



November 2005 Rule Changes



John Rothermel
Stewart Title Guaranty

Agenda Item #2004-01

- Amends the Limited Pre-Foreclosure Policy Form T-40 to change the number of the form. The new form number will be T-98.



Agenda Item #2004-02

- Amends the Limited Pre-Foreclosure Policy Down Date Endorsement Form T-41 to change the number of the form and make other conforming amendments. The new form number will be T-99





Agenda Item #2004-03

- Amends Procedural Rule P-43 to make conforming changes based on amendments to the Limited Pre-Foreclosure Policy and Limited Pre-Foreclosure Policy Down Date Endorsement. This is a technical change: the Limited Pre-Foreclosure Policy will now be T-98 and the Pre-Foreclosure Policy Down Date Endorsement will now be T-99



Agenda Item #2002-04

- Amends the Verification of Services Rendered Form T-00 by updating and clarifying the form to comply with new and existing reporting requirements
- Essentially, all that this change does is to add the TDI#s for both the local and closing agents. Makes it possible for underwriters to fill out the DIP report.



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■ 3. INFORMATION ABOUT AGENT
ISSUING / **REQUESTING** POLICY:

■ *NAME:

■ ADDRESS:

■ CITY, STATE, ZIP:

■ *TEXAS DEPARTMENT OF INSURANCE
NUMBER: _____



Agenda Item #2004-05

- Amends the Endorsement Instruction in Section II of the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas and Procedural Rule P-8 to allow for issuance or affirmation of coverage under Forms T-19 or T-19.1 upon completion of contemplated improvements



Agenda Item #2004-05

- If the T-19 or T-19.1 Endorsement was previously issued with the Policy, no additional charge is made for the update. If the T-19 or T-19.1 was not previously issued with the Policy, the regular charge for the Endorsement must be made pursuant to R-29.



Agenda Item #2004-06

- Adopts new Procedural Rule P-59 regarding recodification of the Texas Insurance Code. This new rule is needed to keep provisions of the Basic Manual up-to-date with the recoding of the Insurance Code without having to resort to amending each provision in the Basic Manual that references provisions in the current Insurance Code.



Agenda Item #2004-07

- Amends the First Loss Endorsement Form T-14 to conform to a new American Land Title Association form and to eliminate the 10% threshold loss requirement

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- For the purposes of this endorsement:
- (a) “Indebtedness” means all monetary obligations evidenced by the loan documents at Date of Policy as secured by the insured mortgage, but limited to the balance outstanding at the time the claim is made.
- (b) “Collateral” means all property, including the land, given as security for the Indebtedness.
- (c) “Material Impairment Amount” means the amount by which any matter covered by this policy for which a claim is made diminishes the value of the Collateral below



First Loss endorsement

- Procedural Rule P-9(b)(11) does not require that all parcels be described in the Policy or be in Texas. Existing Rate Rule R-11.i provides that the Rate for the First Loss Endorsement (T-14) to the Mortgagee Policy (T-2) on non-residential real property is \$25 for each endorsement.





First Loss endorsement

- **Underwriting Requirements:**
- We require the following in order to issue the First Loss Endorsement (T-14):
- Verify the Indebtedness is secured by at least two tracts of land. We do not require that the Mortgagee Policy insure all tracts.
- Issue only with a Mortgagee Policy. This Endorsement is not designed for issuance with an Owner Policy.
- The Endorsement does not contain any blanks that must be completed.



Agenda Item #2004-08 – *can not issued until Rate Rule is adopted*

- **Adopts the New Assignment of Rents/Leases Endorsement Form T-27. This coverage relates to the value of the collateral consisting of offices, shopping centers or similar property.**
- **Proposed rate: \$**



Agenda Item #2004-08

- The Company hereby insures the insured against loss which the insured shall sustain by reason of:
 - (a) any defect in the execution of the document entitled referred to in paragraph _____ of Schedule B; and
 - (b) the existence, as shown by the public records, of any prior assignment of the lessor's interest in the lease or leases specified in such document, including any assignments of rents there under, other than as set forth in Schedule B.



Agenda Item #2004-09

- Adopts the new Procedural Rule P-60 for the proposed new Assignments of Rents/Leases Endorsement. This endorsement may be issued only after collection of the premium for the endorsement if a rate rule is later adopted by the commissioner setting the premium amount for the endorsement



Agenda Item #2004-09

- **Underwriting Requirements:**

(1) This Endorsement is used where a lender making a loan on income producing property requires an assignment of the borrower-lessor's interest in leases on the land that are prior to the lien of the deed of trust or mortgage.

(2) This endorsement must not be confused with an assignment of liens under a mortgage or deed of trust.

(3) The requirements for issuance of this endorsement are that:

(a) A search of the title discloses no prior assignments of the lessor's interest in any lease or leases, unless those assignments are shown in Schedule B or are released; and



Agenda Item #2004-09

- (b) The search discloses no prior assignments of rents whether contained in a prior existing deed of trust or mortgage or in a separate instrument, unless the lien or other prior instrument is shown in Schedule B or is released. (c) The current assignment of the borrower-lessor's interest in leases must be properly executed by the borrower-lessor and you must determine that the execution of the document was properly authorized.
- (d) the current assignment of the borrower-lessor's interest in leases must be shown in Schedule B and this Endorsement must refer to the paragraph where the assignment appears.



Agenda Item #2004-09

- Any insured matter covered in the Assignment of Rents/Leases Endorsement (T-27) may be insured only by the use of this Assignment of Rents/Leases Endorsement (T-27). The Assignment of Rents/Leases Endorsement (T-27) may not be issued on residential real property



Agenda Item #2004-10

- Repeals the Adjustable Mortgage Loan Endorsement Form T-33 and Adopts the New Variable Rate Mortgage Endorsement Form T-33 and a Variable Rate- Negative Amortization Endorsement Form T-33.1 to conform to American Land Title Association Forms

Agenda Item #2004-11

- These Endorsements to the Mortgagee Policy replace the Adjustable Mortgage Loan Endorsement (T-33), commencing November 1, 2005. Amended Procedural Rule P-9(b)(6) authorizes the issuance of either of these Endorsements if the mortgage secures a variable rate loan. You may issue the Variable Rate Mortgage Endorsement (T-33) upon request if the mortgage secures a variable rate loan, and you may issue the Variable Rate Mortgage – Negative Amortization Endorsement (T-33.1) upon request if the mortgage secures a variable rate loan that provides for possible





Agenda Item #2004-11

- negative amortization. Rate Rule R-11.D provides that the rate for each endorsement (whether issued separately or chosen in the Short Form Mortgagee Policy) is \$20.



Agenda Item #2004-11

- P-9.b.(6) Adjustable Mortgage Loan Instruments - For purposes of this rule an “adjustable mortgage loan” shall be one which permits **adjustments of the interest rate**, with such adjustments being implemented through changes in the payment amount and/or in the outstanding principal loan balance or in the loan term. When a Mortgage Policy of Title Insurance is to be issued insuring the lien securing an adjustable mortgage loan note, the company may attach to the Mortgage Policy the Endorsement provided for in Form T-33 or Form T-33.1. A Form T-33 Endorsement or Form T-33.1 Endorsement may be issued and attached to a previously issued Mortgage Policy insuring an adjustable mortgage loan upon the payment of any applicable premium charge and compliance with the underwriting requirements of the Company.



Agenda Item #2004-11

- **Underwriting Requirements:**

On residential or commercial transactions, the Variable Rate Mortgage Endorsement (T-33) may be issued in conjunction with the Mortgagee Policy so long as the mortgage or mortgage rider refers to the variable rate features of the interest rate. The Variable Rate Mortgage – Negative Amortization Endorsement (T-33.1) may be issued if the mortgage or mortgage rider refers to the negative amortization provisions. Do not issue the Form T-33.1 on commercial transactions without underwriter consent if you know that the lender receives appreciation, contingent interest or a portion of cash flow.



Agenda Item #2004-12

- Amends the Texas Short Form Residential Mortgagee policy - One-to-Four Family Form T2R to conform to the issuance of the proposed new variable rate mortgage endorsements and other endorsements
- **In other words, it has new boxes to check**



Agenda Item #2004-14 – can not be issued until Rate Rule is adopted

- Adopts the New Condominium Endorsement Form T-28. The new T-28 is essentially like the ALTA endorsement 4. The endorsement provides for various coverage's related to condo statutes and documents



Agenda Item #2004-14

■ Insuring matters

- Unit and common elements are in a condo
 - Condo statutes followed in creating condo
 - RS not violated restricting use of unit
 - Priority of assessment lien over mtg
 - Unit not taxed a separate real property parcel
 - Removal of improvements because they encroach into another unit or the common elements
 - Right of first refusal
- Must be contemporaneously issued with MTP **not after the fact**
- Insuring provisions can be deleted if not true



Agenda Item #2004-15

- Amends Procedural Rule P-9 to add a new subparagraph b.(15) to conform to the issuance of the proposed new Condominium Endorsement Form. This endorsement maybe issued only after collection of the premium for the endorsement if a rate rule is later adopted by the commissioner setting the premium amount for the endorsement



Agenda Item #2004-15

- In Texas a master deed, master lease or declaration must be filed in the real property records. The declaration must be executed by all owners and include a legal description of the condominium regime, a description of the boundaries of

Agenda Item #2004-15

- each unit and unit's identifying number, a statement of the maximum number of units the declarant reserves the right to create, an allocation to each unit of its allocated interests, a plat or plan or recording data for a plat or plan recorded in the real property or condominium plat records, and a statement of the association's obligation to rebuild after a casualty. Tex. Prop. Code §82.055.
 - (2) All taxes for years prior to the time that the units are entitled to separate assessment must be paid. The unit must be separately assessed and taxed after the sale by the declarant. Tex. Prop. Code §82.005.
 - (3) The restrictions disclosed by the examination must not contain any forfeiture or reversionary provision (unless they are, by their express terms, subordinate to the lien of the insured mortgage).



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- the insured mortgage).
 - (4) If the declaration creates a lien for maintenance assessments, all assessments outstanding for the period of time prior to closing must be paid and the declaration must state that the assessment lien is subordinate to the lien of the insured mortgage; otherwise delete paragraph 4. Section 82.113, Property Code provides that an assessment lien has priority over junior mortgages; if you issue this Endorsement on a junior mortgage, delete paragraph 4.
 - (5) If the declaration creates a right of first refusal, you must verify with the association that the right is waived or ineffective as to the current and prior transactions.
 - (6) If the condominium is a commercial condominium unit, then you may not issue this Endorsement.
 - (7) Do not issue this endorsement if you know of any significant encroachment or boundary conflicts. However, you are not required to secure a survey to provide area and boundary coverage to a lender on residential condominium units.



Agenda Item #2004-18

- Repeals certain Bulletins in the Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas. The Bulletins requested to be withdrawn are either out of date or superseded by the promulgation of Rules or Forms. Those withdrawn include: #89 Chattel Mortgage Liens, #113 Irrigated Farms Loans – Water Rights, #134 The Loan Proceeds Draft is in the Form of an Envelope, #137 Construction of Rule R-10, #147 Board Order No. 26940, Correction of Policy or Binder, #156 Commissioner's Order for Title Agent's Licensing and #159 The Recent Constitutional Amendment on Home Equity Loans



Agenda Item #2004-20

- Amends Procedural Rule P-16, Mortgagee Title Policy Binder on Interim Construction Loan (Interim Binder) to re-define situations in which an Interim Construction Binder may be issued.
- ***This change was not requested by Stewart or TLTA. It was requested by Sierra Title in McAllen.***



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- The intent of this rule is that the only time a binder can be issued is when the builder owns the lot and is building a spec house (that is, not a custom home for a person who already owns the land).
- “The use of such Interim Binder shall be limited solely to interim construction loans and pledges of the interim construction notes and liens wherein: (i) the obligor on the indebtedness is an original contractor who is also the record owner of the land upon which improvements are to be constructed; and, (ii) the security document for the indebtedness is not in the form of a Mechanic’s Lien Contract”.

ICBs and R-18

- For all construction deals except spec homes, the most appropriate way to hand the transaction is using R-18.
- This means that we issue the policy at the start of construction to the construction lender, when the work is complete, the permanent lender then gets a new policy at the minimum premium (which is the price of the binder anyway).



ICBs and R-18

- If the original lender is actually the permanent lender, then the best way to handle the transaction action is to issue the policy for the amount of the loan for the land and the contemplated improvement, with P-8 exceptions that are removed at the end of the construction.





Agenda Item #2004-21

- Adopts New Texas Master Indemnity Agreement Form T-29. For use by Title Insurance Underwriters.
- Adopted the form written and used by STG for the last 18 months.



Agenda Item #2004-21

- **Homestead Issues**

- Is the property residential property as defined in P-1u?
- If yes, determine the following:
 - Has the spouse of all owners of the property joined in all deeds, including the transaction insured in the other company's policy?
 - Are there conveyances that do not state the marital status of the person signing the deed?
 - Are there conveyances that fail to state whether the property is the homestead of the grantors?
 - Are there conveyances that fail to state whether the property is the community property under the sole management and control of the grantor?
- If the answers to any of questions above are yes, the master indemnity agreement applies and you may proceed to close the transaction and issue a Stewart Policy of Title Insurance.



Agenda Item #2004-21

- **Judgment Liens, federal tax liens and state tax liens**
- Does your title search reveal an abstract of judgment, federal tax liens or state tax lien against a prior owner or person with a similar name for which no release is found?
- If yes, determine the following:
 - Does the face amount of the AJ, FTL or STL exceed \$500,000?
 - Is there a notice of foreclosure (judicial or non judicial) recorded?
 - Is the lien excepted to in the other company's policy?
- If the answer to all of the above questions is no, then the indemnity applies and you may proceed to close and issue our policy without exception to the matter. You should consider giving express insurance under P-39c in our policy.



Agenda Item #2004-21

- **Mortgages, Deeds of trust, Mechanic's lien contracts and other consensual liens**
 - Does your title search reveal a mortgage?
- If yes, determine the following:
- Does the face amount of the mortgage exceed \$500,000?
 - Is there a notice of foreclosure (judicial or non-judicial) recorded?
 - Does the mortgage secure a revolving credit line?
 - Do you have any information that the mortgagor (borrower) is in bankruptcy?
 - Is the mortgage excepted in the other company's policy?
- If the answer to all of the above questions is no, then the indemnity applies and you may proceed to close and issue our policy without exception to the matter. You should consider giving express insurance under P-39c in our policy.



Agenda Item #2004-21

- **Due process in prior litigation**

- - Does your title search reveal a court proceeding (probate, judicial foreclosure, home equity foreclosure approval, quiet title, trespass to try title, partition suit, divorce or similar case) the result of which vests title in someone in your chain of title?
- If yes, determine the following:
 - Was any defendant in the case a minor, or missing or out of Texas?
 - Did the court fail to appoint guardian ad litem for the defendant?
 - Did the court fail to require proof that the plaintiff and the process server had made the proper search for the defendant before allow substituted service of process (such as publication)
- If the answer to all of the above questions is yes, then the indemnity applies and you may proceed to close and issue our policy without exception to the mat



Agenda Item #2004-21

- **Authority of Trustees, Attorneys in fact, Executors, Administrators**
 - Does your title search reveal that a trustee, attorney in fact under a power of attorney, executor or administrator of an estate signed a deed in the chain of title?
- If yes, determine the following:
 - Did your title search reveal notice of the authority of the trustee, attorney in fact, executor or administrator to sign the conveyance?
 - Was the power of attorney recorded?
 - Is there notice of any proceeding attacking the title?
 - Is the notice of appointment of the executor or administrator filed in the land records of the county where the land is located?
 - Does the other company policy insure someone other than the current seller or mortgagor of the property?
- If the answer to all of the above questions is no, then the indemnity applies and you may proceed to close and issue our policy without exception to the matter.



Agenda Item #2004-21

■ General Matters

- All of the property must be in the State of Texas
- The Master Indemnity Agreement applies only when the other insurer has issued an owner title policy, or a mortgagee policy to a lender who has acquired the title by foreclosure and is now the seller.
- If another title insurer approaches you whether Stewart's Master Agreement with them is covered, please call a Texas Underwriting Counsel or your district manager.
- After issuing our policy you receive any notice of a claim you must notify us immediately.



Agenda Item #2004-22

- Amends Procedural Rule P-11 to provide for the use of the new Texas Master Indemnity Agreement Form

Agenda Item #2004-24

- Amends Administrative Rule L-1, Title Insurance Agent regarding notice to TDI from a title insurance underwriter of cancellation of a title insurance agents' appointment by the underwriter





Agenda Item #2004-25

- Amends Administrative Rule L-2, Title Escrow Officer regarding notice to TDI from a title insurance agent or direct operation of cancellation of an escrow officers' appointment by the title insurance agent or direct operation.



Agenda Item #2004-26

- Amends Procedural Rule P-58, Report on Directly Issued Policy to clarify that the gross premium reported is that for the policy and all endorsements to the policy that are issued in the transaction.



Agenda Item #2004-30 & 31

- Amends Procedural Rule P-53, Rebates and Discounts Prohibited. The department combined agenda items 30 & 31 to conform to the legislative changes made by HB 2565 and minor changes made by TDI.



P-53 changes

- 1. You or your employees can join, be a member of and participate in a trade association of producers. However, no one person's participation may exceed 2 hours per business week (5% of a business week) and may not be the kind of things that would normally be done by the paid staff of a trade association. This means that you or your employees should not be stuffing envelopes, doing registrations or answering the phone. Other activities like working on committees, organizing open house tours, and sitting on holes at golf tournaments should be ok.

P-53 changes

- Your company can advertise in a publication or at an event of producers. You cannot pay more than the market rate. Market rate will be determined by comparing the price of the advertising to that recently paid by others for similar services or things including others not in the title insurance business. This should mean that as long as everyone who is participating in the advertising is paying the same rate and the rate is not completely out of line with similar publications you are safe. I would advise you that events that cost what the department would deem exorbitant will still not be ok even if everyone pays the same price.



P-53 changes

- 3. Assuming there are no changes in the rule, effective November 1, 2005 it will be permissible to deliver checks and documents to a party to the transaction and to a representative of the party (real estate agent, attorney, lender, or other similar person).
- The other things that have always been illegal under then Art. 9.30, Insurance Code and codified by P-53 are still illegal





Agenda Item #2004-33

- Amends Procedural Rule P-1, Definitions, aa. Directly Issued Policy and cc. Commitment for Title Insurance. The amended agenda item conforms the rule to the statutory definition of a commitment as including the mortgagee title policy binder on interim construction loans.



Agenda Item #2004-34

- Amends Minimum Standards, Specific Instructions and Report Forms for Audit of Trust Funds Required of Texas Title Insurance Agents, Direct Operations, Title Attorneys and Attorneys Licensed as Escrow Officers. It clarifies signature requirements and conforms this provision with Administrative Rule L-2, concerning title insurance escrow officers.

Agenda Item #2004-35

- Repeals the existing and adopts a New Policy Guaranty Remittance Form (T-G1) in Section V of the Basic





Agenda Item #2004-36

- Amends Procedural Rule P-28, Requirements for Continuing Education for Title Agents and Escrow Officers. This proposal updates language and clarifies the monthly calculation for required continuing education hours

Agenda Item #2004-36

- In accordance with the following schedule for all licenses renewing on
- or after July 1, 2004.
- LICENSE PERIOD REQUIRED HOURS
- Less than 4 months 0
- 4 months up to and including 6 months 4
- 7 months up to and including 9 months 5
- 10 months up to and including 12 months 6
- 13 months up to and including 15 months 7
- 16 months up to and including 18 months 8
- 19 months up to and including 21 months 9
- 22 months or more 10





Agenda Item #2004-38

- Amends Section VI, Administrative Rules of the Basic Manual regarding notice to TDI in the event of a change in the employment status of an escrow officer who remains licensed with that same title insurance agent or direction operation



Agenda Item #2004-39

- Adopts new Procedural Rule P-61, Regarding the Timely Issuance of Title Policies. This proposal will establish a firm deadline for providing policies to insureds while protecting compliance with Schedule C requirements
- **P-61. Timely Provision of Title Policies.** Title policies shall be provided and furnished to the insured **within ninety (90) days** after receipt by the title company of proof of **compliance with the company's Schedule C requirements.**

Agenda Item #2004-39

- Remember if you have made a requirement (like on an MHU) and you have taken on the responsibility to do the work, you will have to issue the policy if you haven't fulfilled the requirement because of your actions. You can't withhold the policy because THEY haven't complied.





Agenda Item #2004-40

- Adopts New Procedural Rule P-62, Regarding the Licensing and Location of Title Agents and Direct Operations. This rule will require that a title insurance agent or direct operation may not maintain an office in any county in which the title insurance agent or direction operation is not licensed



Agenda item 2004-42

- Schedule D is amended :
- You are further advised that the estimated title premium* is:
- Owners Policy \$_____
- Mortgagee Policy \$_____
- Endorsement Charges
\$_____
- Other \$_____
- Total