

Stewart Bulletin

TX2008003

Date: April 17, 2008

From: John Rothermel
Texas Agency Services Manager
Associate Underwriting Counsel

To: All Texas Issuing Offices

RE: **Revision to P-24 Payment for services rendered**

Dear Associates:

The Texas Insurance Commissioner has approved a 2-step process for the implantation of revisions to P-24. The base rule is adopted as of May 1, 2008 but is not effective until July 1, 2008.

The format of the rule is similar to the rule that existed before May 1, 2008 in that it deals with policy amounts above and below a certain amount. The prior rule divided the split of premium as policies below \$100,000.00 and above \$100,000.00. The new rule speaks to policies above and below \$125,000.00.

If the policy amount is below \$125,000.00, the maximum split of premium is 90% to the company furnishing title evidence or furnishing title evidence and examination and 10% to the company closing the transaction or closing the transaction and title examination.

Please note that the amended rule appears to prohibit a company from only examining if it doesn't also produce the title evidence.

For amounts in excess of \$125,000.00, 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) are made;
2. In transactions in excess of \$125,000.00, 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 \$125,000.00, 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 includes, 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. 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 “Title 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 on 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 in a manner other than as set out in the rule. We would suggest that such agreements be modeled on the language set out in the definitions, particularly P-1f and P-22.

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 the Texas underwriter listed below.

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Note: Please distribute this bulletin to the appropriate associates.

References

Bulletins Replaced:

None.

Related Bulletins:

None.

Underwriting Manual:

None.

Exceptions Manual:

None.

Forms:

None.