

No. **2023-8429**

**Official Order
of the
Texas Commissioner of Insurance**

Date: 12/21/2023

Subject Considered:

Texas Title Insurance Public Hearing

General Remarks and Official Action Taken:

The subject of this order is the title insurance public hearing on November 15, 2023. The hearing considered changes proposed from the Texas Land Title Association (TLTA) and the staff of the Texas Department of Insurance (TDI). This order approves exhibits for formal rulemaking proposal.

Background

On September 1, 2023, TLTA filed a petition requesting amendments to the *Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas* (Basic Manual). TDI posted a notice of hearing on its website that included TLTA's proposal. TDI also added its own proposed updates to the notice and published the notice in the *Texas Register* on September 15, 2023. The notice of hearing and proposal exhibits are included as Attachment A. On November 14, 2023, TLTA submitted written comments before its presentation at the hearing. TLTA requested at the hearing and via comments that three of its proposed exhibits be withdrawn (Exhibits 15, 17, and 20) and that five exhibits be replaced (Exhibits 8, 10, 12, 14, and 19) with amended versions of those exhibits included in its comments. Those items are included as Attachment B.

The following findings of fact and conclusions of law are adopted.

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Findings of Fact

1. On September 1, 2023, the TLTA filed a petition with the TDI Chief Clerk requesting amendments to the Basic Manual. TLTA is an association composed of more than 50% of the title insurance agents and title insurance companies licensed or authorized by TDI.
2. On September 15, 2023, the Notice of Public Hearing for Proposed Changes to the Title Insurance Basic Manual (Docket No. 2841) was published in the *Texas Register* (48 TexReg 5191) and posted on the TDI website.
3. The notice included URL links to both the TLTA and TDI proposals (Exhibits 1–27; Attachment A) and a brief description of the proposal items. The items included changes to rate rules for several types of endorsements and for simultaneous issuance of policies, changes to existing forms and procedural rules, and creation of new forms with corresponding rate rules and procedural rules. The notice also included proposal items related to the survey affidavit, endorsement signature requirements, electronic signatures on escrow checks, updates to the auditor's opinion letter, removal of the notarization requirement on licensing forms, and updates to the Texas Title Insurance Statistical Plan (Statistical Plan).
4. On November 15, 2023, the commissioner conducted the public hearing, as required by Insurance Code § 2703.202(b), under Docket No. 2841. In accordance with Insurance Code § 2703.202(c), the hearing was not a contested case hearing under Government Code Chapter 2001. TLTA and TDI testified and presented exhibits at the hearing. TLTA also presented its written comments, included as Attachment B. TLTA requested through written and oral comments to withdraw Exhibits 15, 17, and 20 of its original proposal, Attachment A. TLTA also requested to withdraw Exhibits 8, 10, 12, 14, and 19 in Attachment A and replace them with Exhibits A, B, C, D, and E, respectively, in Attachment B.

TLTA Petition

Exhibit 1 – Rate Rule R-11 Loan Policy Endorsements

5. Rate Rule R-11.a sets the premium for a Form T-3 endorsement (Assignment of Mortgage) issued as provided in Procedural Rules P-9.b.1 and P-9.b.2. Rate Rule R-

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11.b sets the premium for a T-38 endorsement (Partial Release, Release of Additional Collateral, Modification Agreement, Reinstatement Agreement, or Release from Personal Liability) issued as provided by Procedural Rule P9.b.3. Rate Rule R-11.c sets the premium for a T-3 endorsement (Down Date Endorsement) issued as provided in Procedural Rule P-9.b.4.

6. *T-3 endorsement (Assignment of Mortgage)*. The current premium for a Form T-3 Assignment of Mortgage endorsement is the minimum Basic Premium Rate. TLTA proposed that an additional \$100 be added to that premium for each additional full or partial 12-month period after the first anniversary of the date of the policy. TLTA asserted that as the time between the initial policy date and the endorsement increases, the volume and complexity of the title evidence reviewed and the risk associated with issuing the endorsement increases. TLTA reasoned that an increase in premium of \$100 per additional year is justified for the increased labor cost and risk.
7. *T-38 endorsement (Partial Release, Release of Additional Collateral, Modification Agreement, Reinstatement Agreement, or Release from Personal Liability)*. The current premium for a Form T-38 endorsement is \$100 plus \$10 per year between the issuance of the endorsement and the policy. TLTA proposed that the baseline premium for the endorsement be increased to the minimum Basic Premium Rate, and that the additional premium per year be increased from \$10 to \$25.
8. *T-3 endorsement (Down Date Endorsement)*. The current premium for a Form T-3 Down Date Endorsement is \$50. TLTA proposed that the premium be \$100 for nonresidential construction projects and remain \$50 for residential construction projects.
9. TLTA asserted that issuing a down date endorsement on the loan policy for a commercial construction project requires greater amounts of work, time, and risk than for a residential project. Commercial projects often stretch over multiple years and have more documents recorded during construction. The projects often involve multiple contractors, more subcontractors and materialmen, and even regulatory authorities. Accordingly, the rate rule should differentiate between residential and nonresidential projects.
10. TLTA testified at the hearing that these cost increases are necessary because the premiums for the T-3 and T-38 endorsements of Exhibit 1 have not changed for

many years. TLTA also asserted that revising the rates in this way allows title insurance professionals to recoup these expenses with premium from the sale of the endorsement rather than shifting these expenses to the general expense base and impacting the premium rate for all Texas title insurance consumers.

Exhibit 2 – Rate Rule R-15.b, Owner's Policy Down Date Endorsement

11. Rate Rule R-15.b sets the premium for a Form T-3 endorsement issued as provided in Procedural Rule P-9.a.3. Commonly referred to as a "down date endorsement," it is used when an existing owner's policy insures title to property under construction. The endorsement increases coverage and brings it forward in time. TLTA proposed that the premium be \$100 for nonresidential construction projects and remain \$50 for residential construction projects. Currently, the premium is \$50, regardless of whether the project is residential or nonresidential.
12. TLTA asserted that issuing a down date endorsement on the owner's policy for a commercial construction project requires greater amounts of work, time, and risk than for a residential project. Commercial projects often stretch over multiple years and have more documents recorded during construction. The projects often involve multiple contractors, more subcontractors and materialmen, and even regulatory authorities. Accordingly, the rate rule should differentiate between residential and nonresidential projects.
13. TLTA testified at the hearing that the premium charged for this endorsement has not changed in decades. They asserted that increasing the premium for the endorsement would properly assign premium to the specific consumers who use it. They reason that inadequate premium for the endorsement shifts the increased cost to the Basic Premium Rate.

Exhibit 3 – Rate Rule R-30, Access Endorsement

14. Rate Rule R-30 sets the premiums for a Form T-23 endorsement (Access Endorsement), which is issued under Procedural Rule P-54. This endorsement covers a property's access to a specific street. Each street is given its own endorsement. TLTA proposed to charge \$100 for each endorsement. The current charge is \$100 per policy, regardless of how many endorsements are issued.

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15. TLTA asserted that setting the charge on a *per policy* basis was the result of "an unintended wording error" when Rate Rule R-30 was originally proposed and adopted. Insurers sometimes must verify and cover many access streets to a property, and the proposed change would appropriately compensate a company for the additional labor and risk associated with issuing multiple access endorsements on a policy.

Exhibit 4 – Form T-1R, Residential Owner's Policy

16. The Residential Owner's Policy of Title Insurance One-to-Four Family Residences (Form T-1R) is the standard form used for a residential owner's policy of title insurance. TLTA proposed to remove a parenthetical "(Applies to Owner's Policy only)" in Section B, Item 3 of the form. The parenthetical appears to have been mistakenly included in the form and is unnecessary.

Exhibit 5 – Form T-16, Loan Policy Aggregation Endorsement

17. The Loan Policy Aggregation Endorsement (Form T-16) aggregates coverage amounts across simultaneously issued loan policies. The endorsement is used when multiple policies are issued to cover separate mortgages securing the same loan. The endorsement is for nonresidential property only. TLTA proposed to repeal and replace the current version of the endorsement with an American Land Title Association (ALTA) version.
18. TLTA asserted that the current version of Form T-16 does not adequately address the aggregation of policies across multiple states. It does not correlate well with the ALTA version, which is used in other states. This causes confusion and misunderstanding among insurers and consumers about how Texas coverage correlates with policies from other states.

Exhibit 6 – Forms T-19, T-19.1, T-19.2, and T-19.3; Surface Damage Coverage

19. Forms T-19 through T-19.3 are a series of endorsements that include coverage for damage to improvements because of mineral extraction or development. The endorsements are added to policies that insure title to the surface estate. TLTA proposes to make coverage across the four endorsements more consistent and to update Forms T-19.2 and T-19.3 to conform with their ALTA form equivalents.

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20. TLTA asserted that while Forms T-19.2 and T-19.3 do not provide additional coverage for a consumer who already has Form T-19 or Form T-19.1, slightly different verbiage in the forms creates consumer uncertainty which, in turn, encourages the unnecessary purchase of T-19.2 and T-19.3 endorsements. By making the wording more consistent, this problem can be avoided.

Exhibit 7 – Forms T-1 and T-2; Survey Coverage Clarification

21. Owner's Policies (Form T-1) and Loan Policies (Form T-2) can include coverage of title issues that would be revealed by a survey (e.g., a neighboring building that encroaches on the insured land). In the forms, survey coverage is provided through the Covered Risk 2(c) paragraph.
22. If survey coverage is purchased, the title company deletes language in the standard exception—Exception 2—from the policy. When Exception 2 is left in the policy, it is designed to effectively negate or remove the survey coverage provided through Covered Risk 2(c). While the wording in Exception 2 slightly differs from the language in Covered Risk 2(c), the coverage in Covered Risk 2(c) is meant to be provided only when survey coverage is purchased. TLTA asserted that currently, consumers are confused by the interaction of Covered Risk 2(c) with Exception 2. TLTA proposed to amend Forms T-1 and T-2 to clarify there is no coverage through Covered Risk 2(c) if Exception 2 is left in the policy.

Exhibit 8 – Form T-50, Insured Closing Service Letter

23. The Insured Closing Service Letter (Form T-50) is an agreement by the title insurance underwriter to indemnify an insured lender for losses that occur because of misconduct by the title agent. The underwriter may not impose a charge for the Insured Closing Service Letter. ALTA has a similar agreement, called a Closing Protection Letter. In recent years, ALTA changed the language in its model Closing Protection Letter, including the addition of computer-related fraud exclusions. TLTA proposed to revise the Insured Closing Service Letter to conform more closely to the ALTA version.
24. At the hearing, TLTA submitted written comments that included a request to withdraw Exhibit 8 in its petition (Attachment A) and replace it with Exhibit A of its comments (Attachment B). The new Exhibit A includes clarifying language in section 10 of Form T-50, specifying that the time limit for submitting a claim begins

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within two years from the "date of the transmittal of Funds," as opposed to "within two years of Funds" as stated in Exhibit 8. TLTA testified that this clarification will prevent confusion.

25. TLTA asserted that revising the Insured Closing Service Letter to conform more closely to the ALTA version will help maintain greater consistency nationwide.
26. TLTA testified at the hearing that changing the letter to exclude computer-related fraud by third parties like the ALTA form does is necessary in Texas, as that problem has been increasing. TLTA also testified that it presented this new version of the form to the Texas Mortgage Bankers Association, which did not object to the changes in coverage. Additionally, TLTA stated that the ALTA version of this form was submitted for comments to several national lending entities and the American College of Real Estate Attorneys before it was adopted by ALTA.

Exhibit 9 – Procedural Rule P-20, Standard Exception Relating to Texas

27. Section C of Procedural Rule P-20 sets conditions that must be met for a Loan Policy to insure taxes not yet due and payable. Currently, the rule prescribes that this coverage is for taxes in the "year of the issuance" of the policy. The "year of the issuance" requirement might not align with the year lenders want covered. TLTA proposed to amend P-20 to allow title companies to specify which year the coverage applies to.
28. TLTA asserted that P-20 needs more flexibility to allow a company to fill in the tax year that coverage applies to, rather than requiring that coverage is tied to the year when the policy is issued. TLTA reasoned that the rule's current language of subsection C, "not yet due and payable," does not adequately accommodate the mechanics of property tax liability in Texas for certain parts of the year. If taxes are already paid in a given year, lenders want the "taxes not yet due and payable" coverage for the upcoming tax year. But the upcoming tax year may not be the "year of the issuance" of the policy.

Exhibit 10 – Form T-54, Severable Improvement Endorsement; Forms T-55 through T-55.5, Energy Project Endorsements; Rate Rule P-37; and Procedural Rule P-72.

29. The Severable Improvements Endorsement (Form T-54) extends coverage to severable improvements affixed to the insured land on or after the policy date.

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Severable improvements are not considered real property—they can be removed without material damage to the severable improvements or the land. Form T-54 covers diminution in value of the severable improvements and the reasonable cost incurred to remove or relocate the improvements. This coverage is commonly associated with large energy projects. Form T-54 is currently the only endorsement that provides this severable improvement coverage. Also, there is currently no corresponding rate rule and procedural rule for the endorsement.

30. TLTA initially proposed to:
 - a. Repeal the existing version of Form T-54 and replace it with six ALTA endorsements (Energy Project Endorsements numbered as new Forms T-54, T-54.1, T-55, T-55.1, T-56, and T-56.1) that are more specifically tailored for different scenarios that the existing version of Form T-54 was intended to cover.
 - b. Create Rate Rule R-37 to charge 5% of the Basic Premium Rate for each endorsement.
 - c. Amend Procedural Rule P-72 to address use of the six new endorsements.
31. TLTA asserted that the proposed new endorsements provide significant additional coverage to all parties to energy transactions, valuing title as an integrated project when determining loss. The new endorsements also cover rent and easement payments; fair market value of leaseholds or easements; damages from breach of leases or easements; and costs for rezoning, obtaining government permits, architectural and engineering services, and environmental testing.
32. TLTA asserted that the proposed 5% rate is justified by the costs and risks associated with these types of transactions, including specialized searches regarding mineral risks, sovereignty, the status of oil and gas leases, surface waivers, use agreements, and geological analyses. These projects often require retaining specialists, such as landmen. Additionally, these transactions often involve significant acreages and multiple parties of varying interests that require extensive review and underwriting. TLTA further asserted that the proposed rate compares favorably to similar coverages with higher rates in other states.
33. At the hearing, TLTA requested that Exhibit 10 in its petition (Attachment A) be replaced with Exhibit B of its submitted comments (Attachment B). Exhibit B withdraws the proposed repeal of the existing version of Form T-54 and makes

conforming changes to include existing Form T-54 in the proposed amendments to Procedural Rule P-72 and in proposed new Rate Rule R-37. It also renumbers the proposed new Energy Project Endorsements as Forms T-55, T-55.1, T-55.2, T-55.3, T-55.4, and T-55.5. TLTA explained at the hearing and in its comments that the existing version of Form T-54 should be kept for projects other than those contemplated in the proposed set of Energy Project Endorsements. TLTA reasoned that Form T-54 still has application for other projects that require "very intensive and expensive equipment with high associated relocation costs." TLTA also explained that the form numbers of the proposed new endorsements needed to change because a Form T-56 and a Form T-57 already exist in the Basic Manual.

Exhibit 11 – Procedural Rule P-57, Additional Insured Endorsement

34. The Additional Insured Endorsement (Form T-26) extends owner policy coverage to additional insureds. Procedural Rule P-57 limits which persons or entities can be added as an additional insured. Among other things, the current rule allows the endorsement when real estate ownership will pass to a living trust or a living trust's beneficiaries. It also allows a family partnership or family corporation to be an additional insured.
35. TLTA proposed to broaden the rule to allow more legal entities used in estate planning to be an additional insured, including family-owned limited liability companies and limited partnerships. TLTA also proposed to allow the endorsement to be added up to 90 days after title was conveyed to the additional insured.
36. TLTA asserted that estate planning and elder law attorneys have asked that the rule be expanded to allow more estate planning tools commonly used today. The amended rule will support greater flexibility in estate planning.

Exhibit 12 – Procedural Rule P-1(u) and Rate Rule R-16; Amend the Definition of Residential Property

37. "Residential real property" is defined in Procedural Rule P-1.u. Most significantly, the definition requires residential property to have improvements and be principally designed for 1–4-family occupancy. Individual units of condominiums and cooperatives are specifically included. Procedural Rule P-1.u also requires residential property to be one of the following: located in a platted subdivision,

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consist of 5 acres or less, or consist of 200 acres or less if used for agricultural production by individual insureds.

38. Classifying property as residential for title insurance purposes is significant in at least two ways. First, it helps determine whether the title company will issue a Residential Owner Policy (Form T-1R) or the default version of the Owner Policy (Form T-1). Second, in Rate Rule R-16, it determines the rate for adding survey coverage, which is 5% of the Basic Premium Rate when added to a Residential Owner Policy (Form T-1R) or 15% when added to the default Owner Policy (Form T-1).
39. TLTA proposed to:
 - a. Allow immediately contemplated residential improvements to be considered residential property.
 - b. Slightly loosen the acreage restrictions, including removing the agricultural production requirement for large residential properties between 10 and 200 acres.
 - c. Make conforming changes to residential property references in Rate Rule R-16, which establishes rates for survey coverage. The changes to Rate Rule R-16 also allow the 5% survey coverage rate to be applied to residential property when an Owner Policy (Form T-1) is issued.
40. TLTA asserted that the current definition in Procedural Rule P-1.u, along with provisions in Procedural Rule P-8.a, created uncertainty about whether property with immediately contemplated residential improvements can be considered residential property. The definition also created uncertainty about how to apply the 1-4-family-occupancy condition. TLTA commented that the uncertainty caused the definition to be applied differently among title companies.
41. TLTA also asserted that more residential consumers were moving into what was traditionally agricultural land, and the agricultural production element in Procedural Rule P-1.u sometimes created confusion.
42. At the hearing, TLTA requested to replace Exhibit 12 in Attachment A with Exhibit C in Attachment B. The difference between Exhibit 12 and Exhibit C was the removal of paragraph B.3 in proposed Rate Rule R-16. Paragraph B.3 was essentially the

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same as paragraph B.2 of proposed Rate Rule R-16 and therefore was redundant and unnecessary.

Exhibit 13 – Form T-47, Survey Affidavit; Form T-47.1, Survey Affidavit Alternative; and Procedural Rule P-2

43. Form T-47 is an affidavit that allows an owner to swear that a property is essentially unchanged since a previous survey was issued. The affidavit, along with a copy of the previous survey, can be used as the basis for providing survey coverage without requiring a new survey. This practice is specifically allowed under Insurance Code § 2704.102, which is conditioned on the use of an affidavit prescribed by the commissioner. Residential real estate sales contracts often require the survey and affidavit to be delivered before closing.
44. TLTA proposed to allow the use of an unsworn declaration (new Form T-47.1) as an alternative to the affidavit and amend Procedural Rule P-2 to explicitly authorize its use. TLTA also proposed to make nonsubstantive changes to the existing Form T-47.
45. Using a survey affidavit rather than requiring a new survey helps reduce consumer expense in a real estate transaction, but the affidavit requires notarization. TLTA asserted that notarization was an unnecessary and cumbersome step before closing. TLTA reasoned that the affidavit was used only for underwriting purposes and was not recorded. Consumers should be allowed to use an unsworn declaration as an alternative to the affidavit.

Exhibit 14 – Form T-42, Equity Loan Mortgage Endorsement

46. The Equity Loan Mortgage Endorsement (Form T-42) insures home equity lenders against the invalidity or unenforceability of a mortgage lien due to federal and state consumer protection laws related to homestead exemptions. Subsection 2.b of Form T-42 references the Texas Constitution, Article XVI, Section 50, which has been amended. The amendment to the Texas Constitution has made the language in subsection 2.b obsolete.
47. TLTA proposed to amend Form T-42 to strike language in subsection 2.b of the form and replace it with “[INTENTIONALLY DELETED].”

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48. At the hearing, TLTA requested to replace Exhibit 14 in Attachment A with Exhibit D in Attachment B. Exhibit D adds language to Form T-42 to explain why subsection 2.b in the form is deleted, rather than simply saying "[INTENTIONALLY DELETED]."

Exhibit 15 – Procedural Rule P-9 (withdrawn)

49. TLTA initially proposed to amend Procedural Rule P-9 by adding a new subsection P-9.c to allow endorsements to be added to a policy without requiring a signature by the title company representative. However, at the hearing, TLTA requested to withdraw this exhibit from its proposal.

Exhibit 16 – Form T-35, Revolving Credit Endorsement; Procedural Rule P-9.b.8; and Rate Rule R-11.f

50. Form T-35 is an endorsement for a loan policy used when the financing for construction on a property is revolving credit. While the endorsement was intended to cover only revolving credit arrangements, the title of the endorsement includes the term "future advance." Future advances of credit are a broader concept than just revolving credit. For example, future advances could conceivably include entirely new loans, not just drawing from revolving credit. Newly originated loans require a new title policy; they were not intended to be covered by this endorsement.
51. TLTA proposed to amend Form T-35 to remove the phrase "future advance" from the title. TLTA also proposed conforming changes to Procedural Rule P-9.b.8 and Rate Rule R-11.f where those rules reference the title of the endorsement. Additionally, TLTA proposed plain language edits to the rules and revisions in Procedural Rule P-9.b.8 to further clarify that the endorsement was limited only to coverage for revolving credit.
52. TLTA asserted that the language in Form T-35 did not provide coverage for future advances of credit that are not part of a revolving credit scheme of a loan initiated at the time of the policy. TLTA noted that, nationally, there were coverages for other "future advances" that did not fit within the coverages of Form T-35. As a result, the endorsement title "Future Advance/Revolving Credit Endorsement (T-35)" created confusion by giving the impression that these additional coverages were available in Texas through Form T-35.

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Exhibit 17 – Licensing Forms, FINT Form Series (withdrawn)

53. TLTA initially proposed removing all requirements for signatures to be notarized on TDI's FINT licensing forms but requested that this exhibit be withdrawn at the hearing because it duplicated Exhibit 25, which was proposed by TDI.

Exhibit 18 – Form T-19.4, Energy Project – Minerals and Surface Damage Endorsement; Procedural Rule P-50.2; and Rate Rule R-29.2

54. TLTA proposed a new 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). TLTA also proposed 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.
55. TLTA noted that Form T-19.2 and Form T-19.3 provided coverage for permanent buildings and other real property improvements damaged through exercise of the right to use the surface of the land for the extraction or development of minerals. TLTA asserted that this kind of coverage was often requested by owners and lenders in energy projects but was not available for severable improvements.

Exhibit 19 – Rate Rule R-5, Simultaneous Issuance of Owner's Policy and Loan Policy

56. Rate Rule R-5 allows a loan policy to be purchased at a discounted rate—usually \$100—if it is purchased at the same time as an owner's policy for the same land. In 2019, Rate Rule R-5 was amended to add subsection R-5.F, which gives property purchases over \$5 million a 90-day window to secure loan financing and still receive the simultaneous issue rate on a loan policy for the same land.
57. In its petition for this hearing, TLTA proposed amending subsection F to reduce the threshold from \$5 million to \$1 million. TLTA also proposed restricting the use of subsection F to land that is not residential real property and transactions in which the loan policy is issued by the same company that issued the owner's policy. Additionally, TLTA proposed amending subsections B, C, and D to clarify that the simultaneous issue discount was available when applying other discounts to the rate.

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58. TLTA asserted that the 90-day window was needed because commercial property sales often were completed before the loan financing was complete. TLTA commented that those timing issues existed even in smaller commercial transactions, and the rule was not intended for residential transactions. TLTA also reasoned that, as a simultaneous issue concept, the 90-day window should only apply when the same company issues both the owner's policy and the loan policy. Finally, TLTA noted that even though Rate Rule R-1 prohibits the combining of discounts, the simultaneous issue rate was never intended to preclude other forms of discounts and that TLTA's proposed amendments to B, C, and D would make that clear.
59. In its written comments and at the hearing, TLTA proposed to replace Exhibit 19 in Attachment A with Exhibit E in Attachment B. TLTA commented that its original attempt at plain language in Exhibit 19 unintentionally changed the meaning of certain aspects of R-5.F and needed to be replaced by Exhibit E to avoid that error.

Exhibit 20 – Internal Control No. 5, Electronic Signatures on Escrow Checks (withdrawn)

60. TLTA proposed to amend Internal Control No. 5 to allow electronic signatures on escrow checks but withdrew the proposal at the hearing and in its written comments because it was duplicative of TDI's proposed Exhibit 21.

TDI Proposal

Exhibit 21 – Internal Control No. 5, Electronic Signatures on Escrow Checks

61. Internal Control No. 5 requires an escrow officer's signature to be on escrow checks. For many years, TDI staff interpreted this control to require a physical signature. In March 2020, during the pandemic, TDI issued guidance (Bulletin [#B-0013-20](#)) stating that escrow checks may be signed electronically.
62. TDI proposed to amend Internal Control No. 5 to explicitly allow for electronic signatures on escrow checks.
63. TDI asserted that Chapter 322 of the Business and Commerce Code and Insurance Code §§ 35.002 and 35.003 authorized regulated entities to do any business electronically to the same extent they were authorized to conduct business

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normally. Allowing escrow officers to sign the checks, without being physically present at the place they are issued, will save time for the industry and consumers.

Exhibit 22 – Form PC-150, Auditor Opinion Letter

64. Under Insurance Code Chapter 2651, escrow accounts must be audited annually by an independent auditor. The auditor's opinion letter (Form PC-150) is a form letter that identifies the auditor, the accounts audited, and the date of the audit. The letter includes an acknowledgment that the report fairly represents the assets and liabilities of the trust fund accounts using standard accounting principles.
65. TDI proposed to update Form PC-150 to align with Texas State Board of Public Accountancy standards.
66. Prior to this proposal, TDI received independent auditor recommendations and a request to update the letter form to reflect modern accounting standards. The form has not been updated since 1990.

Exhibit 23 – Form T-11, Policy of Title Insurance (USA)

67. TDI proposed to correct a clerical error on Form T-11 where the last item on a numbered list did not have its corresponding number. The missing number was inadvertently left off the last time the form was adopted.

Exhibit 24 – Form PC-417, Texas Title Insurance Agent's Minimum Capitalization Bond

68. TDI proposed to update the mailing address on Form PC-417 because TDI's office address changed since the form was last updated.

Exhibit 25 – Licensing Forms FINT 08, FINT 09, FINT 10, FINT 129, and FINT 143

69. TDI proposed to remove the notarization requirement for the following licensing forms and replace them with an unsworn declaration:
 - a. Title insurance licensing and biographical information (FINT 08)
 - b. Escrow officer appointment (FINT 09)
 - c. Title insurance agent or direct operation appointment (FINT 10)
 - d. Title insurance agent or direct operation change request form (FINT 129)
 - e. Application for title insurance agent or direct operation license (FINT 143)

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70. TDI asserted that Civil Practice and Remedies Code § 132.001 allowed an unsworn declaration to be used in the place of notarization where an attestation is otherwise required. Removing the notarization requirement on these forms will remove an unnecessary burden for licensees. It should also increase the efficiency of TDI licensing by eliminating the need for this to be a paper form.

Exhibit 26 – Texas Title Insurance Statistical Plan, 28 Texas Administrative Code § 9.401

71. The Statistical Plan is used to collect experience data from the title insurance industry to use when determining rates.
72. TDI proposed to update the plan to make sure that the codes in the plan accurately matched the transaction descriptions that changed when Rate Rule R-8 was amended in 2019.
73. Some code provisions used to track loan policy data related to refinancing do not accurately reflect the categories of loan policies issued based on the number of years the loan was refinanced after origination. TDI needs to update the plan to properly track the policy data.

Exhibit 27 – Texas Title Insurance Statistical Plan, 28 Texas Administrative Code § 9.401

74. TDI proposed to update the Statistical Plan to make sure that the codes in the plan would accurately match TLTA's proposed rate changes and new endorsements so that data can be properly collected for rate making purposes.

Errors Identified on TLTA Exhibits

Exhibit 1 – Rate Rule R-11

75. In paragraph B of TLTA's proposed Rate Rule R-11, there is an open parenthesis in front of the words "Partial Release" that is not necessary and does not have a corresponding closed parenthesis.
76. In paragraph B.1 there is a missing space in between the words "of" and "the" before the word "policy."

Exhibit 3 – Rate Rule R-30, Access Endorsement

77. The words “per endorsement” or similar language was not included at the end of TLTA’s proposed revisions to Rate Rule R-30 even though the intent of the revisions was to specify that \$100 premium would be charged on each access endorsement, as opposed to \$100 per policy.

Exhibit 13 – Form T-47, Survey Affidavit and Form T-47.1, Survey Affidavit Alternative

78. The word “actual” was not included before the word “knowledge” in paragraph 4 of the proposed Form T-47 affidavit and in paragraph 4 of the proposed Form T-47.1 unsworn declaration, even though the requirements for using an affidavit in lieu of an updated survey in subsection P-2.b of Procedural Rule P-2 refer to the consumer’s actual knowledge of the property’s physical condition.

Public Comments

79. One written comment was received at the hearing from TLTA. The written comment is described in the Background section, and the exhibits for the comment are included as Attachment B. TLTA used the comment to request the withdrawal of some exhibits in its petition and the replacement of other exhibits. All of the withdrawn and replaced exhibits are described in this order’s Findings of Fact and attachments.
80. Another commenter, an escrow payment processing company, asked the commissioner to consider changing the “good funds” rule to increase the unsecured instrument amount allowed and allow ACH transactions to be used for earnest money transactions. The good funds rule was not among the items listed in the notice for the hearing.

Conclusions of Law

1. The commissioner has jurisdiction over this matter under Insurance Code §§ 31.021, 2501.001–2501.008, 2551.003, 2651.153, 2652.051, and 2703.001–2703.208.
2. TDI gave proper and timely notice of the November 15, 2023, public hearing required by Insurance Code § 2703.201.

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3. Insurance Code § 2551.003 authorizes the commissioner to adopt rules that prescribe underwriting standards and practices on which a title insurance contract must be issued and that the commissioner determines are necessary to accomplish the purpose of the Title Insurance Act.
4. Insurance Code § 2651.052 requires title agents and direct operations to obtain a license from TDI with forms and licensing fees prescribed by the department.
5. Insurance Code § 2651.153 authorizes the commissioner to adopt rules for the standards and form of audits required to be done by licensees.
6. Insurance Code § 2652.051 requires that individuals pay fees and obtain a license prescribed and issued by TDI to act as an escrow officer in this state.
7. Insurance Code § 2703.001 requires that all corporations engaged in the business of title insurance operate under the control and the supervision of the commissioner and under uniform rules adopted by the commissioner.
8. Insurance Code § 2703.002 prohibits title insurance companies and agents from using forms required by the Title Insurance Act until the forms have been prescribed and approved by the commissioner.
9. Insurance Code § 2703.151 requires the commissioner to fix and promulgate the premium rates to be charged by title insurance companies and title insurance agents.
10. The following rate changes to the Basic Manual are reasonable as to the public and nonconfiscatory as to title insurance companies:
 - a. Increasing the Form T-3 endorsement (Assignment of Mortgage) premium in Rate Rule R-11 by an additional \$100 for each additional full or partial 12-month period after the first anniversary of the date of the policy (Exhibit 1 – Attachment A).
 - b. Increasing the Form T-38 endorsement (Partial Release, Release of Additional Collateral, Modification Agreement, Reinstatement Agreement, or Release from Personal Liability) premium in Rate Rule R-11 to the minimum Basic Premium Rate plus \$25 year from the date of the original policy (Exhibit 1 – Attachment A).

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- c. Increasing the Form T-3 Down Date Endorsement premium in Rate Rules R-11 and R-15.b to \$100 for nonresidential projects (Exhibits 1 and 2 – Attachment A).
- d. Increasing the Form T-23 Access Endorsement premium in Rate Rule R-30 to \$100 per endorsement instead of \$100 per policy (Exhibit 3 – Attachment A).
- e. Adopting new Rate Rule R-37 to charge premiums for the Severable Improvements Endorsement (Form T-54) and the proposed Energy Project Endorsements (Forms T-55 through T-55.5) at a rate of 5% of the Basic Premium Rate (Exhibit B – Attachment B).
- f. Amending Rate Rule R-16 to permit Form T-1 Owner's Policies insuring Residential Real Property to receive the 5% rate for survey coverage (Exhibit C – Attachment B)
- g. Adopting new Rate Rule R-29.2 to charge a premium for the proposed Energy Project – Minerals and Surface Damage Endorsement (Form T-19.4) at a rate of 5% of the Basic Premium Rate (Exhibit 18 – Attachment A).
- h. Amending simultaneous issue discount in Rate Rule R-5.F to lower the owner's policy amount threshold to \$1 million while also restricting that subsection to land that is not residential property and transactions where the owner's policy and loan policy are issued by the same title insurance company (Exhibit E – Attachment B).

Order

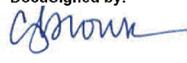
It is ordered that the exhibits as set out in Attachment A are approved for formal rulemaking proposal, subject to the changes proposed by Attachment B and correction of the errors identified in this order. The changes and corrections to exhibits are as follows:

1. Exhibit 1 as proposed in Attachment A and as described in Findings of Fact Nos. 6-8, but with correction of the nonsubstantive errors identified in Findings of Fact Nos. 75 and 76.
2. Exhibit 3 as proposed in Attachment A and as described in Findings of Fact No. 14, but including the omitted "per endorsement" language as described in Finding of Fact No. 77.
3. Exhibits 2, 4, 5-7, 9, 11, 16, and 18 as proposed in Attachment A and as described in Findings of Fact Nos. 11, 16, 17, 19, 22, 27, 35, 51, and 54.

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4. Exhibit 8 is withdrawn and replaced with Exhibit A in Attachment B and as described in Findings of Fact Nos. 23 and 24.
5. Exhibit 10 is withdrawn and replaced with Exhibit B in Attachment B and as described in Findings of Fact No. 33.
6. Exhibit 12 is withdrawn and replaced with Exhibit C in Attachment B and as described in Findings of Fact Nos. 39 and 42.
7. Exhibit 13 as proposed in Attachment A and described in Findings of Fact No. 44, but including the word "actual" before "knowledge" as described in Finding of Fact No. 78.
8. Exhibit 14 is withdrawn and replaced with Exhibit D in Attachment B and as described in Findings of Fact Nos. 47 and 48.
9. Exhibits 15, 17, and 20 have been withdrawn and will not be proposed and adopted.
10. Exhibit 19 is withdrawn and replaced with Exhibit E in Attachment B and as described in Findings of Fact Nos. 57 and 59.
11. Exhibits 21–27 as proposed in Attachment A and as described in Findings of Fact Nos. 62, 65, 67–69, 72, and 74.

DocuSigned by:

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Cassie Brown
Commissioner of Insurance

Recommended and reviewed by:

DocuSigned by:

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Mark Worman, Deputy Commissioner

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Jessica Barta, General Counsel