*Stewart Title Guaranty Company proposes the following amendment to Agenda Item 2012-72 as originally submitted by the Title Office Staff of the Texas Department of Insurance with Stewart Title’s explanations and justifications added to those of the Department staff.*

The Title Office Staff recommends that the Commissioner of Insurance amend Procedural Rule P-9 to conform to the changes made to Rate Rule R-11 in Agenda Item 2008-61 effective 01/01/2011

References to Owner Policy have been amended to Owner’s Policy and references to Mortgagee Policy have been amended to Loan Policy.

In addition, P-9a(2) needs to have the reference changed from Rate Rule R-3.c to R-15.a which was apparently changed at some point in the past.

This agenda item incorporates the changes as submitted by TLTA in Agenda Item 2011 - \_\_\_\_.

Conforming changes to the stat plan need to be revised to reflect the renumbering of items R-11j through R-11l.

**P-9. Endorsement of ~~Owner~~ Owner’s or ~~Mortgagee~~ Loan Policies**

 **a. ~~Owner~~ Owner’s Policy**

 (1) When an ~~Owner~~ Owner’s Policy of Title Insurance (Form T-1) is to be issued on a leasehold estate in the land, the Company shall attach to the said ~~Owner~~ Owner’s Policy (Form T-1) the Leasehold ~~Owner~~ Owner’s Policy Endorsement (Form T-4). When a Residential ~~Owner~~ Owner’s Policy of Title Insurance -- One-To-Four Family Residences (Form T-1R) is to be issued on a leasehold estate in the land, the Company shall attach the Residential Leasehold Endorsement ~~f~~Form T-4R to the Residential ~~Owner~~ Owner’s Policy -- One-To-Four Family Residences (Form T-1R). The ~~Owner~~ Owner’s Policy shall show that the estate being insured is a leasehold and exceptions shall be shown under Schedule B to all of the terms, provisions, and conditions of said lease creating such leasehold estate.

 (2) When an insured under an ~~Owner~~ Owner’s Policy shall have satisfied the Company as to the current value of the estate or interest insured by such ~~Owner~~ Owner’s Policy, and shall have paid the premium provided for in ~~Rule R-3.c~~ Rate Rule R-15.a, the Company shall attach to the said ~~Owner~~ Owner’s Policy ~~e~~Endorsement ~~f~~Form T-34.

 (3) When an ~~Owner~~ Owner’s Policy is issued in the manner provided in Procedural Rule P-8.a, and the coverage thereunder increases as provided in Rate Rule R-2, Procedural Rule P-8 or otherwise as provided in these Rules, upon request and compliance with Rate Rule R-15b, the title insurance company which issued the ~~Owner~~ Owner’s Policy may extend the effective date of the said ~~Owner~~ Owner’s Policy and state the amount then existing under such Policy by issuing ~~the~~ ~~e~~Endorsement ~~provided for in~~ Form T-3, as provided for in T-3 Endorsement Instructions, Item VIII. Per Endorsement Instructions VIII, Items (~~a~~A) 1, 2 and 3 of the endorsement may not be deleted.

 (4) Where an ~~Owner~~ Owner’s Policy has been issued covering the land and a manufactured housing unit which has been affixed to the land so as to become part of the real property, the Company may, if it considers the additional risk insurable and if requested by the proposed insured, attach to the policy ~~e~~Endorsement ~~f~~Form T-31.1 upon the payment of the premium prescribed in Rate Rule ~~R-15~~ R-15.c and all expenses required by the Company (such as survey and/or inspection).

(5) A Company may issue its Utility Access Endorsement T-23.1 to a contemporaneously issued Owner’s Policy of Title Insurance (T-1) on or after the date Rate Rule R-11.m. is effective, if its underwriting requirements are met and if it is paid the premium described in Rate Rule 11.m. The Company may delete any insuring provision if it does not consider that risk acceptable. The Company may not issue the Utility Access Endorsement (T-23.1) if the land covered by the policy does not contain a building or other structure actually served by the easement(s) indentified in the endorsement and shown on a survey of the property acceptable to the Company. The Utility Access Endorsement T-23.1 may not be issued in connection with a residential real property transaction.

 **b. ~~Mortgagee~~ Loan Policy**

 (1) Assignment of Mortgage to Government Agencies - Where a ~~Mortgagee~~ Loan Policy has been issued covering the lien securing an indebtedness, and such indebtedness and lien have been subsequently sold, transferred and assigned to ~~Government National Mortgage Association~~ Ginnie Mae and/or ~~Federal National Mortgage Association~~ Fannie Mae and/or ~~Administrator~~ Secretary of Veterans' Affairs and/or Secretary of Housing and Urban Development, as their names may be changed from time to time, the Company which issued the original policy may issue a~~n~~ Endorsement Form T-3 ~~Endorsement~~ thereto to show ~~the~~ ~~Government National Mortgage Association~~ Ginnie Mae and/or ~~Federal National Mortgage Association~~ Fannie Mae and/or ~~Administrator~~ Secretary of Veterans' Affairs and/or Secretary of Housing and Urban Development, or as their names may be changed from time to time as a party insured upon payment of the premium prescribed by Rate Rule R-11.a and as provided for in T-3 Endorsement Instructions III. As a condition to the issuance of the Endorsement, the Company may require a showing from the assignor that such assignor has not accelerated the maturity of the indebtedness, or if ~~he~~ it has, that there has been a proper reinstatement of the obligation. It shall be permissible for the Company to show the current owner of the fee simple title to the property in the said Endorsement ~~II~~.

 (2) Assignment of Mortgage to Others - Except as to those loans secured by one-to-four family residential properties, the Endorsement Form T-3 provided for in Procedural Rule P-9b(1) may also be issued to any assignees other than those set out in said Procedural Rule P-9b(1) upon payment of the premium prescribed by Rate Rule R-11.a and as provided for in T-3 Endorsement Instructions III.

 (3) Partial Release, Release of Additional Collateral, Modification Agreement, Reinstatement Agreement and/or Release from Personal Liability - When a ~~Mortgagee~~ Loan Policy has been issued covering the lien securing an indebtedness, and the holder of such ~~Mortgagee~~ Loan Policy desires to:

 (a) release a part of the land described in Schedule A of said Policy; and/or

 (b) release additional collateral securing indebtedness described in said Schedule A; and/or

 (c) modify only one or more of the following items described in Schedule A of said policy: the mortgage, deed of trust, security instrument, guaranty or promissory note by entering into a Modification Agreement; and/or

 (d) reinstate said mortgage or deed of trust by entering into a Reinstatement Agreement; and/or

 (e) release the mortgagor(s) or other obligors from personal liability;

 Upon payment of the premium prescribed by ~~r~~Rate ~~r~~Rule R-11.b, the Company which issued the original policy may issue a Form T-38 Endorsement thereto to show that policy coverage has not been reduced or terminated solely by virtue of the modification, reinstatement or release.

An endorsement shall not be issued under this subparagraph (3) if:

 (i) the modification agreement, reinstatement agreement or other instrument expressly creates or grants a lien or power of sale; or

 (ii) the indebtedness secured by the lien of the insured mortgage or deed of trust is evidenced by a new promissory note; or

 (iii) the insured mortgage or deed of trust is modified to secure additional principal indebtedness other than accrued or deferred interest on the specific indebtedness described on Schedule A of the policy or advances made pursuant to the terms of the original mortgage or deed of trust; or

 (iv) the insured mortgage or deed of trust is cross-collateralized or otherwise modified to cover property not described on Schedule A of the policy.

 (4) Down Date Endorsement - When a ~~Mortgagee~~ Loan Title Policy is issued in the manner provided in Procedural Rule P-8.b. and construction advances are being made subsequent to such issue, upon request and compliance with Rate Rule R-11.c, the title insurance company which issued the ~~Mortgagee~~ Loan Title Policy may extend the effective date of the said ~~Mortgagee~~ Loan Title Policy and state the amount of coverage then existing under the policy, by issuing the Endorsement Form T-3 provided for in Form T-3 Endorsement Instructions, Item V. Instruction V. Items (a) 1, 2 and 3 of the Endorsement may not be deleted.

 When a ~~Mortgagee~~ Loan Title Policy Binder on Interim Construction Loan is issued as provided in Procedural Rule P-16, and construction advances are being made subsequent to such issue, upon request and compliance with Rate Rule R-11.c, the title insurance company which issued the ~~Mortgagee~~ Loan Title Policy Binder on Interim Construction Loan may extend the effective date of the said ~~Mortgagee~~ Loan Title Policy Binder on Interim Construction Loan by issuing the Endorsement provided for in Form T-3 Endorsement Instructions, Item VII.~~, Instruction VIII. Items (a) 1 and 2 of the Endorsement may not be deleted.~~

 (5) When a ~~Mortgagee~~ Loan Policy of ~~t~~ Title Insurance is to be issued on a leasehold estate in the land, the Company shall attach to the said ~~Mortgagee~~ Loan Policy the Leasehold ~~Mortgagee~~ Loan Policy Endorsement Form T-5. The ~~Mortgagee~~ Loan Policy shall show that the estate being insured is a leasehold and exception shall be shown under Schedule B to all of the terms, provisions, and conditions of the said lease creating such leasehold estate.

 (6) Variable Rate Mortgage Loan Instruments - For purposes of this rule a “variable rate mortgage loan" shall be one which permits adjustments of the interest rate, with such adjustments being implemented through changes in the payment amount and/or in the outstanding principal loan balance or in the loan term. When a Loan Policy of Title Insurance is to be issued insuring the lien securing a variable rate mortgage loan note, the company may attach to the Loan Policy the Endorsement T-33 or T-33.1 upon payment of the premium prescribed by Rate Rule R-11.d.

A T-33 Endorsement or T-33.1 Endorsement may be issued and attached to a previously issued Loan Policy insuring a variable rate mortgage loan upon the payment of any applicable premium charge and compliance with the underwriting requirements of the Company.

 (7) Where a ~~Mortgagee~~ Loan Policy has been issued covering the lien securing an indebtedness against land and a manufactured housing unit which has been affixed to the land covered by said lien so as to become part of the real property, the Company may, if it considers the additional risk insurable and if requested by the proposed insured, attach to the policy ~~e~~Endorsement ~~f~~Form T-31 or ~~e~~Endorsement ~~f~~Form T-31.1 upon the payment of the premium prescribed in Rate Rule R-11.e and all expenses required by the Company (such as survey and/or inspection). A company is not required to issue ~~e~~Endorsement ~~f~~Form T-31 in order to issue ~~e~~Endorsement ~~f~~Form T-31.1.

 (8) Future Advance/Revolving Credit (T-35). When a Loan Policy of Title Insurance is to be issued to insure the validity and priority of a lien created by a mortgage or deed of trust which secures a revolving credit promissory note or other such indebtedness where:

 ~~(1)~~(a) a line of credit of a specific amount is extended to a borrower for the term of indebtedness,

 ~~(2)~~(b) the amount of indebtedness actually outstanding at any particular time is subject to fluctuations up or down due to future disbursements of loan proceeds and/or future repayments thereof from time to time over the term of the indebtedness (which disbursements and repayments are contemplated by the parties at the time the indebtedness is created), and

 ~~(3)~~(c) repayments by the borrower neither reduce nor increase the original line of credit extended nor affect the borrower's liability to repay the principal sum of all outstanding disbursements plus all accrued interest thereon, the Company upon request and compliance with Rate Rule R-11.f shall attach to said Loan Policy of Title Insurance the Future Advance/Revolving Credit Endorsement.

The Future Advance/Revolving Credit Endorsement shall be available only where the mortgage or deed of trust creating the lien to be insured discloses to the satisfaction of the Company that the indebtedness secured thereby is a revolving type of indebtedness as set forth above.

 (9) (i) When a ~~mortgagee~~ Loan ~~p~~ Policy of Title Insurance is to be issued covering the lien securing an indebtedness against land used or to be used primarily for residential purposes, the company may, if it considers the risk insurable, attach to the policy ~~e~~Endorsement Form T-36 Environmental Protection Lien with any applicable exceptions in paragraph (b) upon the payment of the premium prescribed in Rate Rule R-11.g.

 (ii) When a loan policy is to be issued covering the lien securing an indebtedness against land that is not used or to be used primarily for residential purposes, the company may, if it considers the risk insurable, attach to the Policy Endorsement Form T-36.1 Commercial Environmental Protection Lien Endorsement upon the payment of the premium prescribed in Rate Rule R-11.g.

 (10) Balloon Mortgage Endorsement - When a ~~mortgagee~~ Loan ~~p~~Policy of title insurance is to be issued on residential real property insuring a lien that contains a balloon rider, the Company may attach to the ~~mortgagee~~ Loan ~~p~~Policy ~~e~~Endorsement Form T-39. The balloon rider must contain a conditional right to refinance. The lien as originally created and described in the ~~mortgagee~~ Loan ~~p~~Policy must contain the balloon rider. The Company must be paid the premium prescribed in Rate Rule R-11.h for issuance of the endorsement.

 (11) A Company may issue its First Loss Endorsement Form T-14 to a ~~Mortgagee~~ Loan Policy (T-2), if (1) its underwriting requirements are met, (2) other property not described in the ~~Mortgagee~~ Loan 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.i. The Company may not issue the First Loss Endorsement Form T-14 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.**

 (13) A Company may issue ~~its Mortgagee~~ a Loan Policy Aggregation Endorsement (T-16) to a ~~Mortgagee~~ Loan Policy of Title Insurance (T-2), if (1) it is paid the premium prescribed in Rate Rule ~~R-11.k~~ R-11.j; (2) its underwriting requirements are met; and (3) multiple policies are simultaneously issued covering separate mortgages securing the same indebtedness or loan. The Company shall charge the applicable premium for each ~~Mortgagee~~ Loan Policy of Title Insurance (T-2).

 (14) A Company may issue its Planned Unit Development Endorsement (T-17) to a ~~Mortgagee~~ Loan Policy, if its underwriting requirements are met and if it is paid the premium described in Rate Rule ~~R-11.l~~ R-11.k. The Company may delete any insuring provision if it does not consider that risk acceptable. The Company may not issue the Planned Unit Development Endorsement (T-17) if the land covered by the policy is not residential real property. Any insurance matter that may be covered by a Planned Unit Development Endorsement (T-17) may be insured only by the use of the Planned Unit Development Endorsement (T-17).

 (15) A Company may issue its Condominium Endorsement T-28 to a contemporaneously issued ~~Mortgagee~~ Loan Policy ~~on or after the date Rate Rule R-11.m is effective~~, if its underwriting requirements are met and if it is paid the premium, if any, described in Rate Rule ~~11.m~~ R-11.l. The Company may delete any insuring provision if it does not consider that risk acceptable. The Company may not issue the Condominium Endorsement (T-28) if the land covered by the policy is not residential real property. Any insured matter that may be covered by a Condominium Endorsement (T-28) may be insured only by the use of the Condominium Endorsement (T-28). This endorsement may not be issued in conjunction with the Planned Unit Development Endorsement (T-17).

(16) A Company may issue its Utility Access Endorsement T-23.1 to a contemporaneously issued Loan Policy of Title Insurance (T-2) on or after the date Rate Rule R-11.m. is effective, if its underwriting requirements are met and if it is paid the premium described in Rate Rule 11.m. The Company may delete any insuring provision if it does not consider that risk acceptable. The Company may not issue the Utility Access Endorsement (T-23.1) if the land covered by the policy does not contain a building or other structure actually served by the easement(s) indentified in the endorsement and shown on a survey of the property acceptable to the Company. The Utility Access Endorsement T-23.1 may not be issued in connection with a residential real property transaction.

JUSTIFICATION

Title Staff: This agenda item corrects typographical errors and conforms the language to other rules and forms in the Basic Manual.

STGC: Owners and Lenders are rightfully concerned whether buildings have access to utilities as without utilities the buildings have a greatly diminished value. This endorsement provides coverage if such buildings do not have actual access to the utility services listed and checked in the endorsement. This endorsement is limited in applicability to situations where the improvements have already been built or are under construction and can be shown on a survey of the property.