2009 Legislative and Regulatory Update

Texas Land Title Institute
2009

Prepared by
G. Roland Love
Winstead PC
1201 Elm Street
Suite 5400
Dallas, Texas 75270
214.745.5400
214.745.5390 (fax)
Email: rlove@winstead.com
G. Roland Love
Winstead P.C.
1201 Elm Street, Suite 5400
Dallas, Texas 75270 (214) 745-5198
Email: rlove@winstead.com

Background
Texas A & M University, B.S., summa cum laude, 1974; College of Engineering Outstanding Senior Award; Dept. of Electrical Engineering Bolton Award; National I.E.E.E. Outstanding Student Paper.

Southern Methodist University School of Law, J.D., 1977; Editor, Southwestern Law Journal; Thomas P. McElroy Award, Texas Civil Practice.

Admitted to practice before the State of Texas, U.S. District Courts for the Northern, Southern, Eastern and Western Districts of Texas; United States Court of Appeals for the Fifth and Eleventh Circuits; United States Supreme Court; United States Patent & Trademark Office.

Winstead PC: Executive Committee

Community Involvement
Director, North Texas Housing Coalition; Vice President, Board of Trustees, St. Michael's School; Director, Episcopal School of Dallas; Nation Chief, Indian Guides Program; Coach, YMCA Youth Sports Program; Board of Directors, Park Cities YMCA; Director, The 500, Inc.; Sports Committee, Park Cities YMCA; Director and Manager, Dallas Inter Soccer Club; Chair, YMCA Partners With Youth Sustaining Campaign; Mentor, Dallas Volunteer Attorney Program and Lawyers for Affordable Housing.

Professional Memberships & Associations
State Bar of Texas; Dallas Bar Association (Past Chair, Legal Ethics and Law in the Schools Committees)
Council Member, Real Estate Probate and Trust Law Section, State Bar of Texas
DBA Certified Mediator, Past Chair; Law in the Schools Committee/Past Chair
Texas Land Title Association (Chair, Land Title Institute; Chair, Legislative Committee, Past Chair, Defense Counsel Committee; Director and Vice-Chair; PAC, Instructor)
Life Fellow, Texas Bar Foundation
Fellow, Dallas Bar Foundation and Tarrant County Bar Foundation
Fellow, College of the State Bar of Texas
Special Prosecutor, State Bar of Texas
Texas Real Estate Commission, Instructor

Honors And Recognition
Texas Land Title Association Teaching Excellence Award, President's Award, Professional Excellence Award
Texas Bar Foundation Outstanding Law Review Article Award
Dallas Inter-Volunteer of the Year
Texas Monthly Super Lawyer
# TABLE OF CONTENTS

**Legislative Update**

I. Introduction ........................................................................................................... - 1 - 
II. Closing .................................................................................................................... - 1 - 
III. Construction ........................................................................................................... - 5 - 
IV. Foreclosure ............................................................................................................. - 5 - 
V. Homestead .............................................................................................................. - 6 - 
VI. Judicial Tax Sales .................................................................................................. - 6 - 
VII. Landlord/Tenant .................................................................................................. - 6 - 
VIII. Oil and Gas ......................................................................................................... - 7 - 
IX. Property Owner’s Association .............................................................................. - 8 - 
X. Regulatory .............................................................................................................. - 9 - 
XI. Title and Examination ......................................................................................... - 12 - 
XII. Others of Interest? ............................................................................................. - 14 - 
XIII. Potentially Relevant Bills Not Reported ......................................................... - 15 - 
XIV. Bills To Think About ......................................................................................... - 15 - 
XV. Conclusion ............................................................................................................ - 16 - 

**Regulatory Update** .................................................................................................... - 17 -  
Rules with Potential Significant Impact by Agenda Item ........................................... - 18 - 
Rules with Potential Moderate Impact by Agenda Item ............................................ - 20 - 
Rules with Potential Significant Impact - Alphabetical ............................................ - 21 - 
Rules with Potential Moderate Impact - Alphabetical .............................................. - 23 - 
Rules with Potential Significant Impact by Rule ....................................................... - 24 - 
Rules with Potential Moderate Impact by Rule ......................................................... - 26 - 
New Mineral Endorsements ....................................................................................... - 27 - 
Enforcement Actions .................................................................................................. - 29 - 
Disciplinary Orders Posted ....................................................................................... - 30 - 
Pending Matters ........................................................................................................... - 35 - 
Conclusion ..................................................................................................................... - 35 - 

**APPENDIX**

1. Affidavit as Release of Lien
2. Significant 2008 Agenda Items
3. Agenda Item: 2008-66
4. Commissioner's Bulletin #B-0032-09
I.
INTRODUCTION

LEGISLATIVE UPDATE

The 81st Regular Legislative Session began with a new Speaker of the House, but with a very slim 76 to 74 Republican majority. With redistricting on the horizon, the Voter ID Bill took center court. In addition, major legislative issues in education, insurance, and Sunset legislation for major agencies, including the Texas Department of Insurance, took significant time in the House. Thus, time problems, compounded by a new speaker, new committee appointments, major legislation, and the Voter ID created significant road blocks for any other legislation.

The final blow came in the form of scheduling the Voter ID Bill for consideration on the House Major State Calendar. This moved the bill ahead of many bills scheduled for floor debate. Moreover, before the House could even get to the Major State Calendar, it had to complete the Local and Consent Calendar. "Chubbing" became the word of the day, which really refers only to extended debate intended to delay the Local and Consent Calendar. If debate on a bill extends beyond ten minutes, the bill is automatically withdrawn. This is rare, and the entire calendar is usually read and considered within a very short time. However, by debating each and every bill for some moment in time short of ten minutes, the Local and Consent Calendar was extended almost indefinitely. Essentially, any legislation that had not already crossed the finish line was doomed to death by the end of the session.

Accordingly, a much smaller percentage of legislation was passed this session than in the past. On the other hand, a number of specific title related bills came out of the chute early and did cross the finish line before the chubbing began. The most material of these are listed in the accompanying summary. A few federal statutes having impact on Texas practice are also identified.

II.
CLOSING


HB 3073- Geren; Texas Insurance Code § 2501.008; effective January 1, 2010. A title insurance company, title insurance agent, or direct operation may charge, separate from the title insurance premium, actual costs or a reasonable estimate of costs incurred in connection with a closing and settlement, including:

(1) a charge by a third party for an electronic filing fee; or

(2) a fee of a third party for the provision of an ad valorem tax report.

Pass through of the charges incurred in connection with e-filing was previously not permitted (See Commissioner's Bulletin, No. B-0031-06, Title Bulletin No. 163), and the Commissioner had not ruled on pending proposals to do so. The legislature approved the charge after united
support from both the title industry and the county clerks. The charge may be included as a separate charge beginning January 1, 2010.

Similarly, pass through of the charge for a third party ad valorem tax report is now clearly permitted, as of January 1, 2010, as a separate charge. This charge was proposed before the Commissioners on several occasions, and the Department staff and OPIC had opposed it. It was commonly passed through in actual practice, however, although some audits had noted it as non-compliant.

Note that HB 3073 included a Section 2 which states that the Act applies only to a real property transaction that closes on or after the effective date of the Act. "A real property transaction that closes before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose." Remember, the propriety of the pass-through charges was in dispute.

Order 09-0919, effective February 1, 2010, adopted a modified Agenda Item 2008-14, which amends P-17, "Electronically Produced, Filed or Recorded Forms, Instruments or Documents" to add subparagraph (g) which reads:

(g) Due to the higher level of security and expedited recording time afforded by electronically filing or recording instruments, promulgated forms or other documents incident to real or personal property transactions, the actual charges or a reasonable estimate of charges, including actual charges or a reasonable estimate of charges by a trusted third-party provider to an authorized filer, for electronically filing or recording (e-filing) such instruments, forms or documents may be passed through to the consumer. Such actual charges or a reasonable estimate of charges may not be marked up.

Additionally, the Commissioner's Order adopted Agenda Item 2008-15, "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," which amends paragraph 5 to include the following language:

If there are charges shown on the closing statement for overnight mail service, messenger service, copies of documents, recording fees or tax certificates, whether purchased from a governmental or non-governmental entity, it must be determined that these charges are actual expenses or reasonable estimates of charges that must be made prior to closing and not arbitrary or uniformly charged amounts for these items on all closing statements. … If actual charges for products or services provided by third party vendors are known at or prior to closing, the charges may not be marked up. If actual charges for such products or services are not known by the time of closing, only reasonable estimates of such charges should be shown on closing statements and charged.

**MAY USE PAYOFF AFFIDAVIT AS A RELEASE OF LIEN.** HP 3945; Texas Property Code §12.017; effective September 1, 2009. An “Authorized title insurance agent” may execute and record a statutory “Affidavit as Release of Lien” if:
(a) a notice is given to the mortgagee;

(b) no controverting affidavit is filed by the mortgagee within 45 days after the notice is received; and

(c) an authorization by the title insurance company has been recorded in the real property records.

The Property must be 1-4 family residential, or the original face amount of the indebtedness less than $1.5 million. Previously only an authorized officer of a title insurance company could do so pursuant to a more complicated process which arguably disclosed confidential information. One current suggestion is to include the lender notice in the standard payoff letter. The fee collected to record the Release of Lien may be used to record the Payoff Affidavit. Also, the underwriter authorization may be subject to terms, limitations, and conditions set out by the title insurance company.

A person who negligently causes an affidavit with false information to be executed and recorded under this section is liable to a party injured by the affidavit for actual damages.

A copy of the portion of the bill amending Texas Property Code § 12.017(d) is attached setting out the form of the affidavit. An affidavit used as a release of lien must be in substantially the same form. Note that the affidavit must include the names of the mortgagor and the mortgagee, the date of the mortgage, and the volume and page or clerks file number of the real property records where the mortgage is recorded. This same information should also be included for any recorded assignment. The county clerk will index the affidavit in the names of the:

1. original mortgagee and last assignee of record as grantors;

2. and the mortgagor as grantee.

**NOTICE OF CERTIFICATE OF CONVENIENCE TO PURCHASERS IN A MUNICIPALITY.**

HB 4043– Callegari; Texas Water Code § 13.257(c); effective September 1, 2009. Texas Water Code § 13.257 requires a seller to give written notice to a purchaser if the real property is located in a "certificated service area of a utility service provider." A "utility service provider" means a retail public utility. Previously, notice was not required if the property was located within a municipality, regardless of whether water or sewer was provided by a municipally owned utility. Now the notice must be given to purchasers in a municipality, if not served by a municipally owned utility. Failure by Seller as conveyor to give notice, unless an exception exists, permits the buyer to rescind the sale. This may result in an expanded Schedule C requirement.

**MODIFIED SELLER’S DISCLOSURE NOTICE.**

HB 3502– Pickett; Texas Property Code § 5.008(b); effective January 1, 2010. The statutory sellers disclosure notice provided by Texas Property Code § 5.008(b) has been expanded to include additional notice regarding smoke detectors. If a buyer or a member of buyer’s family is hearing impaired, the buyer may require the seller to install smoke detectors for the hearing impaired. But the parties “may agree who will bear the cost...” The previous Seller’s Disclosure Notice did not include the expanded notice regarding smoke detectors, and a purchaser may terminate a contract up to 7 days after
receiving the “notice required by this section.” Failure to give the "notice" creates a non-binding contract. You may want to be sure your contracts include the updated notice, and negotiations over smoke detectors may delay closing.

**Expanded Disabled Veteran Ad Valorem Tax Exemption.** HB 3613—Otto; Texas Tax Code § 11.131, 11.22, 11.43 11.431/Texas Government Code § 403.302; effective June 19, 2009. A disabled veteran who receives from the United States Department of Veterans Affairs or its successor a 100 percent disability compensation due to a service-connected disability and a rating of 100 percent disabled or individual unemployability is entitled to an exemption from taxation of the total appraised value of the veteran’s residence homestead. The exemption and disability rating schedule for the standard disabled veteran exemption is also modified. The 100 percent disability exemption did not previously exist.

Does it affect pro-ration at closing? Many think it might, but probably not. A 100 percent DAV seller will have no taxes to pay to give credit to buyer. A 100 percent DAV buyer will get normal credit, but have no further taxes during ownership. However, the statute does permit a one-year retroactive application. Would that affect pro-ration? Without a granted exemption available at closing, does it matter?

**New Timing Requirements for TILA.** Effective for closings based on applications received on or after July 30, 2009: Mortgage Disclosure Improvement Action Regulation Z (Truth in Lending Act). The initial TILA must be delivered or placed in the mail no later than three business days after the lender receives the borrower's written application. But the loan may not close until seven (7) business days after delivery of the TILA by the Lender. A title company should expect a lender will need a complete list of fees at least 7 business days before closing the transaction. All closing costs and title fees should be included in the total.

If the Annual Percentage Rate (APR) reflected in the initial TILA changes more than one eighth of one percent (.00125), then a revised TILA must be furnished to the borrower not later than three (3) business days before closing. Mailing, email or courier by the lender of a revised TILA raises a presumption of taking three business days before receipt, further delaying the closing another 3 business days, unless a receipt is signed by the consumer for the revised TILA.

The borrower may waive or modify the 7 business days or 3 business days waiting periods if the borrower determines that the loan is needed to meet a bona fide personal emergency. The borrower must provide the lender a dated written statement that describes the emergency, specifically modifies the period, and is signed by all borrowers. Also the lender must provide the TILA to the borrower at or before the time of waiver and modification. The lender must approve any such waiver, which should rarely occur.

These requirements apply only to loans secured by the "dwelling" of the borrower and the loan is subject to RESPA (federally related-mortgage) This may result in more advance disclosures. Timing of a closing may be important to avoid changes in fees, including prepaid interest.
III.
CONSTRUCTION

**CONTRACTOR’S EARNED FEE IS NOT A TRUST FUND.** HB 1513– Smith, Wayne; Texas Property Code Chapter 162; effective September 1, 2009. A fee payable to a contractor is not considered a trust fund if it is earned and paid. The previous definition of construction trust funds is tightened up to protect against claims when bona fide payments have been made to a contractor or a creditor. This may become important in a bankruptcy scenario. Title Companies are excepted from the Construction Trust Fund Provisions.

IV.
FORECLOSURE

**EXPANDED FORECLOSURE PROTECTION FOR SERVICE MEMBERS.** HB 3857– Herrero; Texas Property Code § 51.015; effective June 19, 2009. The Act is patterned after the Federal Act and expands protection of “dwelling” from foreclosure to State National Guard members on active duty (and 9 months thereafter). It includes a surety, guarantor, endorser, accommodation maker, co-maker, or other person who is or may be primarily or secondarily subject to the obligation. On application to a court, a dependent of a military servicemember may also be protected. Protection may be waived by separate written instrument executed during active duty. This statute is broader in many respects than the Federal Servicemembers Civil Relief Act. The foreclosure trustee’s affidavit may need to be modified to include this.

**REASONABLE TIME TO PAY TRUSTEE.** HB 655– Solomons; Texas Property Code § 51.0075(f); effective September 1, 2009. A purchaser at foreclosure may agree with the trustee for a “reasonable time” within which to pay the purchase price. The previous statute required “immediate” payment, but now payment must be “without delay,” or according to agreement. Could a “reasonable time” subject a foreclosure being set aside? Who is going to complain? Will Trustee’s Affidavit need to reflect manner of payment or any agreement?

**NEW FORECLOSURE NOTICE REQUIREMENTS FOR PROPERTIES WITH TENANTS.** Public Law 111-22; Protecting Tenants at Foreclosure Act of 2009; effective for foreclosures June 2, 2009 and thereafter. For foreclosures occurring after May 20, 2009 and relating to certain “federally related mortgage loans” and any loans on a “dwelling” or residential real property, the purchaser at a foreclosure sale is required to provide a bona fide tenant at least 90 days’ notice before the tenant has to vacate. As a general rule, the new law requires any immediate successor-in-interest in property foreclosed upon to assume the property subject to the rights of a bona fide tenant under a bona fide lease until the end of the remaining term of the lease. There are exceptions to this general rule- such as the lease must be in existence as of the date of the foreclosure notice, for example. If a tenant is in possession of the property foreclosed upon without a lease or with a lease that is “terminable at will” the purchaser at foreclosure merely has to give the occupant 90 days’ notice to vacate. In all of the above instances, the foreclosure party can still evict a tenant who is not paying rent or is otherwise in default under his lease. The new foreclosure provisions only affect tenant-occupied properties that are being foreclosed upon and has no effect on mortgagor-occupied properties. This law sunsets on December 31, 2012.
Thus, possession considerations are more important than ever for REO or other post foreclosure policies. An on-site inspection is warranted, or an underwriter may accept an affidavit as to possession.

V. HOMESTEAD

QUALIFYING TRUST MAY HOLD HOMESTEAD PROPERTY. HB 3767– Paxton; Texas Property Code § 41.0021; effective September 1, 2009. If a trust is a “qualifying trust,” and the settlor or beneficiary uses the property as homestead, the trust property is considered homestead under the Texas Constitution. There was split authority as to whether a conveyance into a trust lost homestead protection or could be treated as homestead. A trustee may “sell, convey, or encumber” the property without joinder of either spouse. Family Code requirements to transfer property into a trust must still be satisfied.

VI. JUDICIAL TAX SALES

TAXING UNIT SHALL JOIN TAX LIEN TRANSFEREE’S. HB 1465– Paxton; Texas Tax Code §§ 32.06(i), 33.445; effective September 1, 2009 for pending suits. If a taxing unit files suit to foreclose its tax lien, it shall also join each tax lien transferee of record. The tax lien transferee may file its claim or pay the taxes and receive a transfer of the tax lien(s) without the property owner’s authority. This statute addresses an existing question as to the impact on a tax lien transfer of a taxing unit judicial foreclosure. If a tax lien transferee is joined but fails to act, its lien(s) are extinguished.

OWNER MAY REDEEM PROPERTY SOLD AT JUDICIAL TAX SALE FROM ASSESSOR-COLLECTOR. HB 1407– Geren; Texas Tax Code § 34.21; effective September 1, 2009. If the owner cannot locate a tax sale purchaser after diligent search, or a redemption price cannot be agreed, or the purchaser refuses to give a quit claim deed, then the owner can provide an affidavit and the redemption price to the assessor-collector. The tax assessor-collector will provide a receipt witnessed by two persons, which when recorded, is notice to all persons of the redemption. The existing law lacked specificity as to the affidavit requirements and did not protect the assessor-collector from liability. Recording and indexing of the receipt will be interesting for sure, but the recorded receipt will act as a transfer of title.

VII. LANDLORD/TENANT

LIMITATIONS ON GUARANTOR LIABILITY FOR RENEWAL. HB 534- Anchia/Corona; Texas Property Code § 92.021; effective January 1, 2010. A guarantor of a third party residential lease is not liable in connection with a renewal term unless the guarantor expressly agreed in the original lease to guarantee the renewal. In this case, the original lease must state:

(1) the last date, as specified by the guarantor, on which the renewal of the lease will renew the guarantor's obligation;
(2) that the guarantor is liable under renewal that occurs on or before that date;

(3) that the guarantor is liable under renewal of the lease only if the renewal involves the same parties and does not increase the potential financial obligation for rent. The guarantor must agree to a rent increase during the renewal term in a separate written instrument in order to become obligated for the increased rent.

The landlord does receive some protection if the tenant refuses to vacate – in those instances, the guarantor liability for damages will continue for damages that arise after the original lease or valid renewal expires;

**LANDLORD MAY NOT INTERRUPT UTILITY SERVICE FOR NONPAYMENT OF RENT.** This will be HB 882- Rodriguez/Eltife; Texas Property Code §§ 92.091 and 92.008(b); repeals Texas Property Code §§ 92.008(c), (d) and (e); effective January 1, 2010. This bill repeals provisions that permitted residential landlords to interrupt utility service for nonpayment of rent. It also provides a justice court action to address an unlawful interruption of utilities.

**LATE FEES MAY ONLY BE CHARGED AFTER A FULL DAY AFTER THE DUE DATE.** HB 1109- Anchia/Corona; Texas Property Code § 92.019(a); effective June 19, 2009. This bill makes it clear that a landlord must wait one full day after the day the rent is due before the landlord may charge a residential tenant with a late fee.

**TENANTS MAY VACATE AND AVOID RESIDENTIAL LEASE LIABILITY FOLLOWING THE OCCURRENCE OF CERTAIN SEX OFFENSES OR DOMESTIC VIOLENCE.** SB 83- Nelson/Guillen; Texas Property Code §§ 92.016(b), (c), (c-1) and .0161; effective January 1, 2010. This bill allows a tenant to terminate a residential lease because of sexual assault suffered by the tenant or sexual assault or abuse suffered by an individual for which the tenant is the parent or guardian if the assault/abuse occurred on the premises or at any dwelling on the premises during the preceding six month period. To effect the termination, the tenant must provide 30 days prior notice and deliver documentation as set out by the statute. These rights may not be waived by a tenant. There are also provisions permitting termination by a co-tenant due to family violence.

**TENANTS MAY REQUIRE REPAIR OF RESIDENTIAL RENTAL PROPERTY.** SB 1448-West/Thompson; Texas Property Code § 92.0563; effective January 1, 2010. This bill permits the residential tenant to apply to the justice court for relief to require repairs to residential premises. The jurisdictional limit is $10,000, excluding interests and costs of court.

**VIII. OIL AND GAS**

**MUNICIPALITIES MAY LEASE STREETS, ALLEYS OR PUBLIC SQUARES.** HB 2333-Geren/Davis; Local Government Code § 253.005; effective June 19, 2009. A municipality may now lease a street, alley or public square for oil and gas purposes, so long as the lease prohibits use of the surface for drilling, production or other operations. A "public square" does not include a dedicated public park.
IX.

PROPERTY OWNER’S ASSOCIATION

POA MUST DELIVER UPDATED RESALE CERTIFICATE. SB 1918– West; Texas Property Code § 207.003; effective September 1, 2009. Not later than the seventh day after the date a written request for an update to a resale certificate delivered under Subsection (a) is received from an owner, owner’s agent, or title insurance company or its agent acting on behalf of the owner, the property owners’ association shall deliver to the owner, owner’s agent, or title insurance company or its agent an updated resale certificate that contains the following information:

1. If a right of first refusal or other restraint on sale is contained in the restrictions, a statement of whether the property owners’ association waives the restraint on sale.

2. The status of any unpaid special assessments, dues, or other payments attributable to the owner’s property; and,

3. Any changes to the information provided in the resale certificate.

The update request must be within 180 days of the original resale certificate and from the original requesting party.

Prior law did not require an update nor set out a 7 day requirement. The updates will not only provide a current balance due for dues and assessments but will waive any right of first refusal or other restraint on sale and note any changes in resale certificate. While a “reasonable charge” is permitted, this should generally avoid duplicate charges for resale certificates.

POA MUST RECORD A MANAGEMENT CERTIFICATE. SB 1919– West; Texas Property Code § 209.004; effective September 1, 2009. A Property Owner’s Association shall record a management certificate with proper contact information, or a “purchaser, lender, or title insurance company or its agent” is not liable for any amount due “on the date of a transfer to a bona fide purchaser.” Existing law only requires a management certificate to be recorded, with no liability for a failure to do so. Any past due amounts, and the lien supporting them, will not be a liability when closing a sale or loan involving a bona fide purchaser or lender. The seller will remain liable.

LIENHOLDERS NOW HAVE RIGHT TO REDEEM AFTER A POA LIEN FORECLOSURE. HB 3479 (adopted from SB 2121)– Gallego; Texas Property Code Chapter 209; effective September 1, 2009. The POA is required to give notice of foreclosure to each lien holder of record, and to any transferee or assignee if notice has been given to the POA. If the owner does not redeem during the first 90 days after notice of foreclosure sale, then the lienholder may redeem during the next 90 day period. Under the existing law, the lienholder had no right to redeem. The redemption deed is to the owner, placing the lienholder back in its prior position. This is, of course, not relevant to a lienholder having priority.

THE WOODLANDS-ASSESSMENTS BECOME TAXES? SB 2515– Williams; Section 7, Chapter 289, Acts of the 73rd Legislative Regular Session, 1993; effective immediately. The
Woodlands now thinks its assessments will be treated as taxes! The new statute states that the tax assessor collector may enter into an agreement to collect delinquent assessments. Any lawsuits will have the same priority and preferences as a delinquent tax collection suit, and shall be conducted in the same manner as a delinquent tax collection suit. Does this give tax lien superpriority? Can assessment liens be voluntarily subordinated? Can assessment liens be transferred?

Will this require a new Schedule B exception in The Woodlands? Schedule B already excepts to “taxes and assessments by any taxing authority…” The Woodlands Township is now a management district under Section 375 of the Local Government Code, and Section 375.004 indicates that: “A district is a governmental agency…” T-17 insures against the “priority of any lien for changes and assessments at Date of Policy in favor of any association of homeowners…” The new statute also provides “Title 11, Property Code, does not apply to the district.” Title 11 is the part of the Property Code dealing with restrictive covenants and property owner associations.

The new statute also indicates that the district, as a governmental function, may administer and enforce “a community covenant,” and “in the same manner as qualified association, assume, accept an assignment of, succeed to, or contract to undertake, exercise, or perform all of part of the rights, powers, privileges, duties, responsibilities, assets, liabilities, and obligations of a qualified association under community covenants.” However, an entirely different section of the new statute states the district and a county tax assessor-collector may contract for the collection of the delinquent assessments of a qualified association for which the district has been assigned and has assumed the duties, functions, and responsibilities. Other separate sections of the statute establish new taxes.

Note that T-19 insures against a “private charge or assessment.” If the assessments are considered taxes or government assessments, a T-19 may be issued without exception. A T-17 is a closer question, but the same conclusion probably applies. The paid Assessments should appear on the Tax Certificate and should be handled at closing. Note that resale certificates may not reflect unpaid assessments.

X.
REGULATORY

NEW INSOLVENCY RELATED REQUIREMENTS FOR THE TITLE INDUSTRY. HB 4338-Smithee; Texas Title Insurance Act, effective September 1, 2009. HB 4338 expands the ability to address an impaired title company. The Bill was passed as a companion to the sunset review legislation for the Texas Department of Insurance, which legislation was not reached, so some of the provisions are less meaningful and will be addressed in the next legislative session. However, the Texas Title Insurance Act was still significantly modified. The following chart sets out the affected sections:
<table>
<thead>
<tr>
<th>Section</th>
<th>Statutory Reference</th>
<th>Title</th>
<th>Rule Required</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>2501.004(b)</td>
<td>Abstract Plant</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>2602.002(a)</td>
<td>Purposes and Findings Texas Title Insurance Guaranty Association Financial Solvency</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>2602.003(5)(6)</td>
<td>Definitions – Impaired Agent</td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>2602.011(a)</td>
<td>Information Provided by and to Commissioner</td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>2602.101</td>
<td>General Powers and Duties of Association Administrative Expenses</td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>2602.107</td>
<td>Expenses of Administering Impaired Insurer or Impaired Agent</td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>2602.152</td>
<td>Amount of Fee. Policy Guaranty Fees</td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>2602.153(b)(d)</td>
<td>Use of Fee. Policy Guaranty Fees</td>
<td></td>
</tr>
<tr>
<td>9.</td>
<td>2602.401(a)(b)</td>
<td>Issuance or Renewal of Policies. Operation of Impaired Insurer or Impaired Agent</td>
<td></td>
</tr>
<tr>
<td>10.</td>
<td>2602.451-.453</td>
<td>Subchapter J. Additional Duties of Association</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2602.451</td>
<td>Applicability</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2602.452</td>
<td>Actions for Certain Agents</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2602.453</td>
<td>Authority of Association; Cooperation of Officers, Owners and Employees</td>
<td></td>
</tr>
<tr>
<td>11.</td>
<td>2651.002</td>
<td>License Application. Title Insurance Agent's License</td>
<td>RULE (SHALL)</td>
</tr>
<tr>
<td>12.</td>
<td>2651.0021</td>
<td>Professional Training Program</td>
<td>RULE (MAY)</td>
</tr>
<tr>
<td>13.</td>
<td>2651.011</td>
<td>Privileged Communications; Financial Information</td>
<td></td>
</tr>
<tr>
<td>14.</td>
<td>2651.012</td>
<td>Unencumbered Assets</td>
<td>BOND RULE REQUIRED</td>
</tr>
<tr>
<td>15.</td>
<td>2651.158</td>
<td>Certification of Unencumbered Assets</td>
<td>RULE (SHALL)</td>
</tr>
<tr>
<td>16.</td>
<td>2651.205</td>
<td>Title Agent Records</td>
<td>RULE (MUST)</td>
</tr>
<tr>
<td></td>
<td>2651.206</td>
<td>Examination Reports</td>
<td></td>
</tr>
<tr>
<td>17.</td>
<td>2703.202</td>
<td>Hearing Required for Change in Premium Rate</td>
<td></td>
</tr>
<tr>
<td>18.</td>
<td></td>
<td>Repeal</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2602.056, 2602.153(1)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>19.</td>
<td></td>
<td>Abstract Plant phase in by January 1, 2014</td>
<td></td>
</tr>
<tr>
<td>20.</td>
<td></td>
<td>For 2011 year audit</td>
<td>Certification of Unencumbered Assets (2651.158)</td>
</tr>
<tr>
<td>21.</td>
<td></td>
<td>120/90 days</td>
<td>Hearing and Rule for Examination Reports (2651.206)</td>
</tr>
<tr>
<td>22.</td>
<td></td>
<td>9-1-09</td>
<td>Effective Date of Bill</td>
</tr>
</tbody>
</table>

HB 4338
IMPACTED PROVISIONS OF TEXAS INSURANCE CODE
TITLE 11. TITLE INSURANCE

Subtitle A – General Provisions
Chapter 2501 – General Provisions
Subtitle C – Financial Solvency
Chapter 2602. Texas Title Insurance Guaranty Association
    Subchapter A General Provisions (2602.001-012)
    Subchapter B Governance of Texas Title Insurance Guaranty Association (2602.051-.057)
    Subchapter C General Powers and Duties of Association (2602.001-.117)
    Subchapter D Policy Guaranty Fees (2602.051-.210)
    Subchapter E Operation of Impaired Title Insurance Company or Agent (2602.401-.403)
    Subchapter J Additional Duties of Association (2602.451-.453)

Subtitle D – Title Insurance Professionals
Chapter 2651 – Title Insurance Agents and Direct Operations
    Subchapter A Title Insurance Agent's License (2651.001-.013)
    Subchapter D Annual Audit (2651.151-.158)
    Subchapter E General Regulation of Title Insurance Agents and Direct Operations (2651.201-.206)
    Subchapter F Title Insurance Company Powers and Duties Regarding Title Insurance Agents (2602.251-.253)

Subtitle E – The Business of Title Insurance
Chapter 2703 – Policy Forms and Premium Rates
    Subchapter E Procedures Regarding Premium Rates, Policy Forms, and Other Related Matters (2703.201-.208)
As to highlights, note that a former employee has a legal obligation to cooperate, including responding to written requests for information and producing records. Abstract plants must cover a period back to January 1, 1979, beginning January 1, 2014. An agent applying for an initial license eventually will be required to provide evidence that the agent and its management personal have successfully completed a “professional training program” within one year preceding the application. This requirement will require some rulemaking, yet to come. Likewise, a reporting requirement for quarterly withholding reports is suspended pending further rulemaking.

Moreover, exclusive of the value of the abstract plants, an agent will be required to maintain “unencumbered assets” of a value determined by the size of the county where the principal office is located. There is a phase-in for this requirement, and some rule making has not yet occurred, particularly the form of a bond which can be used to satisfy the requirement. Division of premium due to others is considered a trust fund, but this does not require a separate account. The law provides TDI and underwriter access to guaranty files in the possession of others for a period of 60 days after a designation of impairment. New due process rules for a designation of impairment are adopted. Finally, insolvency audits, and information obtained or provided in that process, may not be part of rate making.

**FIVE YEAR LIMITATIONS PERIOD FOR TDI ENFORCEMENT ACTIONS.** HB 2353– Hughes; Texas Insurance Code § 2551.001(c); effective September 1, 2009 for an action initiated on or after that date. The general statue of limitations for enforcement actions found in the Insurance Code is now incorporated into the Title Insurance Act. Previously, Insurance Code § 81.001 was not incorporated into the Title Insurance Act. Insurance Code § 81.001 provides a 5 year limitations period from the violative conduct, or 2 years after the department is aware of the conduct, whichever is earlier. Ultimately this will provide quicker resolution, more guidance to the industry, and less delay to licensing.

**THE COMMISSIONER CAN ESTABLISH A SCHEDULE OF FINES.** HB 4358– Smithee; Texas Insurance Code § 84.004; effective June 19, 2009. The Commissioner may adopt and enforce reasonable rules that the commissioner determines necessary to accomplish the purposes of this chapter. The Commissioner may establish by rule the amount of an administrative penalty to be imposed under Section 84.022 for a specific violation. Under the existing law, a consent order is typically negotiated, including any fine, other referral to the enforcement division. The idea here is to utilize fewer TDI resources for recurring violations. This law will permit the Commissioner to establish a schedule of penalties for specific violations, without the need for a traditional enforcement process.

**TEXAS ESCROW OFFICERS CAN NOW LIVE IN LOUISIANA!** HB 652- Darby; Texas Insurance Code § 2652.01; effective September 1, 2009. A Texas escrow officer may now be a resident of “a state adjacent to this state. ”You can be a notary too! But it will cost an additional $5,000.00. Existing law required an escrow officer and a notary to be a bona fide resident of this state. Why do you care? Beats me. Why would anyone want to live in New Mexico, Oklahoma, Arkansas, or Louisiana, when you could live in Texas? Note – you still can’t live in Mexico.

--- 11 ---
**Title Insurance Coverage to be Adopted for Trusts.** HB 3768- Paxton; Texas Insurance Code § 2703.101; effective September 1, 2009 for policies delivered on or after January 1, 2010. The Commissioner shall adopt coverage for an owners title policy for residential real property to continue coverage for a trust established by the original named insured. The T-1 currently defines Insured to include: "If the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes." The T-1R does not insure “your transferee or assignee,” and an endorsement P-57 provides an Additional Insured Endorsement T-26 for “the trustee or successor trustee of a Living Trust to whom the insured transfers the title after Policy Date, and/or the beneficiaries of the Living Trust,” for a premium (R-33). This statute will require a new policy form, ostensibly by January 1, 2010.

**XII. Title and Examination**

**Lis Pendens May be Expunged.** HB 396- Hartnett; Texas Property Code §§ 12.007, 12.0071; effective September 1, 2009. A party to an action may file a motion to expunge a lis pendens. The Court, after a hearing, shall determine if:

(a) the pleading on which the notice is based does not contain a real property claim;

(b) the claimant fails to establish by a preponderance of the evidence the probable validity of the real property claim; or

(c) the person who filed the notice for record did not serve a copy of the notice on each party entitled to a copy under Section 12.007(d).

After a certified copy of an order expunging a notice of lis pendens has been recorded, the notice of lis pendens and any information derived from the notice does not:

(a) constitute constructive or actual notice of any matter contained in the notice of any matter relating to the proceedings;

(b) create any duty of inquiry in a person with respect to the property described in the notice; or

(c) affect the validity of a conveyance to a purchaser for value of a mortgage to a lender for value; and

The expunged notice is not enforceable against a purchaser or lender, regardless of whether the purchaser or lender knew of the lis pendens action. The Court may require a bond.

**Child Support Liens Now Have Limitations.** SB 1661- Harris; Family Code §§ 157.3171, 157.318, 231.002 (repealed); effective immediately. This Act creates an ability to remove child support liens from homestead property using an affidavit and notice process. The Affidavit process established by Texas Prop. Code § 52.0012 for Abstracts of Judgment is used, including 30 day notice and recording of the affidavit. Notice is given to the judgment holder, not the Attorney General (AG).
There is also now a 10 year Statute of Limitations, but the liens can be renewed for 10 more years by re-filing. It is not required that the re-filing be within the first 10 years, but probably so to relate back for priority purposes. The AG intends for re-filing to include an updated amount due.

Also an important change, the AG is no longer required to file liens. Most child support recoveries come from garnishment of wages and attachment of life insurance. Existing law required the AG to file a lien, and there was no statute of limitations or requirement for updated information. Obtaining a partial release of lien from an ex-spouse with child support due can be very difficult or time consuming, and this will reduce the need to obtain releases due to fewer lien filings. This law also provides a self-effecting means to sell homestead without the previous difficulty or cost in obtaining a partial release. Finally, this law reduces the cost and time incurred by the AG and county clerks in handling lien filings and releases.

**Adverse Possession Attorney’s Fees in Limited Circumstances.** HB 556-Kuempel; Texas Civil Practice and Remedies Code § 16.034(a); effective September 1, 2009. In an adverse possession suit between one party with record title and one in actual possession only, if the record title holder recovers possession, and the claim of the person in actual possession was groundless and in bad faith, costs and reasonable attorney’s fees shall be recovered. Traditionally, attorney’s fees are not recoverable in an adverse possession suit. Previously, under the circumstances noted, the Court could award fees in its discretion. Now it must do so if the possessor is in bad faith. This is all the more reason to be careful, careful, careful when insuring title based on adverse possession.

**More Specifics in Orders Abandoning Public Roads.** SB 1614- Wentworth; Texas Transportation Code § 251.052; effective September 1, 2009. An Order by a county judge abandoning, closing, or vacating a public road shall now include names of property owners receiving a conveyance, and the dimensions of the property being conveyed. The order will be recorded and indexed by County as Grantor and each receiving owner as Grantee. This should help in searching, although a legal description is still not required.

**Municipalities May Impose a Lien to Finance Energy Efficiency Public Improvements.** HB 1937- Villarreal; Local Government Code Chapter 376; effective September 1, 2009. Municipalities and property owners may enter into a contract for energy efficiency public improvements, which contract imposes an assessment against the property. This is a consensual lien only, but is one more lien to address. The statute appears to give the lien superpriority. Query: Can the lien be imposed on homestead? This will probably be much like a paving lien.

**Sunset for TRCC.** The Special Session ordered by the Governor in July 2009 extended TDI’s life to another regular session, but not for the TRCC (Texas Residential Construction Commission). A last minute notice requirement added to the law in May 2007 provided that the failure to include the notice made the contract unenforceable. This was a concern for lenders and title companies. Although the TRCC continues into August 2010, it is unfunded as of September 1, 2009. Prevailing “wisdom” is that the requirement becomes a nullity on September 1, 2009. Additional information on the rules and procedures during the wind-down period is available on the TRCC website at www.texasrcc.com.
NOTICE OF THE DISCOVERY OF AN UNKNOWN OR ABANDONED CEMETERY. HB 2927-Howard/Nelson; Health and Safety Code Chapters 711 and 713; effective September 1, 2009. Relevant to title, this bill expands the definition of cemetery to include any area containing one or more graves and addresses certain circumstances when a cemetery can be relocated. In removing a dedication for cemetery purposes, a district court must find that the removal of the dedication is in the public interest. If an unknown or an abandoned cemetery is discovered, the Texas Historical Commission is required to file notice of the cemetery in the Deed Records. Also of land use interest, a cemetery owner may not permit the installation of wind turbines or cell towers without consent of the directors and at least two thirds of the owners of the plots.

XII.
OTHERS OF INTEREST?

Appraisers Can Commit Fraud Too. HB 2840- Solomons; Texas Penal Code § 32.32; effective September 1, 2009. A person commits an offense if the person intentionally or knowingly makes a materially false or misleading written statement in providing an appraisal of real property for compensation. Existing law did not specifically include appraisers. In most cases, mortgage fraud requires a cooperating appraiser.

Filing a Bad Mechanic’s Lien is Not Filing a Fraudulent Lien. HB 699-Solomons; Texas Civil Practice and Remedies Code § 12.002; effective September 1, 2009. A person claiming a lien under Chapter 53, Property Code, is not liable under this section for the making, presentation, or use of a document or other record in connection with the assertion of the claim unless the person acts with an intent to defraud. It has been common for a mechanic’s lien claimant to draw a counterclaim for a “fraudulent” lien filing under the existing law. This change benefits contractors and simplifies the foreclosure suits.

New Steps to Abandon MHU (Manufactured Housing Unit). HB 2238-Hamilton; Texas Occupations Code §§ 1201.206(g), 1201.207(c), 1201.217(b)(c), 1201.219; effective September 1, 2009. Notice of an abandonment of a MHU must also be given to “any intervening owners of liens or equitable interest. These parties then have a right to remove the MHU. This statute also tweaks the application process for a Statement of Ownership and Location (S.O.L.) for a used MHU. Time will tell its importance, but the statute also addresses the perfection of a tax lien by filing with the TDHCA. The statement required by Section 1201.205(7) is notice to all persons that the tax lien exists. A tax lien recorded with the department has priority over another lien or claim against the manufactured home. This last provision will reemphasize the need to check the TDHCA records for tax liens any time a MHU is being sold.

New Minimum for Franchise Tax. HB 4765- Oliveira; Texas Tax Code § 171.002; effective January 1, 2010. The franchise tax minimum total revenue is raised from $300,000.00 to $1 million. This expires December 31, 2011. On January 1, 2012, the minimum decreases to $600,000.00. This is intended to provide relief to small businesses.
XIII.

POTENTIALLY RELEVANT BILLS NOT REPORTED

HJR 14- proposing constitutional amendments limiting the public taking of private property, establishing the national research university fund to fund emerging research universities, and eliminating the higher education fund.

HB 10- Financial Institutions and Businesses – relating to the regulation of residential mortgage loan originators. See also HB 2779.

HB 406- relating to the disposition of excess proceeds of a tax sale of real property or foreclosure of a tax lien on real property.

HB 2344- relating to the urban land bank demonstration program in certain municipalities.

SB 543- relating to certain possessory liens; providing a criminal penalty.

SB 1592- relating to the assignment of security interests in certain collateral.

SB 1699- relating to consistency among certain secretary of state filings.

SB 1806- relating to liens for certain veterinary care charges for large animals.

SB 1945- relating to the issuance of a citation to an owner of real property for a violation of a county or municipal rule or ordinance.

XIV.

BILLS TO THINK ABOUT

ANIMAL CONTROL OFFICERS CAN CARRY A BIG STICK. HB 405; Texas Penal Code 46.15, Texas Health and Safety Code § 829.003(a); effective September 1, 2009. This bill permits an Animal Control Officer to carry a club used to deter the bite of an animal, without fear of violating the Texas Penal Code Provisions prohibiting possession of or carrying of a club. However, the Animal Control Officer must receive specific training with respect to principles and procedures to be followed for use of the club.

CONSISTENT IDENTIFICATION OF EMPLOYEES OF SEXUALLY ORIENTED BUSINESSES. SB 707; Texas Labor Code § 51.016; effective September 1, 2009. This bill requires employees of a sexually oriented business to carry proof of identification that contains a physical description and photograph consistent with the person's appearance. This raises interesting questions for a few of the jobs located at such a business. What would be consistent with "the person's appearance?" Where will he or she carry the identification?

KEEP AN EYE ON GOLF CARTS ON PUBLIC BEACHES. HB 1213; Texas Natural Resources Code § 61.011(d); effective May 19, 2009. In a continuing effort to control the use of golf carts on public beaches and the apparent draconian measures undertaken by local
governments, the state legislature made it clear that the Commissioner of the General Land Office may promulgate rules permitting the use of a golf cart on public beaches for transportation of a person with a physical disability. This is paying attention to detail and addressing common sense, or the lack thereof.

**LET'S PROTECT OUR FALCONERS.** HB 693; Texas Occupations Code § 1951.057; effective September 1, 2009. Persons engaged in falconry and who are the holder of a falconer's permit from the Texas Parks and Wildlife Department, may continue to use a raptor to control or relocate other birds. Thank goodness this is not considered to be engaged in the business of structural pest control. Unfortunately, the desire of sport hunters of feral hogs to use a helicopter did not achieve the same success, but died a merciful death in the legislative session. See HB 836.

**XV. CONCLUSION**

Thus, while only one-third of the bills filed actually passed, this resulted in almost 2,500 new or amended laws. The foregoing attempts to identify those most relevant to real estate and title insurance practices. As always, there were a significant number of bills that did not pass – most thankfully. Complete texts and histories can be found on the Texas Legislative website.
REGULATORY UPDATE

On August 10, 2009, the Texas Department of Insurance Commissioner Mike Geeslin proposed amendments to Section 9.1 and Section 9.401 of the Basic Manual and the Texas Title Insurance Statistical Plan. These proposed amendments had been considered at the Rule Making Phase of the 2008 Texas Title Insurance Biennial Hearing held on October 2, 2008, Docket No. 2690. The proposed amendments were published in the Texas Register, with comments to be provided on or before September 21, 2009. Additionally, five other items were withdrawn in the September proposal – the most notable modifications to Procedural Rule 24; "Payment for Services Rendered by a Title Insurance Company, Title Insurance Agent, or Direct Operation to Another Title Insurance Company, Title Insurance Agent, or Direct Operation." On November 19, 2009, the Commissioner adopted Order No. 09-0919, effective February 1, 2009. Significantly, changes to P-18, "Commitment for Title Insurance" (Agenda Item 2008-17) and to P-21, "Additional Requirements for Contents for Commitment for Title Insurance" (Agenda Item 2008-18) were originally proposed for adoption in but were withdrawn in the Order. Also broad provisions in Agenda Item 2008-40 permitting escrow and insurance for rollback taxes were deleted. The following chart identifies, via cross matrix, the adopted items by categories of potential substantive impact and potential moderate impact. Those having no substantive impact (primarily typographical error, or incorrect references) have not been included. The complete order may be obtained at the Texas Department of Insurance website.

Also, on April 23, 2009, the Commissioner of the Texas Department of Insurance conducted a public hearing to address issues relating to Texas title insurance policy coverages and minerals. This hearing was the result of over a year of complaints, bulletins, hearings, and negotiations. At the hearing, the Texas Land Title Association ("TLTA") proposed eight agenda items, all the product of a compromise resulting from nine months of meetings with the real estate bar, builders, realtors, lenders and consumer advocacy groups. On August 12, 2009, the Commissioner issued Order No. 09-0650 adopting the proposals, with some changes, effective November 1, 2009. On September 11, 2009, the Commissioner issued Order No. 09-0760, Correcting Commissioner's No. 09-0650 Nunc Pro Tunc, which correction permitted the use of a T-19.1 comprehensive endorsement for any Owner's Policy. A summary of the changes is included. An excellent history of the issue and process leading up to the April 2009 hearing may be found in F. Biel, Proposed Title Insurance Rules Regarding Minerals, Chpt. 27, 20th Annual Advanced Real Estate Drafting Course (March 2009). See also F. Biel, New Title Insurance Rules Regarding Minerals, 43rd Annual William W. Gibson, Jr. Mortgage Lending Institute (September 2009). Because this topic is addressed by another paper at the 2009 Texas Land Title Institute, it is only summarily addressed herein.

Further, a single Commissioner's Bulletin has been issued in the past year, relating to mineral coverage and potential rate-making. Finally, a summary of the last year's Disciplinary Orders is attached.
<table>
<thead>
<tr>
<th>Agenda Item</th>
<th>Title</th>
<th>Rule/Form</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008-06</td>
<td>Texas Limited Coverage Residential Chain of Title Policy Combined Schedule</td>
<td>T-53</td>
<td>New Product. Not more than 60 months – deeds and leases. Issue: Must this product be used if Lender requests 24 month chain of title? Issue: Must mineral leases be listed?</td>
</tr>
<tr>
<td>2008-07</td>
<td>Texas Limited Coverage Residential Chain of Title Policy</td>
<td>P-71</td>
<td>Procedural Rule for Chain of Title product. Land must be residential and only available to institutional lenders, Mortgage Bankers, and Insurers. Issue: Still need a Rate Rule and State Code Issue: Can a fee attorney sell? Issue: What if more than 60 months requested?</td>
</tr>
<tr>
<td>2008-14</td>
<td>Electronically Produced, Filed or Recorded Forms, Instruments or Documents</td>
<td>P-17</td>
<td>Pass through to consumers of electronic filing fees.</td>
</tr>
<tr>
<td>2008-15</td>
<td>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</td>
<td></td>
<td>Permits pass-through of actual expenses or reasonable estimate of charges (on a per closing basis) for tax reports. Permits &quot;absentee notary sign-up fee&quot; if written signed request. Requires advance disclosure of charge. File must contain Release of lien, or evidence of payment and written demand for release. &quot;Must&quot;, no longer &quot;should&quot;, be a closing statement in file.</td>
</tr>
<tr>
<td>2008-19</td>
<td>Owner's Policy of Title Insurance</td>
<td>T-1</td>
<td>Deletes right of reimbursement for defense costs from insured when reservation of rights.</td>
</tr>
<tr>
<td>2008-20</td>
<td>Loan Policy of Title Insurance</td>
<td>T-2</td>
<td>Deletes right of reimbursement for defense costs from insured when reservation of rights.</td>
</tr>
<tr>
<td>2008-22</td>
<td>Issuance of Insured Closing Letters</td>
<td>P-69</td>
<td>No ICL’s for P-22 attorneys.</td>
</tr>
<tr>
<td>2008-23</td>
<td>Cancellation Fees: Fees for Services Rendered</td>
<td>P-70</td>
<td>No cancellation fees. Permits flat fee for title evidence and examination, but which may not be charged to consumer.</td>
</tr>
</tbody>
</table>
### RULES WITH POTENTIAL SIGNIFICANT IMPACT
**BY AGENDA ITEM**

<table>
<thead>
<tr>
<th>Agenda Item</th>
<th>Title</th>
<th>Rule/Form</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008-30</td>
<td>Title Insurance Basic Manual – Administrative Rules – Title Insurance Agent</td>
<td>L-1</td>
<td>May cancel agent for cause without 30-day notice if &quot;cause&quot; is defined in the agency agreement. If sole underwriter, must submit to TDI a wind down plan.</td>
</tr>
<tr>
<td>2008-38</td>
<td>Contiguity Endorsement (T-25.1)</td>
<td>P-56</td>
<td>New product. Gaps, strips and gores coverage – nonresidential. Four or more parcels or irregular shapes.</td>
</tr>
<tr>
<td>2008-39</td>
<td>Contiguity Endorsement Form</td>
<td>T-25.1</td>
<td>New Contiguity Endorsement Form</td>
</tr>
<tr>
<td>2008-40</td>
<td>Reorganization of Procedural Rule P-29 for Inclusion in Procedural Rule P-20 and Additional Amendments to Procedural Rule P-20</td>
<td>P-20</td>
<td>Permits insuring that taxes are paid for the current year through use of escrow and indemnity agreement. Eliminates P-29. Issue: Bulletin 153 eliminated?</td>
</tr>
<tr>
<td>2008-44</td>
<td>Title Insurance Basic Manual – Administrative Rules – Ceasing Operations by Agents and Direct Operations</td>
<td>D-1</td>
<td>Final Audit must be delivered to TDI within 90 days after surrender of license. Underwriter responsible for completion. All agents must submit wind down plan to TDI and underwriter(s) must be updated annually. Issue: The language does not limit final audit and accounting to open guaranty files. Each underwriter &quot;shall obtain and store its own guaranty files.&quot;</td>
</tr>
<tr>
<td>2008-46</td>
<td>Reasonable Time for Furnishing Title Evidence</td>
<td>P-25</td>
<td>New recordkeeping requirement to substantiate direct issue.</td>
</tr>
</tbody>
</table>
## RULES WITH POTENTIAL MODERATE IMPACT
### BY AGENDA ITEM

<table>
<thead>
<tr>
<th>Agenda Item</th>
<th>Title</th>
<th>Rule/Form</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008-12</td>
<td>Loan Policy of Title Insurance Form</td>
<td>T-1</td>
<td>Deletes T-30 Tax Deletion check-off from T-2 Schedule A. Deletion of subparagraphs from endorsement will only be in Schedule B.</td>
</tr>
<tr>
<td>2008-24</td>
<td>Insured Closing Service</td>
<td>T-50</td>
<td>Revised to conform to ALTA. Expands protected lender. Expands permitted claim period to 2 years.</td>
</tr>
</tbody>
</table>
## RULES WITH POTENTIAL SIGNIFICANT IMPACT
### ALPHABETICAL

<table>
<thead>
<tr>
<th>Title</th>
<th>Agenda Item</th>
<th>Rule/Form</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cancellation Fees: Fees for Services Rendered</td>
<td>2008-23</td>
<td>P-70</td>
<td>No cancellation fees. Permits flat fee for title evidence and examination, but which may not be charged to consumer.</td>
</tr>
<tr>
<td>Contiguity Endorsement (T-25.1)</td>
<td>2008-38</td>
<td>P-56</td>
<td>New product. Gaps, strips and gores coverage – nonresidential. Four or more parcels or irregular shapes.</td>
</tr>
<tr>
<td>Contiguity Endorsement Form</td>
<td>2008-39</td>
<td>T-25.1</td>
<td>New Contiguity Endorsement Form</td>
</tr>
<tr>
<td>Electronically Produced, Filed or Recorded Forms, Instruments or Documents</td>
<td>2008-14</td>
<td>P-17</td>
<td>Pass through to consumers of electronic filing fees.</td>
</tr>
<tr>
<td>Issuance of Insured Closing Letters</td>
<td>2008-22</td>
<td>P-69</td>
<td>No ICL’s for P-22 attorneys.</td>
</tr>
<tr>
<td>Loan Policy of Title Insurance</td>
<td>2008-20</td>
<td>T-2</td>
<td>Deletes right of reimbursement for defense costs from insured when reservation of rights.</td>
</tr>
<tr>
<td>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</td>
<td>2008-15</td>
<td></td>
<td>Permits pass-through of actual expenses or reasonable estimate of charges (on a per closing basis) for tax reports. Permits &quot;absentee notary sign-up fee&quot; if written signed request. Requires advance disclosure of charge. File must contain Release of lien, or evidence of payment and written demand for release. &quot;Must&quot;, no longer &quot;should&quot;, be a closing statement in file.</td>
</tr>
<tr>
<td>Owner's Policy of Title Insurance</td>
<td>2008-19</td>
<td>T-1</td>
<td>Deletes right of reimbursement for defense costs from insured when reservation of rights.</td>
</tr>
<tr>
<td>Reasonable Time for Furnishing Title Evidence</td>
<td>2008-46</td>
<td>P-25</td>
<td>New recordkeeping requirement to substantiate direct issue.</td>
</tr>
<tr>
<td>Reorganization of Procedural Rule P-29 for Inclusion in Procedural Rule P-20 and Additional Amendments to Procedural Rule P-20</td>
<td>2008-40</td>
<td>P-20</td>
<td>Permits insuring that taxes are paid for the current year through use of escrow and indemnity agreement. Eliminates P-29. Issue: Bulletin 153 eliminated?</td>
</tr>
</tbody>
</table>
### RULES WITH POTENTIAL SIGNIFICANT IMPACT
**ALPHABETICAL**

<table>
<thead>
<tr>
<th>Title</th>
<th>Agenda Item</th>
<th>Rule/Form</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Texas Limited Coverage Residential Chain of Title Policy</td>
<td>2008-07</td>
<td>P-71</td>
<td>Procedural Rule for Chain of Title product. Land must be residential and only available to institutional lenders, Mortgage Bankers, and Insurers. Issue: Still need a Rate Rule and State Code Issue: Can a fee attorney sell? Issue: What if more than 60 months requested?</td>
</tr>
<tr>
<td>Texas Limited Coverage Residential Chain of Title Policy Combined Schedule</td>
<td>2008-06</td>
<td>T-53</td>
<td>New Product. Not more than 60 months - deeds and leases. Issue: Must this product be used if Lender requests 24 month chain of title? Issue: Must mineral leases be listed?</td>
</tr>
<tr>
<td>Title Insurance Basic Manual - Administrative Rules - Ceasing Operations by Agents and Direct Operations</td>
<td>2008-44</td>
<td>D-1</td>
<td>Final Audit must be delivered to TDI within 90 days after surrender of license. Underwriter responsible for completion. All agents must submit wind down plan to TDI and underwriter(s) must be updated annually. Issue: The language does not limit final audit and accounting to open guaranty files. Each underwriter &quot;shall obtain and store its own guaranty files.&quot;</td>
</tr>
<tr>
<td>Title Insurance Basic Manual - Administrative Rules - Title Insurance Agent</td>
<td>2008-30</td>
<td>L-1</td>
<td>May cancel agent for cause without 30-day notice if &quot;cause&quot; is defined in the agency agreement. If sole underwriter, must submit to TDI a wind down plan.</td>
</tr>
</tbody>
</table>
## RULES WITH POTENTIAL MODERATE IMPACT
### ALPHABETICAL

<table>
<thead>
<tr>
<th>Title</th>
<th>Agenda Item</th>
<th>Rule/Form</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insured Closing Service</td>
<td>2008-24</td>
<td>T-50</td>
<td>Revised to conform to ALTA. Expands protected lender. Expands permitted claim period to 2 years.</td>
</tr>
<tr>
<td>Loan Policy of Title Insurance Form</td>
<td>2008-12</td>
<td>T-1</td>
<td>Deletes T-30 Tax Deletion check-off from T-2 Schedule A. Deletion of subparagraphs from endorsement will only be in Schedule B.</td>
</tr>
</tbody>
</table>
## RULES WITH POTENTIAL SIGNIFICANT IMPACT
### BY RULE

<table>
<thead>
<tr>
<th>Rule/Form</th>
<th>Agenda Item</th>
<th>Title</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008-15</td>
<td></td>
<td>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</td>
<td>Permits pass-through of actual expenses or reasonable estimate of charges (on a per closing basis) for tax reports. Permits &quot;absentee notary sign-up fee&quot; if written signed request. Requires advance disclosure of charge. File must contain Release of lien, or evidence of payment and written demand for release. &quot;Must&quot;, no longer &quot;should&quot;, be a closing statement in file.</td>
</tr>
<tr>
<td>D-1</td>
<td>2008-44</td>
<td>Title Insurance Basic Manual - Administrative Rules - Ceasing Operations by Agents and Direct Operations</td>
<td>Final Audit must be delivered to TDI within 90 days after surrender of license. Underwriter responsible for completion. All agents must submit wind down plan to TDI and underwriter(s) must be updated annually. Issue: The language does not limit final audit and accounting to open guaranty files. Each underwriter &quot;shall obtain and store its own guaranty files.&quot;</td>
</tr>
<tr>
<td>L-1</td>
<td>2008-30</td>
<td>Title Insurance Basic Manual - Administrative Rules - Title Insurance Agent</td>
<td>May cancel agent for cause without 30-day notice if &quot;cause&quot; is defined in the agency agreement. If sole underwriter, must submit to TDI a wind down plan.</td>
</tr>
<tr>
<td>P-17</td>
<td>2008-14</td>
<td>Electronically Produced, Filed or Recorded Forms, Instruments or Documents</td>
<td>Pass through to consumers of electronic filing fees.</td>
</tr>
<tr>
<td>P-20</td>
<td>2008-40</td>
<td>Reorganization of Procedural Rule P-29 for Inclusion in Procedural Rule P-20 and Additional Amendments to Procedural Rule P-20</td>
<td>Permits insuring that taxes are paid for the current year through use of escrow and indemnity agreement. Eliminates P-29. Issue: Bulletin 153 eliminated?</td>
</tr>
<tr>
<td>P-25</td>
<td>2008-46</td>
<td>Reasonable Time for Furnishing Title Evidence</td>
<td>New recordkeeping requirement to substantiate direct issue.</td>
</tr>
<tr>
<td>P-56</td>
<td>2008-38</td>
<td>Contiguity Endorsement (T-25.1)</td>
<td>New product. Gaps, strips and gores coverage – nonresidential. Four or more parcels or irregular shapes.</td>
</tr>
<tr>
<td>P-69</td>
<td>2008-22</td>
<td>Issuance of Insured Closing Letters</td>
<td>No ICL’s for P-22 attorneys.</td>
</tr>
<tr>
<td>P-70</td>
<td>2008-23</td>
<td>Cancellation Fees: Fees for Services Rendered</td>
<td>No cancellation fees. Permits flat fee for title evidence and examination, but which may not be charged to consumer.</td>
</tr>
<tr>
<td>Rule/Form</td>
<td>Agenda Item</td>
<td>Title</td>
<td>Comment</td>
</tr>
<tr>
<td>----------</td>
<td>-------------</td>
<td>---------------------------------------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>P-71</td>
<td>2008-07</td>
<td>Texas Limited Coverage Residential Chain of Title Policy</td>
<td>Procedural Rule for Chain of Title product. Land must be residential and only available to institutional lenders, Mortgage Bankers, and Insurers. Issue: Still need a Rate Rule and State Code Issue: Can a fee attorney sell? Issue: What if more than 60 months requested?</td>
</tr>
<tr>
<td>T-1</td>
<td>2008-19</td>
<td>Owner's Policy of Title Insurance</td>
<td>Deletes right of reimbursement for defense costs from insured when reservation of rights.</td>
</tr>
<tr>
<td>T-2</td>
<td>2008-20</td>
<td>Loan Policy of Title Insurance</td>
<td>Deletes right of reimbursement for defense costs from insured when reservation of rights.</td>
</tr>
<tr>
<td>T-25.1</td>
<td>2008-39</td>
<td>Contiguity Endorsement Form</td>
<td>New Contiguity Endorsement Form</td>
</tr>
<tr>
<td>T-53</td>
<td>2008-06</td>
<td>Texas Limited Coverage Residential Chain of Title Policy Combined Schedule</td>
<td>New Product. Not more than 60 months - deeds and leases. Issue: Must this product be used if Lender requests 24 month chain of title? Issue: Must mineral leases be listed?</td>
</tr>
</tbody>
</table>
## RULES WITH POTENTIAL MODERATE IMPACT
### BY RULE

<table>
<thead>
<tr>
<th>Rule/Form</th>
<th>Agenda Item</th>
<th>Title</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>T-1</td>
<td>2008-12</td>
<td>Loan Policy of Title Insurance Form</td>
<td>Deletes T-30 Tax Deletion check-off from T-2 Schedule A. Deletion of subparagraphs from endorsement will only be in Schedule B.</td>
</tr>
<tr>
<td>T-50</td>
<td>2008-24</td>
<td>Insured Closing Service</td>
<td>Revised to conform to ALTA. Expands protected lender. Expands permitted claim period to 2 years.</td>
</tr>
</tbody>
</table>
NEW MINERAL ENDORSEMENTS
T-19.2, T-19.3

EFFECTIVE NOVEMBER 1, 2009

• General exception for minerals – promulgated language – permitted in Schedule A or B.
• If general exception, T19.2 or T-19.3 must be provided upon request of the insured.
• The T-19.2 is available for residential, one acre or less, or office industrial, mixed use retail/residential, multifamily
  • It protects improvements
    • It includes coal and lignite.
    • It excludes "lawns, shrubber, or trees".
    • It costs $50.00.
• The T-19.3 is available for all other property.
  • It protects permanent buildings.
  • It includes coal and lignite.
  • It costs $50.00.
• Multiple parcels may require separate endorsements, depending on the nature of the parcels.
• The T-19.1 (Owner's Policy Comprehensive Endorsement) is also now available for residential property, whether the policy is a T-1 or a T-1R. Likewise, the T-19 (Loan Policy Comprehensive Endorsement) is to be used with a T-2 policy. These provide other coverages, but are more expensive.
• The T-19.2 or T-19.3 would appear to be available for any policy, including the T-1, T-1R, T-2, or T-2R. They may also be used in conjunction with T-19 or T-19.1.

Note that the T-2R already includes affirmative minerals coverage, though slightly different. Schedule B, paragraph 5, protects "existing improvements, including lawn, shrubbery and trees". However, there does not appear to be any prohibition against using a T-19.2, or T-19.3, with a T-2R.
CONCERNS

The new rules are not without concerns. First, will the availability of the general exception or limitation of the insured estate become a standard practice for underwriters? To require this would be a self-defeating action. Such conduct would result in hearings in which the Commissioner would address such a general practice and likely undo the benefits of the compromise reached. Much more importantly, many agents have a substantial investment in title plants, some back to the sovereign. The ability to compete in the market-place with a better title product is very valuable to them. More sophisticated consumers and larger transactions will turn to these agents for their commitments and title policies, thus providing a competitive advantage to those agents.

Will the consumer understand the exception and what is being offered? This, of course, will be a matter of education. The title information sheet has been amended to include this disclosure, but there will inevitably be some lack of understanding. Not only will the consumer need to be educated, but escrow officers will need to understand the available products and the options. Some witnesses suggested that the T-19.2 and T-19.3 endorsements should be automatic, but because it is an endorsement and not part of the basic rate, it was determined that it should be an option of the consumer, and a requirement of the title company to provide it, if requested.

OTHER CONSIDERATIONS

These rules and endorsements will essentially eliminate the use of P-39 affirmative express insurance in connection with minerals, which has been previously used for residential or property without improvements. There may yet be some specific instances when a specific encumbrance is being insured against where P-39 will be available, but, again, in any case where one of the endorsements is available, P-39 cannot be used. Moreover, one should consider the impact of a title review period under standard Texas Real Estate Commission contracts or even your own contract form having a title review period. If the title commitment takes an exception to minerals, will that be an "out" under the contract? Finally, counsel should consider the impact of providing a general or special warranty deed for a fee simple estate according to the contract, when in fact, there may be no title insurance coverage for the mineral estate. Note that the standard TREC contract requires a General Warranty Deed, as may lenders.

The new rules and endorsements are currently available. At this point, there are some differences in interpretation and application among underwriters. Most of the differences deal with when more than one of the endorsements might be used and use of the T-19 and T-19.1 if a general exception is taken. The market place should quickly resolve these differences to the most liberal interpretation- that being expanded use of endorsements when it makes sense and use of the T-19 and T-19.1 with the general exception if other underwriting requirements protecting the surface are satisfied.

Also, a rate hearing was conducted September 14, 2009. One of the agenda items included a premium credit for the use of the insured estate exclusion or the general exception for minerals. This proposed Rate Rule is attached as Appendix 3. See also Commissioner's Bulletin #B-0032-19, attached as Appendix 4. There is no current ruling, but it is not expected to be adopted due to a lack of loss experience. This then would permit time to develop some history in
connection with losses and premium recovery to better judge the impact of these changes in coverage.

The current rules and endorsements will provide, at a minimum, surface use protection to most consumers. This is the primary purpose and value of real property ownership to the typical consumer. The new rules expand available coverage to residential properties and preserve the ability to obtain a more specific and comprehensive insurance product. There will be some situations, just as now, that are simply not insurable. However, the overall result will be to extend some form of coverage as to the mineral estate to almost all consumers, while controlling premium costs.

ENFORCEMENT ACTIONS
A review of enforcement actions by the Texas Department of Insurance over the past year reflects the following recurring orders and fines:

- Failure to timely remit title insurance policy guaranty fees;
- Failure to comply with continuing education requirements;
- Failure to timely provide annual trust fund account report;
- Employment of title agent without an escrow officer license;
- Allowing an employee to act as an escrow officer without a license;
- Issuing insured closing letters for closings handled by P-22 attorneys;
- Failure of fee attorney to use bona fide employees as escrow officers;
- Misappropriation or conversion of money belonging to an insurer or insured;
- Unauthorized to issue title insurance;
- False statements in applications; and
- Making improper payments to an unlicensed entity and fee attorneys.

Not surprisingly, the pattern is similar to years past. The following chart lists the last 12 months of posted Disciplinary Orders. Title Insurance professionals are warned, however, of an emerging trend by the Texas Department of Insurance to simply adopt audit findings and move directly to enforcement proceedings. The response letter to the notice from the TDI is more important than ever and warrants extensive and comprehensive attention and effort. It now may be the only opportunity to address negative audit findings or other reported violations.
<table>
<thead>
<tr>
<th>Violation</th>
<th>Action Taken</th>
</tr>
</thead>
<tbody>
<tr>
<td>Misappropriated or converted money belonging to a title insurance agent, direct operation or another person; Felony offense</td>
<td>Escrow Officer Licenses revoked; Must pay $15,000,000 in restitution</td>
</tr>
<tr>
<td>Failed to timely provide an annual trust fund account audit report</td>
<td>$5,400 fine</td>
</tr>
<tr>
<td>Failed to timely provide an annual statistical report; Failed to timely respond to TDI's request for information</td>
<td>$25,000 fine</td>
</tr>
<tr>
<td>Issued title insurance without noting outstanding enforceable recorded liens; Failed to maintain supporting evidence for disbursements; False statement on closing settlement statement</td>
<td>$50,000 fine; Title Agent License revoked</td>
</tr>
<tr>
<td>Failed to timely remit title insurance policy guaranty fees</td>
<td>$3,400 fine</td>
</tr>
<tr>
<td>Acted as an escrow officer without a proper license; Engaged in dishonest practices</td>
<td>$20,000 fine; Escrow Officer License revoked</td>
</tr>
<tr>
<td>Failed to timely file annual statistical report with the Department</td>
<td>$5,100 fine</td>
</tr>
<tr>
<td>Made a material misrepresentation on a license application; Acted as an escrow officer without a proper license</td>
<td>$5,000 fine</td>
</tr>
<tr>
<td>Engaged in fraudulent or dishonest acts or practices; Misappropriated or converted money belonging to another person</td>
<td>Escrow Officer License revoked; Pay restitution of $850,318</td>
</tr>
<tr>
<td>Engaged in fraudulent or dishonest acts or practices; Misappropriated or converted money belonging to a title insurance agent, direct operation or another person</td>
<td>Escrow Officer License revoked</td>
</tr>
<tr>
<td>Acted as a fee attorney and failed to use bona fide employees as escrow officers; Made a material misrepresentation on a license application</td>
<td>$5,000 fine</td>
</tr>
<tr>
<td>Acted as an escrow officer without a proper license; Engaged in fraudulent or dishonest acts or practices; Misappropriated or converted money belonging to an insurer or insured</td>
<td>Escrow Officer License revoked</td>
</tr>
<tr>
<td>Failed to timely provide annual statistical report</td>
<td>$5,000 fine</td>
</tr>
<tr>
<td>Failed to comply with Commissioner's order</td>
<td>Title Insurance Agent's License revoked</td>
</tr>
<tr>
<td>Misappropriated or converted money belonging to title insurance company, insured or another person; Allowed employees to act as escrow officers without a license</td>
<td>Title Agent License revoked</td>
</tr>
<tr>
<td>Violation</td>
<td>Action Taken</td>
</tr>
<tr>
<td>--------------------------------------------------------------------------</td>
<td>------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Misappropriated or converted money belonging to title insurance company,</td>
<td>Escrow Officer's License revoked</td>
</tr>
<tr>
<td>direct operation or another person</td>
<td></td>
</tr>
<tr>
<td>Failure to comply with Commissioner's order</td>
<td>Escrow Officer License revoked</td>
</tr>
<tr>
<td>Failed to comply with continuing education requirements</td>
<td>$750 fine</td>
</tr>
<tr>
<td>Failed to comply with continuing education requirements</td>
<td>$1,500 fine; Must complete 30 hours of continuing education</td>
</tr>
<tr>
<td>Allowed employee to perform duties of an escrow officer without Escrow</td>
<td>$6,000 fine; Must provide training on duties and</td>
</tr>
<tr>
<td>Officer License</td>
<td>authority of a licensed escrow officer</td>
</tr>
<tr>
<td>Acted as an escrow officer without a proper license</td>
<td>$2,000 fine; Must complete additional 10 hours of</td>
</tr>
<tr>
<td>Must provide training on duties and authority of a licensed escrow</td>
<td>continuing education; Probability Escrow Officer License for two years</td>
</tr>
<tr>
<td>officer</td>
<td></td>
</tr>
<tr>
<td>Misappropriated or converted money belonging to an insurer or insured</td>
<td>Escrow Officer License revoked; $10,492 restitution</td>
</tr>
<tr>
<td>Withheld funds belonging to another person; engaged in fraudulent or</td>
<td>Escrow Officer License revoked</td>
</tr>
<tr>
<td>dishonest acts or practices</td>
<td></td>
</tr>
<tr>
<td>Failed to comply with Commissioner's order</td>
<td>Title Insurance Agent License revoked</td>
</tr>
<tr>
<td>Failed to timely remit annual statistical report</td>
<td>$6,100 fine</td>
</tr>
<tr>
<td>Allowed individuals to act as escrow officers without a proper license;</td>
<td>Title Insurance Agent License revoked</td>
</tr>
<tr>
<td>Failed to timely respond to requests for information from TDI; Failed</td>
<td></td>
</tr>
<tr>
<td>to comply with Commissioner's Order</td>
<td></td>
</tr>
<tr>
<td>Made a material misrepresentation on a license application; Attempted</td>
<td>$10,000 fine; Escrow Officer License revoked; Escrow</td>
</tr>
<tr>
<td>to obtain a license by fraud or misrepresentation; Engaged in the</td>
<td>Officer License Application denied</td>
</tr>
<tr>
<td>unauthorized business of title insurance</td>
<td></td>
</tr>
<tr>
<td>Acted as an escrow officer without a proper license; Acted as an escrow</td>
<td>Escrow Officer License revoked</td>
</tr>
<tr>
<td>officer without maintaining a surety bond or deposit</td>
<td></td>
</tr>
<tr>
<td>Provided settlement statements that failed to name all payees; Multiple</td>
<td>$50,000 fine; Title Agent License revoked</td>
</tr>
<tr>
<td>violations of minimum escrow accounting procedures</td>
<td></td>
</tr>
<tr>
<td>Violation</td>
<td>Action Taken</td>
</tr>
<tr>
<td>----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>---------------------------------------------------</td>
</tr>
<tr>
<td>Engaged in fraudulent or dishonest acts or practices; Engaged in the unauthorized business of title insurance</td>
<td>$12,000 fine</td>
</tr>
<tr>
<td>Failed to timely provide an annual trust fund account audit report</td>
<td>$6,600 fine</td>
</tr>
<tr>
<td>Multiple violations relating to the business of Title Insurance</td>
<td>$140,000 fine</td>
</tr>
<tr>
<td>Acted as an escrow officer without a proper license; Acted as an escrow officer without maintaining a surety bond or deposit</td>
<td>Escrow Officer License revoked</td>
</tr>
<tr>
<td>Engaged in the unauthorized business of title insurance; Allowed unlicensed personnel to perform the duties of an escrow officer</td>
<td>$2,500 fine; Escrow Officer License revoked</td>
</tr>
<tr>
<td>Engaged in fraudulent or dishonest acts or practices; Provided a settlement statement that failed to name all payees</td>
<td>$50,000 fine; Escrow Officer License revoked</td>
</tr>
<tr>
<td>Engaged in fraudulent or dishonest acts or practices; illegally withheld money belonging to another person                                                                                          $6,264 restitution; Escrow Officer License revoked</td>
<td></td>
</tr>
<tr>
<td>Engaged in the unauthorized business of title insurance; Made a material misstatement on a license application                                                                                       $1,500 fine; Pending Escrow Officer License shall be issued when fine is paid</td>
<td></td>
</tr>
<tr>
<td>Failed to timely remit title insurance policy guaranty fees                                                                                                                                              $1,200 fine</td>
<td></td>
</tr>
<tr>
<td>Made a material misrepresentation on a license application; Provided a settlement statement that failed to name all payees</td>
<td>Escrow Officer License revoked</td>
</tr>
<tr>
<td>Acted as an escrow officer without a proper license</td>
<td>$2,000 fine; Escrow Officer License revoked</td>
</tr>
<tr>
<td>Engaged in fraudulent or dishonest acts or practices; Misappropriated or converted money belonging to an insurer or insured</td>
<td>$50,000 fine; Title Agent License revoked</td>
</tr>
<tr>
<td>Failed to timely remit title insurance policy guaranty fees                                                                                                                                              $2,400 fine</td>
<td></td>
</tr>
<tr>
<td>Unlicensed individuals engaged in unauthorized title insurance</td>
<td>$60,000 fine</td>
</tr>
<tr>
<td>Failed to comply with continuing education requirements                                                                                                                                                 $1,500 fine</td>
<td></td>
</tr>
<tr>
<td>Violation</td>
<td>Action Taken</td>
</tr>
<tr>
<td>--------------------------------------------------------------------------</td>
<td>------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Failed to timely provide annual trust fund account audit report</td>
<td>$1,900 fine</td>
</tr>
<tr>
<td>Failed to timely provide an annual audit report; Unauthorized title insurance</td>
<td>$55,000 fine</td>
</tr>
<tr>
<td>Failed to comply with continuing education requirements</td>
<td>$1,500 fine; Must complete 2 hours of continuing education</td>
</tr>
<tr>
<td>Acted as an escrow officer without a license; Used incorrectly prepared settlement statements; Charged unauthorized fees</td>
<td>$20,000 fine; $1,875 restitution; Escrow Officer License surrendered and cancelled</td>
</tr>
<tr>
<td>Failed to provide TDI with an annual trust fund account audit report</td>
<td>$1,400 fine</td>
</tr>
<tr>
<td>Acted as an escrow officer without a proper license; Engaged in fraudulent or dishonest acts or practices</td>
<td>Escrow Officer License revoked</td>
</tr>
<tr>
<td>Failed to provide TDI an annual trust fund account audit report</td>
<td>$4,500 fine</td>
</tr>
<tr>
<td>Conducted business in the name of a title agent prior to being a licensed escrow officer; Engaged in dishonest practices</td>
<td>Escrow Officer License revoked</td>
</tr>
<tr>
<td>Failed to timely file an annual trust fund account audit report</td>
<td>$10,000 fine</td>
</tr>
<tr>
<td>Failed to timely file annual trust fund account audit report</td>
<td>$5,500 fine</td>
</tr>
<tr>
<td>Failed to maintain separate and distinct accounting of escrow funds; Misapplication of fiduciary property; Failed to comply with prior Commissioner's Order</td>
<td>Title Insurance Agent's License revoked</td>
</tr>
<tr>
<td>Failed to comply with continuing education requirements</td>
<td>$1,500 fine</td>
</tr>
<tr>
<td>Failed to comply with continuing education requirements</td>
<td>$1,500 fine</td>
</tr>
<tr>
<td>Illegal rebates for referrals of title insurance business; Provided door prizes for real estate open house events</td>
<td>$2,300 fine</td>
</tr>
<tr>
<td>Failed to timely provide an annual trust fund account audit report</td>
<td>$10,000 fine</td>
</tr>
</tbody>
</table>
### DISCIPLINARY ORDERS POSTED
**SINCE OCTOBER 1, 2008**

<table>
<thead>
<tr>
<th>Violation</th>
<th>Action Taken</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unlicensed personnel acting as escrow officers</td>
<td>$10,000 in fines; Cease and Desist Order</td>
</tr>
</tbody>
</table>
PENDING MATTERS

At the current point in time, only the rate hearing held in the fall of 2009 remains open. It is not known when the Commissioner will issue his order in connection with the basic rate and some additional requested miscellaneous rate items. It is also expected that in the near future, the Commissioner will need to hold hearings to address aspects of the HB 4338 insolvency bill and also modify the Owner's Title Insurance Policy forms to address the trust requirements established by Representative Paxton's bill.

CONCLUSION

As can be seen, there are a number of new regulatory matters to address, including some new products available for the consumer. Some will require rates to be effective. New products include the chain of title policy, the expanded continuity endorsement, and endorsements which protect against surface damage from the exploration and extraction of minerals. There are also some new recordkeeping requirements. It will be interesting to observe any impact and growth from the business of selling title work for a flat fee. Of course, addressing issues of insolvency will continue to loom large and RESPA reform, which becomes effective January 1, 2010, will preoccupy many in the title industry. HUD has indicated it will be lenient in enforcement for the first four months of the 2010 calendar year, but that it still expects the title industry to adopt the new HUD requirements and begin working with the new GFE's. Together with the noted increased enforcement by the Texas Department of Insurance, it behooves the title insurance professional to know the rules and to regularly monitor for compliance.
APPENDIX

1. Affidavit as Release of Lien
2. Significant 2008 Agenda Items
3. Agenda Item: 2008-66
4. Commissioner's Bulletin #B-0032-09
AFFIDAVIT AS RELEASE OF LIEN

Before me, the undersigned authority, on this day personally appeared (insert name of affiant) ("Affiant") who, being first duly sworn, upon his/her oath states:

1. My name is (insert name of Affiant), and I am an authorized officer of (insert name of title insurance company or authorized title insurance agent) ("Title Company").
2. This affidavit is made on behalf of the mortgagor or a transferee of the mortgagor who acquired title to the property described in the following mortgage:
(describe mortgage, the name of the mortgagor, and the property described in the mortgage)

3. (Insert name of Mortgagee) ("Mortgagee") provided a payoff statement with respect to the loan secured by the mortgage.

4. Affiant has ascertained that Title Company delivered to Mortgagee payment of the loan secured by the mortgage in the amount and time and to the location required by the payoff statement.

5. The mortgage relates to:

(A) property consisting exclusively of a one-to-four-family residence, which may include a residential unit in a condominium regime; or

(B) property, other than property described by Paragraph (A) above, for which the original face amount of the indebtedness secured by the mortgage on the property is less than $1.5 million.

6. Pursuant to Section 12.017, Texas Property Code, this affidavit constitutes a full and final release of the mortgage from the property.

Signed this__ day of _________, _______.

__________________________________________ (signature of affiant)

State of
County of

Sworn to and subscribed to before me on _______ (date) by

_________________________ (insert name of affiant).
Item 2008-6
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:

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:
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.

Authorized Countersignature

Printed Name:

________________________________________

(Agent or Direct Operation or Title Insurance Company)

By ______________________________________
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:

1. 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.

2. 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.

[Witness Clause]

BLANK TITLE INSURANCE COMPANY

By: ___________________

   PRESIDENT

By: ___________________

   SECRETARY

Form T-53 Texas Limited Coverage Chain of Title Policy
Effective January 1, 2010
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.

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.

CONDITIONS AND STIPULATIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

(a) “insured”: the insured named herein. The term also includes the owner of the indebtedness secured by the insured’s mortgage. The Company reserves all rights and defenses against any insured acquiring an interest in the insured’s
mortgage subsequent to Date of Policy which the Company would have had against the insured named herein or any subsequent insured.

(b) "insured claimant": an insured claiming loss or damage hereunder.

(c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of any public records.

(d) "land": the land described herein and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to herein, nor any right, title, interest, estate or easement in abutting streets, roads, alleys, avenues, lanes, ways or waterways.

(e) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge.

2. DEFENSE AND PROSECUTION OF ACTIONS - NOTICE OF CLAIM TO BE GIVEN BY AN INSURED CLAIMANT

(a) Upon written request by the Insured and subject to the options contained in Section 4 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim which may cause loss or damage, but only as to those stated causes of action alleging a matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the Insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Insured shall notify the Company promptly in writing in case: (i) of any litigation as set forth in (a) above, or (ii) knowledge shall come to an Insured hereunder of any adverse claim which might cause loss or damage for which the Company may be liable by virtue of this policy.

If prompt notice shall not be given to the Company, then all liability of the Company shall cease and terminate in regard to the matter or matters for which prompt notice is required; provided, however, the failure to notify shall in no case prejudice the rights of the Insured under this policy unless and except to the extent that the Company shall be prejudiced by such failure.

(c) The Company shall have the right at its own cost to institute and prosecute any action or proceeding or to do any other act which in its opinion may be
necessary or desirable to prevent or reduce loss or damage insured against by this policy; and the Company may take any appropriate action, whether or not it shall be liable under the terms of this policy, and shall not thereby concede liability or waive any provisions of this policy.

(d) Whenever the Company shall have brought any action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination in a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(e) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the Insured hereunder shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the Insured for such purpose. Whenever requested by the Company, the Insured shall give the Company, at the Company's expense, all reasonable aid (i) in any action or proceeding in effecting settlement, securing evidence, obtaining witnesses, or prosecuting or defending the action or proceeding, and (ii) in any other act which in the opinion of the Company may be necessary or desirable to prevent or reduce loss or damage insured against by this policy, including but not limited to executing corrective or other documents.

3. PROOF OF LOSS OR DAMAGE - LIMITATION OF ACTION

In addition to the notices required under Section 2 of these Conditions and Stipulations, a proof of loss or damage, signed and sworn to by the Insured Claimant shall be furnished to the Company within 91 days after the Insured Claimant shall ascertain or determine the facts giving rise to loss or damage. The proof of loss or damage shall describe the matter insured against by this policy which constitutes the basis of loss or damage, and, when appropriate, state the basis of calculating the amount of the loss or damage.

Should the proof of loss or damage fail to state facts sufficient to enable the Company to determine its liability hereunder, Insured Claimant, at the written request of Company, shall furnish such additional information as may reasonably be necessary to make such determination.

Failure to furnish the proof of loss or damage shall terminate any liability of the Company under this policy as to such loss or damage.

4. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY.
In case of a claim under this policy, the Company shall have the right to exercise the following additional options at any time:

(a) To pay or tender payment of the amount of insurance or to purchase the indebtedness:

(i) to pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the Insured Claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay; or

(ii) to purchase the indebtedness secured by the Insured's Mortgage for the amount owing thereon together with any costs, attorneys' fees and expenses incurred by the Insured Claimant which were authorized by the Company up to the time of purchase and which the Company is obligated to pay.

If the Company offers to purchase the indebtedness as herein provided, the owner of the indebtedness shall transfer, assign, and convey the indebtedness and the Insured's Mortgage, together with any collateral security, to the Company upon payment therefor.

Upon the exercise by the Company of either of the options provided for in paragraphs (a)(i) or (a)(ii), all liability and obligations to the Insured under this policy, other than to make the payment required in those paragraphs, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

(b) To pay or otherwise settle with parties other than the Insured or with the Insured Claimant:

(i) to pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the Insured Claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the Insured Claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs (b)(i) or (b)(ii), the Company's obligations to the Insured under this policy
for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

5. DETERMINATION AND PAYMENT OF LOSS

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in the Combined Schedule;

(ii) the amount of the unpaid principal indebtedness secured by the Insured’s Mortgage at the time the loss or damage insured against by this policy occurs, together with unpaid interest thereon; or

(iii) the difference between the value of the equity in the estate or interest in the land without the Monetary Lien or other matter insured against and the value of the equity in that estate or interest subject to the Monetary Lien or other matter insured against by this policy.

(b) The Company will pay only those costs, attorneys’ fees and expenses incurred in accordance with Section 2 of these Conditions and Stipulations.

(c) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

6. LIMITATION OF LIABILITY

(a) If the Company removes an alleged matter insured against by this policy, or takes action in accordance with Section 2 or Section 4, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company’s consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the Insured with respect to matters insured against by this policy.
(c) The Company shall not be liable for loss or damage to any Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

7. REDUCTION OF INSURANCE; TERMINATION OF LIABILITY

All payments under this policy, except payment made for costs, attorneys’ fees and expenses, shall reduce the amount of the insurance pro tanto.

8. SUBROGATION UPON PAYMENT OR SETTLEMENT

Whenever the Company shall have paid or settled a claim under this policy, it shall be subrogated to the rights of the Insured Claimant unaffected by any act of the Insured Claimant, limited only by the amount paid by the Company. The Insured Claimant shall cooperate with the Company in enforcing these subrogation rights.

9. ARBITRATION

Unless prohibited by applicable law, either the Company or the Insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters SHALL BE arbitrated at the option of either the Company or the Insured. Arbitration pursuant to this policy and under the Rules in effect on the date of the demand for arbitration is made or, at the option of the Insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys’ fees only if the law of the state in which the land is located permit a court to award attorneys’ fees to a prevailing party. Judgment upon the award rendered by the Arbitrators may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules. A copy of the Rules may be obtained from the Company upon request.

10. LIABILITY LIMITED TO THIS POLICY

This policy together with all Endorsements, attached hereto by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

Any claim of loss or damage whether or not based on negligence, or any action asserting any claim, shall be restricted to the terms and provisions of this policy.
No amendment of or Endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, validating officer or authorized signatory of the Company.

No payment shall be made without producing this policy for Endorsement of the payment unless the policy is lost or destroyed, in which case proof of such loss or destruction shall be furnished to the satisfaction of the Company.

11. SEVERABILITY

In the event any provision of this policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision, and all other provisions shall remain in full force and effect.

12. NOTICES WHERE SENT

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company, Attention: Claims Department.
Item 2008-7

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.

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.

c. 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.
Item 2008-12

Loan Policy of Title Insurance Form (T-2)

SCHEDULE A

Name and Address of Title Insurance Company:

[File No.: ] Policy No.:  
Loan No.:  
[Address for Reference only:]  
Amount of Insurance: $ Premium: $  
Date of Policy: [at a.m./p.m.]  

1. Name of Insured:

2. The estate or interest in the Land that is encumbered by the Insured Mortgage is:

3. Title is insured as vested in:

4. The Insured Mortgage, and its assignments, if any, are described as follows:

5. The Land referred to in this policy is described as follows:

6. This policy incorporates by reference those endorsements selected below:

- T-5 (Leasehold Mortgagee Policy Endorsement)
- T-17 (Planned Unit Development)
- T-19 (Restrictions, Encroachments, Minerals)
- T-19.2 (Minerals and Surface Damage)
- T-19.3 (Minerals and Surface Damage)
- T-28 (Condominium)
- T-31 (Manufactured Housing) referring to manufactured housing unit serial number ________
- T-31.1 (Supplemental Coverage Manufactured Housing Unit)
- T-33 (Variable Rate)
- T-33.1 (Variable Rate--Negative Amortization)
- T-35 (Revolving Credit/Future Advance)
- T-36 (Environmental Protection Lien) Paragraph b refers to the following state statute(s):
- T-39 (Balloon Mortgage)
- T-42 (Equity Loan Mortgage) and subparagraph 2(f) of the Equity Loan Mortgage Endorsement set forth in Procedural Rule P-44.C(2) __ is ___ is not added.
- T-42.1 (Supplemental Coverage Equity Loan Mortgage)
- T-43 (Texas Reverse Mortgage)
- Section 13 of the Conditions of this policy, which relates to Arbitration, is hereby deleted.
[The Company may insert or preprint all or part of paragraph 6 as applicable and may delete boxes or substitute lines for boxes. The Company also may substitute the following at the beginning of paragraph 6: "This policy incorporates by reference those endorsements shown below:" ]
(g) Due to the higher level of security and expedited recording time afforded by electronically filing or recording instruments, promulgated forms or other documents incident to real or personal property transactions, the actual charges or a reasonable estimate of charges, including actual charges or a reasonable estimate of charges by a trusted third-party provider to an authorized filer, for electronically filing or recording (e-filing) such instruments, forms or documents may be passed through to the consumer. Such actual charges or a reasonable estimate of charges may not be marked up.
Item 2008–15

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

~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

SPECIFIC AREAS AND PROCEDURES

Several areas require particular attention and thorough investigation on the part of the auditor. Some of these areas are discussed below.

~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

5. Some support for each disbursement must be in the guaranty file, and it shall be determined that the disbursements were to logical payees. If there are charges shown on the closing statement for overnight mail service, messenger service, copies of documents, recording fees or tax certificates, whether purchased from a governmental or non-governmental entity, it must be determined that these charges are actual expenses or reasonable estimates of charges that must be made prior to closing and not arbitrary or uniformly charged amounts for these items on all closing statements. Charges for general overhead expenses such as in-house labor, utilities, taxes, business supplies and equipment are already covered by the title insurance premium and are prohibited. If actual charges for products or services provided by third party vendors are known at or prior to closing, the charges may not be marked up. If actual charges for such products or services are not known by the time of closing, only reasonable estimates of such charges should be shown on closing statements and charged. The actual charge for an absentee notary sign-up fee may be passed through, if the notary is a third party, not affiliated with the licensee that is closing the transaction, and that licensee, prior to closing the transaction, receives a written request signed by the borrower, buyer or seller making the request and agreeing to pay for an absentee sign up by a notary as an accommodation to the requester after the licensee provides the requester with written notice of the amount of the notary fee or a reasonable estimate of the fee, if not known by the licensee. If there is evidence of a prior lien in the file, such as a payoff statement from a lending institution, it must be determined that a check or other written evidence such as a wire transfer confirmation, reflects the payoff of said loan and a release was received or a written demand for a release was made. There must be a closing statement in the file, and entries on the closing statement should be traced to the escrow accounting records. Company records must also include copies of all invoices, receipt items and disbursement checks.
NON-IMPUTATION ENDORSEMENT (MEZZANINE FINANCING) (T-24.1)

Attached to and Forming a Part of

_________________________ Policy of Title Insurance No._____________________

Issued by

BLANK TITLE INSURANCE COMPANY

HEREIN THE COMPANY

1. The Mezzanine Lender is:

and each successor in ownership of its loan ("Mezzanine Loan") reserving, however,
all rights and defenses as to any successor that the Company would have had
against the Mezzanine Lender, unless the successor acquired the indebtedness as a
purchaser for value without Knowledge of the asserted defect, lien, encumbrance,
adverse claim, or other matter insured against by this policy as affecting Title.

2. The Insured

a. assigns to the Mezzanine Lender the right to receive any amounts otherwise
payable to the Insured under this policy, not to exceed the outstanding
indebtedness under the Mezzanine Loan; and

b. agrees that no amendment of or endorsement to this policy can be made without
the written consent of the Mezzanine Lender.

3. The Company does not waive any defenses that it may have against the Insured,
extcept as expressly stated in this endorsement.

4. In the event of a loss under the policy, the Company agrees that it will not assert the
provisions of Exclusions from Coverage 3(a), (b) or (e) to refuse payment to the
Mezzanine Lender solely by reason of the action or inaction or Knowledge, as of
Date of Policy, of the Insured, provided

a. the Mezzanine Lender had no Knowledge of the defect, lien, encumbrance or
other matter creating or causing loss on Date of Policy.

b. this limitation on the application of Exclusions from Coverage 3(a), (b) and (e)
shall

i. apply whether or not the Mezzanine Lender has acquired an interest (direct or
indirect) in the Insured either on or after Date of Policy, and

ii. benefit the Mezzanine Lender only without benefiting any other individual or
entity that holds an interest (direct or indirect) in the Insured or the Land.

5. In the event of a loss under the Policy, the Company also agrees that it will not deny
liability to the Mezzanine Lender on the ground that any or all of the ownership
interests (direct or indirect) in the Insured have been transferred to or acquired by the Mezzanine Lender, either on or after the Date of Policy.

6. The Mezzanine Lender acknowledges
   a. that the Amount of Insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is hereafter executed by an Insured and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment under this policy; and
   b. that the Company shall have the right to insure mortgages or other conveyances of an interest in the Land, without the consent of the Mezzanine Lender.

7. If the Insured, the Mezzanine Lender or others have conflicting claims to all or part of the loss payable under the Policy, the Company may interplead the amount of the loss into Court. The Insured and the Mezzanine Lender shall be jointly and severally liable for the Company's reasonable cost for the interpleader and subsequent proceedings, including attorneys' fees. The Company shall be entitled to payment of the sums for which the Insured and Mezzanine Lender are liable under the preceding sentence from the funds deposited into Court, and it may apply to the Court for their payment.

8. Whenever the Company has settled a claim and paid the Mezzanine Lender pursuant to this endorsement, the Company shall be subrogated and entitled to all rights and remedies that the Mezzanine Lender may have against any person or property arising from the Mezzanine Loan. However, the Company agrees with the Mezzanine Lender that it shall only exercise these rights, or any right of the Company to indemnification, against the Insured, the Mezzanine Loan borrower, or any guarantors of the Mezzanine Loan after the Mezzanine Lender has recovered its principal, interest, and costs of collection.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

AGREED AND CONSENTED TO:

(Insert name of Insured)                      (Insert name of Mezzanine Lender)

By: ___________________________                      By: ___________________________

[Witness clause optional]
BLANK TITLE INSURANCE COMPANY

By: __________________________________________

Authorized Signatory

FORM T-24.1: Non-Imputation Endorsement (Mezzanine Financing)
Item 2008-22

P-69 Issuance of Insured Closing Letters (T - 50 of T – 51)

(a) An insured closing letter shall only be issued when the related transaction is closed by a title insurance agent, direct operation, or licensed escrow officer acting on a title insurance agent's or direct operation's behalf.

(b) An insured closing letter shall not be issued when the related transaction is closed by an attorney that is not licensed as an escrow officer and not acting on a title insurance agent's or direct operation's behalf.

(c) This rule applies specifically to attorneys closing the transaction under P-1f and P-22.
Item 2008–23

P-70 Cancellation Fees; Fees for Services Rendered

(a) A cancellation fee is defined as a fee charged by a title insurance agent, direct operation, title insurance company, or escrow officer, hereinafter "licensee" to a person or entity who is not a licensee for work done by the licensee in connection with a bona fide order for title insurance which fails to close or for which a policy is not issued. Cancellation fees are prohibited.

(b) As long as an agreement complies with Procedural Rule P-24 with respect to transactions that close and a policy is issued, title insurance agents and direct operations may agree in writing to a fee for furnishing title evidence and examination that is a set amount of money instead of a percentage of the title insurance premium to be paid if the order for title insurance does not close and a policy is not issued. Payment under this subsection shall not be considered a cancellation fee and the payment, charge, or fee shall not be passed on or charged to the consumer.

(c) A refusal to agree to set a fee under this rule shall not be considered a refusal to provide title evidence under Procedural Rule P-24 or P-25.
Item 2008–24

INSURED CLOSING SERVICE (T – 50)

BLANK TITLE INSURANCE COMPANY

Name and Address of Addressee:

Date:

Name of Issuing Agent (hereafter, "Issuing Agent"):

[Identity of Issuing Agent appears here.]

Re: Insured Closing Service

Dear

Blank Title Insurance Company (the "Company") agrees, subject to the Conditions and Exclusions set forth below, to reimburse you for actual loss incurred by you in connection with closings of real estate transactions conducted by the Issuing Agent, provided:

(A) title insurance of the Company is specified for your protection in connection with the closing;

(B) you are to be the lender secured by a mortgage (including any other security instrument) of an interest in land, its assignees or a warehouse lender; and

(C) provided the loss arises out of:

1. Failure of the Issuing Agent to comply with your written closing instructions to the extent that they relate to (a) the status of the title to that interest in land or the validity, enforceability and priority of the lien of the mortgage on that interest in land, including the obtaining of documents and the disbursement of funds necessary to establish the status of title or lien, or (b) the obtaining of any other document, specifically required by you, but only to the extent the failure to obtain the other document affects the status of the title to that interest in land or the validity, enforceability and priority of the lien of the mortgage on that interest in land, and not to the extent that your instructions require a determination of the validity, enforceability or the effectiveness of the other document, or

2. Fraud or dishonesty of the Issuing Agent in handling your funds or documents in connection with the closings to the extent that fraud or dishonesty relates to the
status of the title to that interest in land or to the validity, enforceability, and
priority of the lien of the mortgage on that interest in land.

If you are a lender protected under the foregoing paragraph, your assignee and your
warehouse lender in connection with a loan secured by a mortgage shall be protected
as if this letter were addressed to them.

Conditions and Exclusions

1. The Company will not be liable to you for loss arising out of:

A. Failure of the Issuing Agent to comply with your closing instructions which
require title insurance protection inconsistent with that set forth in the title
insurance binder or commitment issued by the Company. Instructions
which require the removal of specific exceptions to title or compliance with
the requirements contained in the binder or commitment shall not be
deemed to be inconsistent.

B. Loss or impairment of your funds in the course of collection or while on
deposit with a bank due to bank failure, insolvency or suspension, except
as shall result from failure of the Issuing Agent to comply with your written
closing instructions to deposit the funds in a bank which you designated
by name.

C. Defects, liens, encumbrances or other matters in connection with your
loan transactions except to the extent that protection against those
defects, liens, encumbrances or other matters is afforded by a policy of
title insurance not inconsistent with your closing instructions.

D. Fraud, dishonesty or negligence of your employee, agent, attorney or
broker.

E. Your settlement or release of any claim without the written consent of the
Company.

F. Any matters created, suffered, assumed or agreed to by you or known to
you.

2. When the Company shall have reimbursed you pursuant to this letter, it shall be
subrogated to all rights and remedies which you would have had against any
person or property had you not been so reimbursed. Liability of the Company for
reimbursement shall be reduced to the extent that you have knowingly and
voluntarily impaired the value of this right of subrogation.

3. The Issuing Agent is the Company's agent only for the limited purpose of issuing
title insurance policies. The Issuing Agent is not the Company's agent for the
purpose of providing other closing or settlement services. The Company's
liability for your losses arising from those other closing or settlement services is
strictly limited to the protection expressly provided in this letter. Any liability of the
Company for loss does not include liability for loss resulting from the negligence,
fraud or bad faith of any party to a real estate transaction other than an Issuing
Agent, the lack of creditworthiness of any borrower connected with a real estate
transaction, or the failure of any collateral to adequately secure a loan connected
with a real estate transaction. However, this letter does not affect the Company’s
liability with respect to its title insurance binders, commitments or policies.

4. Either the Company or you may demand that any claim arising under this letter
be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the
American Land Title Association, unless you have a policy of title insurance for
the applicable transaction with an Amount of Insurance greater than $2,000,000.
If you have a policy of title insurance for the applicable transaction with an
Amount of Insurance greater than $2,000,000, a claim arising under this letter
may be submitted to arbitration only when agreed to by both the Company and
you.

5. You must promptly send written notice of a claim under this letter to the
Company at its principal office at . The Company is not
liable for a loss if the written notice is not received within two years from the date
of the closing.

6. The protection herein offered extends only to real property transactions in Texas.

Any previous closing protection letter or similar agreement is hereby cancelled, except
for closings of your real estate transactions for which you have previously sent (or within
30 days hereafter send) written closing instructions to the Issuing Agent.

BLANK TITLE INSURANCE COMPANY

By: ___________________________
Item 2008-26

[Last-Dollar-Endorsement (T-15)]

ENDORSEMENT TO TITLE POLICY
SERIAL NUMBER
ISSUED BY
No.
BLANK TITLE INSURANCE COMPANY
HEREIN CALLED THE COMPANY]

[The liability of the Company under this policy will not be reduced under Section 9(b) of the Conditions and Stipulations as the result of payment on the indebtedness secured by the insured mortgage, except to the extent such payments reduce the total indebtedness secured by the insured mortgage below the Amount of Insurance stated in Schedule A.]

[The total liability of the Company under said Policy and any endorsements therein shall not exceed, in the aggregate, the face amount of said Policy and costs which the Company is obligated under the conditions and stipulations thereof to pay.]

[This Endorsement is made a part of said Policy and is subject to the terms thereof, except as modified by the provisions of this endorsement. This Endorsement is made a part of the policy and is subject to all the terms and provisions thereof and of any prior endorsement thereto. Except to the extent expressly stated, this Endorsement neither modifies any of the terms and provisions of the policy and prior endorsements, nor does it increase the face amount thereof.]

[Form T-15: Last Dollar Endorsement]

The Last Dollar Endorsement (T-15) has been deleted as of January 1, 2010 because the endorsement refers to a provision that is no longer contained in the Loan Policy (T-2) and therefore it is no longer necessary or appropriate.
P-9 Endorsement of Owner's [Owner] or Loan [Mortgagee] Policies

P-9 b*** (12)—A Company may issue its Last Dollar Endorsement (T-15) to a Mortgagee Policy (T-2), if (1) its underwriting requirements are met, (2) other property not described in the Mortgagee Policy is encumbered to secure payment of the indebtedness secured by the insured mortgage, and (3) the Company is paid the premium prescribed in Rate Rule R-11.j. The Company may not issue the Last Dollar Endorsement (T-15) if the land covered by the policy is residential real property.

Subsection b(12) of Procedural Rule P-9, relating to the issuance of the Last Dollar Endorsement (T-15) is deleted because the Last Dollar Endorsement has been deleted as of January 1, 2010 due to obsolescence.
III. CANCELLATION

A. To cancel a Title Agent from acting as Agent for a Title Insurance Company, advance notice of 30 days must be given to said Agent unless the Agent is cancelled for cause as defined in the agency agreement, and the appropriate procedures must be followed, and the following must be submitted to the Department simultaneously:


2. The current Title Insurance Agent's license or a sworn statement from the Agent stating that the license has been lost or misplaced or a sworn statement from the Title Insurance Company stating they have been unable to obtain the current Title Insurance Agent's license from the Agent.

3. A transmittal letter indicating the reason for cancellation and the date the cancellation is to become effective.

4. The company's plan for an orderly winding down of agency operations and compliance with Administrative Rule D-1 if the company is the sole underwriter at the time of cancellation.

B. Any Title Insurance Agent may voluntarily surrender his license at any time. Advance notice of 30 days must be given by the Agent to the Title Insurance Company concerned, and the following must be submitted:


2. The current Title Insurance Agent's license or a sworn statement from the Agent stating that the license has been lost or misplaced.

C. Such forms, as listed above, must be submitted to the Department immediately upon termination of business operations between an Agent and a Title Insurance Company.
Item 2008-38

P-56. Contiguity Endorsement (T-25, T-25.1)

A. A Company may issue its Contiguity Endorsement (T-25 or T-25.1) to a concurrently issued Loan Policy (T-2) or Owner’s Policy (T-1) on land which is not residential real property:

1. If title to each tract described in the Contiguity Endorsement (T-25) is insured by the policy; and
2. if the Company receives a survey acceptable to it; and
3. if its underwriting requirements are met and it is paid the premium prescribed in Rate Rule R-32.

B. The Company may add any exception to the endorsement that it considers, in its sole discretion, to be appropriate.

C. Any matter covered in the Contiguity Endorsement (T-25) may be insured only by the use of this endorsement.

D. If the insured non-residential land is composed of four or more parcels, or if the insured non-residential land is composed of irregularly shaped parcels, a Company may, in its discretion, issue the Contiguity Endorsement (T-25.1).
Contiguity Endorsement Form (T-25.1)

CONTIGUITY ENDORSEMENT T-25.1
Attached to Policy No. __________
Issued by
BLANK TITLE INSURANCE COMPANY
HEREIN CALLED THE COMPANY

The Company insures against loss or damage sustained by the insured by reason of the presence of any gaps, strips, or gores lying between [describe contiguous parcels].

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

BLANK TITLE INSURANCE COMPANY

By: ________________________________
President
(ATTEST IS OPTIONAL)

Authorized Countersignature

Printed Name of Title Insurance Agent or Direct Operation
Reorganization of Procedural Rule P-29 for Inclusion in Procedural Rule P-20 and Additional Amendments to Procedural Rule P-20 and a Conforming Change to Rate Rule R-24

P-20 Standard Exception Relating to Taxes

A. Taxes for the Current Year
   1. In connection with the issuance or amendment (after issuance) of any Owner's Policy, Loan Policy, or of any Loan Title Policy Binder on Interim Construction Loan (Interim Binder), an exception must be shown on Schedule B to taxes and assessments for the current tax year by any taxing authority, and the Company may not insure that taxes for the current tax year are paid, unless:

   a. Taxes are Paid or Collected at Closing. A company may insure that taxes for the current tax year are paid if:
      (1) All of the taxes for the current tax year have been assessed by the taxing authorities;
      (2) The Company has satisfactory evidence in its file that the assessed taxes for the current year have been paid by the owner or
      (3) If all of the taxes for the current year have not been paid:
          (i) The unpaid taxes are collected at closing by the Company; and
          (ii) The Company will pay the taxes in the ordinary course of business.

   b. Owner's Tax Reserve/Escrow Account With Payoff Lender. A Company may insure that taxes are paid for the current tax year if:
      (1) The Company has satisfactory evidence in its file that the assessed taxes for the current year have been paid by the current lender from the owner's Reserve/Escrow Account held by lender, or
      (2) In the absence of satisfactory evidence in (1) above, a Company may accept:
          (i) A sufficient Indemnity executed by a responsible party,
          (ii) Together with a deposit of funds in an amount sufficient to pay the assessed taxes.

      (3) When following provision (2) above, the Company shall:
          (i) Pay the assessed taxes according to the terms of the Indemnity and before they become delinquent, or
          (ii) Upon receipt of satisfactory evidence that the assessed taxes for the current year have been paid, promptly pay the escrowed funds to the proper party.

   2. If all taxes for the current year have not been assessed by the taxing authorities, the Company may not insure that taxes for the current year are paid.

B. ROLLBACK TAXES
   1. In connection with the issuance or amendment (after issuance) of any Loan Policy or of any Loan Title Policy Binder on Interim Construction Loan (Interim Binder), and upon payment of the premium required under Rate Rule R-19, the words: "and subsequent taxes and assessments by any taxing authority for prior years due to
change in land usage or ownership", as contained in the standard tax exception may be deleted by:
(a) Deletion of such words upon the policy or binder form, either by checking the appropriate box on a Form T-2 or T-2R or by lining through the words or by producing an electronic form with the words; or
(b) By attachment to the policy or binder of endorsement form T-30.

The deletion of the above phrase from the standard tax exception is hereafter referred to as "insure or insuring against rollback taxes".

2. A Company may not insure against rollback taxes unless:
   a. The Company has satisfactory evidence in its file that the assessed taxes for the current year are not based on an agriculture or open-space valuation; or
   b. (i) The rollback taxes have been assessed by all of the taxing authorities;
      (ii) The rollback taxes are collected at closing by the Company, and
      (iii) The Company will pay the roll back taxes in the ordinary course of business.

C. TAXES NOT YET DUE AND PAYABLE
In connection with the issuance of a Loan Policy or Loan Title Policy on Interim Construction Loan (Interim Binder), upon payment of the premium in R-24, a Company may:

1. If satisfied that all taxes, standby fees and assessments by any taxing authority for the year of the issuance of the Loan Policy or Interim Binder are not yet due and payable, add the following after the standard tax exception: "Company insures that standby fees, taxes and assessments by any taxing authority for the year ______ are not yet due and payable." The addition may be made either by checking the appropriate box on a Form T-2 or by otherwise inserting the additional words into the form.

2. If a Company determines that some, but not all of the taxes are not yet due and payable, the Company may add the following after the standard tax exception: "Company insures that standby fees, taxes and assessments by any taxing authority for the year ______ are not yet due and payable, as to [insert name of applicable taxing authority/authorities] only."

Procedural Rule P-29 has been repealed and the language has been reintroduced in P-20 C 1. The current reference to P-29 in Rate Rule R-24 has been conformed to reflect the proper reference to P-20 to read as follows:

R-24 Applicable only as provided in Procedural Rule P-20—a premium of $5.00 shall be charged for addition of the language "Company insures that standby fees, taxes, and assessments by any taxing authority for the year ______ are not yet due and payable."
D.1 REQUIREMENTS FOR CEASING OPERATIONS BY AGENTS AND DIRECT OPERATIONS

Any Title Insurance Agent or Direct Operation that intends to cease operations in the business of title insurance pursuant to a surrender, forfeiture or revocation of license, pursuant to Texas Insurance Code §§2651.201, 2651.301, or 2651.302, must comply with the following mandatory requirements:

I. NOTICE REQUIREMENTS

The Agent/Direct Operation must provide written notice of its intent to cease operations no later than forty-five (45) days prior to its final date of operation to:

1. the Department, addressed to the Texas Department of Insurance, Title Division, Post Office Box 149104, Austin, Texas 78714-9104;

2. all Title Insurance Companies for which the Title Agent/Direct Operation holds an appointment and is currently licensed; and

3. the Public, by public announcement in a local publication of general circulation.

II. AUDIT AND ACCOUNTING REQUIREMENTS

A. The Agent/Direct Operation and Company must conduct a final audit of the Agent's/Direct Operation's trust fund accounts, the records pertaining thereto and the unused forms in Agent's/Direct Operation's possession, pursuant to the requirements of

B. The Agent/Direct Operation must provide a final accounting of all funds held in its escrow account for the State of Texas Policy Guaranty Fees and Recoupment Charge funds. Such final accounting together with a final disbursement of any due funds shall be made to the Texas Title Insurance Guaranty Association c/o General Counsel for the Texas Title Insurance Guaranty Association, 301 Congress, Suite 800, Austin, Texas 78701.

C. The final audit and final accounting required by this section must be delivered to the Department within 90 days after an Agent's/Direct Operation's surrender of its license. If an Agent/Direct Operation fails to complete and submit such audit and accounting, it shall be the responsibility of the respective Companies to use their best efforts to complete and submit such final audits and accountings to the Department. A copy of the final audit shall also be sent to each title insurance company that the agent represents. If a title insurance company fails to receive a final audit report within 90 days of the date of the license surrender, the company shall (1) report that failure to the Department not later than the 100th day after the date of the license surrender and (2) use its best efforts to complete and submit a final audit and/or accounting to the Department within 150 days of the date of surrender of the license.

A Company must provide written explanation and justification to the Department documenting those portions of the final audit and/or accounting that the Company was not able to complete; including the records and personnel available to the company and the efforts the Company used in its attempt to fully complete the final audit and/or final accounting as required under this section.

Each title insurance agent operating in Texas shall prepare a plan for winding down the title agent's operations by the Company should the title insurance agent fail to wind down its own operations, including the title insurance agent's immediate cessation of business due to title insurance agent or Company action. The title insurance agent's plan must provide at a minimum the following:

1. The storage of each Company's guaranty files in one location for a period of at least ninety (90) days so that a final audit and final accounting may be conducted. Each Company shall have access to its own guaranty files and the independent auditors shall have access to all guaranty files. After the final audit and final accounting are conducted under this section, each Company shall obtain and store its own guaranty files.

2. Authorization to each Company to obtain all books, bank statements, associated accounting files and bank records relative to the Company's trust accounts.

3. Authorization to each Company to access its trust accounts.

The title insurance agent's plan and authorization must be furnished to each Company and the Department. The title insurance agent's plan must be reviewed by the title insurance agent annually and updated as necessary. The title insurance agent's plan shall be implemented by the Company immediately upon receipt of written notification.
by the Department that the Department has determined that the title agent has failed to
wind down its own operations.

D. The expenses of such final audit and accounting shall be borne by the respective
Company(ies) in proportion to their share of premiums for the twelve month period
immediately preceding the date of final audit and accounting.

III. TRANSFER OF FILES AND ACCOUNTS

A. The Agent/Direct Operation must surrender all files, together with a list of all pending
files and outstanding commitments, to the appropriate Companies. The Agent/Direct
Operation must send written notice to all interested parties in pending transactions that
the appropriate Companies have custody and control of such files. Such notice to
interested parties shall be provided on a Notice of Cessation Form Ti-100, no later than
forty-five (45) days prior to its final date of operation, with a copy sent to the appropriate
Company and a copy retained in the appropriate guaranty file.

B. The Agent/Direct Operation shall transfer all escrow accounts and investment
accounts, which have not been fully disbursed, to the appropriate Companies for the
benefit of the parties to pending transactions and the general public. Such transfer shall
include a listing of the sources of all transferred funds, and a list of pending
transactions. A copy of such list of pending transactions shall be provided to the
Department.

IV. ESCROW LICENSES AUTOMATICALLY FORFEITED

Pursuant to Texas Insurance Code §§2652.201-202 the licenses of any Escrow Officers
employed by an Agent/Direct Operation ceasing business shall be automatically
cancelled.

V. OTHER NOTICE REQUIREMENTS

The provisions of this Administrative Rule shall be in addition to and cumulative of any
other notice provisions found in Sec. VI Administrative Rules of the Basic Manual of
Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas.
Item 2008-46

P-25. Reasonable Time for Furnishing Title Evidence.

Pursuant to Texas Insurance Code Chapter 2704, a reasonable time for furnishing title evidence is determined to be as follows:

(1) With Prior Title Evidence Satisfactory to the Title Insurance company:
   (a) On Acreage Tracts—15 days.
   (b) On Subdivision Tracts—10 days.

(2) Without Prior Title Evidence Satisfactory to the Title Insurance Company:
   (a) On Acreage Tracts—30 days.
   (b) On Subdivision Tracts—21 days.

These time periods shall begin on the date the order for title evidence is received. If all title insurance agents and direct operations for the county refuse to provide title evidence within such time and for the payments provided in Rule P-24, a title insurance company may directly issue its policy if the title insurance company obtains the best evidence available.

Title agents and direct operations who request that title evidence be provided by another title agent or direct operation shall maintain auditable records and documents demonstrating compliance with this rule. Such auditable records include, but are not limited to, letters, faxes, e-mails, fax confirmations, and certified mail receipts.
The Title Division Staff recommends that the Commissioner of Insurance adopt a new rate rule concerning the exclusion of, or general exception to, conveyed mineral rights.

PROPOSAL

R- Credit for Exclusion of or General Exception for Minerals.

Unless a conveyance or other document limits or reserves the mineral estate or the Company specifically excepts to inclusion of the mineral estate in the manner authorized in Rule P-5, if the Company excludes mineral estate from the interest in land being insured in Schedule A, or makes a general exception to mineral estate in Schedule B, of the Owner's Policy, the premium shall be at the basic rate, but a credit shall reduce the premium by the following amount: xxx

JUSTIFICATION

Title insurance provides coverage for the insured's interest in land being insured and that interest includes the mineral estate unless that estate is specifically not conveyed or the estate is specifically excepted to in the manner authorized in Rule P-5. Otherwise, the exclusion of the mineral estate in Schedule A, or a general exception to such estate in Schedule B, limits coverage under the title insurance policy. This proposal is necessary to adopt a credit that reflects the reduction in coverage.
COMMISSIONER'S BULLETIN #B-0032-09

August 13, 2009

TO: ALL INSURERS WRITING TITLE INSURANCE IN THE STATE OF TEXAS AND ALL DIRECT OPERATIONS OR AGENTS THEREOF

RE: MINERALS COVERAGE

The Commissioner has adopted changes to the Basic Manual concerning minerals coverage effective November 1, 2009. Pursuant to new Procedural Rule P-5.1, policies may contain general exceptions to minerals coverage under prescribed circumstances. The new Form T-19.2 and T-19.3 will be available for protecting improvements and permanent buildings.

Be advised that the adoption of Procedural Rule P-5.1 allows title policies to be issued without the typical examination anticipated under the promulgated basic rate, if a general exception to minerals is being used rather than special exceptions. The new and amended rules and endorsements may of necessity impact the basic premium rate, as the Commissioner remains interested in the concept of a general discount or rate credit where general exceptions are used, rather than the more traditional special exceptions. The Commissioner will hold a public hearing at a later date to consider the impact of general exceptions and to determine whether a credit or discount should be applied when a general exception is provided.

Please feel free to contact me at (512) 322-3482 should you have any questions.

Robert R. Carter, Jr.
Deputy Commissioner – Title Division

For more information contact: Title@tdi.state.tx.us

Copyright © 2009 Texas Department of Insurance
333 Guadalupe, Austin 78701 • P.O. Box 149104, Austin 78714-9104


11/21/2009