

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

INTRODUCTION. The Department of Insurance (TDI) proposes to amend 28 TAC §9.1 to adopt by reference an amended version of the *Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas* (Basic Manual). The amendment to the Basic Manual updates Form T-51, Purchaser/Seller Insured Closing Service Letter (Form T-51) to implement House Bill 1614, 86th Legislature, Regular Session (2019).

EXPLANATION. Form T-51, which is part of the Basic Manual, is an insured closing letter that protects the buyer or seller if escrow funds are lost because of fraud or dishonesty by a title agent. Under Insurance Code §2702.002, Form T-51 can only be given if the sales price of real estate is more than the maximum amount for a covered claim under the Texas Title Insurance Guaranty Act (Guaranty Act).

The amendment to Form T-51 updates the minimum sales prices that can be covered under the form. The update is necessary to implement a change made by HB 1614.

HB 1614 amended Insurance Code §2602.256 to increase the maximum amount for a covered claim under the Guaranty Act from \$250,000 to \$500,000. The rule amendment updates Form T-51 to show \$500,000 as the new threshold amount for coverage.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. David Muckerheide, assistant director of the Property and Casualty Lines Office, has determined that during each year of the first five years the proposed amendment is in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or

administering the sections, other than that imposed by the statute. Mr. Muckerheide made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments. Mr. Muckerheide does not anticipate any measurable effect on local employment or the local economy because of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendment is in effect, Mr. Muckerheide expects that enforcing the proposed amendment will have the public benefit of ensuring that TDI's rules conform to Insurance Code §2602.256, which HB 1614 amended to increase the maximum amount for a covered claim under the Guaranty Act, and Insurance Code §2702.002, which ties the threshold amount for coverage under Form T-51 to the maximum covered claim amount under the Guaranty Act.

Mr. Muckerheide expects that the proposed amendment will not increase the cost of compliance with Insurance Code §2702.002 because the amendment does not impose requirements beyond those in the statute. Insurance Code §2702.002 requires that the insured closing letter be used only if the amount of the transaction exceeds the limit established by the Guaranty Act. As a result, any cost associated with the amended Form T-51 results from statutory requirements and not from the proposed amendment.

Additionally, Mr. Muckerheide expects that while the proposed amendment will necessitate updating a form, it will not impose an economic cost on those required to comply with the amendment. All title forms used in Texas are promulgated by TDI, and title agents and underwriters subscribe to software vendors that electronically update any form changes and provide the most current form. There is typically no additional charge

to update forms. Therefore, the proposed rule amendment does not impose a cost on regulated persons.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendment will not have an adverse economic effect on small or micro businesses, or on rural communities. As discussed in the Public Benefit and Cost Note section, the cost attributable to this proposal is the cost to update the amended form. The update requires only a minor change to the form to make the form consistent with statutory changes. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that the proposed amendment will not impose a cost on regulated persons. Also, no additional rule amendments would be required under Government Code §2001.0045 because the proposed amendment to Form T-51 is necessary to implement legislation. The proposed rule implements Insurance Code §2602.256, as amended by House Bill 1614, and Insurance Code §2702.002.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or eliminate existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;
- will not require an increase or decrease in fees paid to the agency;

- will not create a new regulation;
- will not expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

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

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m. Central time, on November 23, 2020. Send your comments to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, TX 78711-2040.

To request a public hearing on the proposal, submit a request before the end of the comment period and separate from any comments to ChiefClerk@tdi.texas.gov; or to the Office of the Chief Clerk, MC 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, TX 78711-2040. The request for public hearing must be received by TDI no later than 5:00 p.m. Central time, on November 23, 2020. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

SUBCHAPTER A.

28 TAC §9.1.

STATUTORY AUTHORITY. TDI proposes to amend §9.1 under Insurance Code §2702.002, §2551.003, and Insurance Code §36.001.

Insurance Code §2702.002 requires that insured closing and settlement letters be issued in the form and manner prescribed by the Commissioner.

Insurance Code §2551.003 authorizes the Commissioner to adopt rules that are necessary for the business of title insurance.

Insurance Code §36.001 authorizes the Commissioner to adopt any rules necessary to implement the powers and duties of the department under the Insurance Code and laws of this state.

CROSS-REFERENCE TO STATUTE. Section 9.1 implements Insurance Code §2602.256, as amended by HB 1614, and Insurance Code §2702.002.


TEXT.

§9.1. Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.

The Texas Department of Insurance adopts by reference the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas as amended, effective February 1, 2021 [~~March 7, 2019~~]. The document is available from the Texas Department of Insurance, Mail Code 104-PC, P.O. Box 149104, Austin, TX 78711-2040. The document is also available on the TDI website at www.tdi.texas.gov, and by email from ChiefClerk@tdi.texas.gov.

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

Issued in Austin, Texas, on October 5, 2020.

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James Person, General Counsel
Texas Department of Insurance