers the property long since sold. Of course, if title is still in some heirs, express coverage isn't appropriate.

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VII. Proof of Compliance

- We see many documents where A says "When X tells me something by March 1, Y will happen". From the public record, we can't tell if X told him at all, certainly not by March 1. What do we do? We must require *proof* of the events. We need a *copy of the letter*. We need *proof of mailing*. We need *proof of delivery*. We need to check the dates for *timing*. Even with these things, we may still require something from A.
- Sometimes, a person who take title subject to an option alleges the **rule against perpetuities**. See Section 5.043, Prop. Code. The rule says that a contract not performable within a *life in being plus 21 years* is void. A right given to "X, his heirs, successors and assigns" violates the rule. Even so, the risk that X will assert his rights is enough to require a waiver from him.

45

Another frequent problem is contracts for deed. Two main issues arise. First, the estate insured. There are 2 ways to insure a contract for deed. The first is contract purchaser as the interest and the purchaser as the owner of the interest. The other way is to insure the purchaser that the owner has fee simple title. The first way is more easily understood by most lenders.

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The second issue is contract termination. Many contracts aren't recorded. Many buyers walk away from the contract. Years later, the property comes up for sale. Something of records alerts you to the *Contract for Deed*. You call for a release. Seller says the people are long gone. What's available? **Sec. 5.062, Property Code** provides a *notice procedure terminating the contract*. The quality of notice varies depending on how much was paid. But, the notice many time is to the property address. With the people gone, no real notice is provided. Following the law makes an insurable risk.

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VIII. Allocations

- Often, deals include multiple parcels, multiple notes or other matters out of standard. These matters require special handling. Allocate values when *multiple parcels* are insured. Each parcel should have its own value. In case of a claim, the loss percentage will be figured only on the parcel affected. See appropriate language attached.
- The same analysis applies when *more than one note* affects the insured land. Special language should be used. See such language attached.

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Deals including large amounts of **personal property** create problems. Title insurance is a *mono-line insurance*. We can insure only real property interests. As of 2008, *Personal property can be insured using special forms and rates. A 30% commission is payable to an agent for referral to STG (Mike Choy)*. Lenders may want the entire loan collateral insured. We can't insure the equipment only whether there is a UCC-1 filed against it or not.

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Lenders don't understand **collateral assignments**. A owes B. B owes C. B can assign A's deed of trust to C to secure B's debt. If A defaults, C can't foreclose. B must be in default. Then C can foreclose B's DT. Then C can foreclose A. This procedure is rarely followed.

The procedure for the collateral assignment to be foreclosed is set out in the Uniform Commercial Code and is frequently called a UCC foreclosure. (They are usually held in the attorney's office rather than at the courthouse door).

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Insuring **undivided interests** can be challenging. We prefer to insure the entire interest. If we consent to insure an undivided interest, we must except to the *rights of the other owner*. An example of an exception would be: A stated undivided one-_____ interest in and to the following described property:
 _____" (legal description)

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IX. Miscellaneous Topics

- The aging of America causes increased use of **guardianships**. Most guardian sales require the 5 step process. Application, order approving, sale, order confirming and deed are the steps. See list attached. You can avoid the *5-step shuffle* using the *\$100,000 Rule*. Most sales of less than \$100,000 don't require court approval. See Bulletin Tx-36.

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Section 45, Probate Code, helps with *intestacy*. A deceased person leaving a spouse and only children of that marriage passes title to the spouse. The children have no interest. If either spouse has other children, all children have an interest. See Sec. 45, Probate Code & §4.04.8 V.U.

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When the USA provides funds for a *hospital*, it can have a *lien*. See §8.12 V.U.

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A deed in satisfaction of debt does not cut off intervening, subordinate liens. Special exception is required. See §4.12 V.U.

Again, remember most people don't know the difference between *community and separate property*. Nor do they know the difference between *homestead and community property*.

Oil and Gas Issues

- November 1, 2009.
- **Commitment**
- The Title Information Sheet on the Commitment has been revised to add the following language:
- The Policy is not an abstract of title nor does a Company have an obligation to determine the ownership of any mineral interest.
- ---MINERALS AND MINERAL RIGHTS may not be covered by the Policy. The Company may be unwilling to insure title unless there is an exclusion or an exception as to Minerals and Mineral Rights in the Policy. Optional endorsements insuring certain risks, including minerals and the use of improvements (excluding lawns, shrubbery and trees) and permanent buildings may be available for purchase.

Oil and Gas Issues

- Procedural Rule P-5, prohibiting general exceptions, has been left intact. A new Procedural Rule P-5.1 has been promulgated. This rule defines minerals as meaning coal, lignite, oil, gas and other minerals in, under and that may be produced from the Land, together with all rights, privileges, and immunities relating thereto. It restates the notice from the coverage statement that the policy is not an abstract of title nor does the company have a duty to search for mineral ownership.
- The rule then provides that the Company may take an exception for minerals using the following language:
 - On Schedule A:
 - Subject to and the Company does not insure title to, and excepts from the description of the Land, coal, lignite, oil, gas and other minerals, together with all rights, privileges, and immunities relating thereto;
 - Or
 - On Schedule B:
 - "All leases, grants, exceptions or reservations of coal, lignite, oil, gas and other minerals, together with all rights, privileges, and immunities relating thereto, appearing in the Public Records whether listed in Schedule B or not. There may be leases, grants, exceptions or reservations of mineral interest that are not listed."

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Oil and Gas Issues

- You are not required to do a complete search for minerals. We advise you that when you encounter a document that appears to reserve, convey or affect minerals or provide evidence that a document exists that affects the mineral estate, you should use this exception. You do not have to identify the exact recorded document or whether there is a recorded document. The reference to a document is sufficient. We believe that you may use either the Schedule A or Schedule B language or you may use both. In any event, if you use either or both exceptions, you must issue one or more of the applicable endorsements (T-19.2 or T-19.3) as provided in Procedural Rule P-5.1. Since you will have taken exception to minerals, the estate being insured can remain "fee simple" or whatever estate you are insuring.

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Oil and Gas Issues

- If you are asked to specify the mineral estate and can reasonably do so with your title plant supplemented by the courthouse records, it is not sufficient to do a 60 year search (or whatever time period is appropriate in your county due to mineral activity in the past) and ignore possibility of state ownership of some minerals or royalty interest. Unless you have already searched the mineral title in the past, you will need to go back to the patent or otherwise be satisfied that either the patent is pre-9/1/1895 or that you have verified whether minerals were reserved. As to patents before September 1, 1895, the state does not own the minerals. As to patents between September 1, 1895 and August 21, 1931, the examiner should look at the patent and secure a Certificate of Classification or Certificate of Facts from the General Land Office to determine whether the land was formally classified as mineral land (for example, all public free school land sold since 1919 was classified as mineral land); if the land was formally classified as mineral, an exception must be made to all of the minerals retained by the state, regardless of whether a reservation appears in the patent. As to patents after August 21, 1931, the examiner may rely upon a review of the patent to determine the mineral and/or royalty interest retained by the state (generally land subsequently sold after August 21, 1931 and until September 1, 1983 reserved a 1/16th free royalty, and land sold subsequently by the state reserved no less than a 1/16th free royalty). (For more information on state ownership of minerals please see section 12.16.04 of [Virtual Underwriter](#) or the article posted on [stewarttexas.com](#)).

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Oil and Gas Issues

- **P-50.1 Minerals and Surface Damage Endorsement (T-19.2), and Minerals and Surface Damage Endorsement (T-19.3)**
- The T-19.2 and T-19.3 Endorsements are required or available only when Minerals and Surface Damage coverage is not provided to the insured by issuance of a T-19 or T-19.1 Endorsement, as provided in P-50.
- Any insured matter covered in the Minerals and Surface Damage Endorsement T-19.2 or T-19.3 may be insured only by the use of these endorsements, except that coverage regarding minerals may be insured by the use of the T-19 or T-19.1 endorsements as provided in P-50.
- When the policy includes an exception regarding minerals as provided in Procedural Rule P-5.1: As to real property of one acre or less improved or intended to be improved for one-to-four family residential use, upon request of the Insured the Company must issue its Minerals and Surface Damage Endorsement (T-19.2) to an Owner's or Loan policy.
- As to real property improved or intended to be improved for office, industrial, retail, retail/residential, or multifamily purposes upon request of the Insured the Company must issue its Minerals and Surface Damage Endorsement (T-19.2) to an Owner's or Loan policy.
- As to other real property, upon request of the Insured the Company must issue its Minerals and Surface Damage Endorsement (T-19.3) to an Owner's or Loan Policy.
- As to an Owner's or Loan Policy covering multiple parcels of real property that consist of a combination of real property described in paragraphs 1.2, and 3, upon request of the Insured the Company must issue for each parcel the applicable Minerals and Surface Damage Endorsement (T-19.2 or T-19.3) to an Owner's or Loan Policy. The adopted form provides for Parcel numbers.

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Oil and Gas Issues

- If you have determined to use the mineral exception discussed above, you must provide either the T-19.2 or T-19.3 endorsement depending on the type of property being insured. All residential property containing 1 acre or less which is or is intended to be 1-4 family residential property must have the T-19.2 endorsement. All commercial or mixed use property must use the T-19.2. All other property must use the T-19.3. If the policy covers tracts some with minerals and some without, you must issue the applicable T-19.2 or T-19.3 on the affected tracts. "Other property" could include farm and ranch land, access easements, conservation easements, and similar rights. If you have questions, please call a Texas underwriter.
- In determining the intended use of property, we believe that an affidavit from the proposed insured is sufficient to comply with the rule.

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Oil and Gas Issues

- **R-29.1 Premium for Minerals and Surface Damage Endorsement (T-19.2), and Minerals and Surface Damage Endorsement (T-19.3)**
- A. When the Minerals and Surface Damage Endorsement (T-19.2) is issued in accordance with Rule P-50.1, the premium shall be \$50.00.
- B. When the Minerals and Surface Damage Endorsement (T-19.3) is issued in accordance with Rule P-50.1, the premium shall be \$50.00.
- **What you need to do:**
- R-29.1 is a new rule dealing with just the new T-19.2 and T-19.3 endorsements. Once you have determined the existence of some mineral reference and the appropriate endorsement, the premium for either of the new endorsements is \$50.00. If there are multiple tracts, each tract bears a separate endorsement

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Oil and Gas Issues

- Do you consider coal and uranium leases to be in a different category than oil and gas leases? Are you really willing for those leases to be excepted to (or not excepted to) in conjunction with the P-5.1 general exception, resulting in a possible mandatory T-19.2 or T-19.3 insuring against destruction of a present or future house by open-pit mining? *Yes such leases are different and we will not give the option of T-19.2 or T-19.3 in such cases. Especially if there actually are such leases outstanding (which should be in the last 30-40 years) and definitely would not give such coverage on acreage property, since the existence of such lease could lead to destruction of improvements. So unless there was some limit on surface use in the lease, or unless we had good evidence that the lease had terminated, we would decline to give T-19.2 or T-19.3 coverage. We would also decline to provide coverage in a T-19 or T-19.1 where there are such leases, since coal and lignite can be a mineral depending on the facts (whether near surface).*

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X. Shared Tips

- Increasing **productivity** is critical for *profits*. *Cutting exam time* raises productivity. Decreased time *without decreased accuracy* is the goal. One way to reach the goal is to check a release for recording and personal information. But, if a deed of trust is properly released, don't read the entire document. *Carefully read typed language but not printed language.*
- In dealing with closers, remember the closer is reacting to someone's complaints. *The closer didn't cause the title problem. Neither did you.* You only report what's recorded.

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When a document appears to affect the title, don't ignore it. Properly applying statutes of limitations is prudent. But, recorded documents create a duty to ask questions. Does X really have an interest based on a letter? You have a duty of inquiry.

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Citizens and attorneys misuse **lis pendens** notices. A *Lis pendens* isn't a *lien*. It is a notice of the existence of a *lawsuit affecting title* to real property. Filing a *lis pendens* when the suit involves collecting a note is wrong. See [lis pendens case discussion \(§11.24 V.U.\) attached](#). However, since Plaintiff attorneys are becoming very aggressive in pursuing claims even not involving title to the property, we now require a release or order quashing the *lis pendens*. See Section 12.007 Civil Practices and Remedies for method of expunging a *lis pendens*. **You may rely on a final court order expunging a *lis pendens* and remove from or not take exception to it on your commitment or policies. If no order of expunction is filed in the public record, you must continue to exercise sound business judgment in accordance with Virtual Underwriter Section 11.24.1 and obtain a release of the real property to be insured from the *lis pendens*.**

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We often are asked if **abstracts of judgment can be waived**. Mostly, these requests arise when the abstractor and examiner haven't done all they can to eliminate the items. A good way to check AJs is by looking at the *suit papers*. Where was the defendant served? Where did he work? What was the suit about? Look at the *loan papers*? Does the information match the suit papers? What's the *property address*? How does it match the suit papers? Look in the *phone book*? Can you find the judgment debtor? Do the addressees match anything you know? Rely on *affidavits of identity* to supplement what you know. **An affidavit doesn't replace research.**

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THANK YOU!

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