

TLTA
PROPOSED RULE CHANGES
EXHIBIT 13
Form T-47 & T-47.1 (New)
PROCEDURAL RULE P-2 f. (New)

CITATION

Section V, Exhibits and Forms, Form T-47: Residential Real Property Affidavit of *The Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas*.

Section II, Insuring Forms of *The Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas*.

ISSUE AND JUSTIFICATION

During the 2020 COVID-19 Pandemic, the Commissioner eased certain requirements for forms requiring signatures to minimize human contact and to maximize community safety. Since that time, The Texas Land Title Association (TLTA) evaluated these temporary and emergency accommodations to see what items should be reformed going forward. TLTA identified the acknowledgement component of the T-47 form as an area for improvement. The acknowledgement requires a notary which is an unnecessary and cumbersome step for consumers in the closing process. In addition, the Texas Real Estate Commission contract forms licensees are required to use state that the T-47 is to be provided early in the contract performance timeline, requiring a consumer to find a notary for what is ultimately an unrecorded document. This is so despite the remainder of the contract documentation typically all being signed electronically and often remotely.

The Texas Insurance Code Section 2704.102 permits use of an existing survey if accompanied "by an affidavit prescribed by the commissioner that verifies the existing survey." The Texas Civil Practices and Remedies Code provides a statutory alternative to required affidavits. Specifically, Texas Civil Practices and Remedies Code Section 132.001 provides "an unsworn declaration may be used in lieu of a written sworn ... affidavit required by statute or required by a rule, order, or requirement adopted as provided by law." The proposal is the creation of a new form in addition to the existing T-47, that would allow for a Declaration. TLTA additionally proposes minor changes to the existing

T-47 to make the form easier to use - for example by clearly listing the date of the survey at the top and separating the statements of each affiant when for example two spouses are selling a property together. Other changes more closely track the language of P-2 and provide necessary information to review an existing survey.

TLTA also recommends amending Procedural Rule P-2 by adding a new subsection (f) to specifically allow for the use of the new T-47.1 form in lieu of the T-47.

PROPOSED REVISIONS

T-47 RESIDENTIAL REAL PROPERTY AFFIDAVIT (May be Modified as Appropriate for Commercial Transactions)

Date: _____ GF No. _____
Name of Affiant(s): _____
Address of Affiant(s): _____
Description of Property: _____
County _____, Texas
~~Name of Title Company:~~ Date of Survey: _____

"Title Company" as used herein is the Title Insurance Company whose policy of title insurance is issued in reliance upon the statements contained herein.

Before me, the undersigned notary for the State of _____, personally appeared Affiant(s) who after by me being duly sworn, stated:

1. ~~We are the~~ I am an owners-of the Property. (Or state other basis for knowledge by Affiant(s) of the Property, such as lease, management, neighbor, etc. For example, "Affiant _____ is the manager of the Property for the record title owners.")
2. ~~We are~~ I am familiar with the property and the improvements located on the Property.
3. ~~We are~~ I am closing a transaction requiring title insurance and the proposed

insured owner or lender has requested area and boundary coverage in the title insurance policy(ies) to be issued in this transaction. ~~I~~ ~~We~~ understand that the Title Company may make exceptions to the coverage of the title insurance as Title Company may deem appropriate. ~~I~~ ~~We~~ understand that the owner of the property, if the current transaction is a sale, may request a similar amendment to the area and boundary coverage in the Owner's Policy of Title Insurance upon payment of the promulgated premium.

4. To the best of ~~my~~ ~~our~~ actual knowledge and belief, since _____Date of the Survey, there have been no:

- a. construction projects such as new structures, additional buildings, rooms, garages, swimming pools, deckings, or other permanent improvements or fixtures;
- b. changes in the location of boundary fences or boundary walls;
- c. construction projects on immediately adjoining property(ies) which construction occurred on or near the boundary of ~~encroach on~~ the Property;
- d. conveyances, replattings, easement grants and/or easement dedications (such as a utility line) by any party affecting the Property.

5. EXCEPT for the following (If None, Insert "None" Below):

~~56.~~ ~~We~~ ~~I~~ understand that Title Company is relying on the truthfulness of the statements made in this ~~a~~ Affidavit-to provide the area and boundary coverage and upon the evidence of the existing real property survey of the Property. This Affidavit is not made for the benefit of any other parties and this Affidavit does not constitute a warranty or guarantee of the location of improvements.

~~67.~~ ~~We~~ ~~I~~ understand that ~~we~~ ~~I~~ have no liability to Title Company ~~or the title~~

~~insurance company that will issue the policy(ies)~~ should the information in this Affidavit be incorrect other than information that ~~we~~ I personally know to be incorrect and which ~~we~~ I do not disclose to the Title Company.

<u>I declare under penalty of perjury that the foregoing is true and correct.</u> <u>Signed:</u> _____ <u>Affiant</u>	<u>I declare under penalty of perjury that the foregoing is true and correct.</u> <u>Signed:</u> _____ <u>Affiant</u>
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SWORN AND SUBSCRIBED this ____ day of _____, 20____.

Notary Public

**T-47.1 RESIDENTIAL REAL PROPERTY DECLARATION
IN LIEU OF AFFIDAVIT-CERTIFICATE
(May be Modified as Appropriate for Commercial Transactions)
(Provided in accordance with Texas Civil Practice and Remedies Code Section
132.001)**

Date: _____ GF No. _____

Name of Affiant(s)

Declarant: _____

Address of Affiant: _____

Description of Property: _____

County _____, Texas

~~Name of Title Company:~~ Date of Survey: _____

"Title Company" as used herein is the Title Insurance Company whose policy of title insurance is issued in reliance upon the statements contained herein.

~~Before me, the undersigned notary for the State of _____, personally appeared Affiant(s) who after by me being duly sworn, stated:~~

The undersigned declares as follows:

1. ~~We are the~~ I am an owners-of the Property. (Or state other basis for knowledge ~~by Affiant~~ of the Property, such as lease, management, neighbor, etc. For example, "Affiant Declarant _____ is the manager of the Property for the record title owners.")
2. ~~We are~~ I am familiar with the property and the improvements located on the Property.
3. ~~We are~~ I am closing a transaction requiring title insurance and the proposed insured owner or lender has requested area and boundary coverage in the title insurance policy(ies) to be issued in this transaction. I ~~We~~ understand that the Title Company may make exceptions to the coverage of the title insurance as Title Company may deem appropriate. I ~~We~~ understand that the owner of the property, if the current transaction is a sale, may request a similar amendment to the area and boundary coverage in the Owner's Policy of Title Insurance upon

payment of the promulgated premium.

4. To the best of ~~my~~ ~~our~~ actual knowledge and belief, since _____ Date of the Survey, there have been no:
- a. construction projects such as new structures, additional buildings, rooms, garages, swimming pools, deckings, or other permanent improvements or fixtures;
 - b. changes in the location of boundary fences or boundary walls;
 - c. construction projects on immediately adjoining property(ies) which construction occurred on or near the boundary of ~~encroach on~~ the Property;
 - d. conveyances, replattings, easement grants and/or easement dedications (such as a utility line) by any party affecting the Property.

5. EXCEPT for the following (If None, Insert "None" Below):

56. ~~We I~~ understand that Title Company is relying on the truthfulness of the statements made in this ~~affidavit~~ Declaration to provide the area and boundary coverage and upon the evidence of the existing real property survey of the Property. This ~~Affidavit~~ Declaration is not made for the benefit of any other parties and ~~this Affidavit~~ does not constitute a warranty or guarantee of the location of improvements.

67. ~~We I~~ understand that ~~we I~~ have no liability to Title Company ~~or the title insurance company that will issue the policy(ies)~~ should the information in this ~~Affidavit~~ Declaration be incorrect other than information that ~~we I~~ personally know to be incorrect and which ~~we I~~ do not disclose to the Title Company.

7. ALL STATEMENTS IN THIS DECLARATION ARE TRUE TO THE BEST OF MY

KNOWLEDGE. I UNDERSTAND THAT ANY PERSON MAKING A FALSE STATEMENT MAY BE LIABLE FOR ACTUAL AND/OR PUNITIVE DAMAGES.

Executed in _____ County, State of _____, on the _____ day of _____, _____.

SWORN AND SUBSCRIBED this _____ day of _____, 20____.

Notary Public

<p>My name is : _____ My date of birth is _____ and my address is _____</p> <p><u>I declare under penalty of perjury that the foregoing is true and correct.</u></p> <p>Executed in _____ County, State of _____, on the _____ day of _____.</p> <p><u>Signed:</u></p> <p>_____ <u>Declarant</u></p>	<p>My name is : _____ My date of birth is _____ and my address is _____</p> <p><u>I declare under penalty of perjury that the foregoing is true and correct.</u></p> <p>Executed in _____ County, State of _____, on the _____ day of _____.</p> <p><u>Signed:</u></p> <p>_____ <u>Declarant</u></p>
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P-2. Amendment of Exception to Area and Boundaries

a. General Instructions

In either an Owner or Mortgagee Policy, when the Insured desires to have amended the exception as to area and boundaries, (i.e. Item 2 of Schedule B) to delete all save "shortages in area", a title insurance company may accept an existing real property survey and not require a new survey when providing area and boundary coverage if the title insurance company is willing to accept evidence of an existing real property survey, and an affidavit verifying the existing survey, notwithstanding the age of the survey or the identity of the person for whom the survey was prepared. If the transaction involves Residential Real Property, the affidavit verifying the existing survey shall be the Form T-47 Residential Real Property Affidavit. The policy to be issued shall cover the same land as described in the evidence of the existing real property survey. The Company may, if it considers the additional hazard insurable, amend such exception (the Company may waive the requirement of a survey in connection with the issuance of its Mortgagee Policy insuring the lien on a condominium unit), by indicating same in Schedule B of the policy or by endorsement as provided herein upon payment of the premium prescribed in R-16 in the case of an Owner Policy. The survey must be acceptable to the Company.

b. Residential Refinance, Affidavit in Lieu of Updated Survey

This Sub-Section P-2.b. shall apply solely to transactions involving Residential Real Property in connection with a Mortgagee Policy issued on a loan to renew, extend or satisfy a lien already covered by a Mortgagee Policy. On transactions covered by this Sub-Section, the Company shall notify the borrower of the borrower's right to substitute a qualifying Affidavit in Lieu of an Updated Survey. Such notice shall be given: (i) when the application for title insurance is received; or (ii) when the commitment for title insurance is first issued. On qualifying transactions under this Sub-Section, the exception as to area and boundaries shall be amended to read: "Shortages in area" {subject to any additional exceptions, or express insurance coverage, deemed appropriate by the Company} provided that the following requirements are satisfied:

1. The borrower provides to the Company an original, or legible copy of the survey {hereinafter the "Prior Survey"} performed in connection with: (i) the transaction under which the borrower acquired title to the Residential Real Property; or, (ii) a prior loan transaction by the borrower involving the Residential Real Property. The Prior Survey shall not be dated earlier than 7 years prior to the date of the Mortgagee Policy to be issued or performed for another person, unless the Company is willing to accept evidence of an existing survey in accordance with Sub-section-P-2.a.

2. The borrower has actual knowledge of the physical condition of the Residential Real Property since the date of the Prior Survey.

3. The Mortgagee Policy to be issued in connection with the current refinance transaction will describe under item "5" of Schedule "A" the same land described in the Prior Survey.

4. The borrower executes an affidavit concerning the Residential Real Property stating that, since the effective date of the Prior Survey and up to and including the date of the affidavit, there have been no:

- i.construction projects such as new structures, additional rooms, garages, swimming pools or deckings;
- ii.changes in the location of boundary fences or boundary walls;
- iii.construction projects on immediately adjoining property(ies) which construction occurred near the boundary of the Residential Real Property;
- iv.conveyance or replattings or easement grants or easement dedications by the borrower.

- c. A title insurance company may not discriminate in providing area and boundary coverage in connection with residential real property solely because: (1) the real property is platted or unplatted; or (2) a municipality did not accept a subdivision plat in relation to the real property before September 1, 1975.
- d. A title insurance company may not require an indemnity from a seller, buyer, borrower, or lender to provide area and boundary coverage.
- e. If an affidavit is provided to the Company pursuant to this Rule and the affidavit is incorrect, whether due to the negligence or intentional act of the affiant, the area and boundary coverage given pursuant to this Rule shall be unaffected and in full force and effect; provided, however, the exclusions contained in the policy shall not be affected in any way.
- f. An unsworn declaration (Form T-47.1) may be used in lieu of a T-47 affidavit, in accordance with Texas Civil Practice and Remedies Code Section 132.001.