

**SUBCHAPTER A. Basic Manual of Rules, Rates, and Forms
for the Writing of Title Insurance in the State of Texas
28 TAC §9.1**

**SUBCHAPTER C. Texas Title Insurance Statistical Plan
28 TAC §9.401**

1. INTRODUCTION. The commissioner of insurance adopts amendments to 28 TAC §9.1 and §9.401, which adopt by reference amendments to the *Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas* and to the *Texas Title Insurance Statistical Plan*. The adopted amendments revise the *Basic Manual* to reflect a change from multiple title agent licenses to single licenses with appointments for each underwriter. The amendments update the requirements for minimum capitalization to comply with Insurance Code §2651.012. The amendments also make numerous nonsubstantive editorial changes, revise the effective dates of the *Basic Manual* and *Statistical Plan*, update TDI's address, and add the TDI website address in both sections.

The commissioner adopts the amendments with changes to the proposed text published in the April 19, 2013, issue of the *Texas Register* (38 Tex. Reg. 2475). TDI made changes in response to comment, and made nonsubstantive editorial changes to the proposed text to correct grammar and typographical errors.

Dates: To give title agents time to prepare for the new requirements, the rules adopted by this order will be effective on January 3, 2014. Additionally, Administrative

Rule S.1 gives title agents until July 3, 2014, to comply with the new minimum capitalization requirements.

2. REASONED JUSTIFICATION. At the 2012 Texas Title Insurance Periodic Hearing on February 28, 2012, Docket Number 2732, the commissioner considered the items submitted by the title industry and by TDI staff. The commissioner called the hearing under Insurance Code §2703.202 and §2703.206. This adoption order, which adopts by reference new and amended rules and forms in the *Basic Manual* and *Statistical Plan*, is necessary to facilitate the administration and regulation of title insurance and to update, correct, clarify, or harmonize title insurance rules and forms.

The adopted amendments are identified by the item numbers used for the original submissions at the February 28, 2012, hearing. Items 2012-10, 2012-15, 2012-34, 2012-43, 2012-44, 2012-46, 2012-60, 2012-61, and 2012-68 were withdrawn from consideration during the February 28, 2012, hearing at the request of the original petitioners. As explained in Commissioner's Order No. 12-0217, dated March 19, 2012, TDI elected not to propose the following items: 2012-7, 2012-40, 2012-48, 2012-49, 2012-53, 2012-56, 2012-58, 2012-59, 2012-72 (as revised by Stewart Title Guaranty Company), and 2012-91. Additionally, TDI withdrew Item 2012-19 in response to a comment.

The commissioner adopts the 71 attached exhibits, each identified by the unique item number used at the February 28, 2012, hearing. They are agenda items 2012-1 through 2012-6, 2012-8, 2012-9, 2012-11 through 2012-13, 2012-14, 2012-16 through

2012-18, 2012-20 through 2012-33, 2012-35 through 2012-39, 2012-41, 2012-42, 2012-45, 2012-47, 2012-50 through 2012-52, 2012-54, 2012-55, 2012-57, 2012-62 through 2012-67, 2012-69 through 2012-71, and 2012-73 through 2012-90. These agenda items are discussed below.

For this adoption, TDI made nonsubstantive editorial changes to the following items as proposed: 2012-22, 2012-25, 2012-26, 2012-27, 2012-29, 2012-30, 2012-36, 2012-62, 2012-63, 2012-64, 2012-65, 2012-66, 2012-71, 2012-73, 2012-76, 2012-79, 2012-81, 2012-85, 2012-88, and 2012-90. None of these changes materially alter the issues raised in the proposal nor do they introduce new subject matter or affect people who have not already had notice of this rule.

The following items, adopted as originally submitted, make only nonsubstantive editorial changes to conform the language in the rule or form to other rules and forms in the *Basic Manual*:

Item 2012-4: Form T-43, Texas Reverse Mortgage Endorsement,

Item 2012-5: Form T-42, Equity Loan Mortgage Endorsement,

Item 2012-6: Form T-42.1, Supplemental Coverage Equity Loan Mortgage Endorsement,

Item 2012-9: Form T-46, Texas Residential Limited Coverage Junior Mortgagee Policy Home Equity Line of Credit/Variable Rate Endorsement,

Item 2012-12: Rate Rule R-17, Policy Forms for Use by United States Government,

Item 2012-13: Rate Rule R-22, Owner and Leasehold Policies, and

Item 2012-18: Form T-14, First Loss Endorsement.

The following items adopt changes made solely to correct typographical errors:

Item 2012-8: Form T-98, Limited Pre-Foreclosure Policy,

Item 2012-14: Procedural Rule P-1.w, Definitions, and

Item 2012-17: Procedural Rule P-70(b), Cancellation Fees; Fees for Services
Rendered.

The remaining adopted agenda items are described below:

Item 2012-1: Amends Form T-7, Commitment for Title Insurance, to correct typographical errors and conform the language in the form to other rules and forms in the *Basic Manual*. After proposal, TDI removed the first two paragraphs of Form T-7. These two paragraphs contain general information about Texas title insurance forms and were inadvertently inserted onto Form T-7, which was the first exhibit in the proposal. These paragraphs do not contain any information specifically related to Form T-7.

Item 2012-2: Amends Form T-1, Owner's Policy of Title Insurance, to correct margins and conform the language in the form to other rules and forms in the *Basic Manual*.

Item 2012-3: Amends Form T-2, Loan Policy of Title Insurance, to correct margins.

Item 2012-11: Amends Rate Rule R-15, Owner Policy Endorsement, to correct typographical errors and conform the language in the rule to other rules and forms in the *Basic Manual*.

Item 2012-16: Amends Form T-56, Owner Policy Rejection Form, to correct typographical errors and conform the language in the form to other rules and forms in the *Basic Manual*.

Item 2012-20: Amends Form T-53, Texas Limited Coverage Residential Chain of Title Policy Combined Schedule, to conform the language in the form to other rules and forms in the *Basic Manual*, to correct margins, and to change a period from 12 months to the correct period of not more than 60 months.

Item 2012-21: Adopts Administrative Rule S.1, Minimum Capitalization Standards for Title Agents Pursuant to §2651.012 and Certification and Procedure to Determine Value of Assets Pursuant to §2651.158, to include the timetables and capitalization amounts in Insurance Code §2651.012. In the adoption, TDI restored a modified version of paragraph II.C., in response to comment. In the original submission, the minimum capitalization requirements were to take effect six months from adoption. To provide certainty, TDI changed that effective date to July 3, 2014. See the Comments section for justification of these changes.

Item 2012-22: Adopts Form T-S1, Title Agent's Unencumbered Assets Certification Form. The form specifies the title agent's method of meeting the required minimum capitalization under Insurance Code §2651.158. Form T-S1 will normally accompany the annual audit of escrow accounts submitted to TDI unless the agent makes a deposit under Insurance Code §2651.012(f).

Item 2012-23: Adopts Administrative Rule S.2, Solvency Account for Capitalization Standards, to meet the requirements of Insurance Code §2651.012.

Item 2012-24: Adopts Form T-S2, Tripartite Agreement, to enable a title agent to establish a solvency account to comply with capitalization requirements. The form authorizes release of funds from a solvency account in limited circumstances.

Item 2012-25: Adopts Administrative Rule S.3, Title Agent Requirements, Procedures, and Forms for Obtaining Release of Assets in Accordance with Insurance Code §2651.012(b) or §2651.0121, to provide procedures for an agent to request and obtain the release of assets, including funds held in a solvency account.

Item 2012-26: Adopts Form T-S3, Solvency Account Release Request, to meet the Insurance Code §2651.0121(i) requirement to provide a form for an agent to use to request the release of funds held in a solvency account under §2651.0121. The form provides a checklist for the actions required to request the release.

Item 2012-27: Adopts Administrative Rule S.7, Surety Bond for Title Agents to Comply with Minimum Capitalization Standards, to enable title agents to comply with capitalization requirements by using a surety bond.

Item 2012-28: Adopts Texas Title Insurance Agent's Minimum Capitalization Bond form to enable a title agent to use a surety bond to meet capitalization requirements.

Item 2012-29: Adopts Administrative Rule S.4, Title Company Requirements, Procedures, and Forms for Providing Privileged Title Agent Financial Solvency Information to the Department Pursuant to §2651.011, to enable an underwriter to provide information to TDI about a financial matter that may relate to the solvency of a title agent.

Item 2012-30: Adopts Form T-S4, Annual Report of Title Company's Officers Authorized to Provide Information on Agent Financial Matters, to provide a form for title companies to identify to TDI the officers of the title company who are authorized to provide privileged financial information to TDI regarding title agents.

Item 2012-31: Adopts Form T-S4-A, Financial Matter Disclosure Report, to enable a designated officer of a title company to provide information to TDI under Insurance Code §2651.011. Section 2651.011 declares that financial information that a title insurance company provides to TDI regarding a title agent is not public information.

Item 2012-32: Adopts Administrative Rule S.5, Filing of Title Agent's Quarterly Withholding Tax Report. The rule provides TDI with an early warning tool to monitor the financial condition of title agents. It requires agents to file with TDI copies of their quarterly withholding tax reports or their equivalent.

Item 2012-33: Adopts Form T-S5, Title Agent Certification Form of Agent's Quarterly Tax Reports, to provide a method for a title agent to certify that the agent had no employees during a calendar quarter and did not file a quarterly withholding tax report.

Item 2012-35: Adopts Administrative Rule S.6, Requirements for Title Agent Examination Reports Pursuant to §2651.206, to incorporate statutory changes resulting from HB 4338, 81st Legislature, Regular Session (2009). Under Insurance Code §2651.206, the rule establishes requirements and procedures for an examination report. The procedures allow the title agent to respond to the contents and conclusions of the report and allow for an appeal under 28 TAC §7.83.

For the proposal, TDI changed the 10-day response period to 14 days. In the adoption, TDI also added language to Rule S.6 to allow TDI the discretion to lengthen the period in which a title agent has to respond to an examination report, if it is reasonable to do so. See the Comments section for justification of this change.

Item 2012-36: Amends Procedural Rules P-1, Definitions, and P-12, Abstract Plants. The rule amends the P-1 definition of abstract plant to be consistent with Insurance Code §2501.004(b). The rule amends P-12 to be consistent with §2501.004 and to update certain statutory references.

In the proposal, TDI inadvertently removed subsection z of Rule P-1 from the original agenda item. For adoption, TDI restored subsection z to Procedural Rule P-1, which reads:

“z. Furnishing title evidence – Providing information regarding instruments affecting title to a tract of land, covering a period beginning not later than January 1, 1979, or such greater period of time as is necessary to determine the ownership and appropriate liens, encumbrances upon, or defects in the title. The information must include, at a minimum, the following:

1. Grantor of each instrument;
2. Grantee of each instrument;
3. Type of each instrument;
4. Recording information of each instrument; and
5. Copy of each instrument as needed by the examiner.

It is not required that the information include:

1. Following the title to a right of way or easement, or showing instruments executed by the grantee in such right of way or easement, other than amendments to such right of way or easement; or
2. Following the title to an oil, gas, or mineral lease or interest.

In considering the necessary length of time to determine ownership and search the title, the searcher may be authorized by the title insurance company to accept what it considers prior indicia of title. Prior indicia of title include, for example, a prior title policy, a final order of a court of competent jurisdiction determining the entire title, or, on subdivision tracts, the base title of the dedicated subdivision.”

Item 2012-37: Amends Form T-57, Agreement to Furnish Title Evidence, to be consistent with Insurance Code §2501.004(b).

Item 2012-38: Amends Procedural Rule P-5.1, Exception or Exclusion Regarding Minerals. Insurance Code §2703.0515 and §2703.055, enacted in HB 2408, 82nd Legislature, Regular Session (2011), provide that a title insurance company is not required to issue a minerals endorsement after January 1, 2012.

Item 2012-39: Amends Procedural Rule P-50.1, Minerals and Surface Damage Endorsement (T-19.2), and Minerals and Surface Damage Endorsement (T-19.3). Insurance Code §2703.0515 and §2703.055, enacted in HB 2408, provide that a title insurance company is not required to issue a minerals endorsement after January 1, 2012.

Item 2012-41: Repeals Rate Rule R-36, Credit for Exclusion of or General Exception for Minerals. HB 2408 enacted §2703.056(b), which prohibits premium credits for minerals, effective January 1, 2012.

Item 2012-42: Amends Rate Rule R-29.1, Premium for Minerals and Surface Damage Endorsement (T-19.2), and Minerals and Surface Damage Endorsement (T-19.3). As a result of HB 2408, which enacted Insurance Code §2703.0515 and §2703.055, a title company may not charge for either endorsement to a Loan Policy issued after January 1, 2012.

Item 2012-45: Changes the Texas Title Insurance Guaranty Association's address on the Policy Guaranty Fee Remittance Form to "[current address]" to update the form and provide more flexibility for future changes to information without a rule amendment.

Item 2012-47: Amends Specific Areas and Procedures No. 5 to update disclosure requirements for third party notaries to conform the rule to Insurance Code §2501.008.

Item 2012-50: Amends Procedural Rule P-57, Additional Insured Endorsement (T-26), to include "Fairway language" for an optional coverage. In *Fairway Dev. Co. v. Title Ins. Co. of Minn.*, 621 F. Supp. 120 (N.D. Ohio 1985), the court held that the assignment of partnership interests from two partners to the remaining partner and a new third-party purchaser resulted in the termination of the title-insured partnership and the creation of a new partnership. The new partnership lacked standing to bring an action under the title policy issued to the original partnership. The coverage in the

amended endorsement provides that the transfer of an interest in a limited liability company insured under an owner's policy would not be deemed to create a new entity that is not entitled to the benefits of the policy.

Item 2012-51: Amends Form T-26, Additional Insured Endorsement, to include "Fairway language" for an optional coverage. The coverage would provide that the transfer of an interest in a limited liability company insured under an owner's policy would not be deemed to create a new entity that is not entitled to the benefits of the policy. TDI has restored the last paragraph of Form T-26. See the Comments section for justification of this change.

Item 2012-52: Amends Procedural Rule P-58, Report on Directly Issued Policy, to add an Out of County Status Code to conform the rule to Form T-00, which contains three Directly Issued Policy Status Codes, rather than only the two currently listed in P-58.

Item 2012-54: Amends Form T-11, Policy of Title Insurance (USA), to add a creditors' rights exclusion relating to the transaction, to comply with Insurance Code §2502.006, which prohibits certain extra hazardous coverages.

Item 2012-55: Amends Form T-38, Mortgagee Policy of Title Insurance P-9.b.(e) Endorsement, to add a creditors' rights exclusion relating to the transaction, to comply with Insurance Code §2502.006, which prohibits certain extra hazardous coverages.

Item 2012-57: Amends Form T-16, Mortgagee Policy Aggregation Endorsement, to provide optional language that could provide a separate lower limit of liability for the policy in identified states to conform to single risk limits. The amendment also conforms

the language in the form to the current text of American Land Title Association

Endorsement 12-06.

Item 2012-62: Amends Form T-19, Restrictions, Encroachments, Minerals Endorsement, to ensure that a recorded document clearly identifies the terms of a covenant, condition, or restriction. This endorsement separately insures against loss of priority of the lien for the Insured Mortgage, or loss of title because of the provisions of the covenant, condition, or restriction in paragraph 2 of the endorsement, and insures against current violations in paragraph 1.b of the endorsement.

In the adoption, TDI restored paragraph 5.e. to the form in response to comment. See the Comments section for justification of this change.

Item 2012-63: Amends Form T-19.1, Restrictions, Encroachments, Minerals Endorsement – Owner Policy, to ensure that a recorded document clearly identifies the terms of a covenant, condition, or restriction. This endorsement in paragraph 3.a separately insures against covenant violations.

In the adoption, TDI restored paragraph 5.e. to the form in response to comment. See the Comments section for justification of this change.

Item 2012-64: Amends Form T-4, Leasehold Owner's Policy Endorsement, to conform Form T-4 to American Land Title Association (ALTA) Endorsement 13-06 (Leasehold – Owner's).

Item 2012-65: Amends Form T-4R, Residential Leasehold Endorsement, to conform Form T-4R to ALTA Endorsement 13-06 (Leasehold – Owner's).

Item 2012-66: Amends Form T-5, Leasehold Loan Policy Endorsement, to conform Form T-5 to ALTA Endorsement 13.1-06 (Leasehold – Loan).

Item 2012-67: Adopts Form T-36.1, Commercial Environmental Protection Lien Endorsement, to give Texas title companies a way to conform to commercial loan transaction practices in other jurisdictions. This endorsement conforms to ALTA Endorsement 8.2-06. In commercial loan transactions in other jurisdictions, an ALTA 8.2-06 Endorsement is commonly requested and issued.

Item 2012-69: Adopts Form T-54, Severable Improvements Endorsement, to address situations in which an item's status as real or personal property is disputed. This endorsement affects the measure of damages available if there are title defects that cause diminution of value or result in certain costs.

Item 2012-70: Adopts Procedural Rule P-72, Severable Improvements Endorsement, to address situations in which an item's status as real or personal property is disputed. This rule allows a title company to issue Form T-54 if the rule requirements are met. TDI has removed paragraph (b) from new Rule P-72. See the Comments section for justification of this change.

Item 2012-71: Amends Rate Rule R-11, Loan Policy Endorsements, to update references. This item incorporates changes suggested by the Texas Land Title Association in withdrawn Agenda Item 2012-10 re: R-11(D).

Item 2012-73: Amends Form T-1R, Residential Owner's Policy of Title Insurance One-to-Four Family Residences, to make the continuation of coverage language

conform to Insurance Code §2703.101(g), enacted by HB 3768, 81st Legislature, Regular Session (2009).

Item 2012-74: Amends Rate Rule R-5, Simultaneous Issuance of Owner's and Loan Policies, to correct references as a result of paragraph rearrangement and renumbering in Agenda Item 2008-57, adopted in the 2008 Texas Title Insurance Periodic Hearing.

Item 2012-75: Amends Rate Rule R-21, Multiple Owner's Policies on Same Land, to update the reference to Rate Rule R-3, which changed to Procedural Rule P-66 as a result of Agenda Item 2008-65, and to conform the language in the rule to other rules and forms in the *Basic Manual*.

Item 2012-76: Rescinds Rate Rule R-10, Owner's Policies----City Subdivision, Acreage Subdivisions, Industrial Tracts, as obsolete. Rate Rule R-10 provided that no new contracts could be made under Rate Rule R-10 after September 1, 1975.

Item 2012-77: Amends Rate Rule R-32, Premium for Contiguity Endorsement (Form T-25, Form T-25.1), to include the reference to Form T-25.1 (Agenda Item 2008-39) adopted for Procedural Rule P-56 (Agenda Item 2008-56) and to conform the language in the rule to other rules and forms in the *Basic Manual*.

Item 2012-78: Amends Procedural Rule P-16, Loan Title Policy on Interim Construction Loan (Interim Binder), to conform the language in the rule to other rules and forms in the *Basic Manual*.

Item 2012-79: Amends Procedural Rule P-11, Insuring Around, to conform to changes made to Property Code §12.017 by HB 3945, 81st Legislature, Regular Session (2009).

Item 2012-80: Amends Form T-2R and T-2R Addendum, Texas Short Form Residential Loan Policy of Title Insurance and Form T-2R Addendum, to incorporate previous changes implemented by Agenda Item 2008-40, adopted in the 2008 Texas Title Insurance Periodic Hearing, and to correct references.

Item 2012-81: Amends Rate Rule R-2, Rebates and Discounts, to correct a typographical error and to conform to the changes made to R-5 in Agenda Item 2008-57, adopted in the 2008 Texas Title Insurance Periodic Hearing.

Item 2012-82: Amends Rate Rule R-20, Owner's Policy After Construction Period, to conform to the changes made to Rate Rule R-5 in Agenda Item 2008-57.

Item 2012-83: Amends Form T-48, Co-Insurance Endorsement, to modify signature lines.

Item 2012-84: Amends Form T-31, Manufactured Housing Endorsement, to update language and references.

Item 2012-85: Amends Administrative Rule L-1, Title Insurance Agent, to include requirements that when a title insurance agent changes its abstract plant provider, or buys or sells an abstract plant, it must notify TDI. The amendments also update definitions, streamline the licensing process, and conform the requirements to Procedural Rule P-28. The amendments allow title agents to operate under a single license, rather than requiring a separate license for each underwriter with which the title

agent does business. The title agent must possess an appointment from at least one title company to obtain a license. The agent's license must be renewed every two years, and will be suspended during any period during which the agent does not possess a valid appointment.

TDI made the following change to Administrative Rule L-1 (Item 2012-85), in response to comment. Certain sections of Rule L-1 require "Certificates of Account Status" to obtain, renew, or change a Texas Title Insurance Agent License. The comptroller historically issued Certificates of Account Status in response to inquiries about the status of an entity's franchise tax account. As of May 2013, however, Certificates of Account Status are no longer available from the Texas Comptroller of Public Accounts. Instead, users may print a taxpayer's Franchise Tax Account Status page from the comptroller's website to accomplish the same purpose.

In response to this change by the comptroller, Administrative Rule L-1 will now require a printed copy of the webpage displaying the title agent's Franchise Tax Account Status, available on the Texas comptroller's website at www.window.state.tx.us/taxinfo/coasintr.html.

Item 2012-86: Amends Administrative Rule L-3, Direct Operations License, to include requirements when a Direct Operation changes its abstract plant provider, or buys or sells an abstract plant. The amendments conform the requirements in Administrative Rule L-3 to the requirements in Administrative Rule L-1, where possible, to enhance consistency and efficiency.

Item 2012-87: Amends Administrative Rule L-2, Title Insurance Escrow Officer, to incorporate the changes in HB 652, 81st Legislature, Regular Session (2009) regarding escrow officer schedule bonds, and to standardize formatting and references.

Item 2012-88: Amends Procedural Rule P-28, Requirements for Continuing Education for Title Agents and Escrow Officers and Professional Training Program for Title Agent Management Personnel, to implement provisions for the Professional Training Program required by Insurance Code §2651.002(d) and §2651.0021, enacted in HB 4338, 81st Legislature, Regular Session (2009).

Item 2012-89: Amends Form T-3 instructions to better clarify the use of the form and to conform the language in the instructions to the rules and forms in the *Basic Manual*. The amendments also include language from disapproved Agenda Item 2012-56 regarding the creditors' rights exception and the conditions relating to the delivery of the promissory note, to be consistent with the exception in the ALTA Assignment Endorsements.

Item 2012-90: Amends the *Statistical Plan* to conform the language in the plan to other rules and forms in the *Basic Manual*. The amendments also include codes for items adopted at the February 28, 2012, hearing. Additionally, in the proposal, TDI modified Table 3 of the original submission by deleting the reference to the Credit for Exclusion of or General Exception for Minerals. TDI proposed deleting the credit because the repeal of Rate Rule R-36 makes the code obsolete. However, to show that the credit previously existed but is no longer valid, TDI restored the credit into Table 3 with strikethrough text.

Statistical Plan, Table 2: In response to comments, TDI also made changes to Table 2 of the Statistical Plan, editing some of the descriptions and rate rules associated with simultaneous-issue rates.

There are two types of simultaneous-issue situations: the normal situation and the pay-as-you-go situation. Rate Rule R-5.A. states, “when an Owner’s Policy and Loan Policy(ies) are issued simultaneously, bearing the same date, and covering the same land, or a portion [of it]...and covering no other land,...” the premium for the owner’s policy is the Basic Rate, and the premium for the loan policy is \$100. If the liability amount of the loan policy is greater than that of the owner’s policy, a formula in R-5.B. is used to calculate an additional premium for the loan policy, which is then added to the \$100 simultaneous-issue rate. This is the normal simultaneous-issue situation.

The other simultaneous-issue situation is pay-as-you-go. Pay-as-you-go policies are used in multi-phase construction projects costing \$5 million or more. In the pay-as-you-go simultaneous-issue situation, the rules are reversed from the normal simultaneous-issue situation. In pay-as-you-go, the premium for the *loan* policy is the Basic Rate, and the premium for the *owner’s* policy is \$100. If the liability amount of the owner’s policy is greater than that of the loan policy, a formula in R-5.E is used to calculate an additional premium for the owner’s policy, which is then added to the \$100 simultaneous-issue rate.

In the Statistical Plan, the descriptions for codes 1215, 3255, and 3345 reflected the normal simultaneous-issue situation, but they should have reflected the pay-as-you-

go simultaneous-issue situation. In other words, the descriptions for these three codes were reversed. In discussions with title industry representatives, TDI learned that agents are nonetheless reporting the correct data because the codes are correctly described in the software they use. So, TDI edited these descriptions to properly reflect the rules of the pay-as-you-go simultaneous-issue situation.

TDI also made changes to the descriptions and rate rules associated with codes 1230 and 3280 of Table 2 of the Statistical Code. Both codes 1230 and 3280 involve a credit for a surrendered owner's policy. The rate rules associated with a credit for surrendered policies are R-5.C., R-5.D., and R-5.E. Additionally, codes 1230 and 3280 involve the normal simultaneous-issue situation rather than the pay-as-you-go situation.

Rule R-5.C. states that when a prior owner's policy is surrendered for credit in a normal simultaneous-issue situation, a credit is applied to the premium for the owner's policy. Rule R-5.E. states that when a prior owner's policy is surrendered for credit in a pay-as-you-go simultaneous-issue situation, a credit is applied to the premium for the *loan* policy, rather than to the premium for the *owner's* policy. So, the descriptions for codes 1230 and 3280 should refer to Rule R-5.C., not Rule R-5.E. because these are normal simultaneous-issue situations. In the proposed Statistical Plan, these two descriptions refer to Rule R-5.E. TDI corrected the reference in both line items by deleting Rule R-5.E. and adding Rule R-5.C.

A commenter also noted that there are no loan policy code numbers to represent the scenario that Rule R-5.E. addresses. This scenario occurs when an owner's policy is surrendered in a pay-as-you-go transaction. As stated in the above paragraph, Rule

R-5.E. applies the credit to the premium for the loan policy. Currently, the Statistical Plan does not have a special pay-as-you-go loan policy code for a transaction in which credit is given for a surrendered owner's policy. TDI may add a loan policy code for this scenario in a separate rulemaking action.

3. SUMMARY OF COMMENTS AND AGENCY RESPONSE.

General

Comment: The commenters ask that the commissioner set an implementation period to allow time to comply with the new and amended rules and forms. The commenters state that if the adoption date and the compliance date are simultaneous, or if there is not enough time between adoption and compliance, it will be difficult to implement and adhere to the revised rules and forms.

Agency Response: TDI agrees that it is reasonable to allow additional time to comply with the new and revised rules and forms. To give title agents time to comply, the effective date of these rules will be January 3, 2014.

Additionally, paragraph II.D. of new Administrative Rule S.1, Minimum Capitalization Standards (Item 2012-21), as originally submitted, made the minimum capitalization standards effective six months after the surety bond requirements were adopted, to provide sufficient time to implement the new minimum capitalization standards. To provide certainty, TDI set July 3, 2014, six months after the effective date of these rules, as the date that requirement takes effect.

Items 2012-19 and 2012-57

Comment: One commenter notes that both Items 2012-19 and 2012-57 amend Form T-16, the Mortgage Policy Aggregation Endorsement. The commenter submitted Item 2012-19. All of the amendments to the form in Item 2012-19 are also in Item 2012-57. The commenter asks TDI to withdraw Item 2012-19.

Agency Response: TDI agrees, and withdrew Item 2012-19 because the amendments in Item 2012-19 are also in Item 2012-57.

Item 2012-21

Comment: Commenters ask that TDI reconsider a proposed change to Item 2012-21, new Administrative Rule S.1, Minimum Capitalization Standards for Title Agents Pursuant to §2651.012 and Certification and Procedure to Determine Value of Assets Pursuant to §2651.158.

Specifically, the commenters ask that TDI restore paragraph II.C. This section of Rule S.1 deals with whether existing title agents should be grandfathered when an agency is sold – either because it is distressed or because the current owner retires – or when an agency is inherited. In its proposal, TDI removed paragraph II.C. based on concerns that an acquiring agent should be sufficiently capitalized to take over a distressed company, and to clarify that a change in a company's operations does not change the date used to calculate the minimum capitalization requirement.

The commenters state that paragraph II.C. serves two important functions. First, the paragraph contains a series of deadline dates for compliance with the minimum

capital requirements for title insurance agents. These minimum capital requirements relate to the number of years in which a title insurance agent has been in business, and paragraph II.C. is the operative paragraph for establishing the start date.

Second, the commenters assert that paragraph II.C is important because it provides some assurances of rehabilitation and recapitalization for a financially distressed title insurance agency in a situation in which investors (“white knights”) are sought to contribute the necessary operating funds and capital to continue the business as a going concern. The commenters’ rationale is that since the funds in a minimum capitalization account are sequestered and are thus unavailable for use in operating the business, not allowing grandfathering would encourage asset-only purchases of distressed companies, putting the distressed agent out of business with no assets to pay liabilities. This would disrupt consumers awaiting closings and cause problems for the distressed agent’s former customers if they have claims or require other services.

The commenters also assert that it would be a disservice to consumers if those who inherit title agencies are required to increase capitalization. Heirs would have to choose whether to contribute additional capital to the business or shut it down. In geographical areas where there are few title agents, closing the business could substantially affect the availability of title insurance services for area residents.

Agency Response: After TDI considered the commenters’ arguments and staff’s concerns, TDI revised the rule. The rule now allows grandfathering for the minimum capitalization start date for inherited title agents and gives the commissioner discretion to allow grandfathering when a distressed title agent is acquired.

TDI did not use the suggested language in paragraph II.C. because it does not encourage complete mergers over asset-only purchases. It only lessened a potential disincentive for acquiring a distressed title agent's liabilities along with its assets. Additionally, TDI wants to ensure that acquiring title agents have ample funds to rehabilitate distressed agents, giving the resulting company the best chance of success.

In inheritance situations, TDI will allow grandfathering on the presumption that, in those situations, the transferred agency would not necessarily be distressed. Also, title agents are frequently family businesses, so the heir may have experience operating a title agency responsibly, and the heir should not necessarily present a greater risk of insolvency than the transferor.

TDI also concluded that it is reasonable to give the commissioner the discretion to allow "white knight" title agents who acquire financially distressed title agents to continue using the acquired title agent's license start date. Allowing this option for acquisitions of distressed title agents, as well as keeping the provision allowing mergers to be grandfathered, may encourage complete mergers and help ensure that acquiring agents are able and qualified to keep the acquired agent as a going concern.

Acquiring agents would have to petition the commissioner to allow grandfathering for the acquired agent's required minimum capitalization start date. The petition must support the following assertions: (1) the title agent being acquired is financially distressed or is likely to be so, and (2) the acquiring title agent has the means to rehabilitate the distressed title agent and is worthy of the public trust to accomplish that goal. Support for this provision would include evidence that the acquiring title agent has

ample funds and experience, and has never before owned or operated a failed title agent.

In the event of a merger, consolidation, or other combination of two or more title agents, the start date of the surviving agent or new entity is the date on which the agent or oldest entity was first assigned a Title Agent Company Identification Number in connection with the issuance of the survivor's or oldest entity's initial license before the merger, consolidation, or other combination. The adopted language for paragraph II.C. is as follows:

“C. With respect to the schedule for compliance with the minimum capitalization amounts, the start date for the time that a title agent has been licensed is the date on which the title agent was first assigned a Title Agent Company Identification Number by the Department in connection with the issuance of the title agent's initial license.

(1) When a person acquires a title agent by inheritance, resulting in a change of ownership or control of a title agent as specified in Administrative Rule L-1 V, Change in Operations, paragraph B, which requires a new license, the start date of the new license is the date of the Title Agent Company Identification Number of the acquired title agent.

(2) In a non-inheritance transfer, when there is a change of ownership or control of a title agent as specified in Administrative Rule L-1 V, Change in Operations, paragraph B, and a new license is issued, the commissioner may, upon petition of the acquiring title agent, order that the start date of the new license be the date of the Title Agent Company Identification Number of the acquired title agent. The acquiring agent's petition must make and support the following assertions:

(i) that the title agent to be acquired is financially distressed or reasonably likely to become financially distressed; and

(ii) that the acquiring title agent has the means to rehabilitate the distressed title agent and is worthy of the public trust to accomplish that goal. Support for this provision includes evidence that the acquiring title agent has ample funds and experience to accomplish the rehabilitation, and that the acquiring title agent has never before owned or operated a failed title agent.

(3) In the event of the merger, consolidation, or other combination of two or more title agents, the start date of the survivor of or new entity resulting from the combination is the date on which the survivor or oldest entity was first assigned a Title Agent Company Identification Number by the Department in connection with the issuance of the survivor's or oldest entity's initial license before the consummation of the merger, consolidation, or other combination.”

Item 2012-35

Comment: One commenter asks that TDI reconsider a proposed change to Item 2012-35, new Administrative Rule S.6, Requirements for Title Agent Examination Reports Pursuant to §2651.206.

The commenter's request relates to the period within which a title insurance agent or direct operation must respond to TDI after receiving a report from an examination, review, or audit. The length of time originally submitted was “a reasonable

period of not less than 10 days” after the title insurance agent or direct operation receives a report. In its proposal, TDI changed this period to a fixed 14 days.

The commenter asserts that a fixed period does not fulfill the purpose of maximum flexibility expressed in the statute. Section 2651.206 states that the rules pertaining to this procedure must provide “...(2) a reasonable period of not less than 10 days after the title agent or direct operation receives the report and evidence from TDI for the title agent or direct operation to respond.” The commenter asserts that the statute’s language was chosen to provide TDI with the flexibility to grant a period longer than 10 days for a response if the report raises complex issues, or requires substantial research or investigation. The commenter reasons that by creating a fixed period of 14 days, TDI is limiting its discretion to grant a longer response time if needed, and this discretion and flexibility is what §2651.206 intended.

Agency Response: TDI considered the commenter’s arguments and staff’s concerns, and reached a compromise. In new Administrative Rule S.6, as proposed, a title insurance agent or direct operation must respond to TDI within 14 days after receiving a report. TDI added language to Rule S.6, giving TDI the discretion to extend the 14-day period if necessary. The new language adds: “The Department may extend this period if it is reasonable to do so.”

The 14-day period, followed by this discretionary language, meets the concerns of the commenters. Fourteen days is a reasonable time not less than 10 days, and the rule allows discretion and flexibility. Thus, the rule meets the intentions of §2651.206.

Item 2012-51

Comment: Commenters ask that TDI reconsider a proposed change to Item 2012-51, Form T-26, Additional Insured Endorsement.

The commenters ask that TDI restore the last paragraph of Form T-26. The commenters state that the language in the deleted paragraph is a standard provision in endorsements and is common to a number of insuring forms, including Form T-25, the Contiguity Endorsement and Form T-27, the Assignment of Rents/Leases Endorsement. The commenters add that this paragraph does not duplicate any paragraph in Form T-26 and it should be retained as part of that form.

Agency Response: TDI restored the last paragraph of Form T-26. TDI deleted the paragraph because it contains language that is duplicative of part of another paragraph in the form. However, given that the last paragraph of Form T-26 is a standard provision in endorsements and does not completely duplicate any other paragraph on the form, TDI has restored the following language on Form T-26:

“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.”

Items 2012-62 and Item 2012-63

Comment: Commenters ask that TDI reconsider removing an exclusion from Items 2012-62 and 2012-63, which amend Forms T-19, Restrictions, Encroachments, Minerals Endorsement and Form T-19.1, Restrictions, Encroachments, Minerals Endorsement – Owner Policy.

In both forms, this is the paragraph 5.e. exclusion for “negligence by a person or an Entity exercising a right to extract or develop minerals or other subsurface substances.” TDI omitted this paragraph from both forms based on the reasoning that paragraph 5.e. could negate the coverage promised in paragraph 4.d. of the endorsements. Paragraph 4.d. insures against damage resulting from the exercise of “a right to use the surface of the Land for the extraction or development of minerals or any other subsurface substances excepted from the description of the Land or excepted in Schedule B.”

Texas case law has long established that between the mineral estate and the surface estate, the mineral estate is dominant. Because the only access to the mineral estate is through the surface estate, the mineral owner has the right to make any use of the surface estate that is necessarily and reasonably incident to removing the minerals. *See Sun Oil Co. v. Whitaker*, 483 S.W.2d 808 (Tex. 1972). So, when the mineral estate has been severed from the surface estate, the surface owner must accommodate the mineral estate owner. However, it is also established in Texas law that a mineral

lessee's use of the surface estate must be exercised with due regard for the rights of the surface estate's owner.

The commenters assert that paragraph 4.d. is designed to mitigate concerns of the insured surface owner, in that the insured would have coverage for damage to the surface estate. Paragraph 5.e. is designed to clarify that such coverage is strictly limited to the terms of paragraph 4.d. The commenters argue that omission of paragraph 5.e. suggests that the endorsement covers the negligent torts of any person or Entity exercising a right to extract or develop beneath the land. Insurance that provides reimbursement for damages caused by negligent torts is property and casualty insurance, not title insurance.

The commenters also assert that it is the omission of paragraph 5.e., not its inclusion, that could negate the coverage provided in paragraph 4.d. Procedural Rule P-50 provides that a title insurer "shall delete any insuring provision if it does not consider that risk acceptable." If paragraph 5.e. is omitted, the commenters argue, it is likely that title insurance companies will consider the coverage in paragraph 4.d. an unacceptable risk, causing the title insurance companies to delete paragraph 4.d. coverage from the endorsement entirely.

Agency Response: TDI agrees, and has restored paragraph 5.e. into Forms T-19 and T-19.1:

5. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:

e. negligence by a person or an Entity exercising a right to extract or develop minerals or other subsurface substances.

Item 2012-70

Comment: Commenters ask that TDI reconsider a proposed change to Item 2012-70, new Procedural Rule P-72, Severable Improvements Endorsement.

As proposed, this item added a new paragraph (b) to proposed Rule P-72. New Rule P-72, paragraph (b) states that, “A Company may not charge a premium for Form T-54 unless and until an applicable rate rule is in effect. If an applicable rate rule is in effect, the Company must collect the prescribed rate, if any, before the Company may issue Form T-54.”

The commenters state that proposed paragraph (b) conflicts with a portion of Rate Rule R-2, which states: “A company shall not issue or deliver a policy, binder or endorsement until a rate therefore has been adopted by the Commissioner.” The commenters assert that proposed paragraph (b) may imply that it is permissible for a title insurance company to engage in the “imprudent issuance of the [endorsement] without collecting a premium for the liability risk assumed by the issuance of the endorsement.”

Agency Response: TDI agrees with the comments above and has removed paragraph (b) from new Rule P-72.

4. NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For, With Changes: Alliant National Title Insurance Company, First American Title Insurance Company, Stewart Title Guaranty Company, and Texas Land Title Association.

Against: None.

5. STATUTORY AUTHORITY. TDI adopts the amended sections under Insurance Code §§2551.003, 2703.153, 2703.202, 2703.203, 2703.204, 2703.206, 2703.208, and 36.001.

Section 2551.003 authorizes the commissioner to adopt and enforce rules that prescribe underwriting standards and practices on which a title insurance contract must be issued; that define risks that may not be assumed under a title insurance contract; and that the commissioner determines are necessary to accomplish the purposes of Title 11, Insurance Code, which concerns the regulation of title insurance.

Section 2703.153 authorizes and requires the commissioner to collect data from each title insurance company and title insurance agent engaged in the business of title insurance relating to loss experience, expense of operation, and other material matters necessary for fixing premium rates.

Section 2703.202(c) authorizes the commissioner to conduct a public hearing to fix premium rates in response to a qualifying request.

Section 2703.203 requires the commissioner to hold a periodic hearing to consider adoption of premium rates and other matters relating to regulating the

business of title insurance upon request by an association, title insurance company, title insurance agent, or member of the public admitted as a party under §2703.204.

Section 2703.204 requires admission of certain persons as parties to the periodic hearing conducted under §2703.203.

Section 2703.206 authorizes the commissioner to order a public hearing to consider adoption of premium rates and other matters relating to regulating the business of title insurance as the commissioner determines necessary or proper.

Section 2703.208 states that an addition or amendment to the *Basic Manual* may be proposed and adopted by reference by publishing notice of the proposal or adoption by reference in the *Texas Register*.

Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

6. TEXT.

SUBCHAPTER A. Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas

§9.1. Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas. The Texas Department of Insurance adopts by reference the *Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas* as amended, effective January 3, 2014. The document is available from and on file at the Texas Department of Insurance, Mail Code 104-PC, PO Box 149104, Austin,

Texas 78714-9104. The document is also available on the TDI website at www.tdi.texas.gov.

SUBCHAPTER C. Texas Title Insurance Statistical Plan

§9.401. Texas Title Insurance Statistical Plan. The Texas Department of Insurance adopts by reference the rules in the *Texas Title Insurance Statistical Plan* as amended, effective January 3, 2014. This document is published by and is available from the Texas Department of Insurance, Mail Code 105-5D, PO Box 149104, Austin, Texas 78714-9104. The document is also available on the TDI website at www.tdi.texas.gov/title.

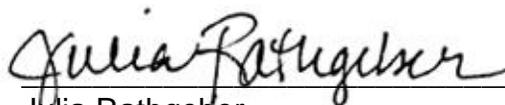
7. CERTIFICATION. This agency certifies that legal counsel has reviewed the adopted sections and found them to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 11, 2013.



Sara Waitt, General Counsel
Texas Department of Insurance

The commissioner adopts amended 28 TAC §9.1 and §9.401.



Julia Rathgeber
Commissioner of Insurance