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**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 §9.1 and §9.401, concerning the adoption by reference of certain amendments to the *Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas* (Basic Manual) and to the *Texas Title Insurance Statistical Plan* (Statistical Plan). The amendments are adopted with changes to the proposed text published in the August 21, 2009 issue of the *Texas Register* (34 TexReg 5643).

2. REASONED JUSTIFICATION. The amendments to the Basic Manual and Statistical Plan, which the amended sections adopt by reference, were considered at the rulemaking phase of the 2008 Texas Title Insurance Biennial Hearing (Biennial Hearing) held on October 2, 2008, Docket Number 2690. The rulemaking phase of the hearing was conducted pursuant to the Insurance Code §2703.205. At the close of the October 2 hearing, the Commissioner directed that the record be held open until October 31, 2008, in order to allow additional written comments to be submitted for all of the agenda items. In accordance with the Insurance Code §2703.205(d), the ratemaking phase of the hearing was referred to the State Office of Administrative Hearings. This adoption by reference of new rules and forms and the modification or replacement of currently existing rules and forms in the Basic Manual and Statistical Plan facilitate the administration and regulation of title insurance in the State of Texas.

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These amendments clarify and standardize the rules and forms regulating the writing and the business of title insurance in the State of Texas.

The amendments to the Basic Manual and Statistical Plan are identified by the item number used in the October 2 hearing. Items 2008-29, 2008-34, 2008-35, 2008-36, and 2008-45 were approved for withdrawal from consideration during the rulemaking phase of the hearing at the request of the entities that originally filed the items for consideration.

After careful review and consideration of the filings, testimony, and comments, the Commissioner has determined that Agenda Items 2008-17 and 2008-18 should not be adopted. Item 2008-17 proposed to amend Procedural Rule P-18 to require that a copy of the Commitment for Title Insurance (T-7) on an Owner's Policy be delivered to the proposed insured as soon as practicable, but in no event later than 5 business days prior to closing the transaction unless extenuating circumstance exist. Agenda Item 2008-17 should not be adopted because the proposed change to P-18 that would require the title commitment to be delivered only to the buyer or seller would deny consumers the flexibility and right of naming an agent or attorney to receive the title commitment on their behalf. This is an option that consumers should be allowed to have because there are a number of circumstances where not having the option to appoint an agent would create a significant hardship on the consumer. Additionally, the Department agrees that imposing a requirement of delivery of the title commitment five days prior to closing could delay closing the transaction which might deny a consumer

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the ability to maintain his initial interest rate. Such a delay could result in adverse economic impact to consumers and losses to industry.

Item 2008-18 proposed to amend Procedural Rule P-21 to remove language from Schedule D of the Commitment for Title Insurance (T-7) regarding optional advanced disclosure of settlement charges and optional advanced issuance of a Commitment for Title Insurance. The Commissioner has determined that Item 2008-18 should not be adopted. The proposed changes to P-21 are designed to facilitate consumer comparison shopping for title insurance. There are new federal Real Estate Settlement Procedures Act of 1974 (RESPA) rules and forms (effective January 1, 2010) that provide a much more comprehensive methodology to facilitate consumer comparison shopping for a loan among competing loan originators than the proposed changes to P-21 in Item 2008-18. It would not be prudent to adopt the proposed changes to P-21 because they involve some of the very same disclosures and estimates that will be mandated under the new federal RESPA rules. The new RESPA rules include estimates for title insurance and title services and there is a high probability for conflict between the proposed changes to P-21 in Item 2008-18 and the new federal RESPA rules.

The Department has made several non-substantive changes to the items adopted by reference. None of these changes, however, materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice. The Department has also made changes to the items adopted by reference to correct statutory references, typographical errors, and formatting errors.

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Additionally, in response to comments, the Department has made the following non-substantive changes to the items adopted by reference:

Item 2008-5 - The Department has changed P-9.b(6) concerning variable rate mortgage loan instruments in response to comment. On the second line, a quotation mark has been added to precede the word variable to properly set off the term “variable rate mortgage.”

Item 2008-9 - The Department has included changes in response to comments to Form T-1R Texas Residential Owner’s Policy of Title Insurance-One to Four Family Residences, Form T-2R Texas Short Form Residential Loan Policy of Title Insurance and Form T-13 Loan Title Policy Binder On Interim Construction Loan. All references in the policies to “mortgagee” were changed to “loan” and all references in the policies to “owner” were changed to “owner’s.”

Item 2008-14 - Since Item 2008-14 was filed, the Texas Legislature passed HB 3073 into law that enacts new §2501.008 of the Insurance Code. The Department has amended Item 2008-14 to conform with the newly enacted §2501.008 of the Insurance Code by including a "reasonable estimate of charges" such that section (g) would read: "Due to the higher level of security and expedited recording time afforded by electronically filing or recording instruments, promulgated forms or other documents incident to real or personal property transactions, the actual charges or a reasonable estimate of charges, including actual charges or a reasonable estimate of charges by a trusted third-party provider to an authorized filer, for electronically filing or recording (e-

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filing) such instruments, forms or documents may be passed through to the consumer.

Such actual charges or reasonable estimate of charges may not be marked up.”

Item 2008-24 - The item proposed for adoption represents the original version of the “Insured Closing Service (T-50) form, not the amended version that was filed on September 19, 2008. The Department intended that the amended version of the “Insured Closing Service (T-50) form that was filed on September 19, 2008 should be adopted in lieu of the original version. The amended version of the Insured Closing Service (T-50) form filed on September 19, 2008, would make four changes to the proposed Insured Closing Service (T-50) form in Item 2008-24. The four changes are as follows: (i) change the caption of the form to state “Insured Closing Service” so that it is consistent with the title of the form; (ii) delete “negligence” in paragraph 2 of the covered matters section of the form so that it is consistent with the amended item filed on September 19, 2008; (iii) delete the reference to borrower in the succeeding sentence of paragraph 2 of the covered matters section of the form since the applicable form for the buyer where appropriate would be form (T-51); and (iv) delete the reference to purchase or lease in paragraph 1.C. of the Conditions and Exclusions, because of the availability of a separate form (T-51) for the buyer.

Item 2008-25 - The Department has adopted the amended version of the Co-Insurance Endorsement Form (T-48) in lieu of the original version that was proposed. The Department inadvertently proposed the original version. The purpose of this item is to revise the existing Co-Insurance Endorsement Form (T-48) to conform with the

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American Land Title Association (ALTA) form. The amended version more accurately reflects the changes needed to conform the existing form to the ALTA form.

Item 2008-28 - The Department has added in the next to last line of P-55 the parenthetical "(Mezzanine Financing)" and changed the italics to regular font for purposes of consistency and clarity.

Item 2008-40 - The Department has adopted the amended version of Item 2008-40 dated November 2, 2008 in lieu of the original version that was proposed. The Department inadvertently proposed the original version. The purpose of this item is to clarify the issues relating to property taxes and insuring those taxes in the title insurance policy. The version that was submitted by the commenter provides the best clarification of the issues by describing common fact patterns involving property taxes and providing underwriting guidelines for providing title insurance coverage. This item amends Procedural Rule P- 20 titled Amendment of Standard Exception in Mortgagee Policy or Mortgagee Title Policy Binder on Interim Construction Loan (Interim Binder) Relating to Taxes to organize procedural rules regarding the standard tax exception and Bulletin 153 into one rule. This item provides guidance to the title industry regarding current year and rollback taxes and it merges Procedural Rule 29, titled Amendment of Standard Exception in Mortgagee Policy Binder on Interim Construction Loan (Interim Binder) Relating to Taxes Not Yet Due and Payable to make it a part of Procedural Rule P-20 subsection C.

Item 2008-54 – The Department has added the following to the Statistical Plan:

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1. Added a Note 6 to Table 1 concerning personal property title insurance transactions.

2. Added reporting codes for the new Texas Limited Coverage Residential Chain of Title Policy Form (T-53).

3. Added reporting codes for the new Minerals and Surface Damage Endorsements (T-19.2 and T-19.3).

4. Added new reporting codes for the Restrictions, Encroachments, Minerals Endorsement-Owner's Policies (T-19.1).

5. Added new reporting codes for the Non-Imputation Endorsement (Mezzanine Financing) (T-24.1).

6. Added new reporting codes for the Contiguity Endorsement (T-25.1).

These changes were made in response to comments and were necessary to accomplish the statistical reporting needed for the new Texas Limited Coverage Residential Chain of Title Policy Form (T-53), the new Minerals and Surface Damage Endorsements (T-19.2 and T-19.3), the Restrictions, Encroachments, Minerals Endorsement-Owner's Policies (T-19.1), the Non-Imputation Endorsement (Mezzanine Financing) (T-24.1), and the Contiguity Endorsement (T-25.1)

In response to comments, the Department has revised the effective date of the adoption by reference of the Basic Manual and Statistical Plan in §9.1 and §9.401. The items adopted by reference include typographical corrections and other changes based on public comments. The effective date of the adopted amendments to §9.1 and §9.401 is February 1, 2010.

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3. HOW THE SECTIONS WILL FUNCTION. The amendments to §9.1 and §9.401 revise the effective date of the amended Basic Manual and Statistical Plan. The items which are the subject of this adoption are as follows:

Item 2008-1 – Adoption of an amendment to the Residential Real Property Affidavit (Form T-47) to remove a duplicate reference to the title insurance company in paragraph 6 of the form.

Item 2008-2 – Adoption of an amendment to Procedural Rule P-36 to allow for the deletion of the arbitration provision on Schedule A of the Loan Policy or the Owner's Policy and to amend outmoded references to the Mortgagee and Owner Policy forms.

Item 2008-3 – Adoption of an amendment to Procedural Rule P-21 to conform the language of the rule with the language of the form by amending outmoded references relating to the Mortgagee and Owner Policy forms and to amend an outmoded reference to the State Board of Insurance.

Item 2008-4 – Adoption of an amendment to Procedural Rule P-9.b(8) to conform the language of the rule with the proposed Future Advance/Revolving Credit Form (T-35) and to delete the requirement that the Loan Policy show by endorsement that the lien being insured secures a revolving credit type of indebtedness.

Item 2008-5 – Adoption of an amendment to Procedural Rule P-9.b(6) to conform the language of the rule with the language of the Variable Rate Mortgage Endorsement (T-33) and the Variable Rate Mortgage-Negative Amortization Endorsement (T-33.1).

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Item 2008-6 – Adoption of a new form to provide for a Limited Coverage Residential Chain of Title Policy (T-53).

Item 2008-7 – Adoption of a new Procedural Rule (P-71) relating to the Limited Coverage Residential Chain of Title Policy (T-53).

Item 2008-8 – Adoption of an amendment to the Assignment of Rents/Leases Endorsement (T-27) to correct typographical errors.

Item 2008-9 – Adoption of an amendment to the Texas Residential Owner Policy of Title Insurance – One-To-Four Family Residences (T-1R), the Texas Short Form Residential Mortgagee Policy of Title Insurance (T-2R), and the Mortgagee Title Policy Binder on Interim Construction Loan (T-13) to conform with the language of the Owner's Policy (T-1) and the Loan Policy (T-2) by changing the term "Owner" to "Owner's" and changing the term "Mortgagee" to "Loan."

Item 2008-10 – Adoption of an amendment to Procedural Rule P-7 to change the language in paragraphs B and C to conform with the language of the Owner's Policy (T-1) and the Loan Policy (T-2) and the proposed changes to the Texas Residential Owner Policy of Title Insurance – One-To-Four Family Residences (T-1R), the Texas Short Form Residential Mortgagee Policy of Title Insurance (T-2R), and the Mortgagee Title Policy Binder on Interim Construction Loan (T-13).

Item 2008-11 – Adoption of an amendment to Schedule B of the Loan Policy (T-2) to correct a typographical error.

Item 2008-12 – Adoption of an amendment to Schedule A of the Loan Policy (T-2) to remove the Tax Deletion Endorsement (T-30) from the list of optional

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endorsements on Schedule A and to remove language from Schedule A regarding deleted provisions from affected endorsements, which will require such deletions to be included as a special exception on Schedule B of the commitment.

Item 2008-13 – Adoption of an amendment to the Deletion of Arbitration Provision of the Commitment for Title Insurance (T-7) to increase the threshold amount for arbitral matters to \$2 million in conformity with Procedural Rule P-36.

Item 2008-14 – Adoption of an amendment to Procedural Rule P-17 to allow a pass-through to consumers of electronic filing fees in accordance with HB 3073, as enacted by the 81st Legislature, Regular Session, effective January 1, 2010.

Item 2008-15 – Adoption of an amendment to Specific Areas and Procedures 5 of the *Minimum Standards* to allow a pass-through to consumers of tax search service fees and certain notary fees in accordance with HB 3073, as enacted by the 81st Legislature, Regular Session, effective January 1, 2010.

Item 2008-16 – Adoption of an amendment to the Commitment for Title Insurance (Form T-7) to conform the language of the form with the changed name of the policies referenced therein.

Item 2008-19 – Adoption of an amendment to the Owner's Policy of Title Insurance (T-1) to remove indemnity language from the form in conformity with the 2006 ALTA Owner's Policy.

Item 2008-20 – Adoption of an amendment to the Loan Policy of Title Insurance (T-2) to remove indemnity language from the form in conformity with the 2006 ALTA Loan Policy.

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Item 2008-21 – Adoption of a new form (T-24.1) titled Non-Imputation Endorsement (Mezzanine Financing) to allow non-imputation coverage provided in paragraph 4 of the Owner's Policy to be assigned by the Insured to a Mezzanine Lender.

Item 2008-22 – Adoption of new Procedural Rule (P-69) titled *Issuance of Insured Closing Letters* to prohibit the issuance of Insured Closing Letter by attorneys operating pursuant to Procedural Rule P-22.

Item 2008-23 – Adoption of new Procedural Rule (P-70) titled, *Cancellation Fees; Fees for Services Rendered*, to define and prohibit cancellation fees and to otherwise allow fees for furnishing title evidence or furnishing title evidence and examination.

Item 2008-24 – Adoption of an amendment to the Insured Closing Service form (T-50) to substantially conform to the ALTA Standard Closing Protection Letter except that it is proposed to maintain the current two year coverage period.

Item 2008-25 – Adoption of an amendment to the Co-Insurance Endorsement (T-48) to substantially conform to the ALTA Standard Co-Insurance – Single Policy Endorsement.

Item 2008-26 – Adoption of the rescission of the Last Dollar Endorsement (T-15) in its entirety.

Item 2008-27 – Adoption of the amendment to Procedural Rule P-9 to rescind the procedure for issuance of the Last Dollar Endorsement (T-15), which has also been proposed for rescission.

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Item 2008-28 – Adoption of the amendment to P-55 to provide that the Non-Imputation Endorsement (Mezzanine Financing)(T-24.1) be issued in accordance with the same procedural provisions currently set forth by the rule for the Non-Imputation Endorsement (T-24).

Item 2008-30 – Adoption of the amendment to Administrative Rule L-1 to provide that a Title Insurance Company may cancel an agent's license for cause without giving the required advance notice of 30 days. The Department adopts the modification of the notice provisions to add a new requirement to specify that if the company is the sole underwriter at the time of cancellation then the company must submit an orderly plan for the winding down of the title agent's operations that is in compliance with Administrative Rule D-1.

Item 2008-31 – Adoption of the amendment to the Future Advance/Revolving Credit Endorsement (T-35) to substantially conform the language of the endorsement to the ALTA Future Advance Endorsement and to conform the language of the endorsement to the Loan Policy (T-2).

Item 2008-32 – Adoption of the amendment to the Leasehold Loan Policy Endorsement (T-5) to conform the language of the endorsement to the ALTA Leasehold Loan Endorsement and to conform the language of the endorsement to the Loan Policy (T-2).

Item 2008-33 – Adoption of the amendment to the Leasehold Owner's Policy Endorsement (T-4) to conform the language of the endorsement to the ALTA Leasehold

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Owner's Endorsement and to conform the language of the endorsement to the Owner's Policy (T-1).

Item 2008-37 – Adoption of the amendment to Procedural Rule P-54, titled *Access Endorsement*, to authorize issuance of the Access Endorsement (T-23) and to remove redundant language.

Item 2008-38 – Adoption of the amendment to Procedural Rule P-56 pertaining to the Contiguity Endorsement (T-25) to include new requirements for new Contiguity Endorsement (T-25.1) that insures against loss or damage sustained by reason of the presence of any gaps, strips, or gores lying between contiguous parcels of insured lands and does not require the contiguous boundary lines of the various parcels of land to be specifically identified. The Department has amended new subsection D. by adding the clarifying language “non-residential” in two places to ensure that it is clear that the new Contiguity Endorsement (T-25.1) would only apply to non-residential property.

Item 2008-39 – Adoption of a new Contiguity Endorsement (T-25.1) to insure against loss or damage sustained by reason of the presence of any gaps, strips, or gores lying between contiguous parcels of insured lands and that does not require the contiguous boundary lines of the various parcels of land to be specifically identified.

Item 2008-40 – Adoption of an amendment to Procedural Rule P- 20 Amendment of Standard Exception in Mortgagee Policy or Mortgagee Title Policy Binder on Interim Construction Loan (Interim Binder) Relating to Taxes to organize procedural rules regarding the standard tax exception and Bulletin 153 into one Procedural Rule. This

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submission makes the information more user friendly and easier to find and provides guidance to a Company as to what may or may not be done regarding the standard tax exception and the practice of ensuring taxes are paid. The submission that is adopted is dated November 2, 2008 (the "November amendment"), and is an amended submission that was submitted as a comment. The comment noted that the September 29, 2008, version was superseded by the November 2, 2008, version which best reflects the agreement of the parties. The November amendment deleted subparagraphs B.2.(i), (ii), and (iii) from the September 28, 2008, version. This is needed because the deleted subparagraphs refer to escrowing funds against a future possibility concerning payment of roll back taxes, and the consequences cannot be determined at the time of escrow and closing. The reference to subparagraph (2) in subparagraph A.1.b.(2) is corrected to refer to subparagraph "(1) above." The reference to Form "T-1" in subparagraph B.1.(a) is corrected to refer to Form "T-2 or T-2R" and a similar change from "Form T-1" to "Form T-2" is made in paragraph C.

The submission merges Procedural Rule 29, titled Amendment of Standard Exception in Mortgagee Policy Binder on Interim Construction Loan (Interim Binder) Relating to Taxes Not Yet Due and Payable to make it a part of Procedural Rule P-20 subsection C. Additionally, a conforming change has been made to the title of Rate Rule R-24. Currently, the title of Rate Rule R-24 reads "Applicable only as provided in Procedural P-29." The title is amended to read "Applicable only as provided in Procedural P-20C" because Procedural Rule P-29 has been merged with Procedural Rule P-20.

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Item 2008-41 – Adoption of an amendment to the Title Insurance Agent (L-1) administrative rule in Section VI of the Basic Manual to update statutory references in the rule.

Item 2008-42 – Adoption of an amendment to the Audit and Review of the Agent/Direct Operations Escrow and Trust Accounts (G.2) administrative rule in Section VI of the Basic Manual to update statutory references in the rule.

Item 2008-43 – Adoption of an amendment to the Policy Guaranty Fee Remittance (T-G1) form in Section V of the Basic Manual to update the policy guaranty fee amount shown on the remittance form to reflect the correct amount due for each policy.

Item 2008-44 – Adoption of an amendment to the Requirements for Ceasing Operation by Agents and Direct Operations (D-1) administrative rule in Section VI of the Basic Manual to clarify the requirements of ceasing operation by agents or direct operations and to update statutory references in the rule.

Item 2008-46 – Adoption of an amendment to the Reasonable Time for Furnishing Title Evidence (P-25) procedural rule in Section IV of the Basic Manual to provide a requirement for title agents and direct operations to maintain auditable records and documents that demonstrate compliance with the rule and to update statutory references in the rule.

Item 2008-47 – Adoption of the amendment to the Statement of Assessment Received from and Recoupments Distributed to Title Insurance Company (T-G3) form in Section V of the Basic Manual.

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Item 2008-48 – Adoption of the amendment to the Guaranty Assessment Recoupment Charge Remittance (T-G2) form in Section V of the Basic Manual.

Item 2008-49 – Adoption of the amendment to the Supplemental Coverage Manufactured Housing Unit Endorsement (T-31.1) in Section II of the Basic Manual to remove a reference to “serial number” in the form and to insert a reference to the “policy number.”

Item 2008-50 – Adoption of the amendment to the Leasehold Mortgagee Policy Endorsement (T-5) in Section II of the Basic Manual to remove a reference to “serial number” in the form.

Item 2008-51 – Adoption of the amendment to the Leasehold Owner Policy Endorsement (T-4) in Section II of the Basic Manual to remove a reference to “serial number” in the form.

Item 2008-52 – Adoption of the amendment to the Policy Guaranty Fee (G.1) administrative rule in Section VI of the Basic Manual to update statutory references in the rule.

Item 2008-53 – Adoption of the amendment to the Title Insurance Escrow Officer (L-2) rule in Section VI of the Basic Manual to provide a procedure for a title agent or direct operation to notify the Department upon a change of name of a licensed escrow officer and to update statutory references in the rule.

Item 2008-54 – Adoption of the amendments to the Statistical Plan to provide Rate Code references and to add statistical reporting codes for the following: (i) new Co-Insurance Endorsement (T-48), (ii) new personal property title insurance forms and

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endorsements, (iii) new Texas Limited Coverage Residential Chain of Title Policy Form (T-53), (iv) new Minerals and Surface Damage Endorsements (T-19.2 and T-19.3), (v) the Restrictions, Encroachments, Minerals Endorsement-Owner's Policies (T-19.1), (vi) the new Non-Imputation Endorsement (Mezzanine Financing) (T-24.1), and (vii) the new Contiguity Endorsement (T-25.1)

The following items have been withdrawn:

Item 2008-29 – Submission to amend the Texas Title Insurance Information form to increase the threshold amount for arbitral matters to \$2 million and to conform the language of the form to the Owner's Policy (T-1), the Loan Policy (T-2), and the Deletion of the Arbitration Provision (P-36).

Item 2008-34 – Submission to propose a new Tax Parcel Endorsement covering a single tract.

Item 2008-35 – Submission to propose a new Tax Parcel Endorsement covering multiple tracts.

Item 2008-36 – Submission to amend Procedural Rule P-9 to authorize a title company to issue the Tax Parcel Endorsements.

Item 2008-45 – Submission to amend P-24 to clarify payments for services rendered among title agents, companies and direct operations.

The Department has filed a copy of each of the items adopted by reference with the Secretary of State's *Texas Register* Section. Persons desiring copies of the adopted items may obtain them from the Office of the Chief Clerk, Texas Department of

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Insurance, 333 Guadalupe Street, Austin, Texas, 78701-3938. To request copies, please contact Sylvia Gutierrez at 512/463-6327.

4. SUMMARY OF COMMENTS AND AGENCY RESPONSE.

General

Comment: Commenters request that the Commissioner allow for an implementation period between the adoption date and the effective date of the rules and forms. The commenters note that a simultaneous effective date and adoption date will make implementation and compliance very difficult. An effective date of at least 60 days after the date of adoption would be prudent, to allow for title agents and underwriters to produce new forms and update software to accommodate the new rules.

Agency Response: The Department agrees that providing 60 days lead time for underwriters to produce new forms and update software to accommodate the new rules is reasonable. The effective date of the adoption will be February 1, 2010 in order to provide sufficient transition time.

Item 2008-5

Comment: One commenter notes that the amendment of P-9.b(6) on the second line, a quotation mark should precede the word variable to properly set off the term “variable rate mortgage.”

Agency Response: The Department agrees that a quotation mark should precede the word variable and has made this correction.

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Item 2008-14

Comment: Commenters note that since Item 2008-14 was filed, the Texas Legislature passed HB 3073 into law that enacts new §2501.008 of the Insurance Code. The commenter recommends that Item 2008-14 be amended to conform with the statute by including a "reasonable estimate of charges" such that section (g) would read: "Due to the higher level of security and expedited recording time afforded by electronically filing or recording instruments, promulgated forms or other documents incident to real or personal property transactions, the actual charges or a reasonable estimate of charges, including actual charges or a reasonable estimate of charges by a trusted third-party provider to an authorized filer, for electronically filing or recording (e-filing) such instruments, forms or documents may be passed through to the consumer. Such actual charges or reasonable estimate of charges may not be marked up."

Agency Response: The Department has conformed the language in P-17 with the changes enacted in HB 3073 in new §2501.008 of the Insurance Code.

Item 2008-17

Comment: Many commenters state positions in opposition to the adoption of Item 2008-17.

The commenters note that a proposed change to P-18 deletes the provision which allows the title commitment to be delivered to an authorized agent or attorney. This change would require the title commitment to be delivered only to the buyer or

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seller. The commenters note that deleting this provision denies consumers the flexibility and right of naming an agent or attorney to receive the commitment on their behalf which is an option that consumers should be allowed to have because there are a number of circumstances where not having the option to appoint an agent to receive the title commitment would create a significant hardship on the consumer.

Many commenters state positions in opposition to the proposed changes to P-18 that would require the title commitment be delivered not later than 5 business days prior to closing unless extenuating circumstances exist. The commenters note that the reasons set forth for these changes to P-18 are that fiduciaries allegedly fail to inform their clients that the cost of some items listed in the title commitment may be negotiable and therefore the option of having the fiduciaries take delivery of the commitment on behalf of the insured must be eliminated. The commenters assert that there was no evidence in the record to support that fiduciaries were in fact breaching their duty and further the commenters disputed that certain charges listed in the title commitment are negotiable just because they are not subject to a promulgated rate.

Many commenters further stated that the proposed changes to P-18 are inconsistent and contradictory to the "One to Four Family Residential Contract (Resale) promulgated by the Texas Real Estate Commission (TREC). The TREC contract sets out the terms of delivery and timetable for delivery for the title commitment and these terms are negotiated by the parties to reflect the practical timing suitable to each transaction. Imposing a requirement of delivery of the title commitment 5 days prior to closing could delay closing the transaction which might deny a consumer the ability to

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maintain his initial interest rate which could result in adverse economic impact to consumers and losses to industry.

The commenter acknowledges the attempt to remedy the inflexibility of the 5 day requirement by adding the language “unless extenuating circumstances exist.” The commenter notes that the addition of this language does not remedy the inflexibility of the 5 day requirement because the term “extenuating circumstances” is not defined and is ambiguous.

Agency Response: The Department declines to adopt the proposed changes to P-18. The Department agrees that the proposed change to P-18 that would require the title commitment to only be delivered to the buyer or seller would deny consumers the flexibility and right of naming an agent or attorney to receive the title commitment on their behalf. This is an option that consumers should be allowed to have because there are a number of circumstances where not having the option to appoint an agent would create a significant hardship on the consumer.

The Department also declines to adopt the proposed change to P-18 that would require the title commitment be delivered not later than 5 business days prior to closing unless extenuating circumstances exist. The Department agrees that imposing a requirement of delivery of the title commitment 5 days prior to closing could delay in closing the transaction which might deny a consumer the ability to maintain his initial interest rate. Such a delay in closing the transaction could result in adverse economic impact to consumers and losses to industry.

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Item 2008-18

Comment: Commenters recommend not adopting Item 2008-18 because there are new federal rules that are being implemented pursuant to amendments to the Real Estate Settlement Procedures Act of 1974 (RESPA) effective January 1, 2010 that have a high potential of conflicting with the proposed changes to P-21.

One commenter believes that no changes should be made to the current Schedule D and that the recently enacted new RESPA rules adequately deal with the disclosure of non-title charges.

Agency Response: The Department agrees that Item 2008-18 should not be adopted. There are new federal rules that are being implemented pursuant to amendments to RESPA that require new standardized forms of the Good Faith Estimate of settlement charges and the HUD-1 uniform settlement statement be placed in service effective January 1, 2010 in addition to several other procedural modifications. These new rules require that (i) "loan originators" (mortgage lenders and mortgage brokers) issue to consumers within three business days after loan application, a revised Good Faith Estimate (GFE) that is intended to disclose accurate costs of closing and key loan terms in a form that may be used by consumers to comparison shop for a loan among competing loan originators during a minimum 10-business-day period in which certain of the costs must be made available for acceptance by the consumer without change or within tolerances for accuracy; and (ii) settlement agents, which in Texas include licensed escrow officers, must complete a revised form of the HUD-1 uniform settlement statement for home loan transactions based on information provided by the loan

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originator that compares costs actually charged at closing, including all loan originator compensation, with like cost estimated on the GFE. Notably, actual loan originator charges at closing may not exceed estimates disclosed by the GFE and the total of certain other charges, which includes title services and title insurance among others, cannot exceed the total estimates on the GFE for those same charges.

In Item 2008-18, the proposed changes to P-21 are designed to facilitate consumer comparison shopping for title insurance. The new federal rules and forms provide a comprehensive approach to facilitate consumer comparison shopping for a loan among competing loan originators (that includes estimates for title insurance and title services) than the proposed changes to P-21. It would not be prudent to adopt the proposed changes to P-21 because they involve some of the very same disclosures and estimates that will be mandated under the new federal RESPA rules and the potential for conflict between the proposed changes to P-21 and the new federal rules is great. The prudent course of action is to monitor the implementation of the federal rules before considering any changes to P-21 and to make such changes in response to well documented problems that occur after the implementation of the new federal RESPA rules.

Items 2008-19 and 2008-20

Comment: Many commenters state positions in opposition to the adoption of Agenda Items 2008-19 and 2008-20 that remove the title insurer's right to seek reimbursement for defense costs from the insured in instances where there has been a reservation of

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rights and where in the course of providing a defense the court holds that there is no coverage. Item 2008-19 pertains to the Owner's Policy of Title Insurance (T-1) subsections 5(c) and 6(c) and Item 2008-20 pertains to Loan Policy of Title Insurance (T-2) subsections 5(c) and 6(c). Commenters assert that it is good public policy for title insurers to have the right to sue their insureds for defense costs in instances where a defense has been provided and the court finds that there is no coverage. The commenters' reasons for asserting that this is good public policy are that (i) if an insured requests a defense under the title policy and the claim proves to be unsuccessful then the insured should be responsible for the prosecution or defense of the claim; and (ii) if the title insurer pays claims where the defense of the claim was unsuccessful then these added expenses will increase title insurance rates for all rate payers. The commenters also made several observations concerning the Texas Supreme Court case *Excess Underwriter's At Lloyd's London v. Frank's Casing Crew and Rental Tools, Inc.* 256 S.W. 3d 42 (Tex. 2008) (hereafter *Frank's Casing*) that was cited as support for adoption of Items 2008-19 and 2008-20. The commenters believe that *Frank's Casing* fell short of suggesting a prohibition against the insurer's right to seek reimbursement from the insured for defense costs. The commenters also note that under *Frank's Casing* there must be express language in the policy to establish the right to seek reimbursement from the insured for defense costs as there is no such right under equitable theories of law.

Agency Response: The Department disagrees that it is good public policy to allow an insurer to seek reimbursement from the insured for defense costs. When a title

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company issues a policy it is binding itself to defend the insured if another party asserts superior title to the property and to pay the loss to the insured if the claim to superior title is upheld. The duty to defend the insured against a claim of superior title is one of the most important rights that the insured has under the title policy. However, the reasonable expectations of the insured do not include that if the insurer provides a defense and the defense proves to be unsuccessful that the insurer can then file suit against the insured to be reimbursed for the defense cost.

In the *Frank's Casing* case the court noted that there is a very difficult dilemma faced by both insurer and insured when the coverage under the policy is uncertain. The court concluded that the risk of coverage uncertainties was best placed with the insurer and not the insured. The court pointed out that a contractual right to reimbursement for defense costs that allows an insurer to pay defense costs and then sue the policyholder fosters conflict and distrust in the relationship between and insurer and its insured which is clearly not good public policy. The court also notes that the fiduciary relationship between insurer and insured is fraught with conflicting interests and that the right of an insurer to sue its own insured could be interpreted by an insurer as a judicial sanction to breach the policy of insurance which is also not good public policy.

Additionally, there are other coverage forms such as liability policies that also contain a duty to defend. Defense against liability claims is a very important coverage that has historically been in a liability policy and the insured needs and expects this coverage. If the Department reviews a liability policy that contains a duty to defend which gives the insurer the right under the policy to obtain reimbursement for defense

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costs for all amounts paid for which there is no coverage, such a policy would not be looked upon with favor in Texas.

Item 2008-24

Comment: One commenter notes that the item proposed for adoption appears to represent the original version of the Insured Closing Service (T-50) form, not the amended version that was filed on September 19, 2008. The commenter requests that the Commissioner adopt the amended version in lieu of the original version.

The amended version of the Insured Closing Service (T-50) form filed on September 19, 2008, would make four changes to the proposed Insured Closing Service (T-50) form in Item 2008-24. The four changes are as follows: (i) change the caption of the form to state "Insured Closing Service" so that it is consistent with the title of the form; (ii) delete "negligence" in paragraph 2 of the covered matters section of the form so that it is consistent with the amended item filed on September 19, 2008; (iii) delete the reference to borrower in the succeeding sentence of paragraph 2 of the covered matters section of the form since the applicable letter for the buyer where appropriate would be form (T-51); and (iv) delete the reference to purchase or lease in paragraph 1.C. of the Conditions and Exclusions, because of the availability of a separate form (T-51).

Agency Response: The Department agrees that the amended version of the Insured Closing Service (T-50) form that was filed on September 19, 2008, and was discussed at the hearing should be adopted in lieu of the original version. The Department

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inadvertently proposed the original version. The purpose of this item is to conform the Insured Closing Service (T-50) form with the American Land Title (ALTA) form. The amended version more accurately reflects the changes needed to conform the existing form to the ALTA form.

Item 2008-25

Comment: Commenters note that the item proposed for adoption appears to represent the original version of the Co-Insurance Endorsement Form (T-48), not the amended version that was filed on September 19, 2008. The commenter requests that the Commissioner adopt the amended version in lieu of the original version.

Agency Response: The Department agrees that the amended version of the Co-Insurance Endorsement Form (T-48) should be adopted in lieu of the original version. The Department inadvertently proposed the original version. The purpose of this item is to revise the existing Co-Insurance Endorsement Form (T-48) to conform with the ALTA form. The amended version more accurately reflects the changes needed to conform the existing form to the ALTA form.

Item 2008-28

Comment: One commenter recommends that for consistency and clarity of reference in the next to last line of P-55 the parenthetical "(Mezzanine Financing)" be added.

Agency Response: The Department agrees that the parenthetical "(Mezzanine Financing)" should be added to provide clarity and consistency.

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Item 2008-31

Comment: One commenter offers a “clean” version of Item 2008-31, the Leasehold Loan Policy Endorsement (T-5) for adoption to correctly reflect additional wordings and deletions that were made in the original submission.

Agency Response: The Department proposed the version of Item 2008-31 that was filed on September 19, 2008. The proposed version has identical wording to the “clean” version offered by the commenter and therefore Item 2008-31 will be adopted without change to the proposal.

Item 2008-32

Comment: One commenter offers a “clean” version of Item 2008-32, the Leasehold Loan Policy Endorsement (T-5) for adoption to correctly reflect additional wordings and deletions that were made in the original submission.

Agency Response: The Department proposed the version of Item 2008-32 that was filed on September 19, 2008. The proposed version has identical wording to the “clean” version offered by the commenter and therefore Item 2008-32 will be adopted without change to the proposal.

Item 2008-33

Comment: One commenter offers a “clean” version of Item 2008-33, the Leasehold Owner’s Policy Endorsement (T-4) for adoption to correctly reflect additional wordings and deletions that were made in the original submission.

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Agency Response: The Department proposed the version of Item 2008-33 that was filed on September 19, 2008. The proposed version has identical wording to the “clean” version offered by the commenter and therefore Item 2008-33 will be adopted without change to the proposal.

Item 2008-40

Comment: One commenter notes that the item proposed for adoption appears to represent the original version of Item 2008-40 except that paragraph D has been deleted. The commenter has submitted an amended version dated November 2, 2008, that was negotiated by the interested parties. The commenter requests that the Commissioner adopt the amended version that was submitted by the commenter in lieu of the original version that was proposed.

Agency Response: The Department agrees that the amended version dated November 2, 2008, that was submitted by the commenter and was negotiated by the interested parties should be adopted in lieu of the original version. The purpose of this item is to clarify the issues relating to property taxes and insuring those taxes in the title insurance policy. The submission merges Procedural Rule 29, titled Amendment of Standard Exception in Mortgagee Policy Binder on Interim Construction Loan (Interim Binder) Relating to Taxes Not Yet Due and Payable to make it a part of Procedural Rule P-20 subsection C. This submission makes the information more user friendly and easier to find and provides guidance to a Company as to what may or may not be done regarding the standard tax exception and the practice of ensuring taxes are paid. The

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November 2, 2008, version that was submitted by the commenter provides the best clarification of the issues by describing common fact patterns involving property taxes and providing underwriting guidelines for providing title insurance coverage.

Item 2008-44

Comment: A commenter recommends that this item that relates to a new wind down procedure for insolvent title agents not be adopted because of the comprehensive Title Agency Insolvency Bill (HB 4338) which was enacted during the 81st Legislative Session. The commenter believes that HB 4338 is a comprehensive approach to address title agents who are exiting the Texas market and that the provisions of Item 2008-44 are not needed. The commenter further points out that some of the language was not in the item at the 2008 Biennial Hearing and that this new language needs further discussion.

Agency Response: The Department does not agree that the newly enacted provisions of HB 4338 address the need for a wind down procedure for title agents that fail to wind down their own operations. While HB 4338 provides several provisions that would help to ensure adequate capitalization of title agents it does not provide any procedures or guidance in the event that a title agent ceases operation and fails to wind down its own operations and it becomes necessary for the underwriter to step in and wind down the title agent's unfinished business.

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Item 2008-44

Comment: One commenter notes that a title agent who is ceasing operations but is failing to wind down its own operations is required to surrender all of its files including the pending files and the closed files to the underwriter. The commenter asserts that there is no reason for the title agent to surrender the closed files to the underwriter since the underwriter has a copy of the policy that was sent with the underwriter's portion of the premium. The commenter believes that the closed files have a market value and that the title agent should be able to retain the closed files as an asset that might be sold to pay the cost of the final audit and accounting. The commenter further believes that the surrender of the pending files and commitments to the underwriter would cause a total loss to the title agent who might be able to use the value of the commitments to negotiate a modest split of the premium with another company who would close the transaction and the premium received might allow the agent to stay in business.

Agency Response:

The Department's main concern when an agent goes out of business is that claims will be handled properly by the underwriters. Proper evaluation of claims will require information from the files, not only the policies. Therefore, it is in the public's interest that the files be surrendered to the underwriter. Additionally, if the agent is already ceasing operations, it would likely no longer be licensed by the time many of the pending transactions have closed. In that situation, the agent who ceased operations would no longer be eligible to receive a premium split. Also, "pending" files sometimes

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only contain disputed earnest money or unclaimed escrow funds. No other agents would be interested in taking such files that may involve litigation.

5. NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTIONS.

For With Changes: Independent Title Agents of Texas (ITAT), Stewart Title Guaranty Company, Texas Land Title Association (TLTA), and University Title Company.

Against: None.

6. STATUTORY AUTHORITY. The amended sections are adopted pursuant to the Insurance Code §§2551.003, 2703.153, 2703.203, 2703.205 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, including risks that may not be assumed because of the insolvency of the parties to the transaction, and that the Commissioner determines are necessary to accomplish the purposes Insurance Code Title 11, 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 the fixing of premium rates. Section 2703.203 authorizes and requires the Commissioner to hold a biennial public hearing to consider adoption of premium rates and other matters relating to regulating the business of title insurance that an

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association, title insurance company, title insurance agent, or member of the public requests to be considered or that the Commissioner determines necessary to consider. Section 2703.205 authorizes and requires the Commissioner to consider rules, forms, endorsements, and related matters that do not have rate implications at the rulemaking phase of the biennial public hearing. Section 36.001 authorizes the Commissioner of Insurance to adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

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 February 1, 2010. The document is available from and on file at the Texas Department of Insurance, Title Division, Mail Code 106-2T, 333 Guadalupe Street, Austin, Texas 78701-3938.

SUBCHAPTER C. Texas Title Insurance Statistical Plan

§9.401. Texas Title Insurance Statistical Plan. The Texas Department of Insurance adopts by reference the rules contained in the *Texas Title Insurance Statistical Plan* as amended effective February 1, 2010. This document is published by the Texas

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Department of Insurance and is available from the Property and Casualty Data Services Division, Mail Code 105-5D, Texas Department of Insurance, William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104.

10. CERTIFICATION. This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that amendments to §9.1 and §9.401 specified herein, concerning the adoption by reference of certain 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 specified herein, are adopted.

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