

Limited Search Policies in Texas

John Rothermel

Stewart Title Guaranty Company

Why do we have a limited search policy?

- 2 Main Reasons
 - Mortgage Fraud
 - Abstractor's liability
- Each of these reasons is important and we will look at them separately

Mortgage Fraud

- For a number of years, unscrupulous people have duped lenders on real estate transactions to make the easy money.
 - Yes, this is usually criminal activity
 - Yes, it takes more than one person to pull it off
 - Yes, you can get caught in the problem when you are involved in “non-traditional” deals or when someone asks you to do something “unusual”.

Mortgage Fraud

- Classic case of mortgage fraud:
 - Fraudulent down payments
 - Phony gifts
 - Inflated income/jobs
 - False impersonation
 - And the Classic: FLIPS.

What is wrong with a Flip?

- In a classic case, a flip transaction occurs when an owner sells the property for an amount at or slightly less than fair market value. Almost immediately thereafter, the middle buyer turns the property to an ultimate buyer for a tidy profit ... usually several thousand dollars. Why did the value go up that much in 2 days? It didn't and that's the fraud.

Combating Mortgage Fraud

- To combat the flip version of mortgage fraud, lenders began to require a certification from the title company that the property hadn't changed hands recently.
 - In Texas, there is no such certification allowed
 - Violates P-35 for example
 - There is also no form promulgated by the Texas Insurance Department
 - Since the request isn't an insurance product, there was no standard method, time frame, protection for the title company or price to the consumer

Abstractor's liability

- Title Insurance evolved in the late 1800s to deal with the fact that most title searchers (abstractors) had little in the way of assets and no way to make good on losses caused by errors in their product.
 - Title Insurance Companies were chartered that collected sufficient assets to pay these losses and still provide sufficient profits to remain in business to protect other insureds.

Abstractor's liability

- Contrasted with a licensed title agent, following sound underwriting practices and issuing state promulgated forms, the abstractor has unlimited liability for errors.
 - The title insurance company may have liability only if the title as it actually exists is different from how title was insured and then only to the limit of the policy coverage.

Abstractor's liability

- An example
 - A buys Land from B for \$200,000. A intends to use the property as an easement for a pipeline to fuel a power plant.
 - Under a title policy, the maximum liability if B didn't own clear fee simple title is \$200,000.
 - Under an abstract, the abstractor could be liable for damages caused by the failure of the power plant to produce the proper amount of electricity as well as other tort liabilities.

24 month chains

- Since, in Texas no 24 month title insurance search product was available, any title company that undertook to provide such a product either:
 - Took on abstractor's liability for an unlimited amount or
 - Added some unauthorized language to the loan policy.
- Clearly, neither of these is a good idea.

Title Industry sought and TDI approved T-53

- **TEXAS LIMITED COVERAGE RESIDENTIAL
CHAIN OF TITLE POLICY COMBINED
SCHEDULE (T-53)**
- Policy
No. _____ [Premium:
\$_____.]
- Amount of Insurance:
\$**100.00** Date of Policy:
- Name of Insured:

T-53

- 1. Grantee (on the latest deed recorded if any in the public records not more than 60 months immediately preceding Date of Policy, purporting to vest the title):
- 2. Additional deeds and leases recorded in the public records within [insert number of months, not to exceed 60] months immediately preceding the Date of Policy:
 - [Insert recording information of deeds and leases or state: “This item is hereby deleted.”]
- 3. The land referred to in this policy is described as follows:

T-53

- **EXCEPTIONS**

- This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of the following exceptions. By excepting to any matter, the Company does not represent the priority or validity of the matter:
 - 1. Documents other than deeds or leases vesting or purporting to vest title to the land.
 - 2. Documents creating or purporting to create any lien, reservation or other encumbrance affecting the land.

T-53

- Authorized Countersignature
- Printed
Name:
- ___Name of underwriter and countersigned

- (Agent or Direct Operation or Title Insurance Company)
- By _____

T-53

- **TEXAS RESIDENTIAL LIMITED COVERAGE CHAIN OF TITLE POLICY (T-53)**
- Issued By
- BLANK TITLE INSURANCE COMPANY
- SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS AND THE CONDITIONS AND STIPULATIONS HEREOF, and provided that the land is a one-to-four family residence or condominium unit, Blank Title Insurance Company, a corporation, herein called the Company, insures, as of Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:
 - The Grantee shown on the Combined Schedule not being the named grantee on the most current deed recorded in the public records purporting to vest the title to the fee estate in the land, as of Date of Policy, or the description of the land in this policy not being the same as that contained in said deed.
 - At Date of Policy, the listed additional deeds and leases not being the only deeds and leases recorded in the public records during the twelve months immediately preceding Date of Policy.
 - The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the Insured, but only to the extent provided in the Conditions and Stipulations.

T-53

- **EXCLUSIONS FROM COVERAGE**

- The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:
 - 1. Any invalidity, unenforceability, lack of priority, or ineffectiveness of any mortgage held by the insured.
 - 2. Any invalidity, unenforceability, lack of priority or ineffectiveness of any of the instruments or other matters shown in the Exceptions in this Policy.
 - 3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) created, suffered, assumed or agreed to by the Insured Claimant;
 - (b) known to the Insured Claimant whether or not disclosed in the public records;
 - (c) resulting in no loss or damage to the Insured Claimant; or
 - (d) recorded or filed in the public records subsequent to Date of Policy.

T-53

- 4. The land not being owned by the Grantee.
- 5. Claims of:
 - a. usury,
 - b. any consumer credit protection law (including, but not limited to Subsections (a)(6) and (g) of Section 50, Article XVI, Texas Constitution and any statutory or regulatory requirements); or
 - c. bankruptcy or insolvency proceedings of Grantee.
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T-53

- **CONDITIONS AND STIPULATIONS**
- Very similar to a standard policy because this is a title insuring form.

The Rate

- **R-35. Texas Limited Coverage Residential Chain of Title**

A premium of \$**15.00** shall be charged for the issuance of each Texas Limited Coverage Residential Chain of Title Policy with respect to deeds and leases recorded in the public records in the period **not exceeding sixty (60) months** immediately preceding the Date of Policy.

P-71. Texas Limited Coverage Residential Chain of Title Policy

- a. A Company may issue the Texas Limited Coverage Residential Chain of Title Policy ([T-53](#)) upon request on or after the date Rate Rule [R-35](#) is effective, if its underwriting requirements are met and it is paid the premium, if any, as prescribed by Rate Rule R-35, provided that:
 - 1. The land is **residential real property**; and
 - 2. The **proposed insured** is an entity which is an **institutional lender** including a Bank, Credit Union, or Savings Association as defined in § 341.001, Texas Finance Code, or a Mortgage Banker as defined in §157.002, Texas Finance Code, or an Insurer as defined in §823.002, Texas Insurance Code.

P-71

- b. A Texas Limited Coverage Residential Chain of Title Policy ([T-53](#)) may be issued only by an agent licensed in the county in which the land is located; and no other party may receive any portion of the premium, other than the promulgated division of premium between agent and underwriter.

P-71

- The Texas Limited Coverage Residential Chain of Title Policy ([T-53](#)) shall not be issued with respect to deeds and leases recorded in the public records more than sixty (60) months immediately preceding the Date of Policy.
- **NOTE:** Any period sought by the insured lender up to 60 months is acceptable, even though the policy itself (ALTA form) discusses the most immediate 12 months preceding the policy date.

Stewart Bulletin

TX2010004

Date: January 29, 2010 **To:** All Texas Issuing Offices **RE:** 2008 Rules Hearing Results Effective February 1, 2010; 2008 Rate Hearing Results effective January 1, 2011
[Revised 12-15-10]

- **2008-7** Creates new Procedural Rule for issuance of the Texas Limited Coverage Chain of Title Policy:
 - cannot be issued until a rate is set by TDI;
 - for residential real property only;
 - names last grantee in deed, and shows other deeds and leases in chain of title for up to past 60 months;
 - issued only to institutional lenders, not to individuals;
 - no split of premium will be permitted, title agent doing search retains all premium.
- What you need to do: Comply with the rule and the rate rule (2008-55 below).**
- **2008-55 sets the premium for this policy at \$15.00**

Issues

- How many months can the T-53 cover?
 - Any amount the lender requests not to exceed 60 months immediately preceding the policy date.

Issues

- What underwriting standards do we use?
 - This is an insuring form so it is covered by your Agency Agreement.
 - You must do a search of your abstract plant sufficient to list the deeds affecting the Land being insured
 - The time is the time requested for coverage by the insured lender.
 - You are not responsible for the matters covered by the standard Loan Policy such as proper execution, proper parties signing, capacity of the parties, etc. Those issues will be addressed in examining and underwriting a Loan Policy.

Issues

- Can I be required to show more than the current vesting deed?
 - Yes. P-71 provides that you can show
 - Additional deeds and leases recorded in the public records within [insert number of months, not to exceed 60] months

Issues

- Can the “Big City” agent make me split premiums for a limited search policy?
 - NO
- A Texas Limited Coverage Residential Chain of Title Policy ([T-53](#)) may be issued only by an agent licensed in the county in which the land is located; and no other party may receive any portion of the premium, other than the promulgated division of premium between agent and underwriter.

There seems to be more than 1 rate code?

- The original form presented to the Insurance Commissioner had 3 possible periods to cover. As the form was adopted for use, only 1 period is covered and there is only 1 rate code, no matter how many months are searched and covered by the policy.
- The stat plan will be officially revised at the next rules hearing but TDI staff has authorized the changes to be used/implemented now.

There seems to be more than 1 rate code?

- 40. Amend the Rate Rule Reference for Code 6000 from R-35(1) to R-35 due to Item 2008-55. Texas Limited Coverage Residential Chain of Title as adopted being only one paragraph instead of paragraphs 1, 2 and 3.
- 41. Delete Description of Transaction, Rate Rule Reference and Code 6005 due to Item 2008-35. Texas Limited Coverage Residential Chain of Title as adopted being only one paragraph instead of paragraphs 1, 2 and 3.
- 42. Delete Description of Transaction, Rate Rule Reference and Code 6010 due to Item 2008-35. Texas Limited Coverage Residential Chain of Title as adopted being only one paragraph instead of paragraphs 1, 2 and 3.

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- 42. Delete Description of Transaction, Rate Rule Reference and Code 6010 due to Item 2008-35. Texas Limited Coverage Residential Chain of Title as adopted being only one paragraph instead of paragraphs 1, 2 and 3.

Can you summarize this for me?

- Search in the normal way (probably in conjunction with a Loan Policy) for all deeds and leases of record for the period not more than 60 months prior to the policy date as requested by lender.
- Show all deeds and leases that appear/purport to affect the property
- Write the T-53 policy. Policy amount is \$100. Premium is \$15 and can't be split with another other agent. Issue the policy.