

Agenda for New forms and rules web conference
April 18, 2008
Jim Gosdin and John Rothermel

1. Initial welcome and house keeping by Allie James 9:00-9:05 am
2. JOHN: P-24 and HOI matters

For amounts in excess of \$125,000, the maximum split is now 50%-50%..

Companies can still enter into prior written agreements to vary the percentages discussed above but not the services. The important points concerning prior written agreements are:

1. the agreement must be entered into at least 90 days before any payments (other than as provided in the rule) as made;
2. In transactions in excess of \$125,000 issuing offices can agree to any split they wish and can be with other issuing offices in any other county where splits are allowed by joint plant agreements;
3. In transactions below \$125,000, issuing offices can agree to a different split only with agents in adjoining counties;
4. All payments must be made within 30 days after the date of recording by the county clerk of an instrument conveying an interest in the land;
5. The rule applies to anyone acting as an escrow officer for an issuing office;
6. After January 1, 2013, the threshold amount rises automatically from \$125,000 to \$150,000.

Definitions to remember:

1. The rule applies to any attorney who is an escrow officer of an issuing office, agent or direction operation.
2. Furnishing title evidence remains defined in P-1z: “Furnishing title evidence--- Providing information regarding instruments affecting title to a tract of land, going back not less than 25 years or such greater period of time as is necessary to determine the ownership and appropriate liens, encumbrances upon or defects in the title. The information must include, at a minimum, the following:
 1. Grantor of each instrument;
 2. Grantee of each instrument;
 3. Type of each instrument;
 4. Recording information of each instrument;
 5. Copy of each instrument as needed by the examiner.It is not required that the information include:
 1. Following the title to a right of way or easement, or showing instruments executed by the grantee in such right of way or easement, other than amendments to such right of way or easement;
 2. Following the title to an oil, gas, or mineral lease or interest.In considering the necessary length of time to determine ownership and search

- the title, the searcher may be authorized by the title insurance company to accept what it considers prior indicia of title. Prior indicia of title include, for example, a prior title policy, a final order of a court of competent jurisdiction determining the entire title, or, on subdivision tracts, the base title of the dedicated subdivision
3. Title examination remains as defined in P-1e: “Title Examination---The search and examination of a title to determine the conditions of the title to be insured and to evaluate the risk to be undertaken in the issuance of a title insurance policy or other title insurance form.”
 4. **JOHN** :Closing the transaction remains defined in P-1f (as amended effective May 1, 2008): “The **investigation** made on behalf of a title insurance company, title insurance agent or direct operation before the actual issuance of the title policy **to determine proper execution, acknowledgment and delivery of all conveyances, mortgage papers, and other title instruments which may be necessary to the consummation of the transaction and includes the determination that all delinquent taxes are paid, all current taxes, based on the latest available information, have been properly prorated between the purchaser and seller in the case of an Owner Policy, the consideration has been passed, all proceeds have been properly disbursed, a final search of the title has been made, and all necessary papers have been filed for record.**”
 5. Escrow officer continues to be defined in P-1s “Escrow Officer---An attorney, or bona fide employee of either an attorney licensed as an escrow officer, bona fide employee of a title insurance agent, or bona fide employee of a direct operation whose duties include any or all of the following: (1) countersigning title insurance forms; or (2) supervising the preparation and supervising the delivery of title insurance forms; (3) signing escrow checks; or (4) closing the transaction.
 6. Attorney continues to be defined in P-1x “Attorney---A person who is both licensed to practice law and a member of the State Bar of Texas, including a Texas professional corporation organized for the purpose of rendering professional legal services.”
 7. Title insurance agent continues to be defined in P-1 h “itle Insurance Agent---A person, firm, association or corporation owning or leasing and controlling an abstract plant or participating in a bona fide joint abstract plant operation, and authorized in writing by a title insurance company to solicit insurance and collect premiums and to issue or countersign policies in its behalf.”
 8. Direct operation continues to be defined in P-1 y “Direct Operation---The operations of a title insurance company under the authority of a license issued under [Article 9.36A](#), Insurance Code. Whenever the term "title insurance agent" is used in this Chapter, it shall be construed to include "direct operation" unless the context indicates to the contrary.”.

There is no promulgated form of a ‘prior written agreement’ to split the premium an manner other than as out in the rule. We would suggest that such agreements be modeled on the definitions set out in the definitions, particularly P-1f and P-22.

Jim : The issues described in P-24 and any prior written agreements are part of an issuing offices escrow business and it is not our intent to dictate the split of premium to which offices may agree, the form of any such prior written agreement or the advisability of offices entering into such forms. We are providing guidance and definitions in one convenient location. If you have questions about this bulletin, contact a Texas underwriter.

Rate Matters

JOHN: No rate change in 2008

Commissioner of Insurance (“Commissioner”) has adopted the current rate schedule for the remained of 2008 and for the next calendar year and subsequent years until changed by subsequent order of the Commissioner, after notice and hearing as provided by Subchapter D of Chapter 2703 of the Texas Insurance Code, the Schedule of Basic Premium Rates for Title Insurance. The Insurance Department is expected to gather information during the summer and call for a rate hearing later in the year. No rate change is likely during 2008.

JIM: Forms not used without a rate

Rate Rule R-2 has been amended to read, in part: A company shall not issue or deliver a policy, binder or endorsement for which a premium is prescribed without collecting the full charge therefore until a rate therefore has been adopted by the Commissioner. This means that companies cannot be forced to issue forms when the form has been approved but a rate has not.

JIM: Reorganization of the Basic Manual

After many years of confusion and difficulty in finding procedures buried in rate rules and vice versa, a number of rules have been modified to put them in the correct section and to clarify the language.

1. **Rate Rule R-3** has been amended (a) to move the provision for the **Increased Value Endorsement to amended Rate Rule R-15** and (b) **to delete portions of Rate Rule R-3 that have been included in a new, Procedural Rule P-66**, The **remaining portion of R-3 deals only with situations where improvements are subsequently added** (which portion remains unchanged)
 - a. For Owner’s Policies, the new rule **Procedural Rule P-66**, combines all rules dealing with:
 - i. Fee simple
 - ii. Leasehold
 - iii. Easement
 - iv. Acquisitions by the USA
 - v. Increased value
 - b. For Loan policies, the new rule combines the rules dealing with:
 - i. Variable interest including negative amortization
 - ii. R-6 issuance subsequent to Owner’s Policy

iii. Reverse Mortgages

2. **R-7** has been amended to clarify that the additional subordinate policies each bear a \$5.00 premium.
3. **R-15** has been amended to include the reference to the endorsements allowed to Owner's Policies by name rather than by reference to the procedural rule. These endorsements are: Increased Value, Increases in Policy Amount during construction and the T-31 MHU series.
4. **R-18** has been amended to change the name to Refinance of Construction Loans, and reorganize for clarity. There are no substantive changes in the rule.
5. The **statistical plan** has been amended to provide for **2 new codes: 0888** when a T-19.1 has been issued along with a single issue Owner's Policy and amendment of the area and boundary has also been made. **Code 0889** is used when a T-19.1 has been issued along with a single issue Owner's Policy and no amendment of the area and boundary has also been made.

Rule Matters

JIM Agenda item 2006-01, Co-insurance Endorsement

This endorsement allows two title insurers to agree that they are both issuing policies in the same transaction. It provides space for the proportionate amount of liability to be disclosed. Like other endorsements, it can be issued by title insurance agent(s) for the insurers involved or directly by the title insurer.

Actions/Requirements

Discuss co-insurance files with the other agents involved as well as underwriting counsel as appropriate.

Agenda item 2006-02, Amendment to P-6

The Co-insurance Endorsement is available only when the total transaction exceeds \$15 million. The premium is to be figured on the total risk and then apportioned to each insurer based on the amount of liability each company will have. Each company may issue its own policy or one company may issue a policy and all other co-insurers may issue the Co-insurance Endorsement.

Actions/Requirements

Issuing offices must compute the total premium and then percentage that each insurer's premium bears to the whole premium. The issuing office then applies that percentage to the premium to compute each insurer's share of the premium and remits the appropriate premium to the title insurer.

JOHN: Agenda item 2006-03, Revised Verification of Services Rendered Form T-00

Actions/Requirements

The T-00 form contains the instructions for completing it. It is imperative that Issuing Offices properly complete the form in every transaction where they are buying title services from

another licensee. Without proper information, the insurer cannot properly complete the directly issued policy report.

JOHN: Agenda item 2006-04, MHU extended coverage endorsement T-31.1

This form is based on the ALTA 2006 form. From the issuing office's perspective, this form differs little from the existing form.

Actions/Requirements

The issuing office must determine that a MHU is actually located on the land. Examples of how to make this determination would include: survey, inspection, appraisal and tax information.

The issuing office must determine that a Statement of Ownership and Location has been issued by the Texas Department of Housing and Community Affairs. The form lists a number of lien types for which title insurance is provided. The information at the TDHCA and the local tax office is sufficient to provide this insurance.

JOHN: Agenda item 2006-05, Future Advance/ Revolving Credit Endorsement (T-35)

This form, based on the ALTA form of the same name, replaces the existing T-35. This form modifies language in the newly adopted T-2 Loan Policy so that a new form was needed.

Actions/Requirements

As to revolving credit loans, essentially this form provides the same basic coverage as the prior Texas form. Issuing offices must determine that the loan documents (deed of trust) contain language that the lender may advance additional funds as the loan is repaid. This loan should not be issued on home equity loans or reverse mortgage loans. Revolving Credit Loans should be so identified in the Deed of Trust creating the lien being insured.

JIM: Leasehold Owner Policy Endorsement (T-4)

Paragraph 2 of the Leasehold Owner Policy Endorsement (T-4) states that "The provisions of subsection (b) of Section 7 of the Conditions and Stipulations shall not apply to any leasehold estate covered by this policy." This reference applied to the Owner Policy (T-1) that was effective before May 1, 2008 and that reference was to the co-insurance clause that has been removed from the new Owner Policy effective May 1, 2008.

Actions/Requirements:

Until TDI promulgates the removal of this reference, you should delete this reference in one of the following ways:

1. In Schedule B, state "Paragraph 2 of the Leasehold Owner Policy Endorsement (T-4) is hereby deleted."
2. Add a cover sheet to the policy that states: "Paragraph 2 of the Leasehold Owner Policy Endorsement (T-4) is hereby deleted."

JOHN: Agenda item 2006-06, T-47 Residential Real Property Affidavit

This form is amended to remove the name of the title company from the top of the form and inserts a definition that title company is the Title Insurance Company whose policy is issued in

reliance on the information contained in the form. This change was needed to make it clear that it is the underwriter rather than the title insurance agent who is relying on the form and may seek enforcement for a false affidavit.

Actions/Requirements

None required except to use this form instead of the prior form T-47 for transactions with a policy date after May 1, 2008.

JOHN: Agenda item 2006-07, Adds new P-63 Policy Issued to Qualified Intermediary

This agenda item moves the manner by which a policy may be issued to a qualified intermediary from Rate Rule (R-2) to the Procedural Rule (P-63) where it more properly belongs.

The language is unchanged.

Actions/Requirements

None.

JOHN: Agenda item 2006-08, Adds new P-64 Subordinate Liens and Leases (P-11.b(8))

This agenda item moves the instruction for setting out subordinate liens and leases from the middle of a comprehensive list of endorsements to a separate Procedural Rule. The coverage provided and the steps to take are unchanged.

Actions/Requirements

None.

JOHN: Agenda item 2006-09, Adds new P-65 Owner Policy Required When Issuing Loan Policy

This item simply adds the existing statutory reference that requires rejection of an owner policy into its own Procedural Rule.

Actions/Requirements

None. Prior procedures are still applicable.

JIM: Agenda item 2006-10, Adds new P-66 Determination of Amount of Insurance

This agenda item simply takes the existing Rate Rules for determining policy amount and moves them into the more appropriate Procedural Rule.

Actions/Requirements

None. Prior procedures are still applicable.

JIM: Agenda item 2006-12, Adds new P-7 Name of Insured On Loan Policy or Commitment for Loan Policy

This item moves the language for successors and assigns from TDI Bulletin 157 and makes it clear that the language "and each successor etc.," can also be used in commitments.

Actions/Requirements

None except that “and each successor in ownership of the indebtedness secured by the insured mortgage, except a successor who is an obligor under the provisions of Section 12c of the Conditions and Stipulations” may now be used in commitments for loan policies.

JOHN: Agenda item 2006-14, P-21.3 Additional Requirements for Commitment (Schedule D)

This item only changes the reference from The State Board of Insurance to Commissioner of Insurance

Actions/Requirements

None. Prior procedures are still applicable.

JOHN: Agenda item 2006-15, P-28 Requirements for Continuing Education for Title Agents and Escrow Officers

This item amends the existing rule P-28 by adding to the definition of provider (of such educational programs) “a company that owns one or more title insurance companies.”

Actions/Requirements

None. Prior procedures are still applicable. This rule appears to provide that agents may not provide continuing education hours unless working under the auspices of one of the listed providers.

JIM: Agenda item 2006-16, Amends P-45 Texas Reverse Mortgages T-43

This item adds two new maximum amounts of insurance as follows:

1. The amount of the lien as estimated by the lender according to written closing instructions and
2. in the case of an FHA-insured loan, the Maximum Claim Amount as established by FHA.

Actions/Requirements

None. In either of the new situations, the amount of insurance should be requested by the lender in written instructions.

JOHN: Agenda items 2006-17 and 2006-42, Relating to P-53 Rebates

This agenda item removes the automatic termination date for the rule and makes P-53 permanent.

Actions/Requirements

None. Prior procedures are still applicable.

JOHN: Agenda item 2006-19, Administrative Rules

This agenda item changes the method by which the TDI notifies agents of the expiration of agency licenses and the need to renew such licenses. It provides that the TDI will notify an agent who fails to renew by the specified time. They have a period before a complete new

license will be required. The TDI will issue this warning letter within 45 days after the license has expired.

Actions/Requirements

Issuing offices should keep close track of license periods for both agency licenses and escrow officer licenses. For agency licenses, the TDI will provide a notice to renew 45 days before the license expires. Missing that letter and the renewal date in reliance on the additional 45 day notice provided in this amended rule could cause the agent to have to cease business until the complete new license process is completed.

JOHN: Agenda item 2006-22, Dealing With Annual Audits of Policy Guaranty Fees

This item adds the words “if the agent opts to maintain these accounts separate from the agent’s standard audited escrow account maintained in the ordinary course of business” to the requirement that the annual audit must include policy guaranty fees. This means that an agent may maintain guaranty fees either in the general escrow accounts or in a separate guaranty fee escrow account.

Actions/Requirements

Agents and issuing offices should notify the independent auditor who conducts their annual escrow audit if there is in fact a separate escrow account into which guaranty fees are placed pending quarterly remittance to the Guaranty Association.

JIM: Agenda item 2006-24, ALTA Owner’s Policy of Title Insurance T-1

Texas has now adopted for use the 2006 ALTA Owner’s Policy. The form follows the basic ALTA format and is a form many commercial buyers will recognize. The form is somewhat more general in its wording than many people in the Texas title insurance industry are used to seeing. However, many of these wordings simply make Texas law apply without necessarily specifying the exact law.

The policy adds several coverages for electronic recording of documents.

The policy form changes the language of the standard tax exception to make it clear that the exception is for real estate taxes or assessments imposed by a governmental authority (rather than, for example, assessments by a home owners association.)

Because Texas law prohibits insurance of marketable title, the new T-1 form insures good and indefeasible title and excludes unmarketable title.

Schedule A allows a place to insert the property address for reference only upon request of the owner and if the issuing office chooses to insert the property address. This reference does not insure the correctness of the property address.

The policy form amends the arbitration section. When the policy amount is less than \$2 million, either the company or the insured can require arbitration unless the insured is an individual in which case arbitration is not mandatory under Texas law. When the amount of insurance exceeds \$2 million, arbitration must be agreed to by both parties. The form increases this threshold from \$1 million to \$2 million.

Actions/Requirements

None other than to be aware of the changes and use the new form for all policies with a policy date of May 1, 2008, and later. You are not required to insert the policy address if you choose not to do so.

JIM: Agenda item 2006-26 ALTA Loan Policy of Title Insurance T-2

The first thing to notice about this new lender policy is the name. Since Texas is a lien theory state and rarely uses mortgages, this new form is rightly named a LOAN policy.

It has many of the same features as does the new Owner's Policy.

The definition of the Insured in the 2006 Loan Policy is expanded. While the language is expanded, the definition of Insured does not include an affiliate if "actual valuable consideration" changes hands. This means purchase instead of assignment.

There is a new definition of "Indebtedness" in the 2006 Loan Policy:

"(d) "Indebtedness": The obligation secured by the Insured Mortgage including one evidenced by electronic means authorized by law, and if that obligation is the payment of a debt, the Indebtedness is the sum of

- (i) the amount of the principal disbursed as of Date of Policy;**
- (ii) the amount of the principal disbursed subsequent to Date of Policy;**
- (iii) the construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the Land or related to the Land that the Insured was and continued to be obligated to advance at Date of Policy and at the date of the advance;**
- (iv) interest on the loan;**
- (v) the prepayment premiums, exit fees, and other similar fees or penalties allowed by law;**
- (vi) the expenses of foreclosure and any other costs of enforcement;**
- (vii) the amounts advanced to assure compliance with laws or to protect the lien or the priority of the lien of the Insured Mortgage before the acquisition of the estate or interest in the Title;**
- (viii) the amounts to pay taxes and insurance; and**
- (ix) the reasonable amounts expended to prevent deterioration of improvements; but the Indebtedness is reduced by the total of all payments and by any amount forgiven by an Insured."**

This sweeping definition results in consideration of these post-policy advances in calculation of the maximum amount of liability that a title insurer will have pursuant to Section 8 of the Conditions and in calculation of the Amount of Insurance. **It does not reduce the need for a T-35 Endorsement to cover Future Advances; the Endorsement is still necessary, for example, to insure the validity and priority of the lien of the Insured Mortgage for the Future Advances.** This definition does not insure that the post-policy Advances are actually secured by the Insured Mortgage, because the policy contains a post-policy exclusion and because the definition states that it means "obligations secured by the Insured Mortgage...." Because of this definition and because the pro-tanto reduction in liability clause of the 1992 Loan Policy does not appear in the 2006 Loan Policy, **there is no longer any need for a Last Dollar Endorsement.** However, the policy continues to provide (at Subsection 1(d) (iii))

that post-policy construction advances are included in the calculation of Indebtedness only if they continue to be obligatory, except to the extent a Pending Disbursement Clause modifies this clause. The requirement that construction advances be obligatory does not apply to other advances made post-policy (at Subsection 1(d)(ii)), so that other post-policy advances should be included in calculation of Indebtedness, whether obligatory or not.

Actions/Changes needed

- Last dollar endorsements should be discouraged and approved only by a Texas underwriting counsel.
- P-8 exceptions in construction deals are still required

The Proof of Loss Section (Section 4 of the Conditions of the 2006 Policy) is substantially rewritten. No longer is there any requirement to provide a Proof of Loss, unless the Proof of Loss is requested by the title insurer and unless the facts are known by the Insured.

The 2006 Policies contain a new provision that expands the Amount of Insurance in certain claims situations. Section 8(b) of the Conditions of the 2006 Policies states that:

“(b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title or the lien of the Insured Mortgage, as insured,

(i) the Amount of Insurance shall be increased by 10%, and

(ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.”

This clause has two imports: (1) it increases the Amount of Insurance if the Company pursues its rights and is “unsuccessful;” and (2) it allows the Insured to choose to have the amount of loss determined as of the date the claim was made or the date it is settled and paid. This clause may apply to more than one claim covered by the Policy. The clause also does not require that the pursuit of rights by the Company consist solely of litigation; the Company may instead make an unsuccessful attempt to secure a release or other settlement with a third party. In any such situation, the Amount of Insurance will be increased by 10%, even if the claim is for a lesser amount than 10% of the Amount of Insurance.

Actions/Changes needed

Although this provision is intended to apply only to cases where the underwriter has been notified of a claim, issuing offices should be extremely careful not to appear to be handling a claim by seeking releases or settlements without approval of our claims department. Such actions could lead to allegations by the insured that coverage has increased by 10% at no cost and issuing offices incurring liability.

Another change to the T-2 Loan Policy is that **endorsements may now be attached to the policy in the same manner as to the Short Form Loan Policy, via check box**. The 2006 Loan Policy as modified in Texas incorporates, by selection, endorsements in a new flexible paragraph 6 of Schedule A. These endorsements do not have to be attached to the policy; the endorsements are incorporated by checking the box next to the endorsement reference or by listing the endorsements. The Loan Policy authorizes incorporation of Endorsements T-5, T-17, T-19, T-28, T-30, T-31, T-31.1, T-33, T-33.1, T-35, T-36, T-39, T-42, T-42.1, T-43,

and Deletion of Section 13 of the Conditions (Arbitration). The Insured may continue to request other endorsements available in Texas.

Survey Coverage

New Covered Risk 2(c) of the 2006 Owner's and Loan Policies for the first time in a policy provides explicit "survey" (or boundary and encroachment) coverage without issuance of a special endorsement. That Covered Risk insures against loss because of:

"Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land."

This Covered Risk is similar to but more detailed than the affirmative insurance in paragraph 2 of Schedule B of the Texas Short Form Mortgagee (Loan) Policy, which states:

"This policy insures against loss or damage arising from any encroachments or protrusions, or any overlapping of existing improvements located on the land onto adjoining land, and encroachments onto the land of existing improvements located on adjoining land."

The Short Form Mortgagee Policy does not include the word "encumbrance" and does not refer to any applicable "survey" or "land" survey. Other policies in the U.S. did not include any explicit insurance unless an endorsement was attached, and left to litigation the meaning of the absence of a survey exception. While "land survey" is not defined by reference to any standards, such as an ALTA/ACSM Survey, the term should be construed as a land survey of the highest standards for a commercial, rural or residential survey within the jurisdiction that accurately reflects boundaries, corners, improvements, easements, other encumbrances, discrepancies in boundary lines and encroachments both into and over the property lines or above or below ground.

The term "survey" has been construed as meaning a boundary line survey that would reveal encroachments and boundary line disputes, not a mortgage loan survey that would show only the location of improvements. The term "other matters" shown on a survey was construed as referring to the size and dimensions of a lot. *State Farm Ins. Cos. v. Peda*, No. 2001-L-161, 2003 Ohio 1092, 2003 Ohio App. LEXIS 1026 (Ohio Ct. App. March 7, 2003) (a mortgage loan survey was prepared and did not disclose encroachment or boundary dispute).

This coverage will not serve as a substitute for a Contiguity or Access Endorsement, and will not insure against shortages in area, absent a special endorsement.

Compliance with P-2. No changes need to be made to underwriting standards concerning the age of acceptable surveys, use of T-47 update affidavits, certifications or copyright notices. This coverage will not apply if you do not amend the area and boundary exception to Schedule B.

A key new element of this coverage is the recognition that covered encroachments include encroachments of existing improvements on the Land onto adjoining land. This additional clarification is necessary to prevent further debate as to whether survey coverage results in a

valid claim if an improvement encroaches onto adjoining land. That issue has arisen repeatedly because the definition of "land" in the all title insurance policies (including the 1992 Policies) excluded any land beyond the boundaries described in Schedule A, and, therefore, arguably did not insure against encroachments onto adjoining land because such encroachments would not be the insured "land." While cases generally rejected that contention, the issue will no longer exist if the 2006 Policy is issued because of the new definition of and insurance against any "encroachment." The definition of "land" remains the same, but that definition is subject to the provisions of the Covered Risk. However, just as the policies do not insure against other matters excepted in Schedule B, the 2006 Policies will not insure against survey matters if an exception appears in Schedule B. This Covered Risk does not reduce the need for endorsements such as the Access Endorsement, Contiguity Endorsement, or Restrictions, Encroachments, Minerals Endorsement.

- **It is possible that fewer lenders will require a T-19 endorsement unless they are concerned about damage to improvements because of oil and gas exploration and production.**
- **It should be noted that newly approved T-19 forms (May 1, 2008) provide insurance against loss in this area to existing or future built improvements.**

Agenda item 2006-27, Amends P-1 Definitions to Change the Definition Contained in P-1ee from Mortgage Policy to Loan Policy.

Actions/Requirements

None.

JOHN: Agenda item 2006-29, Amends P-32 Dealing with Document Retention

This amendment clarifies and modernizes P-32. It corrects a statutory reference. It reorganizes and gives specific examples of the types of matters such as escrow accounting documentation (as opposed to the former language "matters normally maintained in GF files") and evidence of insurability.

The amendment sets out the following time periods for maintaining documents:

- a. escrow accounting: 3 yrs
- b. evidence of insurability: 15 yrs
- c. title policies (electronic or printed): indefinitely.

The rule specifies that these time periods apply to electronically produced documents under P-17.

Actions/Requirements

None.

The rule does not impose new requirements. It simplifies and clarifies the existing rule and allows retention of electronic copies, including scanned copies.

JIM: Agenda item 2006-30 Dealing with Arbitration Provisions in Policies

This agenda item provides the regulatory basis for the changes in the arbitration clauses in the new Owner's and Loan policies using a \$2 million threshold rather than a \$1 million threshold.

Actions/Requirements

None.

JOHN: Agenda item 2006-31, Amending P-37 Lack of Access

This item simply changes the paragraph references in the rule to correspond to the paragraph in the T-1 Owner's, T-2 Loan and T-1R Residential Owner's Policies.

Actions/Requirements

None.

JIM: Agenda item 2006-32, Facultative Reinsurance Agreement T-18.1

This item adopts the new national form of the agreement used by title insurers. It has no bearing on title insurance agents or issuing offices.

Actions/Requirements

None.

JIM: Agenda item 2006-33 and 2006-34, Dealing with Restrictions, Encroachments and Mineral Endorsements T-19 and T-19.1

These agenda items are amended to more closely conform the Texas T-19 and T-19.1 series to the current ALTA Form 9 series. The main change is that coverage is provided for damage to improvements, including lawns, shrubbery or trees located on the land for the T-19 and excluding lawn, shrubbery and trees located on the land on the T-19.1 on or after policy date resulting from the exercise of mineral rights. This language change to include "after policy date": (i) allows the form to be used on unimproved property, and (ii) will cover improvements added to already improved property after the policy date.

Actions/Requirements

None.

JIM: Agenda item 2006-35, Tertiary Facultative Reinsurance Agreement Type I

This item adopts the new national form of the agreement used by title insurers. It has no bearing on title insurance agents or issuing offices.

Actions/Requirements

None.

JIM: Agenda item 2006-36 Tertiary Facultative Reinsurance Agreement Type II

This item adopts the new national form of the agreement used by title insurers. It has no bearing on title insurance agents or issuing offices.

Actions/Requirements

None.

JOHN: Agenda item 2006-38, Amending P-47 Insured Closing Letters T-50

This agenda item requires the title insurer to create a database of insured closing letters and specifies the matters that must be included in the database. It provides that title agents and direct operations must have access to that database.

Actions/Requirements

None. The creation of the database is the burden of the title insurer. This agenda item is not effective until October 1, 2008. As a result of this change, all insured closing letters are now single transaction letters.

JOHN: Agenda item 2006-39, New P-68 Consumer Notice

This agenda item is designed to correct a deficiency that existed in TDI regulations, which placed this notice into the promulgated title insurance policies forms, which could not be changed without public hearing amending the policy forms. This rule allows TDI to make changes to the consumer notice common to all lines of insurance.

Actions/Requirements

None

JIM: Agenda item 2006-40, Definition of Closing the Transaction Under P-1f

This agenda item deletes the prior language concerning voluntary assistance by the title company to aid insureds in meeting requirements on Schedule C.

Actions/Requirements

None. Issuing offices may, at their option, continue to assist insureds in meeting requirements by obtaining payoffs of existing loans, disbursing money for the lender, furnishing copies of restrictions, prorating insurance and rents. It remains the responsibility of the insured to satisfy requirements. It is not the responsibility of the title company to cure title defects.

JOHN: Agenda item 2006-44, Minimum Escrow Standards

This item amends Paragraph 18 of the Minimum Escrow Standards to add language that when a settlement statement requires changes, the escrow office may either 1. prepare a new statement, 2. make pen and ink changes to the existing statement or 3. "obtain sufficient evidence to support the changes".

Actions/Requirements

"Sufficient evidence" will be determined on a case-by-case basis but could include email from a reliable source, a letter from the party on letterhead stationary or a fax with coversheet. Other evidence may also prove acceptable in a certain file. Issuing offices should use their best judgment as to what is sufficient evidence.

JOHN: Agenda item 2006-45, Amends L-1 Administrative Rules

This item adds a new Paragraph E to section VI Special Note Regarding Change in Operations. This provides that an agent may not operate in a county for a specific underwriter until the agent receives notification from TDI that the change in county has been approved and the county has been added to their agent license.

Actions/Requirements

While this has been the position of the TDI for some time, this rule change makes it clear that an agent must wait until it has actual notification from TDI that a county has been added before it can operate in a new county. TDI auditors will have a specific date available to them when reviewing files.

JOHN: Agenda item 2006-46, Amends Section VI of the Administrative Rules Dealing with Escrow Officers

This agenda item changes a statutory reference and provides that once an attorney has opted to become an escrow officer, only a title agency escrow account may be used to close title insurance transactions in the name of the title company.

Actions/Requirements

Attorneys who are escrow officers should be reminded that all title insurance transactions must be closed in their title company escrow account and not through an attorney's trust account.

JOHN: Agenda item 2006-47, Amends Section VI of the Administrative Rules Dealing with Escrow Officers

This item amends Paragraph B to update a statutory reference. It also amends Paragraph C to update a statutory reference and to require that all non-attorney employees of an attorney who perform escrow functions must be licensed as escrow officers. The final two sentences are combined to make it clear that no agent or direct operation may allow an attorney to conduct the attorney's business in the name of the title company unless the attorney and all bona fide employees of the attorney are licensed as escrow officers.

Actions/Requirements

Issuing offices that have arrangements with attorneys who close transactions in return for a portion of the premium will need to be certain that attorneys know about this rule and are in compliance with the rule.

JIM: Agenda item 2006-48, Administrative Rules

This agenda item makes numerous changes to Section VI Administrative Rules. These changes are technical and are done in response to revisions in the Texas Business Organization Code. For example, the definitions section has three new definitions: (F) partnership; (G) entity; and (H) certificate of formation. Other sections have broken sentences requiring Application Form A and Form B into numbered sections. Other changes delete references to corporate agents and changed them to entity agents to cover limited liability companies and similar entities.

Actions/Requirements

None.

JIM:Agenda item 2006-49, Dealing with Policy Guaranty Fees

This item simply amends Remittance Procedure E to provide that all remittances must be postmarked on or before the remittance due date.

Actions/Requirements

None other than to send remittances on or before the quarterly due date.

JOHN: Agenda Item 2006-50, Amending the Texas Title Insurance Statistical Plan

This agenda item makes six changes in the stat plan:

1. deletes Table 6 property classification codes for Texas Operations
2. deletes Note 7 and renumbers Note 8 as Note 7 on page 8
3. adds a new standard endorsement code for T-19.1 for a single issue R-4 policy (Code 29C 0895)
4. adds language to T-19.1 Code 29C 0889 when no amendment to the area and boundary exception is also made
5. corrects the County Code for Nolan County to 353

Actions/Requirements

Issuing offices should take steps to insure that all escrow officers and policy preparation departments have the proper rate and county codes. Issuing offices should also be aware that the form of the stat plan that the TDI will be sending to you will have different information collected and you should make appropriate changes to data collection software as necessary.

JOHN leads with JIM commenting freely: Commissioner's Bulletin B-0013-08 dealing with mineral estates

April 15, 2008

Robert Carter
Deputy Commissioner-Title
Texas Insurance Department
333 Guadalupe
PO Box 149104
Austin Tx 78714-9104

Re: Commissioner's Bulletin #b-0013-08
Coverage of Mineral Estate

Dear Mr. Carter:

Stewart Title Guaranty Company has reviewed the captioned bulletin and finds that the bulletin has certain flaws which may well make it unenforceable and certainly can create

an untoward hardship on many title insurance agents and direct operations (called herein agents) in the state of Texas.

First, let us say that we don't disagree with the bulletin. We generally agree with you that in cases where it is reasonably possible to do so, agents should specifically show the documents wherein mineral interests are conveyed or reserved.

That said, we do have several issues with the language of the bulletin:

1. We have a serious concern with your second point, that the insured estate must be the same as the conveyed estate and that any diminution of the insured estate from that agreed to in the contract is a violation of P-5.
 - a. Title companies are not public utilities and neither the parties to the transaction nor the commissioner can force a title company to take a risk it does not wish to take.
 - b. There are times when the estate that the parties have agreed to sell and buy is not an estate that the title company is willing to insure. For example the sales contract is for 100% interest in the property. The search and examination of the property reveals that a 1/8th interest is outstanding in an heir of a prior owner. The title company requires that a deed to that 1/8th interest be obtained. The person's whereabouts cannot be easily ascertained, the seller insists upon closing and the buyer is willing to accept a deed for the entire interest and an exception for the 1/8th interest outstanding. Your bulletin prohibits the title company from insuring in this way. Your bulletin requires the title company to require an amendment to the contract. Since we are not a party to the contract, we have no way to compel such an amendment. Are we to insure the full interest when we know a partial interest is outstanding?
 - c. Mineral interests are very complex and many times are composed of numerous documents dealing with complex fractional interests. A typical land title examination is unlikely to have the necessary experience to determine, for example, whether a conveyance of a 1/2 interest is of a 1/2 of a 100% interest or only 1/2 of whatever interest the grantor has. See *Duhig v. Peavy Moore Lumber Company*, 144 SW2d 878, Texas Supreme Court, 1940 affirming 119 SW2d 688 and cited in at least 50 times showing the complexity and frequency of the problem. Requiring a title policy to insure a specific mineral estate rather than to simply provide a listing of documents affecting that estate is an invitation to disaster.
 - d. The Commissioner's bulletin may be intended to address only the mineral estate issue but clearly has broader implications. This bulletin may be used by class action attorneys to create a case where the title company may have refused to insure the minerals or a portion of them. You have said that you are only interpreting the rule and so any interpretation to the contrary done before the Bulletin may still subject the entire title industry to catastrophic litigation.

- e. As mentioned above, the bulletin may also be read to imply that title companies do not have the right to refuse to insure certain transactions or to insure only with certain exceptions or to make certain requirements. While such an interpretation is likely not intended by the commissioner, and in fact is contrary to the express terms of
 - f. Defense of a class action suit could subject any company or even the entire Texas title insurance business to catastrophic expenses.
 - g. Finally, the department reminder is addressed only to underwriters. If an underwriter does not send its agents a letter contradicting your letter and an agent decides in its business judgment that the bulletin is impossible for them to comply with, is not the department required to file a disciplinary action the agent? Why is this paragraph aimed only at underwriters?
2. We must express our deep disappointment that the Commissioner and staff did not take the opportunity to allow the TDI Study Committee an opportunity to review and comment on this Bulletin prior to its being issued. Many of us on that Committee have devoted many hours to being a sound resource for you and the Commissioner. We would never expect the Department to be required to accept any or all changes to a draft of a Commissioner's Bulletin. However, we would expect that since the issue was brought before the Committee, we would be given a chance to discuss a bulletin of this wide-ranging importance before it was sent to the industry. As you can see from the other points raised in this letter, the Commissioner's Bulletin has serious issues that likely could have been avoided had the committee's input been sought. This Bulletin again calls into question what we perceive to be a developing adversarial relationship between the Department's and the industry.

We do not believe that Commissioner's Bulletin #B-0013-08 in its entirety can be allowed to stand unchallenged. We would be available at any time to discuss the issues raised by this letter individually, in a meeting with you, Mr. Jarmon and the Commissioner or within the context of the Study Committee.

Stewart Title Guaranty Company urges in the strongest possible terms that the Commissioner withdraw or abate this Bulletin until such time as an emergency public hearing can be held on an amendment to Procedural Rule P-5. We hereby request such hearing be held within the next 60 days.

Attached to this letter is a proposed agenda item for this hearing.

Sincerely,

John Rothermel

CC: Commissioner Mike Geeslin
Gene Jarmon
Glenn Clements
Malcolm Morris
Mike Skalka
Cathy Fryer
Ashley Smith
Randy Lee
Jim Gosdin
Texas Land Title Association

Agenda item 2008-_____

Presented by John Rothermel, Jim Gosdin, Jim Kletke

On behalf of Stewart Title Guaranty Company

Address 1980 Post Oak Blvd, Suite 800

Houston Tx 77056

Phone 800-729-1900

Stewart Title Guaranty Company requests the Commissioner to replace existing P-5 as set out below with an amended P-5as set out below:

Existing: P-5. Special Exceptions---With the knowledge of the Insured, it shall be permissible for the Company to insert such special exception(s) as shall develop from the examination of the title under consideration. Such special exception(s) shall in all cases specifically describe the particular item(s) excepted to, and shall not be general in its terms.

Amended P-5. Special Exceptions: A Company may insert special exceptions which in its sole discretion may be required by the Company to issue it policy(ies) in a manner acceptable to the Company.

The Company shall give the Insured notice of its intent to insert a special exception. If the Insured agrees to buy or lend money on the property with the special exception in the policy, the Company has complied with this rule. No amendment of the contract for sale or loan agreement is required so long as the Company has given the notice and the Insured has agreed to the special exception. Placing such notice and the requirement for such agreement in Schedule C of the Commitment shall comply with this rule.

To the extent possible, the exception shall refer to a particular item(s) excepted to and shall not be general in its terms.

If the exception concerns mineral interests or estates, the Company may elect to insure the surface only and take exception to: "All oil, gas and other minerals that may have been reserved or conveyed more than 50 years prior to the policy date. The Company insures that no such conveyance or

reservation of the mineral estate appears in the public records within such 50 years unless set out in a specific exception.”

Justification:

- a. Recent developments in the price of oil and natural gas have lead to renewed interest in mineral rights in Texas. As a result, parts of the State where no mineral activity has been undertaken in years or even decades are now subject to renewed interest in mineral estates. Mineral interests are very complex and many times are composed of numerous documents dealing with complex fractional interests. A typical land title examination is unlikely to have the necessary experience to determine, for example, whether a conveyance of a ½ interest is of a ½ of a 100% interest or only ½ of whatever interest the grantor has. See *Duhig v. Peavy Moore Lumber Company*, 144 SW2d 878, Texas Supreme Court, 1940 affirming 119 SW2d 688 and cited in at least 50 times shows the complexity and frequency of the problem. Requiring a title policy to insure a specific mineral estate rather than to simply provide a listing of documents affecting that estate is an invitation to disaster.
- b. The Commissioner’s bulletin B-0018-08 may be intended to address only the mineral estate issue but is clearly has broader implications. P-5 deals with all kinds of special exceptions not just mineral interests. Any interpretation to the contrary done before the Bulletin may still subject the entire title industry to catastrophic litigation and expense and adversely affecting the solvency of a particular agent or underwriter or even the entire industry.
- c. In many cases, a full search of the mineral estate is simply not worth the time and expense it will take for the title company to locate the documents. A full listing of all documents affecting the mineral estate including severance deeds, conveyances of the minerals, leases and assignments can be hundreds of documents. In many counties, mineral estates have been severed since the 1870s or early 1900s. (First oil production in Texas was in 1866 and the Spindletop well was drilled in about 1901.) Unless the proposed insured has all of these documents reviewed by an experienced oil and gas attorney (at much greater expense

than the title premium, the information provided by the exceptions will have little meaning to the proposed insured.

- d. In many cases, knowing that the mineral estate has been severed still has little to no consequences to the proposed insured. In a residential subdivision, there may be outstanding minerals but the property is restricted against drilling, or the restrictions limit drilling to a specific well site or a city may have imposed a non-drilling ordinance or the size of the lots is insufficient for the statewide spacing rules of the Texas Railroad Commission to allow drilling (currently approximately 5 acres for oil, and much larger for gas wells).
- e. The revision to P-5 is written in a more plain language, understandable way. It also recognizes that policy coverages are a determination made by the Company in the same manner as endorsements as provided in procedural rules P-55, P-56, P-57, P-60 , P-50, P-47, portions of P-45, portions of P-44, and P-37.
- f. The proposed new language will provide for a reasonable search period of 50 years and will only require a courthouse search of a relatively short period of time even for an agent using only a 25 year abstract plant as allowed under P-12.