

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

INTRODUCTION. The Texas Department of Insurance (TDI) proposes amendments to 28 TAC §9.1 and §9.401, concerning the *Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas* (Basic Manual) and the *Texas Title Insurance Statistical Plan* (Statistical Plan). On September 1, 2023, the Texas Title Land Association (TLTA) submitted to TDI proposed new and amended Basic Manual rules and items. The commissioner of insurance considered the proposed items submitted by the title industry and TDI staff on November 15, 2023, at the Texas Title Insurance Public Hearing, Docket No. 2841. The commissioner called the hearing under Insurance Code §2703.202 and §2703.206.

On December 21, 2023, the commissioner issued Commissioner's Order No. 2023-8429, approving the proposed new and amended items submitted by TLTA and TDI, with changes and corrections to some of the items, as noted in the order. The order and all the proposed items, with their explanations and detailed justifications, can be viewed on [TDI's website](#).

EXPLANATION. The proposed new and amended rule items are identified by the item numbers used for the November 15, 2023, hearing submissions, except for "2023" preceding all the item numbers. This was added by TDI after the hearing for the exhibits referenced in this proposal. This proposal is necessary to:

- adopt new rules, forms, and rates;
- modify or replace existing rules and forms;
- facilitate the administration and regulation of title insurance; and

- update, correct, clarify, or harmonize title insurance rules and forms.

Details for the proposed new and amended items are provided in this proposal. In some of these items, TDI made substantive and nonsubstantive changes to the original submissions. The description of each item includes a brief explanation of any substantive changes.

At the hearing on November 15, 2023, the petitioners withdrew Items 2023-15, 2023-17, and 2023-20 from consideration. The petitioners also withdrew Items 2023-8, 2023-10, 2023-12, 2023-14, and 2023-19 and replaced them with amended versions of those submissions, labeling them as 2023-A, 2023-B, 2023-C, 2023-D, and 2023-E, respectively.

The proposed amendments to §9.1 and §9.401 and the proposed new and amended rule items in the Basic Manual and Statistical Plan are described in the following paragraphs.

Section 9.1. Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas. Amendments to §9.1 propose to adopt by reference the version of the Basic Manual effective on November 1, 2024. The section is also amended to remove text providing for the Basic Manual to be available via mail and email because it is accessible on TDI's website.

Section 9.401. Texas Title Insurance Statistical Plan. Amendments to §9.401 propose to adopt by reference the version of the Statistical Plan effective January 1, 2025. The section is also amended to update the mailing address from which the Statistical Plan is available.

Item 2023-1. TDI proposes to amend Rate Rule R-11.c, affecting the following Basic Manual items:

1. Form T-3 (Assignment of Mortgage Endorsement) - TDI proposes to increase the premium to the minimum Basic Premium Rate plus \$100 for each additional

full or partial 12-month period after the first anniversary of the initial policy date. Currently the premium is the minimum Basic Premium Rate.

2. Form T-38 (Partial Release, Release of Additional Collateral, Modification Agreement, Reinstatement Agreement, or Release from Personal Liability Endorsement) - TDI proposes to increase the premium to the minimum Basic Premium Rate plus \$25 per year between the issuance of the endorsement and the policy. Currently, the premium is \$100 plus \$10 per year between the issuance of the endorsement and the policy.

3. Form T-3 (Down Date Endorsement) - TDI proposes to increase the premium from \$50 to \$100 for nonresidential construction projects. The premium remains \$50 for residential construction projects.

TDI also makes nonsubstantive edits that change the lettering convention on the subsections from lowercase to uppercase and plain language edits.

Item 2023-2. TDI proposes to amend Rate Rule R-15.b to increase the premium for the Form T-3 "down date endorsement" for Owner's Policies from \$50 to \$100 for nonresidential construction projects. The premium remains \$50 for residential construction projects.

Item 2023-3. TDI proposes to amend Rate Rule R-30 to increase the premium for Access Endorsements (Form T-23) from \$100 for all Access Endorsements issued under a policy to \$100 for each Access Endorsement issued under a policy. TDI also makes nonsubstantive plain language edits.

Item 2023-4. TDI proposes to amend Form T-1R, Residential Owner's Policy of Title Insurance One-to-Four Family Residences, to remove the parenthetical "(Applies to Owner's Policy only)" in Schedule B, Item 3 of the form.

Item 2023-5. TDI proposes to amend Form T-16, Loan Policy Aggregation Endorsement, to make changes to conform more closely to the American Land Title Association (ALTA) form used in other states. TDI also makes nonsubstantive plain

language edits, renumbers the subsections, and restructures the form text for greater clarity and easier reading.

Item 2023-6. TDI proposes to amend Forms T-19, T-19.1, T-19.2, and T-19.3, which are a series of endorsements that include coverage for damage to improvements because of mineral extraction or development. The proposed amendments make coverage across the forms more consistent and update Forms T-19.2 and T-19.3 to conform with their model form equivalents from ALTA.

Item 2023-7. TDI proposes to amend Forms T-1 and T-2 to clarify provisions related to survey coverage. **Item 2023-9.** TDI proposes to amend subsection C of Procedural Rule P-20 to allow title insurers to specify for which year the policy insures that taxes are not yet due and payable.

Item 2023-11. TDI proposes to amend Procedural Rule P-57 to allow for more legal entities used in estate planning to be an additional insured on the Additional Insured Endorsement (Form T-26) and to allow the endorsement to be added up to 90 days after title is conveyed to the additional insured.

Item 2023-13. TDI proposes to amend Procedural Rule P-2 and create a new Form T-47.1 to allow for an unsworn declaration to be used to affirm that a property is essentially unchanged since a previous survey was issued. New Form T-47.1 can be used instead of the Form T-47, Survey Affidavit. Form T-47 will still be available. TDI proposes to amend Form T-47 to allow for a single declarant and makes nonsubstantive plain language updates.

Item 2023-16. TDI proposes to amend Procedural Rule P-9.b.8, Rate Rule R-11.f, and Form T-35 to clarify that the endorsement covers only revolving credit arrangements for construction projects, not other kinds of future advances.

Item 2023-18. TDI proposes a new endorsement, Energy Project - Minerals and Surface Damage Endorsement (Form T-19.4), for surface damage coverage for severable

improvements that would not be insured under the other forms that cover surface damage related to mineral extraction (Forms T-19, T-19.1, T-19.2, and T-19.3). TDI also proposes new Procedural Rule P-50.2 to govern use of the new endorsement, and new Rate Rule R-29.2 to set a premium of 5% of the Basic Premium Rate. The endorsement will only be used if it is issued simultaneously with an energy project endorsement, as described in Item 2023-B.

Item 2023-21. TDI proposes to amend Internal Control No. 5 to explicitly allow for electronic signatures on escrow checks.

Item 2023-22. TDI proposes to update Form PC-150 to align with the Texas State Board of Public Accountancy standards.

Item 2023-23. TDI proposes to amend Form T-11 to correct a clerical error on the form where the last item on a numbered list did not have its corresponding number.

Item 2023-24. TDI proposes to amend Form PC-417 to update TDI's mailing address on the form.

Item 2023-25. TDI proposes to amend Licensing Forms FINT 08, FINT 09, FINT 10, FINT 129, and FINT 143 to remove the notarization requirement and replace it with an unsworn declaration.

Item 2023-26. TDI proposes to amend the Statistical Plan to update codes related to Rate Rule R-8 so that the plan matches the transaction descriptions that changed when Rate Rule R-8 was amended in 2019. TDI proposes to further amend the Statistical Plan to add codes that match the rate changes and new endorsements in Items 2023-1, 2023-18, 2023-B, and 2023-C. TDI also proposes to amend descriptions, where appropriate, for clarification and consistency of presentation. TDI proposes several nonsubstantive style and formatting changes to reflect current TDI style preferences. These include changing the font to Segoe UI, increasing the type size to 12 point, and improving text alignment and table formats. Item 2023-26 combines Items 26 and 27 from Commissioner's Order

No. 2023-8429 for more efficiency since both items addressed changes to the Statistical Plan.

Item 2023-27. TDI proposes to update TDI's mailing address, email address, and physical address where they are listed in the Basic Manual to reflect TDI's move from its previous location in the William P. Hobby Building at 333 Guadalupe Street, Austin, Texas 78701, to the Barbara Jordan State Office Building at 1601 Congress Avenue, Austin, Texas 78701, and also added TDI's Title Examinations email address as another way to communicate with TDI. These changes to the Basic Manual were not proposed at the hearing but are nonsubstantive and necessary to include in the proposal. This item changes TDI's address in the following places in the Basic Manual:

- Section V, Exhibit & Forms, Report forms for Audit of Trust Funds (TDI Title Forms PC 150)
- Section VI, Administration Rules, Rule D-1: Requirements for Ceasing Operations by Agents and Direct Operations, Section I, A
- Section VI, Administration Rules, Rule S1: Minimum Capitalization Standards for Title Agents Pursuant to §2651.012 and Certification and Procedure to Determine Value of Assets Pursuant to §2651.158, Section III, C, D, and E
- Section VI, Administration Rules, Rule S.4: Title Company Requirements, Procedures, and Forms for Providing Privileged Title Agent Financial Solvency Information to the Department Pursuant to §2651.011, # A - 2 and 3, # B - 1 and 2
- Section VI, Administration Rules, Rule S.5: Filing of Title Agent's Quarterly Withholding Tax Report, Section III and Section IV
- Section VI, Administration Rules, Rule S.7: Surety Bond for Title Agents to Comply with Minimum Capitalization Standards, Section I, # E

Item 2023-A. TDI proposes to amend Form T-50, the Insured Closing Service Letter, to conform more closely to recent changes in ALTA's model Closing Protection

Letter, including the addition of language that excludes computer-related fraud. TDI makes nonsubstantive changes to update the formatting to TDI style, including the use of 12-point Segoe UI font, plainer language for the letter's contents, consistently numbered and lettered paragraphs, and clearer organization of the information.

Item 2023-B. TDI proposes to add six new endorsements that are specifically tailored for different scenarios involving coverage of severable improvements in connection with electrical energy projects: Forms T-55, T-55.1, T-55.2, T-55.3, T-55.4, and T-55.5. TDI also proposes amendments to Procedural Rule P-72 to govern use of the new endorsements and a new rate rule that will charge 5% of the Basic Premium Rate for each endorsement (Rate Rule R-37). Amended Procedural Rule P-72 will also govern the use of an existing severable improvements endorsement form (Form T-54), and new Rate Rule R-37 will establish a charge of 5% of the Basic Premium Rate for the endorsement. TDI makes nonsubstantive changes to update the formatting to TDI style, including changing the font to 12-point Segoe UI, plainer language for the form contents where possible, consistently numbered and lettered paragraphs, and a clearer organization of the information.

Item 2023-C. TDI proposes to amend Procedural Rule P-1.u. to broaden the description of residential real property. The amendments will allow immediately contemplated improvements to be considered residential properties on currently unimproved land. The amendments will also loosen the acreage restrictions, including removing the agricultural production requirement for large residential properties between 10 and 200 acres. TDI also proposes to amend Rate Rule R-16 by allowing a 5% survey coverage rate to be applied to residential property when an Owner's Policy (Form T-1) is issued, not just when a Residential Owner Policy (Form T-1R) is issued. TDI makes nonsubstantive changes to update the formatting to TDI style, including to the use of 12-

point Segoe UI font, plainer language for the form contents where possible, consistently numbered and lettered paragraphs, and a clearer organization of the information.

Item 2023-D. TDI proposes to amend subparagraph 2.b of the Equity Loan Mortgage Endorsement (Form T-42) by deleting the existing language and inserting a statement that the subparagraph is intentionally deleted because of an amendment to the Texas Constitution. The Texas Constitution amendment made the subparagraph obsolete.

Item 2023-E. TDI proposes to amend subsections B, C, D, and F of Rate Rule R-5 (Simultaneous Issue of Owner's Policy and Loan Policy). The amendments to subsections B, C, and D clarify that the simultaneous issue discount is available in combination with other applicable rate discounts. The amendments to subsection F lower the Owner's Policy amount threshold for that subsection from \$5 million to \$1 million. They also restrict the subsection to nonresidential property transactions and qualify that the subsequent Loan Policy must be issued by the same company that issued the Owner's Policy. Finally, the proposed amendments include nonsubstantive editorial and formatting changes to conform the Basic Manual items to the TDI style and to improve clarity. These changes update the formatting to TDI style, including the use of 12-point Segoe UI font, plainer language for the form contents where possible, consistently numbered and lettered paragraphs, and a clearer organization of the information.

TDI received comments at the public hearing on November 15, 2023, and received comments on TLTA's formal petition, which was posted on TDI's website on September 15, 2023. The comments included TLTA proposing revisions to the exhibits in its formal petition, and supportive comments from other stakeholders. TDI considered these comments when drafting this proposal.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. David Muckerheide, assistant director of the Property and Casualty Division, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the amendments, other than those imposed by the statute. Mr. Muckerheide made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Mr. Muckerheide does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Mr. Muckerheide expects that administering them will have the public benefit of ensuring that TDI's rules conform to and support the purposes of the Title Insurance Act by adopting by reference updated versions of the Basic Manual and Statistical Plan, which will better protect consumers and purchasers of title insurance policies and provide for adequate and reasonable rates of return for title insurance companies and agents. Some of the revisions to the Basic Manual will also have public benefits of (1) making insuring forms easier to understand and reducing uncertainty, (2) making new title insurance coverage available, (3) supporting the availability and flexibility of existing title insurance coverage, and (4) reducing the administrative burden of some underwriting and regulatory processes. Mr. Muckerheide expects that the proposed adoption by reference of the revised Basic Manual will not impose costs of compliance for title agents and underwriters. The primary costs attributable to this proposal are the costs of updating the amended forms and adding new forms for consistency with the revised Basic Manual. In Texas, title forms are promulgated, which means all title agents

and underwriters must use the same forms. Title agents and underwriters typically have subscriptions with software vendors whose services include providing Basic Manual forms; these vendors make any necessary form updates and additions as well as associated data capture for Statistical Plan reporting. Vendors typically do not charge extra for these updates and additions. The services are included in the fee that title agents and underwriters pay to vendors.

The other aspect of this proposal includes adoption by reference of new or amended rate rules and procedural rules. Again, software vendors will absorb some or all of the costs associated with these changes as part of the services ordinarily included in their subscriptions at no extra charge. Any changes in underwriting labor that may be incidental to the new or amended rate rules and procedural rules will be offset, at least to some extent, by the proposed rate rule items that increase rates in some cases or introduce charges for new endorsements. Other changes include removing notarization requirements on licensing forms, removing notarization requirements for survey coverage by allowing use of an unsworn declaration rather than an affidavit, and allowing escrow checks to be signed electronically. These changes should reduce time and cost expenditures for licensees.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed adoption by reference of the revised Basic Manual and Statistical Plan will not have an adverse economic effect on small or micro businesses, or on rural communities. As described in the preceding Public Benefit and Cost Note section, the changes are unlikely to impose an actual cost on title agents or underwriters, and this includes any that are small or micro businesses. Further, they do not create requirements applicable to rural communities. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal is unlikely to impose a cost on regulated persons. Even if the proposal were to impose such a cost, no additional rule amendments are required under Government Code §2001.0045 because the sections as proposed and the changes to the Basic Manual and Statistical Plan are necessary to implement legislation. The proposed rule implements Insurance Code Chapters 2551, 2651, 2652, and 2703. Under the Title Insurance Act, the commissioner is responsible for and required to promulgate title insurance rates and forms, as well as adopt necessary rules governing their use. If any changes impose additional costs, such as implementation costs, it is reasonable for TDI to apply the implementation exception in Government Code §2001.045 to the ongoing concern of promulgating rates and forms and regulating the business of title insurance, as required by the Legislature.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments and the Basic Manual's new and amended rules are in effect, the proposed rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on July 1, 2024. The full text of the adoption-by-reference materials for 28 TAC §9.1 and §9.401 can be viewed at www.tdi.texas.gov/rules/2023/exrules.html and is available for review in the Office of the Chief Clerk. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC:

GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on July 1, 2024. If a public hearing is held, TDI will consider written and oral comments presented at the hearing.

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

STATUTORY AUTHORITY. TDI proposes amendments to §9.1 under Insurance Code §§2551.003, 2651.002, 2651.007, 2652.051, 2703.054, 2703.101, 2703.151, 2703.208, and 36.001.

Insurance Code §2551.003 authorizes the commissioner to adopt and enforce rules that prescribe underwriting standards and practices, that define risks, and that the commissioner determines are necessary to accomplish the purposes of the Title Insurance Act.

Insurance Code §2651.002 requires that a title agent must file an application for an agent's license on forms provided by TDI.

Insurance Code §2651.007 requires that TDI prescribe title agent licensing renewal forms.

Insurance Code §2652.051 requires that an escrow officer file an application for an escrow officer's license on forms provided by TDI.

Insurance Code §2703.054 authorizes the commissioner to amend owner title insurance policy language and endorsements to implement Insurance Code Chapter 2703, Subchapter A.

Insurance Code §2703.101 requires the commissioner to prescribe an owner title policy form to be used in connection with a transaction involving residential real property in this state.

Insurance Code §2703.151 requires the commissioner to fix and promulgate premiums rates charged by title insurance companies and agents.

Insurance Code §2703.208 provides that any addition or amendment to the Basic Manual may be proposed and adopted by reference by publishing notice in the *Texas Register*.

Insurance Code §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.

CROSS-REFERENCE TO STATUTE. Section 9.1 implements Insurance Code §§2551.003, 2703.054, 2703.101, and 2703.151.

TEXT.

§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* (Basic Manual) as amended, effective November 1, 2024 [~~February 1, 2021~~]. The Basic Manual is available [~~from the Texas Department of Insurance, Mail Code 104-PC, P.O. Box 149104, Austin, TX 78711-2040. The Basic Manual is also available~~] on the TDI website at www.tdi.texas.gov [~~, and by email from ChiefClerk@tdi.texas.gov~~].

Subchapter C. Texas Title Insurance Statistical Plan
28 TAC §9.401

STATUTORY AUTHORITY. TDI proposes amendments to §9.401 under Insurance Code §§2551.003, 2703.151, 2703.153, 2703.208, and 36.001.

Insurance Code §2551.003 authorizes the commissioner to adopt and enforce rules that prescribe underwriting standards and practices, that define risks, and that the commissioner determines are necessary to accomplish the purposes of the Title Insurance Act.

Insurance Code §2703.151 requires the commissioner to fix and promulgate premiums rates charged by title insurance companies and agents.

Insurance Code §2703.153 requires the commissioner to develop and maintain a statistical report for the use of fixing and promulgating premium rates. The commissioner is required to evaluate the statistical report not less than every five years to see whether changes are required and amend it as necessary.

Insurance Code §2703.208 provides that any addition or amendment to the Basic Manual may be proposed and adopted by reference by publishing notice in the *Texas Register*.

Insurance Code §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.

CROSS-REFERENCE TO STATUTE. Section 9.401 implements Insurance Code §2703.153.

TEXT.

§9.401. Texas Title Insurance Statistical Plan.

The Texas Department of Insurance adopts by reference the rules in the Texas Title Insurance Statistical Plan [~~Texas Title Insurance Statistical Plan~~] as amended effective January 1, 2025 [~~April 1, 2020~~]. This document is published by and is available from the Texas Department of Insurance, MC: PC-ACT, [~~Mail Code 105-5D,~~] P.O. Box 12030, [~~149014,~~] Austin, Texas 78711-2030 [~~78714-9104~~]. This document is also available on the TDI website at www.tdi.texas.gov.

CERTIFICATION. This agency certifies that legal counsel has reviewed the proposal and found it to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on May 14, 2024.

DocuSigned by:
Jessica Barta
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Jessica Barta, General Counsel
Texas Department of Insurance