**Agenda Item: 2012-50 (Amended)**

**Submitted by: Jim Gosdin and John Rothermel**

**On Behalf of: Stewart Title Guaranty Company**

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Stewart Title Guaranty Company petitions the Commissioner of Insurance to adopt the following revisions to Procedural Rule P-57, Additional Insured Endorsement (T-26):

**P-57.  ADDITIONAL INSURED ENDORSEMENT (T-26)**

A. Living Trust, Acquisition of Interest under Existing Agreement, Family Partnership or Family Corporation

A Company may issue its Additional Insured Endorsement (T-26) ~~on or after the date that Rate Rule R-33 is effective~~ to an Owner’s Policy of Title Insurance (T-1 or T-1R) by naming a person as an additional insured in the endorsement, if:

(1) its underwriting requirements are met,

(2) it is paid the premium, if any, prescribed in Rate Rule R-33, and

(3) the additional insured is:

(a) the trustee or successor trustee of a Living Trust to whom the insured transfers the title after Policy Date, and/or the beneficiaries of the Living Trust, or

(b) any partner, member or stockholder that acquires the interests of the other owners of the insured in accordance with the terms and provisions of a written agreement in effect at Date of Policy, or

(c) a family partnership or family corporation solely composed of or owned by members of the insured's family and the insured.

Any matter covered in the Additional Insured Endorsement (T-26) may be insured only by the use of this endorsement.

**B. LIMITED LIABILITY COMPANY**

A Company may add to the Additional Insured Endorsement (T-26) to an Owner’s Policy of Title Insurance (T-1), when:

(1) its underwriting requirements are met, and

(2) it is paid the premium, if any, prescribed in Rate Rule R-33,

the following language when requested by a Limited Liability Company that is the insured in the policy to which the endorsement is to be added, when:

(i) there will be a transfer(s) of all or any part of the Limited Liability Company members' interests in the insured to any transferee(s), or

(ii) the withdrawal(s) of one or more of the members from the Limited Liability Company, or

(iii) the addition(s) of one or more persons or entities as members of the Limited Liability Company.

The Company may acknowledge that the Company will not deny liability under the policy or raise a defense to any claims because such actions may cause a dissolution or termination of the Limited Liability Company.

Language that may be added:

[ ] **Optional Coverage for Limited Liability Companies: [if box is checked]**

The Company hereby agrees that, notwithstanding anything to the contrary contained in this policy, in the event of loss or damage insured under this policy, the Company shall not deny liability under this policy or raise a defense to any claim made under this policy solely on the ground that, after the Date of Policy, a dissolution or termination of the Limited Liability Company has occurred or a new Limited Liability Company or other entity has been created by reason of any one or more:

(i)  transfer(s) of all or any part of the Limited Liability Company members' interests in the insured to any transferee(s),
(ii) withdrawal(s) of one or more of the members from the Limited Liability Company, or
(iii) addition(s) of one or more persons or entities as members of the Limited Liability Company;

provided that the insured Limited Liability Company remains the record title holder and no new Limited Liability Company is explicitly formed.

The Company reserves all of its rights and defenses under this policy which the Company would have had against the named insured or its constituent members before or after any withdrawal, transfer or substitution.

Justification:

The Fairway Endorsement ("Fairway") for an owner's policy of title insurance was developed in the early 1990s to address customers' concerns that a title insurance company would apply the holding in Fairway Development Company v. Title Insurance Company of Minnesota5 to owner's policies issued to limited liability companies.

In the Fairway case, a federal district court in Ohio, applying that state's uniform partnership law, held that the assignment of partnership interests from two partners to the remaining partner and a new, third-party purchaser resulted in the termination of the title insured partnership and the creation of a "new" partnership, which "new" partnership lacked the standing to bring an action under the title policy issued to the original partnership. The endorsement provided, in effect, that the transfer of an interest in an Insured under an owner's policy would not be deemed to create a new entity, not entitled to the benefits of the policy.

The 2006 ALTA owner's policy, subsequently adopted in Texas, added to the definition of the "Insured" successors by "reorganization." An "Insured" is defined, in part, to include "successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization." Nevertheless, Companies are requested from time to time to provide such coverage, and no form of the coverage is currently available in Texas.

This proposal would allow as an optional coverage the inclusion of Fairway language to the existing Additional Insured Endorsement T-26.

The issuing office would be required by sound underwriting practices to review the Limited Liability Agreement to determine that there is no contravening language that could cause the LLC to be terminated or wound up simply because there is or will be a partial change in the ownership of the LLC. It is estimated that it would entail approximately 45 minutes to review such document.

It is considered highly unlikely that a company would be called upon to issue a T-26 where there is both a LLC with certain interests being changed and there being (1) a trustee or successor trustee of a Living Trust to whom the insured transfers title, or the beneficiaries of the Living Trust, or (2) a partner, member or stockholder that acquires interests of the other owners of the insured pursuant to an agreement in effect **at Date of Policy**, or (3) a family partnership or corporation composed of the insured and family members. This new Endorsement may be issued Owner Policies covering residential real property, farmland, commercial land or any other type of land. The optional language would be available even if there were no existing agreement at the date of policy.

A company may add the additional language as an additional checkbox in a printed form of promulgated T-26 or it may add such language to an electronically produced form T-26 at the option of the Company.