

TDI DOCKET NO. \_\_\_\_\_

PETITION TO HOLD THE PERIODIC TITLE INSURANCE RATE HEARING & ADOPT RULES

TDI DOCKET NO. \_\_\_\_\_

IN THE MATTER OF THE

BEFORE THE

PERIODIC TITLE INSURANCE RATE  
RULEMAKING HEARING,

COMMISSIONER OF INSURANCE FOR

TEXAS LAND TITLE ASSOCIATION

THE STATE OF TEXAS

**PETITION TO HOLD THE PERIODIC TITLE INSURANCE TITLE RATE RULEMAKING HEARING AND FOR THE  
ADOPTION OF RULES**

**TO THE HONORABLE CASSIE BROWN, COMMISSIONER OF INSURANCE:**

In accordance with TEX. GOV'T CODE § 2001.021, TEX. INS. CODE §§ 2703.202 and 2703.203, and 28 TEX. ADMIN. CODE § 1.202, the Texas Land Title Association (TLTA) files this petition to hold the Periodic Title Insurance Rate Hearing as a rulemaking proceeding and to adopt proposed amendments to 28 TEX. ADMIN. CODE § 9.1.

1. TLTA, the Petitioner, is represented by Aaron Day and G. Roland Love in the above referenced matter. Aaron Day will serve as the attorney of record. Mr. Day's mailing address, telephone number, and facsimile number are contained in the signature line below.

2. TLTA is an association composed of approximately 80 percent – well over the required 50 percent – of the number of title insurance agents and title insurance companies licensed or authorized by the Texas Department of Insurance (Department); and, on behalf of its membership, TLTA requests that the Commissioner hold a rulemaking proceeding to fix and promulgate new title insurance premium rates for certain endorsements pursuant to TEX. INS. CODE § 2703.202(b). In addition, TLTA proposes changes to certain Procedural Rules, Forms, and Title Licensing Forms shown in Appendix A and the included exhibits.

3. TLTA requests that the Commissioner adopt the proposed amendments to 28 TEX. ADMIN. CODE § 9.1, attached as Appendix A as a Table of Agenda Items and incorporated into this petition by reference, including the following new items and amendments identified as Exhibits to the Table of Agenda Items:

Rate Rule R-11, Loan Policy Endorsement, attached as **Exhibit 1**;

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Rate Rule R-15.b, Increase in Coverage During Construction, attached as **Exhibit 2**;

Rate Rule R-30, Premium for Access Endorsement, attached as **Exhibit 3**;

T-1R, Schedule B, paragraph 3, attached as **Exhibit 4**;

T-16, Loan Policy Aggregation – State Limits, attached as **Exhibit 5**;

T-19, Restrictions, Encroachments, Minerals Endorsement, T-19.1, Restrictions, Encroachments, Minerals Endorsement – Owner’s Policy, and T-19.2, Minerals and Surface Damage Endorsement, attached as **Exhibit 6**;

T-1, Owner’s Policy of Title Insurance and T-2 Loan Policy of Title Insurance, Schedule B, paragraph 2, attached as **Exhibit 7**;

T-50, Insured Closing Service Letter, attached as **Exhibit 8**;

P-20, Standard Exception Relating to Taxes, attached as **Exhibit 9**;

T-54, Leasehold/Easement Owner’s Endorsement, T-54.1, Leasehold/Easement-Loan Endorsement, T-54.2, Energy Project – Owner’s Endorsement, T-54.3, Energy Project – Leasehold Loan – Loan Endorsement, T-54.4, Energy Project – Fee Estate – Owner’s Endorsement, T-54.5, Energy Project – Fee Estate – Loan Endorsement, R-37. Premium for Energy Project Endorsements, and P-72 Energy Project Endorsements, attached as **Exhibit 10**;

P-57.A, Additional Insured Endorsement (Form T-26), Acquisition of Interest under Existing Agreement or Estate Planning, attached as **Exhibit 11**;

P.1.u, Residential Real Property and R-16, Amendment of Exception as to Area and Boundaries, attached as **Exhibit 12**;

T-47, Residential Real Property Affidavit, T-47.1 Residential Real Property Declaration, and P-2 Amendment of Exception to Area and Boundaries, attached as **Exhibit 13**;

T-42.2(b), Equity Loan Mortgage Endorsement, attached as **Exhibit 14**;

P-9.c., Permissive Issuance Procedures, attached as **Exhibit 15**;

P-9.b(8), Revolving Credit Endorsement, and R-11.f, attached as **Exhibit 16**;

FINT Forms, deletion of notarization requirement **Exhibit 17**;

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T-19.4, Energy Project – Minerals and Surface Damage Endorsement, and Rate Rule R-29.2, Premium for T-19.4, attached as **Exhibit 18**;

Rate Rule R-5-B, .C, .D, and .F, Simultaneous Issuance of Owner’s and Loan Policies, attached as **Exhibit 19**;

Section V, Minimum Escrow Accounting Procedures and Internal Controls, Internal Control No. 5, attached as **Exhibit 20**;

all to be made part of the *Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas*.

4. Appendix B attached hereto is a table of estimated relative “Transaction Volume,” “Loss Frequency,” and “Loss Severity” to assist in analyzing the potential impact of certain rate rule proposals.

5. TLTA prays that the Commissioner will assign this petition a reference number, provide a copy to the appropriate Department staff for review and response, and notify the Petitioner via the attorney of record of the name, address and telephone number of the staff person reviewing the proposal and designated as contact person for inquiries, as well as the reference number assigned to the petition.

6. TLTA has provided a copy of its analysis and recommendations to Department staff.

7. TLTA has publicly and informally conferred with Department staff to obtain the opinions and advice of interested persons about the contemplated rulemaking as per TEX GOV’T CODE § 2001.031.

8. TLTA prays that the Commissioner will instruct the Office of the Chief Clerk to submit the proposed rules as recommended by the petitioner to the *Texas Register* for publication and that the Commissioner will publish a Notice of Public Hearing to consider the adoption of title insurance rates and these other matters that relate to regulating the business of title insurance.

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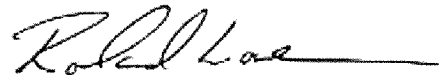
The Texas Land Title Association respectfully requests that the Commissioner of Insurance grant this petition and award the relief requested.

Respectfully submitted,



Aaron Day

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Austin, Texas 78703



G. Roland Love

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Austin, Texas 78703

**ATTORNEYS FOR THE  
TEXAS LAND TITLE ASSOCIATION**

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**CERTIFICATE OF SERVICE**

In accordance with 28 TEX. ADMIN. CODE § 1.202, I certify that on September 1, 2023 a true and correct copy of this petition, the proposed rules, and Appendices A through B have been sent to the following parties:

Justin Beam, Chief Clerk  
Office of the Chief Clerk  
Texas Department of Insurance, MC 113-2A  
P.O. Box 149104  
Austin Texas 78714-9104  
Fax 512-490-1064  
**VIA EMAIL AT ChiefClerk@tdi.texas.gov**

David Bolduc, Public Counsel & Executive Director  
Office of Public Insurance Counsel  
1601 Congress Avenue  
Austin, Texas 78701  
**VIA EMAIL AT dbolduc@opic.texas.gov**



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Aaron Day

Texas Land Title Association  
1717 W. 6<sup>th</sup> St. Suite 120  
Austin, Texas 78703

**ATTORNEY FOR THE  
TEXAS LAND TITLE ASSOCIATION**

# **Appendix A**

**TLTA**  
**PROPOSED RULE CHANGES**  
**EXHIBIT 1**  
**RATE RULE R-11**

**CITATION**

Section III, Rate Rule R-11 Loan Policy Endorsements of *The Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas*.

**ISSUE AND JUSTIFICATION**

The Texas Land Title Association requests amending Rate Rule R-11. Rate Rule R-11 establishes the premium that a title insurance agent may collect when a T-3 Endorsement (assignment of mortgage) is issued as provided in Procedural Rules P-9b(1) and P-9b(2), the T-38 Endorsement (Partial Release, Release of Additional Collateral, Modification Agreement, Reinstatement Agreement, or Release from Personal Liability) that is issued as provided in Procedural Rule P-9b(3), and the T-3 Endorsement (Down Date Endorsement) that is issued with a lender's title insurance policy. The current rates are inadequate and do not reflect the costs and risk associated with issuing these endorsements resulting in an inequitable shift of burden to the average consumer vis-à-vis the rate base. These endorsements are requested less frequently, however when they are requested, they require a significant amount of work and additional risk. Other proposed changes are simply Plain Language amendments.

The **T-3 (Assignment of Mortgage) Endorsement** updates the policy to reflect the documents recorded between the initial closing and a sale of a loan. The endorsement brings coverage forward from the original policy date to the date of the endorsement – including coverage for real property taxes – and extends the coverage to include the validity of the assignment to the new insured. In order to issue this endorsement, the title examiner must review each document recorded at the county and posted in the title plant as to the property, which as to the chain of title may have changed significantly. Additionally, the extent and configuration of the property itself may have changed during the interim. The likelihood of more documents and more complexity increases linearly over time. Upon identifying documents that may impact the original lien, the Underwriter must engage, analyze, and determine whether there is an acceptable risk before allowing the agent to issue the endorsement. Thus, there are multiple steps that must be taken by more than one individual and by more than one entity, with each entity coordinating with each other

in this process. Currently, under Rate Rule R-11 the premium for this endorsement is fixed at the minimum basic premium and does not differentiate between a loan that is sold within one year of the initial closing and a loan that is sold years after the initial closing.

TLTA's proposed change seeks to remedy this by increasing the rate an additional \$100 for each twelve-month period beginning on the first anniversary of the date of the original policy. By tying any rate increase to the length of time between the original closing and the issuance of the endorsement, this proposal fairly allocates the increased premium to transactions in relation to the examination and underwriting expenses as well as the risks associated with issuing the assignment of mortgage endorsement.

The **T-38 Endorsement (Partial Release, Release of Additional Collateral, Modification Agreement, Reinstatement Agreement, or Release from Personal Liability)** is requested when lenders, or borrowers find it more advantageous to rearrange existing financing rather than refinancing the debt into a new loan. A modification endorsement ensures that the coverage offered under the title insurance policy is not impaired by the execution or recording of a specifically drafted document. These documents are unique to the transaction and may include partial releases of liability, releases of additional collateral, a reinstatement, and releases from personal liability. A modification could include changes to the collateral, changes to terms and conditions such as the term and interest rate, as well as the loan structure. The endorsement provides that the modification of the earlier loan transaction has not caused a loss of coverage under the original loan policy.

Issuing this endorsement requires significant work, potentially long after the initial closing has occurred. The title agent must identify, retrieve, and review the original file, and then review the modification instrument to ensure it is consistent with the requirements and limitations of Procedural Rule P-9.b.(3).

The requirements and limitations of these instruments can range from a few pages in a typical residential transaction, to fifty (50) or more pages in a transaction involving complicated residential and non-residential property. Finally, if the instrument does not meet the requirements of Procedural Rule P-9, the title agent must work with the lender's staff to appropriately restate the documents. In addition to these administrative, examination, analysis, and underwriting costs, the issuance of this endorsement results in the assumption of additional risk. Moreover, this analysis will often require a more experienced title officer or Underwriting Counsel. If the Agent were to get it wrong then the Underwriter which has insured priority, validity and enforceability would likely suffer a total loss. Also as noted, if the documents do not meet the requirements of P-9.b(3), there are typically continued discussions to modify the documents to satisfy those requirements. Lenders and Borrowers will generally go



to great efforts to avoid buying a new loan policy.

To address these expenses, TLTA suggests increasing the premium for this endorsement to the minimum basic premium rate from the current \$100. Note, this \$100 rate was originally adopted in 1989 and the current value of \$100 adjusted for inflation is approximately \$245.

Additionally, TLTA proposes increasing the current additional fee of \$10.00 per year between the issuance of the endorsement and the original policy to \$25.00 per year to reflect the additional work and risk associated with the passage of time as well as inflation. Adjusting for inflation over time, preserves the balance among rate payers established at the origin of the rule. A \$10 rate in 1989 is worth approximately \$24 in current value. Modifications are primarily a lending tool impacting commercial properties or residential non-homestead properties and are rare for a residential homestead except in distress situations. Given the rarity of residential homestead applications TLTA does not believe that a bifurcation of rates is appropriate in this context.

The **T-3 Endorsement (Down Date Endorsement)** that is issued with a lender's title insurance policy can be issued with a policy insuring any type of property under construction, and brings coverage forward from the original policy date or the date of a previously-issued endorsement. The endorsement provides affirmative coverage regarding the documents recorded in the period between the original policy (or a previously issued endorsement) to the date of the endorsement.

Currently, Rate Rule R-11 does not differentiate between the rate charged for this endorsement in transactions involving residential real property and other types of properties. This rating scheme overlooks the significant differences between the expenses and risk associated with issuing this endorsement in a transaction involving residential real property and the expenses and risk associated with issuing this endorsement in other transactions.

A residential and a nonresidential construction project are significantly different particularly relative to the number of individuals and entities working on the project and the time necessary to complete the project. The paperwork is also much more extensive—for example the number of draws, approvals and documents required by the Texas Property Code and the Lender that may be involved. Construction projects involving residential real property are generally completed in less than a year and typically significantly fewer documents are recorded during the construction period. Also, a residential construction project usually involves a single general contractor and fewer subcontractors and materialmen. Therefore, these factors result in fewer possible disputes and filings. The necessary title search is usually less complicated, and the results can typically be reviewed by a less experienced examiner.

In contrast, construction projects on non-residential property often stretch out

over multiple years, during which time any number of documents may be recorded. There are typically many more subcontractors and materialmen. There may also be more than one general contractor, project engineers and architects all of whom can and do file liens. There are often multiple original contractors and even regulatory authorities involved in the project. The property record search for these transactions is typically longer and more complex, and the review requires more time and expertise. The endorsement expands coverage to include the period between the date of the policy or the last down date endorsement and the date the most recent down date endorsement is issued. Additionally, the endorsement increases coverage to reflect the current amount of insurance and exposes the title insurance company to additional risk of loss.

Accordingly, TLTA recommends amending the rate rule for this endorsement to differentiate between transactions involving residential real property and transactions involving other property. TLTA suggests leaving the premium for this endorsement for transactions involving residential real property unchanged and increasing the cost of the endorsement for other transactions to \$100.00. Note, current value of the \$50 rate adjusted for inflation since it was adopted is approximately \$123. The current rates established under Rate Rule R-11 do not sufficiently reflect the expenses and risks associated with issuing these endorsements. TLTA suggests amending the rates for these endorsements to acknowledge typical scenarios that alter the expenses and risks associated with issuing these endorsements. 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.

## **PROPOSED REVISIONS**

### **R-11. Loan Policy Endorsements**

Applicable only as provided in Procedural Rule P-9.

A. Assignment of Mortgage Endorsement (Form T-3, Endorsement Instruction III):

1. If issued within twelve months after the date of the policy, the premium is the ~~Assignment of Mortgage Endorsement issued as provided in Procedural Rules P-9.b(1) and P-9.b(2)~~ The minimum Basic Premium Rate. shall be charged for each General Endorsement (Form T-3) Instruction III (Assignment of Mortgage) - issued after the date of the original policy.

2. If issued more than twelve months after the date of the policy, the premium is the minimum Basic Premium Rate plus \$100.00 for each additional full or partial twelve-month period.

3. ~~In no event, h~~ However, the maximum premium collected must not be more than shall such premium exceed 50% of the premium applicable to the original Loan Policy under the Schedule of Basic Rates for the loan policy Amount based on the current under the Schedule of Basic Premium Rates.

B. ~~b. Loan Policy of Title Insurance Endorsement (Partial Release, Release of Additional Collateral, Modification Agreement, Reinstatement Agreement, or Release from Personal Liability Endorsement (Form T-38):~~

1. ~~If issued as provided in Procedural Rule P-9.b(3) — A premium of \$100.00 shall be charged for each Loan Policy of Title Insurance Endorsement (Form T-38) (Partial Release, Release of Additional Collateral, Modification Agreement, Reinstatement Agreement, or Release from Personal Liability) issued within one year~~ twelve months after the date of the original policy, the premium is the minimum Basic Premium Rate.

2. ~~If issued more than twelve months after the date of the policy, the premium is the minimum Basic Premium Rate plus said one-year period, an additional \$25.00~~ \$10.00 shall be charged for each additional full or partial twelve-month period thereafter, or a part thereof.

3. ~~In no event, however, shall such premium exceed~~ However, the maximum premium collected must not be more than 50 percent % of the premium applicable to the original Loan Policy for the loan policy amount based on the current under the Schedule of Basic Premium Rates.

C.- ~~€. Down Date Endorsement issued as provided in Procedural Rule P-9.b(4) — A premium of \$50.00 shall be charged for the issuance of each General (Form T-3), Endorsement Instructions V or VII :-(Down Date Endorsement), provided for in Procedural Rule P-9.b(4).~~

1. If the land in the policy is Residential Real Property, the premium is

\$50.00;

2. If the land in the policy is not Residential Real Property, the premium is \$100.00.

D. ~~d. Variable Rate Mortgage Endorsement (Form T-33) and Variable Rate Mortgage - Negative Amortization Endorsement (Form T-33.1): issued as provided in Procedural Rule P-9.b(6) —~~

1. A The premium of \$20.00 shall be charged for the issuance of each for the Variable Rate Mortgage Endorsement (Form T-33) is \$20.00; Variable Rate Mortgage Endorsement (Form T-33) or

2. The premium for the Variable Rate Mortgage-Negative Amortization Endorsement (Form T-33.1) is: authorized by Procedural Rule P-9.b(6) except that such

a. \$20.00 or

b. \$0.00 when additional premium charge shall not be made if an additional premium is charged has been made for the loan policy because of an increased policy Amount. (to which the Endorsement is attached).

E. -e. Manufactured Housing Endorsement (Form T-31) and Supplemental Coverage Manufactured Housing Unit Endorsement (Form T-31.1):

1. The premium for the Manufactured Housing Endorsement (Form T-31) is issued as provided in Procedural Rule P-9.b(7) — A premium of \$20.00 shall be charged for the issuance of Endorsement a Manufactured Housing Endorsement (Form T-31) as provided for in Rule P-9b(7).

2. The premium for the Supplemental Coverage Manufactured Housing Unit Endorsement (Form T-31.1) is A premium of \$50.00. shall be charged for the issuance a Supplemental Coverage — Manufactured Housing Unit Endorsement (Form T-31.1) as — provided for in Procedural Rule P-9b(7).

F. f. Future Advance/ The premium for the Revolving Credit Endorsement

~~(Form T-35) is issued as provided in Procedural Rule P-9.b(8) A premium of \$50.00. shall be charged for the issuance of each Future Advance/Revolving Credit Endorsement (Form T-35) provided for in Procedural Rule P-9.b(8).~~

~~G. g. The premium for the Environmental Protection Lien Endorsement (T-36) is issued as provided in Procedural Rule P-9.b(9) A premium of \$25.00. shall be charged for the issuance of each Environmental Protection Lien Endorsement (Form T-36) provided for in Procedural Rule P-9.b(9).~~

~~H. — h. Balloon Mortgage Endorsement (Form T-39):~~

~~1. When issued at the time of the policy is issued, the premium is - issued as provided in Procedural Rule P-9.b(10) A premium of \$25.00; shall be charged for the issuance of the Balloon Mortgage Endorsement (Form T-39) provided for in Procedural Rule P-9.b(10) if the endorsement is issued at the time of the issuance of the Loan Policy.~~

~~2. When issued after the date of the policy, the A premium is \$50.00. shall be charged for the issuance of the endorsement provided for in Procedural Rule P-9.b(10) if the endorsement is issued subsequent to the issuance of the Loan Policy.~~

~~I. i. The premium for the First Loss Endorsement (Form T-14) issued as provided in Procedural Rule P-9.b(11) When the First Loss Endorsement (T-14) is issued with a Loan Policy in accordance with Procedural Rule P-9 b(11), the premium for the First Loss Endorsement (Form T-14) shall be \$25.00.~~

~~J. j. The premium for Loan Policy Aggregation Endorsement issued as provided in Procedural Rule P-9b(13) When the Loan Policy Aggregation Endorsement (Form T-16) is issued with a Loan Policy in accordance with Procedural Rule P-9b(13), the premium for the Loan Policy Aggregation Endorsement (Form T-16) shall be \$25.00.~~

~~K. k. Planned Unit Development Endorsement issued as provided in Procedural Rule P-9b(14) When the Planned Unit Development~~

Endorsement (Form T-17):

1. ~~The premium is issued with a Loan Policy in accordance with Procedural Rule P-9b(14), the premium for the endorsement Planned Unit Development Endorsement (Form T-17) shall be \$25.00.~~
  2. ~~If the Company issues the~~ However, when multiple Planned Unit Development Endorsements (Form T-17) ~~on two or more~~ are issued simultaneously on multiple loan title insurance policies ~~which are issued simultaneously covering the same land, then the premium for the first endorsement is \$25.00 and the premium for additional endorsements is \$0.00.~~ Planned Unit Development Endorsement (Form T-17) shall be charged only for one Planned Unit Development Endorsement (Form T-17).
- L. ~~The premium for the Condominium Endorsement (Form T-28) is as provided in Procedural Rule P-9b(15) — When the Condominium Endorsement (Form T-28) is issued with a Loan Policy in accordance with Procedural Rule P-9b(15), the premium for each Condominium Endorsement (Form T-28) shall be \$0.00.~~

**TLTA**  
**PROPOSED RULE CHANGES**  
**EXHIBIT 2**  
**RATE RULE R -15.b**

**CITATION**

Section III, Rate Rule R-15 Owner's Policy Endorsements of *The Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas*.

**ISSUE AND JUSTIFICATION**

Rate Rule R-15.b. establishes the premium that a title insurance agent may collect for each T-3 Endorsement (down date endorsement) that is issued with an owner's title insurance policy. This endorsement is the same endorsement as the Loan Policy T-3 except that it applies to the owner's policy. Therefore, the justifications articulated for the T-3 amendments equally apply. It is worth noting that the risk on the owner's policy unlike the loan policy does not decrease over time. Additionally, a partial loss exposure amount increases over time on an Owner's Policy. The down date endorsement brings coverage forward to the current certification date from the date of the policy or the last down date endorsement. The endorsement increases coverage by reflecting the current amount of insurance. This endorsement is issued on commercial and residential transactions where construction improvements are immediately contemplated. The expenses and risk associated with issuing this endorsement on residential real property transactions, as compared to other transactions, is significantly different. Currently, Rate Rule R-15 does not differentiate between the rate charged for this endorsement in a transaction residential real property and other types of property.

This rating scheme overlooks the significant differences between the expenses and risk associated with issuing this endorsement in a transaction involving residential real property and the expenses and risk associated with issuing this endorsement in other transactions. Construction projects involving residential real property are generally completed in less than a year and significantly fewer documents are usually recorded during the construction period. A residential construction project typically involves a single general contractor and fewer subcontractors and materialmen. Therefore, these factors result in fewer possible disputes and filings. The necessary title search is usually less complicated, and the results can typically be reviewed by an average examiner.

In contrast, construction projects on non-residential property often stretch out over multiple years, during which any number of documents may be recorded. There are typically many more subcontractors and materialmen. There are often multiple original contractors and even regulatory authorities involved in the project. The property record search for these transactions is typically longer and more complex, and the review requires more time and expertise. The endorsement expands coverage to include the period between the date of the policy or the last down date endorsement and the date the most recent down date endorsement is issued. Additionally, the endorsement increases coverage to reflect the current amount of insurance and exposes the title insurance company to additional risk of loss. Accordingly, TLTA suggests amending the rate rule for this endorsement to differentiate between transactions involving residential real property and transactions involving other property. TLTA suggests leaving the premium for this endorsement for transactions involving residential real property unchanged and increasing the charge of the endorsement for other transactions to \$100.00. (Note, current value of the \$50 rate adjusted for inflation since it was adopted is approximately \$123.)

Increasing the rate in this manner appropriately compensates the title insurance agent and title insurance company for the expenses and risks associated with transactions involving more complicated and voluminous property records. Each time a downdate endorsement is issued, the coverage is brought forward and the examination and analysis is repeated similar to the examination and analysis for an original policy. These expenses and risks are not accounted for by the original premium paid because there is an additional risk created by the passage of time and expenses incurred by reason of additional examination and analysis. The proposed amendment avoids a scenario where the cost of these expenses and risks are pushed onto residential real property consumers and shifts them appropriately to the consumers whose transactions require the additional service and involve additional risk.

The frequency of these policies are less than purchase and sale or refinances because they are limited to a construction context.



## PROPOSED REVISIONS

### R-15. Owner's Policy Endorsements -

- a. **Increased Value** – When requested by the Insured, and upon compliance with Rule P-9a(2), endorsement form T-34 shall be attached to the Owner's Policy upon payment of a premium for such endorsement which shall be the Basic Rate computed on the new amount less the premium paid for the Owner's Policy and any form T-34 endorsements previously attached thereto, but in no event less than the then applicable minimum policy Basic Premium Rate.
  
- b. **Increase in Coverage During Construction (Form T-3, Endorsement Instruction VIII)** – ~~A premium of \$50.00 shall be charged for each T-3 Endorsement issued according to Instruction VIII, as provided in Rule P-9a(3).~~
  1. If the Land in the policy is Residential Real Property, the premium is \$50.00;
  2. If the Land in the policy is not Residential Real Property, the premium is \$100.00.
  
- c. **Manufactured Housing Unit** - A premium of \$50.00 shall be charged for each T-31.1 Endorsement issued, as provided in Rule P-9a(4).

**TLTA**  
**PROPOSED RULE CHANGES**  
**EXHIBIT 3**  
**RATE RULE R-30**

**CITATION**

Section III, Rate Rule R-30 Premium for Access Endorsement (T-23) of *The Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas*.

**ISSUE AND JUSTIFICATION**

Rate Rule R-30 establishes the premium that a title insurance agent may collect if a T-23 Endorsement (access endorsement) is issued pursuant to Procedural Rule P-54. The access endorsement expands coverage by confirming that the property has access to a specific street or road. Often transactions may require multiple access endorsements. Currently, if the transaction requires one, three, or more access endorsements the title agent may only charge a total of \$100.00 for all the endorsements. This choice was not deliberate, but a mistaken consequence of the original wording.

When Rate Rule R-30 was originally proposed, the agenda item contained an unintended wording error. The access endorsement was proposed and adopted at the same time as the T-25 contiguity endorsement and its corresponding Rate Rule R-32. The same rate and language were proposed for both endorsements. In the case of the contiguity endorsement, all the desired coverage may be accomplished through a single endorsement. Restricting the amount charged for a contiguity endorsement on a per policy basis is reasonable. The access endorsement, however, names the specific street, road, or highway from which access to the property is gained. Therefore, a separate endorsement is necessary to confirm the property has access from each street, road, or highway. Each endorsement requires separate examination and carries independent risk. The rate provided for in Rate Rule R-30 is adequate to support the work associated with the search and examination that is necessary to issue a single access endorsement. The rate, however, is not sufficient for transactions that require multiple access endorsements.

The Texas Land Title Association (TLTA) suggests changing Rate Rule R-30 from a per policy charge to a per endorsement charge. This change would only impact transactions that require multiple access endorsements. These primarily involve large commercial projects and new developments with improvements. Amending the rate rule

in this way appropriately compensates the title insurance agent and title insurance company for the expenses associated with issuing multiple access endorsements. Additionally, the proposed amendment allows title insurance agents to collect the premium necessary to support the work associated with each endorsement from the consumer that requested or needed the endorsement, rather than shift the expenses into general expenses and costs that factor into the promulgated basic rate that each Texas title insurance consumer must pay.

## **PROPOSED REVISIONS**

### **R-30. Premium for Access Endorsement (T-23)**

~~When The premium for the Access Endorsement (T-23) is issued with a Mortgagee Policy of Title Insurance (T-2) or Owner Policy (T-1) in accordance with Rule P-54, the premium for the Access Endorsement (T-23) shall be \$100 for each policy.~~

**TLTA  
PROPOSED RULE CHANGES  
EXHIBIT 4  
FORM T-1R**

**CITATION**

Section II, Insuring Forms, Form T-1R: Residential Owner's Policy of Title Insurance One-to-Four Family Residences of *The Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas*.

**ISSUE AND JUSTIFICATION**

This is a "Housekeeping Item." Section B, Item 3 of the Form T-1R: Residential Owner's Policy of Title Insurance One-to-Four Family Residences includes a parenthetical that reads "(Applies to the Owner's Policy only)." This language appears to have mistakenly been taken from Section B, Item 3 of Form T-7: Commitment for Title Insurance. The language is appropriate in Form T-7 but is unnecessary in Form T-1R.

The Texas Land Title Association ("TLTA") suggests revising Form T-1R to remove the unnecessary parenthetical.

**PROPOSED REVISIONS**

**Form T-1R: Residential Owner's Policy of Title Insurance One-to-Four Family Residences**

**BLANK TITLE INSURANCE COMPANY**

**TEXAS RESIDENTIAL OWNER'S POLICY OF TITLE INSURANCE**

**ONE-TO-FOUR FAMILY RESIDENCES (T-1R)**

**OWNER'S INFORMATION SHEET  
(no change)**

**TABLE OF CONTENTS  
(no change)**

**OWNER'S COVERAGE STATEMENT**

**(no change)**

**SCHEDULE A**

**(no change)**

**SCHEDULE B**

**EXCEPTIONS**

We do not cover loss, costs, attorneys' fees and expenses resulting from:

1. (no change)
2. (no change)
3. Homestead or community property or survivorship rights, if any, of any spouse of any insured. ~~(Applies to the Owner's Policy only.)~~
4. (no change)
5. (no change)
6. (no change)

**EXCLUSIONS (no change)**

**CONDITIONS (no change)**

**TLTA  
PROPOSED RULE CHANGES  
EXHIBIT 5  
FORM T-16**

**CITATION**

Section II, Insuring Forms, Form T-16: Loan Policy Aggregation Endorsement of *The Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas*.

**ISSUE AND JUSTIFICATION**

The current aggregation endorsement, T-16, does not adequately address the aggregation of multiple policies in various states. When Texas policies are aggregated with policies from other states, the current Form T-16 does not correlate well with the ALTA 12.1-06. The language of the T-16 creates confusion and misunderstanding among insurers and consumers as to how the Texas coverage correlates with policies from other states.

The Texas Land Title Association ("TLTA") suggests that the Commissioner of Insurance adopt the ALTA 12.1-06 aggregation endorsement as a replacement for the current Form T-16 so that multi-state transactions may be correctly reflected. The proposed changes will continue to accommodate intra-state transactions as the form has been traditionally used.

**PROPOSED REVISIONS**

**LOAN POLICY AGGREGATION - STATE LIMITS - ENDORSEMENT FORM T-16**

ATTACHED TO POLICY NO. \_\_\_\_\_

Issued By

BLANK TITLE INSURANCE COMPANY

File Number: \_\_\_\_\_

1. The following policies are issued in conjunction with one another:

| Policy Number: | County: | State: | Amount of Insurance: |
|----------------|---------|--------|----------------------|
| _____          | _____   | _____  | _____                |
| _____          | _____   | _____  | _____                |
| _____          | _____   | _____  | _____                |
| _____          | _____   | _____  | _____                |

~~Notwithstanding the provisions of Section 8(a)(i) of the Conditions of this policy, the Amount of Insurance available to cover the Company's liability for loss or damage under this policy at the time of payment of loss hereunder shall be the aggregate of the Amount of Insurance under this policy and the other policies identified above. At no time shall the Amount of Insurance under this policy and the other policies identified above exceed in the aggregate \$\_\_\_\_\_. Subject to the provisions of Section 10(a) of the Conditions of the policies, all payments made by the Company under this policy or any of the other policies identified above, except the payments made for costs, attorney's fees and expenses, shall reduce the aggregate Amount of Insurance by the amount of the payment.~~

~~[At no time shall the Amount of Insurance under this policy when aggregated with the other policies above exceed, in Texas, the amount shown as follows: \$.]\_\_\_\_\_~~

~~This endorsement is issued as part of the policy. Except as it expressly states, it does not~~

~~(i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.~~

2. The Amount of Insurance available to cover the Company's liability for loss or damage under this policy at the time of payment of loss shall be the Aggregate Amount of Insurance defined in Section 3 of this endorsement.

3. The Aggregate Amount of Insurance under this policy is either:

a. \$ \_\_\_\_\_ ; or

b. If the Land is located in one of the states identified in this subsection, then the Aggregate Amount of Insurance is restricted to the amount shown below:

State:

Aggregate Amount of Insurance:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



4. Section 7(a) of the Conditions of this policy is amended to read:

**7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY**

In case of a claim under this policy, the Company shall have the following additional options:

- (a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness.
  - (i) To pay or tender payment of the lesser of the value of the Title as insured or the Aggregate Amount of Insurance applicable under this policy at the date the claim was made by the Insured Claimant, or to purchase the Indebtedness, together with any cost, attorneys' fees, and any costs and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay;
  - (ii) To pay or tender payment of the lesser of the value of the Title as insured at the date the claim was made by the Insured Claimant, or the Aggregate Amount of Insurance applicable under this policy, together with any cost, attorneys' fees, and any costs and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay; or
  - (iii) To purchase the Indebtedness for the amount of the Indebtedness on the date of purchase, together with any costs, attorneys' fees and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of purchase and that the Company is obligated to pay.

When the Company purchases the Indebtedness, the Insured shall transfer, assign, and convey to the Company the Indebtedness and the

Insured Mortgage, together with any collateral security.

Upon the exercise by the Company of any of the options provided for in Section 7 (a) all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in those subsections, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

5. Section 8(a) and 8(b) of the Conditions of this policy are amended to read:

### **8. DETERMINATION AND EXTENT OF LIABILITY**

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

- (a) The extent of liability of the Company for loss or damage under this policy shall not exceed the least of:
  - (i) the Aggregate Amount of Insurance for the State where the Land is located,
  - (ii) the Indebtedness,
  - (iii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy, or
  - (iv) if a government agency or instrumentality is the Insured Claimant, the amount it paid in the acquisition of the Title or the Insured Mortgage in satisfaction of its insurance contract or guaranty.
  
- (b) If the Company pursues its rights under Section 3 or Section 5 of these Conditions and is unsuccessful in establishing the Title or the lien of the Insured Mortgage, as insured, the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled

and paid.

6. Section 10 of the Conditions of this policy is amended to read:

**10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY**

- (a) All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the applicable Aggregate Amount of Insurance by the amount of the payment.
- (b) If this policy insures the Title to Land located in a state identified in Section 3. b. of this endorsement:
  - (i) all payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Aggregate Amount of Insurance by the amount of the payment; but
  - (ii) a payment made for loss or damage on Land insured in one of the policies identified in Section 1 on Land located outside this state shall not reduce the Aggregate Amount of Insurance in Section 3.b. of this endorsement until the Aggregate Amount of Insurance in Section 3.a. is reduced below the Aggregate Amount of Insurance in Section 3.b .
- (c) However, any payments made prior to the acquisition of Title as provided in Section 2 of these Conditions shall not reduce the Aggregate Amount of Insurance afforded under this endorsement except to the extent that the payments reduce the Indebtedness.
- (d) The voluntary satisfaction or release of the Insured Mortgage shall terminate all liability of the Company under this policy, except as provided in Section 2 of these Conditions, but it will not reduce the Aggregate Amount of Insurance for the other policies identified in Section 1 of this endorsement.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

IN WITNESS WHEREOF, the Company has caused this endorsement to be issued and become valid when signed by an authorized officer or licensed agent of the Company.

Date:

By:

Authorized Countersignature

**TLTA**  
**PROPOSED RULE CHANGES**  
**EXHIBIT 6**  
**FORM T-19**

**CITATION**

Section II, Insuring Forms, Form T-19, T-19.1, T-19.2 and Form T-19.3: Minerals and Surface Damage Endorsement of *The Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas*.

**ISSUE AND JUSTIFICATION**

The Texas Land Title Association suggests revising Forms T-19, T-19.1, T-19.2 and T-19.3 to achieve consistency, avoiding differences between the mineral coverages and exclusions, and conform to American Land Title Association forms ("ALTA forms").

Endorsements T-19.2 and T-19.3 were adopted based upon the existing Form T-19 and T-19.1 endorsements. Recently, the Form T-19 and T-19.1 endorsements were updated to conform with the national ALTA T-19 and T-19.1 form equivalents. The proposed amendments to update the T-19.2 and T-19.3 reflect the changes previously made to the Form T-19 and T-19.1. The proposed also includes the term "flood" in the list of items that are excluded from coverage which is an additional update conforming it to the corresponding current ALTA forms.

Currently, consumers often request 19.2 and 19.3 when they already have T-19.1. Although the additional endorsements do not provide any additional coverage and despite explanations from members of the industry, the discrepancies in the existing language creates consumer uncertainty which encourages the unnecessary additional purchases. By making the forms consistent, the consumer will not be as inclined to make unnecessary purchases.

## PROPOSED REVISIONS

RESTRICTIONS, ENCROACHMENTS, MINERALS ENDORSEMENT (Form T-19)

### ENDORSEMENT

Attached to Policy No. \_\_\_\_\_

Issued by

**BLANK TITLE INSURANCE COMPANY**

1. The insurance provided by this endorsement is subject to the exclusions in Section 5 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For the purposes of this endorsement only:
  - a. "Covenant" means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.
  - b. "Improvement" means an improvement, including any landscaping, lawn, shrubbery, or trees, affixed to either the Land or adjoining land that by law constitutes real property.
  - c. "Private Right" means (i) an option to purchase; (ii) a right of first refusal; (iii) a right of prior approval of a future purchaser or occupant; or (iv) a private charge or assessment.
3. The Company insures against loss or damage sustained by the Insured by reason of:
  - a. A violation of a Covenant that:
    - i. divests, subordinates, or extinguishes the lien of the Insured Mortgage,
    - ii. results in the invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage, or
    - iii. causes a loss of the Insured's Title acquired in satisfaction or

partial satisfaction of the Indebtedness;

- b. A violation on the Land at Date of Policy of an enforceable Covenant, unless an exception in Schedule B of the policy identifies the violation;
  - c. Enforced removal of an Improvement located on the Land at Date of Policy as a result of a violation, at Date of Policy, of a building setback line shown on a plat of subdivision recorded or filed in the Public Records, unless an exception in Schedule B of the policy identifies the violation;
  - d. A notice of a violation, recorded in the Public Records at Date of Policy, of an enforceable Covenant relating to environmental protection describing any part of the Land and referring to that Covenant, but only to the extent of the violation of the Covenant referred to in that notice, unless an exception in Schedule B of the policy identifies the notice of the violation; or
  - e. Enforcement of a Private Right in a Covenant affecting the Title at Date of Policy that:
    - i. results in the invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage, or
    - ii. causes a loss of the Insured's Title acquired in satisfaction or partial satisfaction of the Indebtedness.
4. The Company insures against loss or damage sustained by reason of:
- a. An encroachment of:
    - i. an Improvement located on the Land, at Date of Policy, onto adjoining land or onto that portion of the Land subject to an easement; or
    - ii. an Improvement located on adjoining land onto the Land at Date of Policy unless an exception in Schedule B of the policy identifies the encroachment otherwise insured against in

Sections 4.a.i. or 4.a.ii.; or

- b. A final court order or judgment requiring the removal from any land adjoining the Land of an encroachment identified in Schedule B; or
  - c. Damage to an Improvement located on the Land, at Date of Policy that is located on or encroaches onto that portion of the Land subject to an easement excepted in Schedule B, which damage results from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved; or
  - d. Damage to ~~Improvements~~ an Improvement located on the Land on or after Date of Policy, resulting from the future exercise of any a right existing at the Date of Policy to use the surface of the Land for the extraction or development of coal, lignite, oil, gas, or other minerals or any other subsurface substances excepted or excluded on Schedule A, Item 2 from the description of the Land or excepted in Schedule B.
5. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
- a. any Covenant contained in an instrument creating a lease;
  - b. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land;
  - c. except as provided in Paragraph 3.d, any Covenant relating to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances;
  - d. contamination, explosion, fire, fracturing, vibration, earthquake, flood or subsidence; or
  - e. negligence by a person or an Entity exercising a right to extract or develop minerals or other subsurface substances.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior



endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

**BLANK TITLE INSURANCE COMPANY**

By: \_\_\_\_\_

Authorized Signatory

RESTRICTIONS, ENCROACHMENTS, MINERALS ENDORSEMENT – OWNER’S POLICY  
(Form T-19.1)

**ENDORSEMENT**

Attached to Policy No. \_\_\_\_\_

Issued By

BLANK TITLE INSURANCE COMPANY

1. The insurance provided by this endorsement is subject to the exclusions in Section 5 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For the purposes of this endorsement only:
  - a. “Covenant” means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.
  - b. “Improvement” means a building, structure, road, walkway, driveway, or curb, affixed to either the Land or adjoining land and that by law constitutes real property, but excluding any crops, landscaping, lawn, shrubbery, or trees.
  - c. “Private Right” means (i) an option to purchase; (ii) a right of first refusal; or (iii) a right of prior approval of a future purchaser or occupant.
3. The Company insures against loss or damage sustained by the Insured by reason of:
  - a. A violation on the Land at Date of Policy of an enforceable Covenant, unless an exception in Schedule B of the policy identifies the violation;
  - b. Enforced removal of an Improvement located on the Land at Date of Policy as a result of a violation, at Date of Policy, of a building setback line shown on a plat of subdivision recorded or filed in the

Public Records, unless an exception in Schedule B of the policy identifies the violation;

- c. A notice of a violation, recorded in the Public Records at Date of Policy, of an enforceable Covenant relating to environmental protection describing any part of the Land and referring to that Covenant, but only to the extent of the violation of the Covenant referred to in that notice, unless an exception in Schedule B of the policy identifies the notice of the violation; or
  - d. Enforcement of a Private Right in a Covenant affecting the Title at Date of Policy based on a transfer of Title on or before Date of Policy that causes a loss of the Insured's Title.
4. The Company insures against loss or damage sustained by reason of:
- a. An encroachment of:
    - i. an Improvement located on the Land, at Date of Policy, onto adjoining land or onto that portion of the Land subject to an easement; or
    - ii. an Improvement located on adjoining land onto the Land at Date of Policy unless an exception in Schedule B of the policy identifies the encroachment otherwise insured against in Sections 4.a.i. or 4.a.ii.; or
  - b. A final court order or judgment requiring the removal from any land adjoining the Land of an encroachment identified in Schedule B; or
  - c. Damage to an Improvement located on the Land, at Date of Policy that is located on or encroaches onto that portion of the Land subject to an easement excepted in Schedule B, which damage results from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved; or
  - d. Damage to Improvements ~~an Improvement~~ located on the Land on or after Date of Policy, resulting from the future exercise of any a right existing at the Date of Policy to use the surface of the Land for

the extraction or development of coal, lignite, oil, gas or other minerals or any other subsurface substances excepted or excluded on Schedule A, Item 2 from the description of the Land or excepted in Schedule B.

5. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
- a. any Covenant contained in an instrument creating a lease;
  - b. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land;
  - c. except as provided in Paragraph 3.c, any Covenant relating to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances;
  - d. contamination, explosion, fire, fracturing, vibration, earthquake, flood or subsidence; or
  - e. negligence by a person or an Entity exercising a right to extract or develop minerals or other subsurface substances.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

By: \_\_\_\_\_

\_\_\_\_\_

Authorized Signatory

**FORM T-19.2: Minerals and Surface Damage Endorsement**

**Minerals and Surface Damage Endorsement (T-19.2)**

Attached to Policy No. \_\_\_\_\_; Applies to Parcel(s) \_\_\_\_\_ Issued by:  
\_\_\_\_\_ TITLE INSURANCE COMPANY  
Herein called the Company

The Company insures the insured against loss which the insured shall sustain by reason of damage to improvements (excluding crops, landscaping, lawn, lawns shrubbery, or trees) located on the Land on or after Date of Policy resulting from the future exercise of any right existing at Date of Policy to use the surface of the Land for the extraction or development of coal, lignite, oil, gas or other minerals or any other subsurface substances excepted or excluded on Schedule A, Item 2 or excepted in Schedule B. ~~This endorsement does not insure against loss resulting from subsidence.~~

This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:

1. contamination, explosion, fire, fracturing, vibration, earthquake, flood, or subsidence; or
2. negligence by a person or an Entity exercising a right to extract or develop minerals or other subsurface substances.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

\_\_\_\_\_ TITLE INSURANCE COMPANY

By: \_\_\_\_\_  
Authorized signatory

**FORM T-19.3: Minerals and Surface Damage**

**Endorsement Minerals and Surface Damage**

**Endorsement (T-19.3)**

Attached to Policy No. \_\_\_\_\_; Applies to Parcel(s) \_\_\_\_\_ Issued by:  
\_\_\_\_\_ TITLE INSURANCE COMPANY  
Here in called the Company

The Company insures the insured against loss which the insured shall sustain by reason of damage to permanent buildings located on the Land on or after Date of Policy resulting from the future exercise of any right existing at Date of Policy to use the surface of the Land for the extraction or development of coal, lignite, oil, gas or other minerals or any other subsurface substances excepted or excluded on Schedule A, Item 2 or excepted in Schedule B. ~~This endorsement does not insure against loss resulting from subsidence.~~

This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:

1. contamination, explosion, fire, fracturing, vibration, earthquake, flood or subsidence; or
2. negligence by a person or an Entity exercising a right to extract or develop minerals or other subsurface substances.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

\_\_\_\_\_ TITLE INSURANCE COMPANY  
By: \_\_\_\_\_ Authorized signatory

**TLTA**  
**PROPOSED RULE CHANGES**  
**EXHIBIT 7**  
**FORM T-1, FORM T-2**

**CITATION**

Section II, Insuring Forms, Form T-1: Owner's Policy of Title Insurance of *The Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas*.

Section II, Insuring Forms, Form T-2: Loan Policy of Title Insurance of *The Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas*.

**ISSUE AND JUSTIFICATION**

In 2008, TDI adopted changes to Form T-1, Form T-1R, Form T-2, and Form T-2R to make the Texas forms consistent with the 2006 American Land Title forms used in other jurisdictions. However, the current mechanics of the insuring form is confusing to consumers. The proposed language clarifies that Covered Risk 2 (c) of the Covered Risks section in the T-1 and T-2 is not available unless a deletion of the exception in Schedule B, Exceptions From Coverage, Paragraph 2, is obtained. Schedule B, paragraph 2, excepts from coverage survey matters such as discrepancies, conflicts, boundary lines, or any encroachments or protrusions, or any overlapping of improvements. Pursuant to P-2, this language can be deleted, leaving only "shortages in area" as an exception from coverage and reinstating Covered Risks paragraph 2(c). The proposed language makes it clear to a consumer that the coverage in Covered Risks paragraph 2(c) is not provided unless the "survey exception" in Schedule B is deleted. Pursuant to P-2, an accurate and complete land survey of the Land must be provided. In summary, survey coverage is provided if P-2 is followed, an acceptable survey is provided, and additional premium is paid pursuant to R-16. An exception always remains for shortages in area.

**PROPOSED REVISIONS**

**OWNER'S POLICY OF TITLE INSURANCE (Form T-1)**

...

COVERED RISKS

...

2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from:

- (a) No Change
- (b) No Change
- (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land. [This coverage is deleted by Schedule B. Exceptions From Coverage. Paragraph 2, unless a survey of the Land acceptable to Company is timely provided and the applicable premium is paid to amend the exception to "shortages in area."]

...

EXCLUSIONS FROM COVERAGE

No Change

SCHEDULE A

No Change

SCHEDULE B

...

2. Any discrepancies, conflicts, or shortages in area or boundary lines, or any



encroachments or protrusions, or any overlapping of improvements. Covered Risk 2(c) is hereby deleted.

...

### **CONDITIONS**

No Change

No Change

### **LOAN POLICY OF TITLE INSURANCE (Form T-2)**

No Change

### **COVERED RISKS**

...

2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from:

(a) No Change

(b) No Change

(c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.

...

### **EXCLUSIONS FROM COVERAGE**

No Change

### **SCHEDULE A**

No Change

### **SCHEDULE B**

File No.

Policy No.

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) that arise by reason of the terms and conditions of leases and easements, if any, shown in Schedule A, and the following matters:

1. No Change
2. Any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements. Covered Risk 2(c) is hereby deleted.

[ ] Item 2 of Schedule B is hereby amended to read: "shortages in area".

3. No Change
4. No Change
5. No Change

**CONDITIONS**

No Change

...

**TLTA PROPOSED  
RULE CHANGES  
EXHIBIT 8  
FORM T-50**

**CITATION**

Section V, FORM T-50: INSURED CLOSING SERVICE of *The Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.*

**ISSUE AND JUSTIFICATION**

The American Land Title Association (ALTA) has recently made significant revisions to its model Closing Protection Letter, the national equivalent to Form T-50. TLTA recommends revising Form T-50 to adopt appropriate revisions made to the ALTA Insured Closing Service Letter to maintain consistency as much as possible with the rest of the country. For example, Form T-50 currently does not include important exclusions for computer related fraud. These exclusions are, however, now included in the American Land Title Association (ALTA) Insured Closing Service Letter. The proposed language incorporates many, but not all the changes adopted by ALTA.

Presented language includes the phrase "Your loss is solely caused by..." The ICL is not a policy of insurance nor a guarantee or warranty and is only intended to cover the actions of the Title Company's appointed Title Agent. The change clarifies that the actions or omissions of third parties with which Title Companies have no relationship or over which they have no control are not part of any ICL coverage.

The ALTA forms committee as part of the process provided drafts and an opportunity for comment to Fannie Mae, Freddie Mac, Federal Housing Administration (FHA), the U.S. Department of Housing and Urban Development (HUD), the largest national banks (such as Wells Fargo, Bank of America) and other lenders, the American college of Mortgage Attorneys, The American College of Real Estate Attorneys and any other parties who may have expressed an interest. After reviews and comments, the form was adopted by the board of the ALTA. At such time an additional 30 day period was provided for anyone who may have had additional comments. The proposed form incorporates changes that were vetted by the numerous parties who would be affected by such changes

**PROPOSED REVISIONS**

**INSURED CLOSING SERVICE LETTER (T-50) BLANK TITLE INSURANCE COMPANY**

Name and Address of Addressee:

Date:

Texas Title Insurance Agent (hereafter, "Issuing Agent"): [Issuing Agent appears here.]

Transaction (the "Real Estate Transaction"):

[Includes GF No., Property, and Borrower's Name]

Re: Insured Closing Service

Dear

In consideration of your acceptance of this letter, Blank Title Insurance Company (the "Company"), agrees to indemnify You for actual loss of Funds incurred by You in connection with the closing of the Real Estate Transaction conducted by the Issuing Agent on or after the date of this letter, subject to the Requirements, Conditions and Exclusions set forth below:

REQUIREMENTS

1. The Company issues or is contractually obligated to issue a Policy for Your protection in connection with the closing of the Real Estate Transaction.
2. You are to be a lender secured by the insured mortgage.
3. Your loss is solely caused by:
  - a. A failure of the Issuing Agent to comply with Your written closing instructions that relate to:
    - i. the disbursement of Funds necessary to establish the status of the Title to the land or the validity, enforceability, or priority of the lien of the Insured Mortgage; or
    - ii. the obtaining of any document, specifically required by You, but only to the extent that the failure to obtain the document adversely affects the status of the Title to the Land or the validity, enforceability, or priority of the lien of the Insured Mortgage.
  - b. Fraud, theft, or dishonesty, or misappropriation of the Issuing Agent in handling Your funds or documents in connection with the

closing, but only to the extent that the fraud, theft, dishonesty, or misappropriation adversely affects the status of the Title to the Land or to the validity, enforceability, or priority of the lien of the Insured Mortgage.

## CONDITIONS AND EXCLUSIONS

1. Your transmittal of Funds or documents to the Issuing Agent for the Real Estate Transaction constitutes Your acceptance of this letter.
2. For purposes of this letter:
  - a. "Commitment" means the Company's written contractual agreement to Issue the Policy.
  - b. "Funds" means the money received by the Issuing Agent for the Real Estate Transaction.
  - c. "Policy" or "Policies" means the contract or contracts of title insurance, each in a form adopted for use in the State of Texas, issued or to be issued by the Company in connection with the closing of the Real Estate Transaction.
  - d. "You" or "Your" means: the Addressee of this letter; subject to all rights and defenses relating to a claim under this letter that the Company would have against the Addressee, and:
    - i. the assignee of the Insured Mortgage, provided such assignment was for value and the assignee was, at the time of the of the assignment, without Knowledge of facts that reveal a claim under this letter; and
    - ii. the warehouse lender in connection with the Insured Mortgage.
  - e. "Indebtedness," "Insured Mortgage," "Knowledge" or "Known," "Land," and "Title" have the same meaning given them in the Loan Policy of Title Insurance (Form T-2).
3. The Company shall have no liability under this insured closing service

letter for any loss arising from any:

- a. failure of the Issuing Agent to comply with Your closing instructions that require title insurance protection inconsistent with that set forth in the Commitment. Your written closing instructions received and accepted by the Issuing Agent after issuing the Commitment that require the removal, where allowed by state law, rule, or regulation, of specific Schedule B Exceptions from Coverage or compliance with the requirements contained in the Commitment shall not be deemed to require inconsistent title insurance protection;
- b. Loss or impairment of Your funds in the course of collection or while on deposit with a bank due to bank failure, insolvency or suspension, except loss or impairment resulting from failure of the Issuing Agent to comply with Your written closing instructions to deposit the Funds in a bank that You designated by name;
- c. Any constitutional or statutory lien or claim of lien that arises from services, labor, materials, or equipment, if any Funds are to be used for the purpose of construction, alteration, or renovation. This Section 3.c does not affect the coverage, if any, as to any lien for services, labor, materials, or equipment afforded in the Policy;
- d. Defect, lien, encumbrance, or other matter in connection with the Real Estate Transaction. This Section 3.d does not affect the coverage afforded in the Policy;
- e. Fraud, theft, misappropriation, dishonesty or negligence by You or Your employee, agent, attorney or broker;
- f. Fraud, theft, dishonesty, or misappropriation by anyone other than the Company or Issuing Agent;
- g. Your settlement or release of any claim by You without the Company's written consent;
- h. Any matters created, suffered, assumed or agreed to or known by You.

- i. Failure of the Issuing Agent to determine the validity, enforceability, or the effectiveness of a document required by Your closing instructions. This Section 3.i does not affect the coverage afforded in the Policy;
  - j. Federal consumer financial law, as defined in 12 U.S.C. §5481 (14), actions under 12 U.S.C. §5531, or other federal or state laws relating to truth-in-lending, a borrower's ability to repay a loan, qualified mortgages, consumer protection, or predatory lending, including any failure of the Issuing Agent to comply with Your closing instructions relating to those laws;
  - k. Federal or state laws establishing the standards or requirements for asset-backed securitization including, but not limited to, exemption from credit risk retention, including any failure of the Issuing Agent to comply with Your closing instructions relating to those laws;
  - l. The periodic disbursement of Funds to pay for construction, alteration, or renovation on the Land relating to the Real Estate Transaction; or
  - m. The Issuing Agent acting in the capacity of a qualified intermediary or facilitator for tax deferred exchange transactions as provided in Section 1031 of the Internal Revenue Code; or
  - n. Wire fraud, mail fraud, telephone fraud, facsimile fraud, unauthorized access to a computer, network, email, or document production system, business email compromise, identity theft, or diversion of Funds to a person or account not entitled to receive the Funds perpetrated by anyone other than the Company of Issuing Agent.
4. If the closing is to be conducted by the Issuing Agent, a Commitment in connection with the Real Estate Transaction must have been received by You prior to the transmittal of Your final closing instructions to the Issuing Agent.
5. When the Company shall have indemnified You pursuant to this letter, it shall be subrogated to all rights and remedies You have against any person or property had You not been indemnified. The Company's liability

for indemnification shall be reduced to the extent that You have impaired the value of this right of subrogation.

6. The Company's liability for loss under this letter shall not exceed the least of:
  - a. the amount of Your Funds;
  - b. the Company's liability under the Policy at the time written notice of a claim is made under this letter;
  - c. the value of the lien of the Insured Mortgage;
  - d. the value of the Title to the Land insured or to be insured under the Policy at the time written notice of a claim is made under this letter;  
or
7. The Company will be liable only to the holder of the Indebtedness at the time that payment is made.
8. Payment to You or to the owner of the Indebtedness under either the Policy or Policies or from any other source shall reduce liability under this letter by the same amount. Payment in accordance with the terms of this letter shall constitute a payment pursuant to the Conditions of the Policy.
9. The Issuing Agent is the Company's agent only for the limited purpose of issuing Policies. The Issuing Agent is not the Company's agent for the purpose of providing other closing or settlement services. The Company's liability for Your loss arising from closing or settlement services is strictly limited to the contractual protection expressly provided in this letter. Other than as expressly provided in this letter, the Company shall have no liability for loss resulting from the fraud, theft, dishonesty, misappropriation, or negligence of any party to the Real Estate Transaction, the lack of creditworthiness of any borrower connected with the Real Estate Transaction, the failure of any collateral to adequately secure a loan connected with the Real Estate Transaction, or the failure of any collateral to adequately secure a loan connected with the Real Estate Transaction.
10. In no event shall the Company be liable for a loss if the written notice of a



claim is not received by the Company within two years of Funds. The condition that the Company must be provided with written notice under this provision shall not be excused by lack of prejudice to the Company;

11. You must promptly send written notice of a claim under this letter to the Company at its principal office at \_\_\_\_\_ If the Company is prejudiced by Your failure to provide prompt notice, the Company's liability to You under this letter shall be reduced to the extent of the prejudice.
  
12. Whenever requested by the Company, You, at the Company's expense, shall:
  - a. give the Company all reasonable aid in:
    - i. securing evidence, obtaining witnesses, prosecuting, or defending any action or proceeding, or effecting any settlement; and
    - ii. any other lawful act that in the opinion of the Company may be necessary to enable the Company's investigation and determination of its liability under this letter;
  - b. deliver to the Company any records, in whatever medium maintained, that pertain to the Real Estate Transaction or any claim under this letter; and
  - c. submit to an examination under oath by any authorized representative of the Company with respect to any such records, the Real Estate Transaction, any claim under this letter or any other matter reasonably deemed relevant by the Company.
  
13. The Company shall have no liability under this letter if:
  - a. the Real Estate Transaction has not closed within one year from the date of this letter; or
  - b. at any time after the date of this letter, but before the Real Estate Transaction closes, the Company provides written notice of termination of this letter to the Addressee at the address set forth

above.

14. The protection of this letter extends only to real estate in Texas, and any court or arbitrator shall apply the law of the jurisdiction where the Land is located to interpret and enforce the terms of this letter. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law. Any litigation or other proceeding under this letter must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.
15. There shall be no right for any claim under this letter to be arbitrated or litigated on a class action basis.
16. Either the Company or You may demand that any claim arising under this letter be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association, unless You have a Policy for the Real Estate Transaction with an Amount of Insurance greater than \$2,000,000. There shall be no right for any claim under this letter to be arbitrated or litigated on a class action basis. If You have a Policy for the Real Estate Transaction with an Amount of Insurance greater than \$2,000,000, a claim arising under this letter may be submitted to arbitration only when agreed to by both the Company and You.

This closing protection letter supersedes and cancels any previous letter or similar agreement for closing protection that applies to the Real Estate Transaction.

**BLANK TITLE INSURANCE COMPANY BY:**

Authorized Signatory

**INSURED CLOSING SERVICE (T-50) BLANK TITLE INSURANCE COMPANY**

Name and Address of Addressee: Date:

Name of Issuing Agent (hereafter, "Issuing Agent"):

[Identity of Issuing Agent appears here.] Re: Insured Closing Service

Dear

~~Blank Title Insurance Company (the "Company") agrees, subject to the Conditions and Exclusions set forth below, to reimburse you for actual loss incurred by you in connection with closings of real estate transactions conducted by the Issuing Agent, provided:~~

~~—— (A) title insurance of the Company is specified for your protection in connection with the closing;~~

~~—— (B) you are to be the lender secured by a mortgage (including any other security instrument) of an interest in land, its assignees or a warehouse lender; and~~

~~—— (C) provided the loss arises out of:~~

~~————— 1. Failure of the Issuing Agent to comply with your written closing instructions to the extent that they relate to (a) the status of the title to that interest in land or the validity, enforceability and priority of the lien of the mortgage on that interest in land, including the obtaining of documents and the disbursement of funds necessary to establish the status of title or lien, or (b) the obtaining of any other document, specifically required by you, but only to the extent the failure to obtain the other document affects the status of the title to that interest in land or the validity, enforceability and priority of the lien of the mortgage on that interest in land, and not to the extent that your instructions require a determination of the validity, enforceability or the effectiveness of the other document, or~~

~~————— 2. Fraud or dishonesty of the Issuing Agent in handling your funds or documents in connection with the closings to the extent that fraud or dishonesty relates to the status of the title to that interest in land or to the validity, enforceability, and priority of the lien of the mortgage on that interest in land. If you are a lender protected under the foregoing paragraph, your assignee and your warehouse lender in connection with a loan secured by a mortgage shall be protected as if this letter were addressed to them.~~

#### ~~Conditions and Exclusions~~

~~1. The Company will not be liable to you for loss arising out of:~~

~~A. failure of the Issuing Agent to comply with your closing instructions which require title insurance protection inconsistent with that set forth in the title insurance binder or commitment issued by the Company. Instructions which require the removal of specific exceptions to title or compliance with the requirements contained in the binder or commitment shall not be deemed to be inconsistent.~~

~~B. Loss or impairment of your funds in the course of collection or while on deposit with a bank due to bank failure, insolvency or suspension, except as~~

~~shall result from failure of the Issuing Agent to comply with your written closing instructions to deposit the funds in a bank which you designated by name.~~

~~C. Defects, liens, encumbrances or other matters in connection with your loan transactions except to the extent that protection against those defects, liens, encumbrances or other matters is afforded by a policy of title insurance not inconsistent with your closing instructions.~~

~~D. Fraud, dishonesty or negligence of your employee, agent, attorney or broker.~~

~~E. Your settlement or release of any claim without the written consent of the Company.~~

~~\_\_\_\_\_ F. Any matters created, suffered, assumed or agreed to by you or known to you.~~

~~\_\_\_\_\_ 2. When the Company shall have reimbursed you pursuant to this letter, it shall be subrogated to all rights and remedies which you would have had against any person or property had you not been so reimbursed. Liability of the Company for reimbursement shall be reduced to the extent that you have knowingly and voluntarily impaired the value of this right of subrogation.~~

~~\_\_\_\_\_ 3. The Issuing Agent is the Company's agent only for the limited purpose of issuing title insurance policies. The Issuing Agent is not the Company's agent for the purpose of providing other closing or settlement services. The Company's liability for your losses arising from those other closing or settlement services is strictly limited to the protection expressly provided in this letter. Any liability of the Company for loss~~

~~does not include liability for loss resulting from the negligence, fraud or bad faith of any party to a real estate transaction other than an Issuing Agent, the lack of creditworthiness of any borrower connected with a real estate transaction, or the failure of any collateral to adequately secure a loan connected with a real estate transaction.~~

~~However, this letter does not affect the Company's liability with respect to its title insurance binders, commitments or policies.~~

~~\_\_\_\_\_ 4. Either the Company or you may demand that any claim arising under this letter be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association, unless you have a policy of title insurance for the applicable transaction with an Amount of Insurance greater than \$2,000,000. If you have~~

~~a policy of title insurance for the applicable transaction with an Amount of Insurance greater than \$2,000,000, a claim arising under this letter may be submitted to arbitration only when agreed to by both the Company and you.~~

~~5. You must promptly send written notice of a claim under this letter to the Company at its principal office at \_\_\_\_\_ . The Company is not liable for a loss if the written notice is not received within two years from the date of the closing.~~

~~6. The protection herein offered extends only to real property transactions in Texas.~~

~~Any previous closing protection letter or similar agreement is hereby cancelled, except for closings of your real estate transactions for which you have previously sent (or within 30 days hereafter send) written closing instructions to the Issuing Agent.~~

BLANK TITLE INSURANCE COMPANY

By: \_\_\_\_\_

**TLTA**  
**PROPOSED RULE CHANGES**  
**EXHIBIT 9**  
**PROCEDURAL RULE P-20.C**

**CITATION**

Section IV, Procedural Rules, Procedural Rule P-20: Standard Exception Relating to Taxes of *The Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas*.

**ISSUE AND JUSTIFICATION**

Procedural Rule P-20: Standard Exception Relating to Taxes does not address the realities of many transactions. The 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.

The Texas Land Title Association suggests amending Procedural Rule P-20 to better address these situations. The proposed change will more adequately describe the assurances consumers are requesting.

**PROPOSED REVISIONS**

**PROCEDURAL RULE P-20: Standard Exception Relating to Taxes**

A. NO CHANGE

B. NO CHANGE

C. TAXES NOT YET DUE AND PAYABLE

~~In connection with the issuance of On a Loan Policy (Form T-2) or Loan Title Policy Binder on Interim Construction Loan (Interim Binder) (Form T-13), upon payment of the premium in R-24, a Company may:~~

1. ~~If satisfied that all taxes, standby fees, and assessments by any taxing unit authority for the year inserted in the standard tax exception of the issuance of the Loan Policy or Interim Binder are not yet due and payable, add the following to the form by checking the applicable box or inserting after the standard tax exception: "Company insures that standby fees, taxes and assessments by any taxing authority for the year are not yet due and payable for the year \_\_\_\_\_." The addition may be made either by checking the appropriate box on a Form T-2 or by otherwise inserting the additional words into the form.~~
  
2. ~~If a Company determines satisfied that some, but not all, of the taxes, standby fees, and assessments for the year inserted in the standard tax exception are not yet due and payable, Company may add the following to the form after the standard tax exception: "Company insures that standby fees, taxes and assessments by any only taxing authority for the year \_\_\_\_\_ are not yet due and payable, as to [insert name of applicable taxing unit or units] authority/authorities] only are not yet due and payable for the year \_\_\_\_\_"~~

**TLTA**  
**PROPOSED RULE CHANGES**  
**EXHIBIT 10**  
**FORM T-54**

**CITATION**

Section II, Insuring Forms, Form T-54: Severable Improvements Endorsement of *The Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas*.

Section III, Rate Rule, R-37: Premium for Energy Project Endorsements (T-54, T-54.1, T-55, T-55.1, T-56, T-56.1) of *The Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas*.

Section IV, Procedural Rules, P-72: Energy Project Endorsements (T-54, T-54.1, T-55, T-55.1, T-56, T-56.1) of *The Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas*.

**ISSUE AND JUSTIFICATION**

Currently, *The Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas* does not include a promulgated rate for Form T-54. Since the Commissioner of Insurance adopted Form T-54, the American Land Title Association (ALTA) has created more specific and transaction tailored endorsements to address the scenarios Form T-54 was intended to cover. The consumers that utilize these coverages have requested the same in Texas.

The Texas Land Title Association (TLTA) suggests repealing Form T-54 and replacing it with the six ALTA endorsements. Additionally, TLTA suggest adopting a corresponding Rate Rule for each endorsement. TLTA recommends a rate of 5% of the premium for each endorsement, based on comparable coverages with higher rates in other states.

Compared to the existing (but never issued) T-54, the new proposed endorsements provide significant additional coverages to all parties to energy transactions. Energy projects take up large swaths of land. Developers, tenants and owners need to access and use all of the parcels to properly construct, operate, maintain and repair an electrical facility. A loss or damage to one parcel impacts the value of the whole. These endorsements address this concern by valuing title as an integrated project when determining loss. Additionally, under paragraph 5 of these endorsements additional items of loss are covered including rent and easement payments, fair marketvalue of leaseholds or easements, damages from breach of leases



or easements, costs for rezoning, obtaining government permits, architectural and engineering services, environmental testing as well as others listed.

The proposed rate is justified by the costs and risks associated with their issuance. There are significant and costly additional examination and closing efforts required to produce these endorsements. A full sovereignty search must be performed from patent forward to find all mineral severances, conveyances and leases and other instruments which affect the mineral interests. All of the mineral interests then need to be fully abstracted to obtain the current outstanding interests and parties. Then all of those instruments need to be reviewed/examined to determine what rights the mineral holder has in and to the land, have there been surface waivers, are there surface use agreements, are there pooling or unitization agreements, etc.

Often, it will be necessary for the abstractor to go to the local courthouses to do this type of search if the agent's plant is not a sovereignty plant or if their records are not as complete or legible. Most times this type of mineral research will involve the retention of land men to complete the research as they are more skilled in these types of mineral searches. The landman's reports will then need to be reviewed/examined to determine the outstanding mineral interests.

In a normal transaction under the rules, the title company is authorized to merely take the broad mineral exception and does not have to deal with these issues. In most instances of underwriting these endorsements, an oil and gas production report will be necessary to determine if various oil and gas leases are still active, as most leases have a provision that the lease continues in effect as long as there is production. These types of searches generally involve a third-party research group that does their research at the Texas Railroad Commission. Those reports then need to be reviewed and examined to determine the status of oil and gas leases and production on the land.

Surface waivers and surface use agreements, as well as other instruments, affect the ability of the energy surface user's rights to use the land. All of those documents must be reviewed and examined to determine if they will impact the surface use by the energy company and if the title insurer can provide the coverages being requested. Additionally, a geological analysis is often performed by a third-party service to determine the likelihood of potential future production. These reports also need to be reviewed and examined to determine if coverages may be provided.

Energy transactions often involve hundreds or thousands of acres of land. As such to provide even normal types of coverages requires substantial time to review all of the outstanding encumbrances on the land as well as the surveys for these types of transactions. In reviewing the surveys for an energy transaction, the parties will often overlay their planned development onto the survey to indicate where the improvements, usually solar arrays or wind turbines will be located as well as where drill sites and drill corridors or easements to facilitate the improvements may be located.

Most of the energy transactions involve multiple parties with varying interests the projects, fee owners, leasehold owners, easement owners as well as the associated lenders for each of the interests. All of these types of transactions involve complicated ownership structures and lending facilities that require extensive review and underwriting. Should any outstanding mineral interests or documents be missed or improperly examined as to the mineral owner's rights or existence, these will have a very detrimental effect on the project's viability, and the loss under any issued policy would be extensive as these types of projects often run into the hundreds of millions and even billions of dollars. Given the additional work and risk involved in these types of transactions the rate proposed is appropriate. The 5% proposed rate is consistent with or less than the rates charged for the same coverage in similarly situated states.

## **PROPOSED REVISIONS**

**Repeal Form T-54 and replace with proposed forms below.**

**New Insuring Forms T-54, T-54.1, T-55, T-55.1, T-56, and T-56.1**

### **ENERGY PROJECT – LEASEHOLD/EASEMENT OWNER'S ENDORSEMENT (Form T-54)**

Attached to Policy No. \_\_\_\_\_

Issued by

**[Title Company]**

1. The insurance provided by this endorsement is subject to the exclusions in Section 6 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only:
  - a. "Constituent Parcel" means one of the parcels of Land described in Schedule A that together constitute one integrated project.
  - b. "Easement" means each easement described in Schedule A.
  - c. "Easement Interest" means the right of use granted in the Easement for the Easement Term.

- d. "Easement Term" means the duration of the Easement Interest, as set forth in the Easement, including any renewal or extended term if a valid option to renew or extend is contained in the Easement.
- e. "Electricity Facility" means an electricity generating facility which may include one or more of the following: a substation; a transmission, distribution or collector line; an interconnection, inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, wheeling, sale or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.
- f. "Evicted" or "Eviction" means (a) the lawful deprivation, in whole or in part, of the right of possession or use insured by this policy, contrary to the terms of any Lease or Easement or (b) the lawful prevention of the use of the Land or any Electricity Facility or Severable Improvement for the purposes permitted by the Lease or the Easement, as applicable, in either case as a result of a matter covered by this policy.
- g. "Lease" means each lease described in Schedule A.
- h. "Leasehold Estate" means the right of possession granted in the Lease for the Lease Term.
- i. "Lease Term" means the duration of the Leasehold Estate, as set forth in the Lease, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.
- j. "Plans" means the survey, site and elevation plans or other depictions or drawings prepared by (insert name of architect or engineer) \_\_\_\_\_ dated \_\_\_\_\_, last revised, \_\_\_\_\_ and designated as \_\_\_\_\_

(insert name of project or project number) consisting of \_\_\_\_\_ sheets.

- k. "Remaining Term" means the portion of the Easement Term or the Lease Term remaining after the Insured has been Evicted.
- l. "Severable Improvement" means property affixed to the Land at Date of Policy or to be affixed in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.

3. Valuation of Title as an Integrated Project:

- a. If in computing loss or damage it becomes necessary to value the Title, or any portion of it, as the result of an Eviction, then, as to that portion of the Land from which the Insured is Evicted, that value shall consist of (i) the value of (A) the Leasehold Estate or the Easement Interest for the Remaining Term, as applicable, (B) any Electricity Facility existing on the date of the Eviction, and, if applicable, (ii) any reduction in value of another insured Lease or Easement as computed in Section 3(b) below.
- b. A computation of loss or damage resulting from an Eviction affecting any Constituent Parcel shall include loss or damage to the integrated project caused by the covered matter affecting the Constituent Parcel from which the Insured is Evicted.
- c. The Insured Claimant shall have the right to have the Leasehold Estate, the Easement Interest, and any Electricity Facility affected by a defect insured against by this policy valued either as a whole or separately. In either event, this determination of value shall take into account any rent or use payments no longer required to be paid for the Remaining Term.
- d. The provisions of this Section 3 shall not diminish the Insured's rights under any other endorsement to the policy; however, the calculation of loss or damage pursuant to this endorsement shall not allow

duplication of recovery for loss or damage calculated pursuant to Section 8 of the Conditions or any other endorsement to the policy.

4. Valuation of Severable Improvements:

- a. In the event of an Eviction, the calculation of the loss shall include (but not to the extent that these items of loss are included in the valuation of the Title determined pursuant to Section 8 of the Conditions or any other provision of this or any other endorsement) the diminution in value of the Insured's interest in any Severable Improvement resulting from the Eviction, reduced by the salvage value of the Severable Improvement.
  
- b. The policy does not insure against loss or damage (and the Company will not pay any costs, attorneys' fees or expenses) relating to:
  - i. the attachment, perfection or priority of any security interest in any Severable Improvement;
  
  - ii. the vesting or ownership of title to or rights in any Severable Improvement;
  
  - iii. any defect in or lien or encumbrance on the title to any Severable Improvement; or
  
  - iv. the determination of whether any specific property is real or personal in nature.

5. Additional items of loss covered by this endorsement:

If the Insured is Evicted, the following items of loss, if applicable to that portion of the Land from which the Insured is Evicted, shall be included, without duplication, in computing loss or damage incurred by the Insured, but not to the extent that the same are included in the valuation of the Title determined pursuant to Section 3 of this endorsement, the valuation of Severable Improvements pursuant to Section 4 of

this endorsement, or Section 8(a)(ii) of the Conditions.

- a. The reasonable cost of: (i) disassembling, removing, relocating and reassembling any Severable Improvement that the Insured has the right to remove and relocate, situated on the Land at the time of Eviction, to the extent necessary to restore and make functional the integrated project; (ii) transportation of that Severable Improvement for the initial one hundred miles incurred in connection with the restoration or relocation; and (iii) restoring the Land to the extent damaged as a result of the disassembly, removal and relocation of the Severable Improvement and required of the Insured solely because of the Eviction.
  
- b. Rent, easement payments or damages for use and occupancy of the Land prior to the Eviction that the Insured as owner of the Leasehold Estate or the Easement Interest, as applicable, may be obligated to pay to any person having paramount title to that of the lessor in the Lease or the grantor in the Easement, as applicable.
  
- c. The amount of rent, easement payments or damages that, by the terms of the Lease or the Easement, as applicable, the Insured must continue to pay to the lessor or grantor after Eviction with respect to the portion of the Leasehold Estate or Easement Interest, as applicable, from which the Insured has been Evicted.
  
- d. The fair market value, at the time of the Eviction, of the estate or interest of the Insured in any lease, sublease or easement specifically permitted by the Lease or Easement, as applicable, and made by the Insured as lessor or grantor of all or part of the Leasehold Estate or Easement Interest, as applicable.
  
- e. Damages caused by the Eviction that the Insured is obligated to pay to lessees or sublessees or easement or subeasement grantees on account of the breach of any lease or sublease or easement or subeasement specifically permitted by the Lease or the Easement, as applicable, and made by the Insured as lessor or grantor of all or part of the Leasehold Estate or Easement Interest, as applicable.

- f. The reasonable cost to obtain land use, zoning, building and occupancy permits, architectural and engineering services and environmental testing and reviews for a replacement leasehold reasonably equivalent to the Leasehold Estate or a replacement easement reasonably equivalent to the Easement Interest, as applicable.
  
  - g. If any Electricity Facility is not substantially completed at the time of Eviction, the actual cost incurred by the Insured up to the time of Eviction, less the salvage value, for the Electricity Facility located on that portion of the Land from which the Insured is Evicted. Those costs include costs incurred to construct and fabricate the Electricity Facility, obtain land use, zoning, building and occupancy permits, architectural and engineering services, construction management services, environmental testing and reviews, and landscaping, and cancellation fees related to the foregoing.
6. This endorsement does not insure against loss, damage or costs of remediation (and the Company will not pay costs, attorneys' fees, or expenses) resulting from environmental damage or contamination.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

**[Title Company]**

**ENERGY PROJECT – LEASEHOLD/EASEMENT – LOAN ENDORSEMENT (Form T-54.1)**

Attached to Policy No. \_\_\_\_\_

Issued by

**[Title Company]**

1. The insurance provided by this endorsement is subject to the exclusions in Section 6 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
  
2. For purposes of this endorsement only:
  - a. “Constituent Parcel” means one of the parcels of Land described in Schedule A that together constitute one integrated project.
  
  - b. “Easement” means each easement described in Schedule A.
  
  - c. “Easement Interest” means the right of use granted in the Easement for the Easement Term.
  
  - d. “Easement Term” means the duration of the Easement Interest, as set forth in the Easement, including any renewal or extended term if a valid option to renew or extend is contained in the Easement.
  
  - e. “Electricity Facility” means an electricity generating facility which may include one or more of the following: a substation; a transmission, distribution or collector line; an interconnection, inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage,



switching, metering, step-up, step-down, inversion, transmission, conducting, wheeling, sale or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.

- f. "Evicted" or "Eviction" means (a) the lawful deprivation, in whole or in part, of the right of possession or use insured by this policy, contrary to the terms of any Lease or Easement or (b) the lawful prevention of the use of the Land or any Electricity Facility or Severable Improvement for the purposes permitted by the Lease or the Easement, as applicable, in either case as a result of a matter covered by this policy.
  
- g. "Lease" means each lease described in Schedule A.
  
- h. "Leasehold Estate" means the right of possession granted in the Lease for the Lease Term.
  
- i. "Lease Term" means the duration of the Leasehold Estate, as set forth in the Lease, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.
  
- j. "Plans" means the survey, site and elevation plans or other depictions or drawings prepared by (insert name of architect or engineer) dated \_\_\_\_\_, last revised \_\_\_\_\_, designated as \_\_\_\_\_ (insert name of project or project number) \_\_\_\_\_ consisting of \_\_\_\_\_ sheets.
  
- k. "Remaining Term" means the portion of the Easement Term or the Lease Term remaining after the Insured has been Evicted.
  
- l. "Severable Improvement" means property affixed to the Land at Date of Policy or to be affixed in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.

m. “Tenant” means the tenant under the Lease or a grantee under the Easement, as applicable, and, after acquisition of all or any part of the Title in accordance with the provisions of Section 2 of the Conditions of the policy, the Insured Claimant.

3. Valuation of Title as an Integrated Project:

a. If in computing loss or damage it becomes necessary to value the Title, or any portion of it, as the result of an Eviction, then, as to that portion of the Land from which the Tenant is Evicted, that value shall consist of (i) the value of (A) the Leasehold Estate or the Easement Interest for the Remaining Term, as applicable, (B) any Electricity Facility existing on the date of the Eviction, and, if applicable, (ii) any reduction in value of another insured Lease or Easement as computed in Section 3(b) below.

b. A computation of loss or damages resulting from an Eviction affecting any Constituent Parcel shall include loss or damage to the integrated project caused by the covered matter affecting the Constituent Parcel from which the Insured is Evicted.

c. The Insured Claimant shall have the right to have the Leasehold Estate, the Easement Interest, and any Electricity Facility affected by a defect insured against by the policy valued either as a whole or separately. In either event, this determination of value shall take into account any rent or use payments no longer required to be paid for the Remaining Term.

d. The provisions of this Section 3 shall not diminish the Insured’s rights under any other endorsement to the policy; however, the calculation of loss or damage pursuant to this endorsement shall not allow duplication of recovery for loss or damage calculated pursuant to Section 8 of the Conditions or any other endorsement to the policy.

4. Valuation of Severable Improvements:

a. In the event of an Eviction, the calculation of the loss shall include (but not

to the extent that these items of loss are included in the valuation of the Title determined pursuant to Section 8 of the Conditions or any other provision of this or any other endorsement) the diminution in value of the Insured's interest in any Severable Improvement resulting from the Eviction, reduced by the salvage value of the Severable Improvement.

- b. The policy does not insure against loss or damage (and the Company will not pay any costs, attorneys' fees or expenses) relating to:
  - i. the attachment, perfection or priority of any security interest in any Severable Improvement;
  - ii. the vesting or ownership of title to or rights in any Severable Improvement;
  - iii. any defect in or lien or encumbrance on the title to any Severable Improvement; or
  - iv. the determination of whether any specific property is real or personal in nature.

5. Additional items of loss covered by this endorsement:

If the Insured acquires all or any part of the Title in accordance with the provisions of Section 2 of the Conditions of the policy and thereafter is Evicted, the following items of loss, if applicable to that portion of the Land from which the Insured is Evicted shall be included, without duplication, in computing loss or damage incurred by the Insured, but not to the extent that the same are included in the valuation of the Title determined pursuant to Section 3 of this endorsement, the valuation of Severable Improvements pursuant to Section 4 of this endorsement, or Section 8(a)(iii) of the Conditions:

- a. The reasonable cost of: (i) disassembling, removing, relocating and reassembling any Severable Improvement that the Insured has the right to remove and relocate, situated on the Land at the time of Eviction, to the extent necessary to restore and make functional the integrated project; (ii) transportation of that Severable Improvement for the initial one hundred miles incurred in connection with the restoration or relocation; and (iii) restoring the Land to the extent damaged as a result of the disassembly, removal and relocation of the Severable Improvement and required of the Insured solely because of

the Eviction.

- b. Rent, easement payments or damages for use and occupancy of the Land prior to the Eviction that the Insured as owner of the Leasehold Estate or the Easement Interest, as applicable, may be obligated to pay to any person having paramount title to that of the lessor in the Lease or the grantor in the Easement, as applicable.
  
- c. The amount of rent, easement payments or damages that, by the terms of the Lease or the Easement, as applicable, the Insured must continue to pay to the lessor or grantor after Eviction with respect to the portion of the Leasehold Estate or Easement Interest, as applicable, from which the Insured has been Evicted.
  
- d. The fair market value, at the time of the Eviction, of the estate or interest of the Insured in any lease, sublease or easement specifically permitted by the Lease or Easement, as applicable, and made by the Tenant as lessor or grantor of all or part of the Leasehold Estate or Easement Interest, as applicable.
  
- e. Damages caused by the Eviction that the Insured is obligated to pay to lessees or sublessees or easement or subeasement grantees on account of the breach of any lease or sublease or easement or subeasement specifically permitted by the Lease or the Easement, as applicable, and made by the Tenant as lessor or grantor of all or part of the Leasehold Estate or Easement Interest, as applicable.
  
- f. The reasonable cost to obtain land use, zoning, building and occupancy permits, architectural and engineering services and environmental testing and reviews for a replacement leasehold reasonably equivalent to the Leasehold Estate or a replacement easement reasonably equivalent to the Easement Interest, as applicable.
  
- g. If any Electricity Facility is not substantially completed at the time of

Eviction, the actual cost incurred by the insured up to the time of Eviction, less the salvage value, for the Electricity Facility located on that portion of the Land from which the Insured is Evicted. Those costs include costs incurred to construct and fabricate the Electricity Facility, obtain land use, zoning, building and occupancy permits, architectural and engineering services, construction management services, environmental testing and reviews, and landscaping, and cancellation fees related to the foregoing.

6. This endorsement does not insure against loss, damage or costs of remediation (and the Company will not pay costs, attorneys' fees, or expenses) resulting from environmental damage or contamination.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

**[Title Company]**

**ENERGY PROJECT – LEASEHOLD – OWNER’S ENDORSEMENT (Form T-55)**

Attached to Policy No. \_\_\_\_\_

Issued by

**[Title Company]**

1. The insurance provided by this endorsement is subject to the exclusions in Section 6 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
  
2. For purposes of this endorsement only:
  - a. “Constituent Parcel” means one of the parcels of Land described in Schedule A that together constitute one integrated project.
  
  - b. “Electricity Facility” means an electricity generating facility which may include one or more of the following: a substation; a transmission, distribution or collector line; an interconnection, inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, wheeling, sale or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.
  
  - c. “Evicted” or “Eviction” means (a) the lawful deprivation, in whole or in part, of the right of possession insured by this policy, contrary to the terms of any Lease or (b) the lawful prevention of the use of the Land or any Electricity Facility or Severable Improvement for the purposes permitted by the Lease, in either case as a result of a matter covered by this policy.

- d. "Lease" means each lease described in Schedule A.
- e. "Leasehold Estate" means the right of possession granted in the Lease for the Lease Term.
- f. "Lease Term" means the duration of the Leasehold Estate, as set forth in the Lease, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.
- g. "Plans" means the survey, site and elevation plans or other depictions or drawings prepared by (insert name of architect or engineer) dated \_\_\_\_\_, last revised \_\_\_\_\_, designated as (insert name of project or project number) consisting of \_\_\_\_\_ sheets.
- h. "Remaining Term" means the portion of the Lease Term remaining after the Insured has been Evicted.
- i. "Severable Improvement" means property affixed to the Land at Date of Policy or to be affixed in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.

3. Valuation of Title as an Integrated Project:

- a. If in computing loss or damage it becomes necessary to value the Title, or any portion of it, as the result of an Eviction, then, as to that portion of the Land from which the Insured is Evicted, that value shall consist of (i) the value of (A) the Leasehold Estate for the Remaining Term, (B) any Electricity Facility existing on the date of the Eviction, and, if applicable, (ii) any reduction in value of another insured Lease as computed in Section 3(b) below.

- b. A computation of loss or damage resulting from an Eviction affecting any Constituent Parcel shall include loss or damage to the integrated project caused by the covered matter affecting the Constituent Parcel from which the Insured is Evicted.
- c. The Insured Claimant shall have the right to have the Leasehold Estate and any Electricity Facility affected by a defect insured against by this policy valued either as a whole or separately. In either event, this determination of value shall take into account any rent no longer required to be paid for the Remaining Term.
- d. The provisions of this Section 3 shall not diminish the Insured's rights under any other endorsement to the policy; however, the calculation of loss or damage pursuant to this endorsement shall not allow duplication of recovery for loss or damage calculated pursuant to Section 8 of the Conditions or any other endorsement to the policy.

4. Valuation of Severable Improvements:

- a. In the event of an Eviction, the calculation of the loss shall include (but not to the extent that these items of loss are included in the valuation of the Title determined pursuant to Section 8 of the Conditions or any other provision of this or any other endorsement) the diminution in value of the Insured's interest in any Severable Improvement resulting from the Eviction, reduced by the salvage value of the Severable Improvement.
- b. The policy does not insure against loss or damage (and the Company will not pay any costs, attorneys' fees or expenses) relating to:
  - i. the attachment, perfection or priority of any security interest in any Severable Improvement;
  - ii. the vesting or ownership of title to or rights in any Severable Improvement;



- iii. any defect in or lien or encumbrance on the title to any Severable Improvement; or
- iv. the determination of whether any specific property is real or personal in nature.

5. Additional items of loss covered by this endorsement:

If the Insured is Evicted, the following items of loss, if applicable to that portion of the Land from which the Insured is Evicted shall be included, without duplication, in computing loss or damage incurred by the Insured, but not to the extent that the same are included in the valuation of the Title determined pursuant to Section 3 of this endorsement, the valuation of Severable Improvements pursuant to Section 4 of this endorsement, or Section 8(a)(ii) of the Conditions.

- a. The reasonable cost of: (i) disassembling, removing, relocating and \_\_\_\_\_ reassembling any Severable Improvement that the Insured has the right to remove and relocate, situated on the Land at the time of Eviction, to the extent necessary to restore and make functional the integrated project; (ii) transportation of that Severable Improvement for the initial one hundred miles incurred in connection with the restoration or relocation; and (iii) restoring the Land to the extent damaged as a result of the disassembly, removal and relocation of the Severable Improvement and required of the Insured solely because of the Eviction.
- b. Rent or damages for use and occupancy of the Land prior to the Eviction that the Insured as owner of the Leasehold Estate may be obligated to pay to any person having paramount title to that of the lessor in the Lease.
- c. The amount of rent or damages that, by the terms of the Lease, the Insured must continue to pay to the lessor after Eviction with respect to the portion of the Leasehold Estate from which the Insured has been Evicted.

- d. The fair market value, at the time of the Eviction, of the estate or interest of the Insured in any lease or sublease specifically permitted by the Lease and made by the Insured as lessor of all or part of the Leasehold Estate.
  - e. Damages caused by the Eviction that the Insured is obligated to pay to lessees or sublessees on account of the breach of any lease or sublease specifically permitted by the Lease and made by the Insured as lessor of all or part of the Leasehold Estate.
  - f. The reasonable cost to obtain land use, zoning, building and occupancy permits, architectural and engineering services and environmental testing and reviews for a replacement leasehold reasonably equivalent to the Leasehold Estate.
  - g. If any Electricity Facility is not substantially completed at the time of Eviction, the actual cost incurred by the Insured up to the time of Eviction, less the salvage value, for the Electricity Facility located on that portion of the Land from which the Insured is Evicted. Those costs include costs incurred to construct and fabricate the Electricity Facility, obtain land use, zoning, building and occupancy permits, architectural and engineering services, construction management services, environmental testing and reviews, and landscaping, and cancellation fees related to the foregoing.
6. This endorsement does not insure against loss, damage or costs of remediation (and the Company will not pay costs, attorneys' fees, or expenses) resulting from environmental damage or contamination.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

**[Title Company]**

**ENERGY PROJECT – LEASEHOLD LOAN – LOAN ENDORSEMENT (Form T-55.1)**

Attached to Policy No.

Issued by

**[Title Company]**

1. The insurance provided by this endorsement is subject to the exclusions in Section 6 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For purposes of this endorsement only:
  - a. “Constituent Parcel” means one of the parcels of Land described in Schedule A that together constitute one integrated project.
  - b. “Electricity Facility” means an electricity generating facility which may include one or more of the following: a substation; a transmission, distribution or collector line; an interconnection, inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, wheeling, sale or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.
  - c. “Evicted” or “Eviction” means (a) the lawful deprivation, in whole or in part, of the right of possession insured by this policy, contrary to the terms of any Lease or (b) the lawful prevention of the use of the Land or any Electricity Facility or Severable Improvement for the purposes permitted by the Lease, in either case as a result of a matter covered by this policy.
  - d. “Lease” means each lease described in Schedule A.

- e. "Leasehold Estate" means the right of possession granted in the Lease for the Lease Term.
- f. "Lease Term" means the duration of the Leasehold Estate, as set forth in the Lease, including any renewal or extended term if a valid option to renew or extend is contained in the Lease.
- g. "Plans" means the survey, site and elevation plans or other depictions or drawings prepared by (insert name of architect or engineer) dated \_\_\_\_\_, last revised \_\_\_\_\_, designated as (insert name of project or project number) consisting of \_\_\_\_\_ sheets.
- h. "Remaining Term" means the portion of the Lease Term remaining after the Insured has been Evicted.
- i. "Severable Improvement" means property affixed to the Land at Date of Policy or to be affixed in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.
- j. "Tenant" means the tenant under the Lease and, after acquisition of all or any part of the Title in accordance with the provisions of Section 2 of the Conditions of the policy, the Insured Claimant.

3. Valuation of Title as an Integrated Project:

- a. If in computing loss or damage it becomes necessary to value the Title, or any portion of it, as the result of an Eviction, then, as to that portion of the Land from which the Tenant is Evicted, that value shall consist of (i) the value of (A) the Leasehold Estate for the Remaining Term, (B) any Electricity Facility existing on the date of the Eviction, and, if applicable, (ii) any reduction in value of another insured Lease as computed in Section 3(b) below.
- b. A computation of loss or damage resulting from an Eviction affecting any Constituent Parcel shall include loss or damage to the integrated project caused by the covered matter affecting the Constituent Parcel from which the Insured is Evicted.

- c. The Insured Claimant shall have the right to have the Leasehold Estate and any Electricity Facility affected by a defect insured against by the policy valued either as a whole or separately. In either event, this determination of value shall take into account any rent no longer required to be paid for the Remaining Term.
- d. The provisions of this Section 3 shall not diminish the Insured's rights under any other endorsement to the policy; however, the calculation of loss or damage pursuant to this endorsement shall not allow duplication of recovery for loss or damage calculated pursuant to Section 8 of the Conditions or any other endorsement to the policy.

4. Valuation of Severable Improvements:

- a. In the event of an Eviction, the calculation of the loss shall include (but not to the extent that these items of loss are included in the valuation of the Title determined pursuant to Section 8 of the Conditions or any other provision of this or any other endorsement) the diminution in value of the Insured's interest in any Severable Improvement resulting from the Eviction, reduced by the salvage value of the Severable Improvement.
- b. The policy does not insure against loss or damage (and the Company will not pay any costs, attorneys' fees or expenses) relating to:
  - i. the attachment, perfection or priority of any security interest in any Severable Improvement;
  - ii. the vesting or ownership of title to or rights in any Severable Improvement;
  - iii. any defect in or lien or encumbrance on the title to any Severable Improvement; or
  - iv. the determination of whether any specific property is real or personal in nature.

5. Additional items of loss covered by this endorsement:

If the Insured acquires all or any part of the Title in accordance with the provisions of Section 2 of the Conditions of the policy and thereafter is Evicted, the following items of loss, if applicable to that portion of the Land from which the Insured is Evicted shall be included, without duplication, in computing loss or damage incurred by the Insured, but not to the extent that the same are included in the valuation of the Title determined pursuant to Section 3 of this endorsement, the valuation of Severable Improvements pursuant to Section 4 of this endorsement, or Section 8(a)(iii) of the Conditions:

- a. The reasonable cost of: (i) disassembling, removing, relocating and reassembling any Severable Improvement that the Insured has the right to remove and relocate, situated on the Land at the time of Eviction, to the extent necessary to restore and make functional the integrated project; (ii) transportation of that Severable Improvement for the initial one hundred miles incurred in connection with the restoration or relocation; and (iii) restoring the Land to the extent damaged as a result of the disassembly, removal and relocation of the Severable Improvement and required of the Insured solely because of the Eviction.
- b. Rent or damages for use and occupancy of the Land prior to the Eviction that the Insured as owner of the Leasehold Estate may be obligated to pay to any person having paramount title to that of the lessor in the Lease.
- c. The amount of rent or damages that, by the terms of the Lease, the Insured must continue to pay to the lessor after Eviction with respect to the portion of the Leasehold Estate from which the Insured has been Evicted.
- d. The fair market value, at the time of the Eviction, of the estate or interest of the Insured in any lease or sublease specifically permitted by the Lease and made by the Tenant as lessor of all or part of the Leasehold Estate.
- e. Damages caused by the Eviction that the Insured is obligated to pay to lessees or sublessees on account of the breach of any lease or sublease specifically permitted by the Lease and made by the Tenant as lessor of all

or part of the Leasehold Estate.

- f. The reasonable cost to obtain land use, zoning, building and occupancy permits, architectural and engineering services and environmental testing and reviews for a replacement leasehold reasonably equivalent to the Leasehold Estate.
  - g. If any Electricity Facility is not substantially completed at the time of Eviction, the actual cost incurred by the Insured up to the time of Eviction, less the salvage value, for the Electricity Facility located on that portion of the Land from which the Insured is Evicted. Those costs include costs incurred to construct and fabricate the Electricity Facility, obtain land use, zoning, building and occupancy permits, architectural and engineering services, construction management services, environmental testing and reviews, and landscaping, and cancellation fees related to the foregoing.
6. This endorsement does not insure against loss, damage or costs of remediation (and the Company will not pay costs, attorneys' fees, or expenses) resulting from environmental damage or contamination.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

**[Title Company]**



**ENERGY PROJECT – FEE ESTATE – OWNER’S ENDORSEMENT (Form T-56)**

Attached to Policy No. \_\_\_\_\_

Issued by

**[Title Company]**

1. The insurance provided by this endorsement is (a) only effective for the parcel or those parcels of the Land as to which the Title is fee simple and (b) subject to the exclusions in Section 6 of this endorsement and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
  
2. For purposes of this endorsement only:
  - a. “Constituent Parcel” means one of the parcels of Land described in Schedule A that together with any other parcel or parcels of Land described in Schedule A constitute one integrated project.
  
  - b. “Electricity Facility” means an electricity generating facility which may include one or more of the following: a substation; a transmission, distribution or collector line; an interconnection, inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, wheeling, sale or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.
  
  - c. “Ejected” or “Ejection” means (a) the lawful divestment, in whole or in part, of the Title to the Land or (b) the lawful prevention of the use of the Land or any Electricity Facility or Severable Improvement, as applicable, in either case as a result of a matter covered by this policy.
  
  - d. “Plans” means the survey, site and elevation plans or other depictions or

drawings prepared by (insert name of architect or engineer) dated \_\_\_\_\_, last revised \_\_\_\_\_, designated as (insert name of project or project number) consisting of \_\_\_\_\_ sheets.

- e. "Severable Improvement" means property affixed to the Land at Date of Policy or to be affixed in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.

3. Valuation of Title as an integrated project:

- a. If in computing loss or damage it becomes necessary to value the Title, or any portion of it, as the result of an Ejection, then, as to that portion of the Land from which the Insured is Ejected, that value shall consist of (i) the value of the fee estate including any Electricity Facility existing on the date of the Ejection, and, if applicable, (ii) any reduction in value of another insured Constituent Parcel as computed in Section 3(b) below.
- b. A computation of loss or damage resulting from an Ejection affecting any Constituent Parcel shall include loss or damage to the integrated project caused by the covered matter affecting the Constituent Parcel from which the Insured is Ejected.
- c. The Insured Claimant shall have the right to have the fee estate, any Constituent Parcel, and any Electricity Facility affected by a defect insured against by this policy valued either as a whole or separately.
- d. The provisions of this Section 3 shall not diminish the Insured's rights under any other endorsement to the policy; however, the calculation of loss or damage pursuant to this endorsement shall not allow duplication of recovery for loss or damage calculated pursuant to Section 8 of the Conditions or any other endorsement to the policy.

4. Valuation of Severable Improvements:

- a. In the event of an Ejection, the calculation of the loss shall include (but not to the extent that these items of loss are included in the valuation of the Title determined pursuant to Section 8 of the Conditions or any other provision of this or any other endorsement) the diminution in value of the Insured's interest in any Severable Improvement resulting from the Ejection, reduced by the salvage value of the Severable Improvement.
- b. The policy does not insure against loss or damage (and the Company will not pay any costs, attorneys' fees, or expenses) relating to:
  - i. the attachment, perfection or priority of any security interest in any Severable Improvement;
  - ii. the vesting or ownership of title to or rights in any Severable Improvement;
  - iii. any defect in or lien or encumbrance on the title to any Severable Improvement; or
  - iv. the determination of whether any specific property is real or personal in nature.

5. Additional items of loss covered by this endorsement:

If the Insured is Ejected, the following items of loss, if applicable to that portion of the Land from which the Insured is Ejected, shall be included, without duplication, in computing loss or damage incurred by the Insured, but not to the extent that the same are included in the valuation of the Title determined pursuant to Section 3 of this endorsement, the valuation of Severable Improvements pursuant to Section 4 of this endorsement, or Section 8(a)(ii) of the Conditions.

- a. The reasonable cost of: (i) disassembling, removing, relocating and reassembling any Severable Improvement that the Insured has the right to remove and relocate, situated on the Land at the time of Ejection, to the extent necessary to restore and make functional the integrated project; (ii) transportation of that Severable Improvement for the initial one hundred miles incurred in connection with the restoration or relocation; and (iii) restoring the Land to the extent damaged as a result of the disassembly, removal and relocation of the Severable Improvement and required of the Insured solely because of the Ejection.
  
- b. Payments or damages for use and occupancy of the Land prior to the Ejection that the Insured may be obligated to pay to any person having paramount title to that of the Insured.
  
- c. The fair market value, at the time of the Ejection, of the estate or interest of the Insured in any lease or easement, as applicable, made by the Insured as lessor or grantor of all or part of the Title.
  
- d. Damages caused by the Ejection that the Insured is obligated to pay to lessees or easement grantees on account of the breach of any lease or easement, as applicable, made by the Insured as lessor or grantor of all or part of the Title.
  
- e. The reasonable cost to obtain land use, zoning, building and occupancy permits, architectural and engineering services and environmental testing and reviews for a fee estate in a replacement parcel of land reasonably equivalent to the parcel that is the subject of the Ejection.
  
- f. If any Electricity Facility is not substantially completed at the time of Ejection, the actual cost incurred by the Insured up to the time of Ejection, less the salvage value, for the Electricity Facility located on that portion of the Land from which the Insured is Ejected. Those costs include costs incurred to construct and fabricate the Electricity Facility, obtain land use, zoning, building and occupancy permits, architectural and engineering services, construction management services, environmental testing and reviews, and landscaping, and cancellation fees related to the foregoing.

6. This endorsement does not insure against loss, damage, or costs of remediation (and the Company will not pay costs, attorneys' fees, or expenses) resulting from environmental damage or contamination.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

**[Title Company]**

**ENERGY PROJECT – FEE ESTATE – LOAN ENDORSEMENT (Form T-56.1)**

Attached to Policy No. \_\_\_\_\_

Issued by

**[Title Company]**

1. The insurance provided by this endorsement is (a) only effective for the parcel or those parcels of the Land as to which the Title is fee simple and (b) subject to the exclusions in Section 6 of this endorsement and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
  
2. For purposes of this endorsement only:
  - a. “Constituent Parcel” means one of the parcels of Land described in Schedule A that together with any other parcel or parcels of Land described in Schedule A constitute one integrated project.
  
  - b. “Electricity Facility” means an electricity generating facility which may include one or more of the following: a substation; a transmission, distribution or collector line; an interconnection, inverter, transformer, generator, turbine, array, solar panel, or module; a circuit breaker, footing, tower, pole, cross-arm, guy line, anchor, wire, control system, communications or radio relay system, safety protection facility, road, and other building, structure, fixture, machinery, equipment, appliance and item associated with or incidental to the generation, conversion, storage, switching, metering, step-up, step-down, inversion, transmission, conducting, wheeling, sale, or other use or conveyance of electricity, on the Land at Date of Policy or to be built or constructed on the Land in the locations according to the Plans, that by law constitutes real property.
  
  - c. “Ejected” or “Ejection” means (a) the lawful divestment, in whole or in part, of the Title to the Land or (b) the lawful prevention of the use of the Land or any Electricity Facility or Severable Improvement, as applicable, in

either case as a result of a matter covered by this policy.

- d. "Plans" means the survey, site and elevation plans or other depictions or drawings prepared by (insert name of architect or engineer) dated \_\_\_\_\_, last revised, \_\_\_\_\_ designated as. (insert name of project or project number) consisting of \_\_\_\_\_ sheets.
- e. "Severable Improvement" means property affixed to the Land at Date of Policy or to be affixed in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.
- f. "Vestee" means the party in which the Title is vested as stated in Schedule A and, after acquisition of all or any part of the Title in accordance with the provisions of Section 2 of the Conditions of the policy, the Insured Claimant.

3. Valuation of Title as an integrated project:

- a. If in computing loss or damage it becomes necessary to value the Title, or any portion of it, as the result of an Ejection, then, as to that portion of the Land from which the Vestee is Ejected, that value shall consist of (i) the value of the fee estate including any Electricity Facility existing on the date of the Ejection, and, if applicable, (ii) any reduction in value of another insured Constituent Parcel as computed in Section 3(b) below.
- b. A computation of loss or damage resulting from an Ejection affecting any Constituent Parcel shall include loss or damage to the integrated project caused by the covered matter affecting the Constituent Parcel from which the Insured is Ejected.
- c. The Insured Claimant shall have the right to have the fee estate, any Constituent Parcel, and any Electricity Facility affected by a defect insured against by this policy valued either as a whole or separately.

d. The provisions of this Section 3 shall not diminish the Insured's rights under any other endorsement to the policy; however, the calculation of loss or damage pursuant to this endorsement shall not allow duplication of recovery for loss or damage calculated pursuant to Section 8 of the Conditions or any other endorsement to the policy.

4. Valuation of Severable Improvements:

a. In the event of an Ejection, the calculation of the loss shall include (but not to the extent that these items of loss are included in the valuation of the Title determined pursuant to Section 8 of the Conditions or any other provision of this or any other endorsement) the diminution in value of the Insured's interest in any Severable Improvement resulting from the Ejection, reduced by the salvage value of the Severable Improvement.

b. The policy does not insure against loss or damage (and the Company will not pay any costs, attorneys' fees, or expenses) relating to:

i. the attachment, perfection or priority of any security interest in any Severable Improvement;

ii. the vesting or ownership of title to or rights in any Severable Improvement;

iii. any defect in or lien or encumbrance on the title to any Severable Improvement; or

iv. the determination of whether any specific property is real or personal in nature.

5. Additional items of loss covered by this endorsement:

If the Insured acquires all or any part of the Title in accordance with the provisions of Section 2 of the Conditions of the policy and thereafter is Ejected,



the following items of loss, if applicable to that portion of the Land from which the Insured is Ejected, shall be included, without duplication, in computing loss or damage incurred by the Insured, but not to the extent that the same are included in the valuation of the Title determined pursuant to Section 3 of this endorsement, the valuation of Severable Improvements pursuant to Section 4 of this endorsement, or Section 8(a)(iii) of the Conditions:

- a. The reasonable cost of: (i) disassembling, removing, relocating and reassembling any Severable Improvement that the Insured has the right to remove and relocate, situated on the Land at the time of Ejection, to the extent necessary to restore and make functional the integrated project; (ii) transportation of that Severable Improvement for the initial one hundred miles incurred in connection with the restoration or relocation; and (iii) restoring the Land to the extent damaged as a result of the disassembly, removal and relocation of the Severable Improvement and required of the Insured solely because of the Ejection.
  
- b. Payments or damages for use and occupancy of the Land prior to the Ejection that the Insured may be obligated to pay to any person having paramount title to that of the Insured.
  
- c. The fair market value, at the time of the Ejection, of the estate or interest of the Insured in any lease or easement, as applicable, made by the Vestee as lessor or grantor of all or part of the Title.
  
- d. Damages caused by the Ejection that the Insured is obligated to pay to lessees or easement grantees on account of the breach of any lease or easement, as applicable, made by the Vestee as lessor or grantor of all or part of the Title.
  
- e. The reasonable cost to obtain land use, zoning, building and occupancy permits, architectural and engineering services and environmental testing and reviews for a fee estate in a replacement parcel of land reasonably equivalent to the parcel that is the subject of the Ejection.

f. If any Electricity Facility is not substantially completed at the time of Ejection, the actual cost incurred by the Insured up to the time of Ejection, less the salvage value, for the Electricity Facility located on that portion of the Land from which the Insured is Ejected. Those costs include costs incurred to construct and fabricate the Electricity Facility, obtain land use, zoning, building and occupancy permits, architectural and engineering services, construction management services, environmental testing and reviews, and landscaping, and cancellation fees related to the foregoing.

6. This endorsement does not insure against loss, damage, or costs of remediation (and the Company will not pay costs, attorneys' fees, or expenses) resulting from environmental damage or contamination.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

**[Title Company]**

### **Section III, Rate Rule, R-37**

#### **R-37. Premium for Energy Project Endorsements (T-54,T-54.1, T-55, T-55.1, T-56, T-56.1)**

- A. The premium for the Energy Project – Leasehold/Easement Owner’s Policy Endorsement (Form T-54) is five percent of the Basic Premium Rate.
- B. The premium for the Energy Project – Leasehold/Easement Loan Policy Endorsement (Form T-54.1) is five percent of the Basic Premium Rate.
- C. The premium for the Energy Project – Leasehold Owner’s Policy Endorsement (Form T-55) is five percent of the Basic Premium Rate.
- D. The premium for the Energy Project – Leasehold Loan Policy Endorsement (Form T-55.1) is five percent of the Basic Premium Rate.
- E. The premium for the Energy Project – Fee Estate Owner’s Policy Endorsement (Form T-56) is five percent of the Basic Premium Rate.
- F. The premium for the Energy Project – Fee Estate Loan Policy Endorsement (Form T-56.1) is five percent of the Basic Premium Rate

### **Section IV, Procedural Rules, P-72**

#### **P-72. Energy Project Endorsements (T-54, T-54.1, T-55, T-55.1, T-56, T-56.1)**

- A. A Company may issue the Energy Project – Leasehold/Easement Owner’s Policy Endorsement (Form T-54), Energy Project – Leasehold/Easement Loan Policy Endorsement (Form T-54.1), Energy Project – Leasehold Owner’s Policy Endorsement (Form T-55), Energy Project – Leasehold Loan Policy Endorsement (Form T-55.1), Energy Project – Fee Estate Owner’s Policy Endorsement (Form T-56),or Energy Project – Fee Estate Loan Policy Endorsement (Form T-56.1) if:
  - 1. The Land is not Residential Real Property;

2. Severable Improvements that would constitute an Electricity Facility are affixed to the Land, or to be affixed to the Land in locations according to the Plans, as those terms are used in the corresponding Energy Project Endorsement;
  
3. The estate or interest in the Land that is insured:
  - a. by the Owner's Policy (Form T-1) includes:
    - i. both a leasehold estate and an easement estate in the case of an Energy Project – Leasehold/Easement Owner's Policy Endorsement (Form T-54),
    - ii. a leasehold estate in the case of an Energy Project – Leasehold Owner's Policy Endorsement (Form T-55), or
    - iii. a fee simple estate in the case of an Energy Project – Fee Estate Owner's Policy Endorsement (Form T-56);
  
  - b. by the Loan Policy (Form T-2) includes:
    - i. both a leasehold estate and an easement estate in the case of an Energy Project – Leasehold/Easement Loan Policy Endorsement (Form T-54.1);
    - ii. a leasehold estate in the case of an Energy Project – Leasehold Loan Policy Endorsement (Form T-55.1); or
    - iii. a fee simple estate in the case of an Energy Project –

Fee Estate Loan Policy Endorsement (Form T-56.1); and

4. Its underwriting requirements are met.
- B. When an Energy Project Endorsement is issued the Amount of the policy must include the value of the Severable Improvements.
- C. In a transaction where an Electricity Facility is completed and existing, the company may delete from an endorsement the definition of Plans and the references thereto.
- D. The Company may add any exception to an Energy Project Endorsement that it considers, in its sole discretion, to be appropriate. The Company shall delete any insuring provision in whole or in part if it does not consider that risk acceptable.
- E. Any matter covered by an Energy Project Endorsement maybe insured only by use of that endorsement. -

**TLTA**  
**PROPOSED RULE CHANGES**  
**EXHIBIT 11**  
**PROCEDURAL RULE P-57.A**

**CITATION**

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

**ISSUE AND JUSTIFICATION**

Texans use a variety of estate planning strategies to preserve family ownership of land and lessen the impact of federal estate taxes. These strategies frequently include utilizing a variety of entities to own all or a portion of land. Although the current owner's policy forms (T-1 and T-1R) contemplate some limited trust situations where coverage is extended (via an expanded definition of Insured in the T-1 and as a Continuation of Coverage in the T-1R), practitioners of estate planning and elder law have requested an endorsement that specifically deals with the estate planning tools they commonly utilize with their clients. These include Family Limited Partnerships and Limited Liability Companies. The Texas Land Title Association (TLTA) suggests amending procedural rule P-57 to address this need.

TLTA developed this proposal in coordination with estate planning practitioners. Based on comments TLTA repeatedly heard from these practitioners, the proposal is intended to allow for greater flexibility in estate planning, address three common conveyances, allow the endorsement to be issued up to 90 days after the conveyance, and in many respects, replace the need for the family to obtain an opinion letter from an attorney to determine if a conveyance would affect coverage.

The proposed amendment allows for an "Estate Planning Vehicle" to become an additional insured under the endorsement (Form T-26) and defines Estate Planning Vehicle to include a legal entity, trust, trustee of that trust if the entity or trust is established by the insured for the purpose of planning the disposition of that person's estate. It further allows for the issuance of the endorsement for estate planning purposes to take place up to 90 days after the conveyance. The amendment does not impact the existing ability of adding partners, members or stockholders that acquire the interests of the owners of the insured entity as additionally insured in the entities currently accommodated under P-57. It is anticipated that this expansion will not involve very many transactions each year. This is an accommodation of a request made by

estate planning attorneys in Texas.

## PROPOSED REVISIONS

### Proposed Revisions to Part A.

#### P-57. ADDITIONAL INSURED ENDORSEMENT (Form T-26)

A. **Living Trust, Acquisition of Interest under Existing Agreement or Estate Planning Vehicle Family Partnership or Family Corporation**

1. An "Estate Planning Vehicle" is a legal entity, a trust, or a trustee of a trust, if the entity or trust is established by the insured for the purpose of planning the disposition of the Insured's estate.
  
2. A Company may issue its Additional Insured Endorsement (Form T-26) to an Owner's Policy of Title Insurance (Form T-1 or Form T-1R) by naming a person as an additional insured in the endorsement, if:
  - a. its underwriting requirements are met; ~~it is paid the premium, if any, prescribed in Rate Rule R-33; and,~~
  
  - b. the additional insured is:
    - i. an Estate Planning Vehicle to which the insured conveys the title after Policy Date; 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
  
    - ii. a distributee who has acquired an interest according to the terms of an Estate Planning Vehicle; 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~~

- iii. ~~a family partnership, limited liability company, or corporation or family corporation, solely composed of or owned by members of the Insured's family and the Insured; or ~~insured.~~~~
- iv. 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;

3. The endorsement is requested by the additional insured; and,

4. In the case of paragraphs 2.b.i-iii above,

- a. the request for the endorsement is made within 90 days after the document conveying title to the additional insured is recorded; and
- b. the documents conveying title to the additional insured contains a warranty of title.

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

**B. NO CHANGE**



**TLTA**  
**PROPOSED RULE CHANGES**  
**EXHIBIT 12**  
**PROCEDURAL RULE P-1 u.**  
**RATE RULE R-16**

**CITATION**

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

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

**ISSUE AND JUSTIFICATION**

The absence of a clear definition of residential real property has created challenges for escrow officers and consumers when attempting to classify a given property in a transaction. The increasing Texas population as well as other factors has increased the popularity of homes and/or residential use in traditionally agriculturally productive parts of the state. The ambiguity regarding the factors used to determine whether a parcel of real property is residential can result in different answers from different Title Agents, Direct Operations, or Title Companies. Proper classification results in a consistent selection of the correct form of Owner's Policy and application of rates to endorsements – all benefitting the consumer. Texas Land Title Association (TLTA) suggests amending procedural rule P-1 to address this issue.

In addition to P-1, TLTA identified a necessary improvement to R-16 to conform its existing language to the proposed new definition.

## PROCEDURAL RULE P-1. DEFINITIONS

...

u. Residential ~~Real~~ ~~Property~~

(1) — Any real property which has improvements thereon designed principally for the occupancy of from one to four families (including individual units of condominiums and cooperatives) and either (a) situated in a platted subdivision of record, or (b) consisting of five acres or less; or

(2) — Any real property which has improvements thereon designed principally for the occupancy of from one to four families and consisting of more than five acres but not more than 200 acres used for agricultural production by individual insureds (according to the information known by the Company at the time of issuance of the policy of title insurance). (Rule P-38)

1. For this definition, the word "Improvements" means improvements designed primarily for the occupancy of from one to four families and includes:
  - a. Improvements existing at Date of Policy; and
  - b. immediately contemplated Improvements when the cost of such Improvements is included in the Amount of Insurance
2. Residential Real Property is any real property with Improvements which at Date of Policy consists of:
  - a. a lot or lots in a platted residential subdivision;
  - b. one or more individual residential condominium and cooperative units;
  - c. 10 acres or less; or
  - d. more than 10 acres, but not more than 200 acres, when the Insured in an Owner's Policy or the Borrower in a Loan Policy is a natural person or persons.

...

**R-16. Amendment of Exception as to Area, Boundaries, etc.**

~~Applicable only as provided in Rules P-2 and P-8.a.(2) the Exception as to area and boundaries, etc., may be amended in an Owner or Mortgagee Policy upon the payment of an additional premium (in the case only of an Owner Policy) therefore equivalent to (1) 15% of the Basic Rate in an Owner Policy (T-1), or (2) 5% of the Basic Rate in a Residential Owner Policy of Title Insurance— One to Four Family Residences (Form T-1R), with a minimum premium of \$20.00.~~

- A. The premium for amending the exception as to area and boundaries, etc. in a Loan Policy (Form T-2 or Form T-2R) is \$0.
  
- B. The premium for amending the exception as to area and boundaries, etc. in an Owner's Policy (form T-1 or Form T-1R) is:
  - 1. 15 percent of the Basic Premium Rate on the Policy Amount when the Land is not Residential Real Property, or
  
  - 2. 5 percent of the Basic Premium Rate on the Policy Amount when the Land is Residential Real Property, but not less than \$20.00
  
  - 3. 5 percent of the Basic Rate for a single-issue policy when the property is Residential Real Property, with a minimum premium of \$20.00.

**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 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. Additionally, language is added to the declaration to emphasize the importance of providing a truthful representation. This warning emphasizes the importance of truthfulness and accuracy in absence of a notarized statement.

**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. ~~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.

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

\_\_\_\_\_

\_\_\_\_\_

5. ~~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.

6. ~~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.

|                                                                                                                                             |                                                                                                                                             |
|---------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| <p><u>I declare under penalty of perjury that the foregoing is true and correct.</u></p> <p><u>Signed:</u></p><br><br><p><u>Affiant</u></p> | <p><u>I declare under penalty of perjury that the foregoing is true and correct.</u></p> <p><u>Signed:</u></p><br><br><p><u>Affiant</u></p> |
|---------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|

SWORN AND SUBSCRIBED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

---

Notary Public

**T-47.1 RESIDENTIAL REAL PROPERTY DECLARATION**  
**IN LIEU OF AFFIDAVIT**

**(Provided in accordance with Texas Civil Practice and Remedies Code Section 132.001)**

Date: \_\_\_\_\_

GF No. \_\_\_\_\_

Declarant: \_\_\_\_\_

Description of Property: \_\_\_\_\_

County \_\_\_\_\_, Texas

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.

The undersigned declares as follows:

1. I am an owner of the Property. (Or state other basis for knowledge of the Property, such as lease, management, neighbor, etc. For example, "Declarant is the manager of the Property for the record title owners.")
  
2. I am familiar with the property and the improvements located on the Property.
  
3. 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 understand that the Title Company may make exceptions to the coverage of the title insurance as Title Company may deem appropriate. I 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 knowledge and belief, since the 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 the Property;
- d. conveyances, replattings, easement grants and/or easement dedications (such as a utility line) by any party affecting the Property.

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

---

---

- 5. I understand that Title Company is relying on the truthfulness of the statements made in this Declaration to provide the area and boundary coverage and upon the evidence of the existing real property survey of the Property. This Declaration is not made for the benefit of any other parties and does not constitute a warranty or guarantee of the location of improvements.
- 6. I understand that I have no liability to Title Company should the information in this Declaration be incorrect other than information that I personally know to be incorrect and which 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 INTENTIONALLY MAKING A FALSE STATEMENT MAY BE LIABLE FOR ACTUAL AND/OR PUNITIVE DAMAGES.

|                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                        |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <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>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>_____</p> <p><u>Declarant</u></p>                                                                                                                                                                                                                                   | <p>_____</p> <p><u>Declarant</u></p>                                                                                                                                                                                                                                   |

**P-2. Amendment of Exception to Area and Boundaries**

...

- 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.

**TLTA**  
**PROPOSED RULE CHANGES**  
**EXHIBIT 14**  
**FORM T-42**

**CITATION**

Section II, Insuring Forms, Form T-42: Equity Loan Mortgage Endorsement of *The Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas*.

**ISSUE AND JUSTIFICATION**

The Texas Land Title Association (TLTA) proposes the following “housekeeping” amendment to the Equity Loan Mortgage Endorsement (T-42) by striking the language in Section 2 (b) and replacing it with “[INTENTIONALLY DELETED].”

The section of the Texas Constitution referenced in this subsection has been amended rendering this section of the endorsement obsolete. The proposed language appropriately updates the form. Additionally, the use of the bracketed language and preservation of the numbering avoids unnecessary costs associated with form changes and potentially cross references in other rules and forms.

**EQUITY LOAN MORTGAGE ENDORSEMENT T-42**

Attached to and made a part of \_\_\_\_\_ Title Insurance Company

Loan Policy No. \_\_\_\_\_,

dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Issued by

**BLANK TITLE INSURANCE COMPANY**

The policy is hereby amended as follows:

1. The following new Subsection (n) is inserted in Section 1 of the Conditions:

(n) "consumer credit protection law": any applicable federal or state regulation, law or constitutional provision relating to consumer credit protection. For purposes of the policy and paragraph 5 of the Exclusions from Coverage, consumer credit protection law includes, but is not limited to, the provisions of Subsections (a)(6), (g), and (t) of Section 50, Article XVI, Texas Constitution, and any statutory or regulatory requirements for a mortgage made pursuant to Subsection (a)(6)."

2. Notwithstanding the specific provisions of paragraph 5 of the Exclusions from Coverage relating to consumer credit protection laws, the Company insures the insured against loss, if any, sustained by the insured under the terms of the policy because of invalidity or unenforceability of the lien of the insured mortgage by reason of the following:

- a. ~~(a)~~ The failure of the insured mortgage to be created under a written agreement with the consent of each owner of the estate or interest described in Schedule A and each owner's spouse, as set forth in Subsection (a)(6)(A) of Section 50, Article XVI, Texas Constitution.

- b. ~~(b)~~ The land being homestead property designated for agricultural use as provided by statutes governing property tax, as set forth in Subsection (a)(6)(I) of Section 50, Article XVI, Texas Constitution.

[INTENTIONALLY DELETED]

- c. ~~(c)~~The indebtedness secured by the lien of the insured mortgage on the land not being the only debt secured by a valid lien on the land at the time the extension of credit is made pursuant to the insured mortgage unless the other debt was made for a purpose described by Subsections (a)(l) through (a)(5) or Subsection (a)(8) of Section 50 of Article XVI, Texas Constitution, as set forth in Subsection (a)(6)(K) of Section 50, Article XVI, Texas Constitution.
  - d. ~~(d)~~The extension of credit secured by the lien of the insured mortgage closing before the first anniversary of the closing date of any other extension of credit described by Subsection (a)(6) of Section 50 of Article XVI, Texas Constitution, and secured by a valid lien on the land, as set forth in Subsection (a)(6)(M)(iii) of Section 50, Article XVI, Texas Constitution.
  - e. (e)The failure of the insured mortgage to contain a disclosure that the extension of credit is the type of credit defined by Section 50(a)(6), Article XVI, Texas Constitution, as set forth in Subsection (a)(6)(Q)(vi) of Section 50(a)(6), Article XVI, Texas Constitution.
3. Provided the insured mortgage secures a home equity line of credit, the Company insures the Insured that any disbursements under the home equity line of credit made subsequent to the date of this policy as provided in the insured mortgage shall be deemed to have been made as of the date of this policy and such disbursements and accrued interest shall have the same priority as any advances made as of the date of this policy, except as to (i) bankruptcies affecting the estate or interest described on Schedule "A" hereof prior to the date of any such advance or disbursement; and (ii) taxes, costs, charges, damages and other obligations to the government secured by statutory liens arising or recorded subsequent to the date of the Policy.
  4. Except as provided in paragraph 2 above, the Company does not insure against invalidity or unenforceability of the lien of the insured mortgage, which arises out of the transaction evidenced by the insured mortgage and is based on any consumer credit protection law.
  5. ~~6.~~ This endorsement does not insure against invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, arising out of usury or truth in lending laws.

This endorsement when countersigned below by an Authorized Countersignature is made a part of said Policy. Except as expressly modified by the provisions hereof, this endorsement is subject to the following policy matters: (i) Insuring provisions; (ii) Exclusions from Coverage; (iii) Schedule "B" Exceptions; (iv) the Conditions; and (v) any prior endorsements. Except as stated herein, this endorsement does not: (i) extend the effective date of the policy and/or any prior endorsements; or (ii) increase the face amount of the policy.

**TLTA**  
**PROPOSED RULE CHANGES**  
**EXHIBIT 15**  
**PROCEDURAL RULE P-9.c (NEW)**

**CITATION**

Section IV, Procedural Rules, P-9: Endorsement of Owner's or Loan Policies, of *The Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas*.

**ISSUE AND JUSTIFICATION**

The Texas Land Title Association (TLTA) proposes amending P-9 in *The Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas* to add a new P-9.c. to provide for incorporation of any endorsements into the policy by attachment or reference in an alternative to requiring a signature by a principle in the title company. Further, the proposal maintains the signature requirement for "post policy" endorsements.

Over the years, endorsement forms have been adopted in a non-uniform manner and have not evolved with technological innovations. Often there is no discernible reason for different signature requirements. For example, the T-25 Contiguity Endorsement form does not call for any signature, while the very similar T-25.1 form calls for signature of the underwriter's president plus a countersignature. These discrepancies also inhibit the efficient use of electronic signatures.



## P-9 ENDORSEMENT OF OWNER'S OR LOAN POLICIES

...

### c. Owner's Policies and Loan Policies – Signature Procedures

1. When an endorsement is issued simultaneously with a policy and the endorsement does not provide for a signature other than the authorized agent or Title Insurance Company.
  - a. it may be made a part of the policy by either attachment or reference; and
  - b. a signature is not required.
2. Schedule A of the Owner's Policy (Forms T-1 and T-1R) and the Loan Policy (Form T-2) may be amended to include an additional paragraph. The paragraph shall read: *The endorsements marked below are incorporated herein:* [followed by a list of endorsements].
3. When an endorsement is not issued simultaneously with the policy, it must be signed when the promulgated form contains a signature, except for electronically produced forms as provided in Procedural Rule P-17b. Permissible Changes to Promulgated Forms.

**TLTA**  
**PROPOSED RULE CHANGES**  
**EXHIBIT 16**  
**PROCEDURAL RULE P-9.b(8)**  
**RATE RULE R-11**  
**FORM T-35**

**CITATION**

Section IV, Procedural Rules, P-9: Endorsement of Owner's or Loan Policies, of *The Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas*.

Section III, Rate Rules, R-11: Endorsement of Owner's or Loan Policies, of *The Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas*.

Section II, Insuring Forms, T-35: Future Advance/Revolving Credit Endorsement, of *The Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas*.

**ISSUE AND JUSTIFICATION**

The Texas Land Title Association (TLTA) proposes a non-substantive amendment to P-9b.(8), R-11, and T-35 in *The Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas* to clarify that the endorsement does not cover "future advances" and is limited to the "revolving credit" in the context of a loan initiated at the time of the policy.

The language in T-35 does not provide coverage for future advances of credit which are not part of a revolving credit scheme of a loan initiated at the time of the policy. However, nationally, there are coverages for other "future advances" that do not fit within the coverages of T-35. The current title, "Future Advance/Revolving Credit Endorsement (T-35), creates consumer confusing by given the impression that these additional coverages are available in Texas through the existing T-35.

## P-9. ENDORSEMENT OF OWNER'S OR LOAN POLICIES

...

### b. Loan Policy Owner's Policy

...

(8) ~~Future Advance/Revolving Credit Endorsement – Upon request, a Company may issue the Revolving Credit Endorsement (Form T-35) when:~~ When

a. a loan policy ~~is to be issued to~~ insures the validity and priority of a lien created by a mortgage or deed of trust ~~that secures~~ securing a revolving credit promissory note or ~~other such~~ similar indebtedness where:

- i. ~~(a)~~ a line of credit of a specific amount is extended to a borrower for the term of indebtedness,
- ii. ~~(b)~~ the amount of indebtedness ~~actually~~ outstanding at any particular time may fluctuate ~~is subject to fluctuations up or down from time to time over the term of the indebtedness due to future disbursements of loan proceeds and/or or future repayments there of from time to time over the term of the indebtedness of loan proceeds (which disbursements and repayments are contemplated by the parties at the time the indebtedness is created),~~
- iii. ~~(c)~~ repayments by the borrower neither reduce nor increase the original line of credit extended nor affect the borrower's liability to repay the principal sum of all outstanding disbursements plus all accrued interest ~~thereon, the Company upon request and compliance with Rate Rule R-11.f shall attach to said Loan Policy the Future Advance/Revolving Credit Endorsement (Form T-35).~~

b. the mortgage or deed of trust creating the lien to be insured discloses to the satisfaction of the Company that the indebtedness secured is a revolving type of indebtedness as set forth above; and

~~The Future Advance/Revolving Credit Endorsement shall be available only where the mortgageor deed of trust creating the lien to be insured discloses to the satisfaction of the Company that the indebtedness secured thereby is a revolving type of indebtedness as set forth above.~~

- c. the Loan Policy does not include the cost of immediately contemplated improvements or contain exceptions required under Procedural Rule P-8.

...

**R-11. Loan Policy Endorsements**

Applicable only as provided in Procedural Rule P-9.

...

f. ~~Future Advance/Revolving Credit Endorsement issued as provided in Procedural Rule P-9.b(8)~~—~~A~~ The premium for the of \$50.00 shall be charged for the issuance of each ~~Future Advance/Revolving Credit Endorsement (Form T-35) provided for in Procedural Rule P-9.b(8)~~ is \$50.00.

...

**FUTURE ADVANCE/REVOLVING CREDIT ENDORSEMENT (T-35)**

Issued by

...

**TLTA**  
**PROPOSED RULE CHANGES**  
**EXHIBIT 17**  
**FINT FORM SERIES**

**CITATION**

FINT Form Series

**ISSUE AND JUSTIFICATION**

The Texas Land Title Association (TLTA) requests that the Texas Department of Insurance (TDI) by rule or administrative action remove all requirements for notarization of signatures on FINT series forms.

During the COVID pandemic, TDI suspended the requirement of notarization on various FINT series forms. As part of the current rule proposal, TLTA has sought to identify temporary changes made during the pandemic which should be made permanent. The required signature acknowledgments in the FINT series are, to TLTA's knowledge and understanding, unnecessary and simply an extension of the Title Insurance Code section 2651.002 for an initial license to other forms– something not required by the statutory scheme. Additionally, the adoption of SIRCON has made notarization unworkable in many FINT form contexts.

**TLTA PROPOSED RULE CHANGES**  
**EXHIBIT 18**  
**FORM T-19.4**  
**(New)**  
**PROCEDURAL RULE P-50.2 (New)**  
**RATE RULE R-29.2 (New)**

**CITATION**

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

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

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

**ISSUE AND JUSTIFICATION**

As the proposed Energy Project Endorsements (Exhibit 10) were discussed, a need for minerals coverage was identified. It is also often requested by owners and lenders in energy projects but is currently unavailable for severable improvements. Damage to improvements and permanent buildings that results from exercising the right to use the surface of the land for the extraction or development of minerals is available in the Form T-19.2 and Form T-19.3 respectively. In order to confer the desired coverage for severable improvements and compliment the series of proposed Energy Project Endorsements, the Texas Land Title Association (TLTA) suggests adopting a new Energy Project – Minerals and Surface Damage Endorsement (T-19.4). New Procedural Rule P-50.2 would authorize the issuance of this endorsement under appropriate circumstances. New Rate Rule R-29.2 would authorize a charge of 5% of the Basic Premium rate, given the expanded coverage and the nature of the risk being insured.



**ENERGY PROJECT – MINERALS AND SURFACE DAMAGE ENDORSEMENT (T-19.4)**

Attached to Policy No. \_\_\_\_\_; Applies to Parcel(s) \_\_\_\_\_

Issued by  
BLANK TITLE INSURANCE COMPANY  
HEREIN CALLED COMPANY

The Company insures the insured against loss which the insured shall sustain by reason of damage to, enforced removal, or alteration of any Severable Improvements located on the Land on or after Date of Policy resulting from the future exercise of any right existing at Date of Policy to use the surface of the Land for the extraction or development of coal, lignite, oil, gas or other minerals or any other subsurface substances excepted from the description of the Land, excepted or excluded on Schedule A, Item 2, or excepted in Schedule B. As used in this endorsement, "Severable Improvement" means property affixed to the Land at Date of Policy or to be affixed in the locations according to the Plans, that would constitute an Electricity Facility but for its characterization as personal property, and that by law does not constitute real property because (a) of its character and manner of attachment to the Land and (b) the property can be severed from the Land without causing material damage to the property or to the Land.

This endorsement does not insure against loss resulting from:

- a. contamination, explosion, fire, vibration, fracturing, earthquake, flood or subsidence;
- b. negligence by a person or an Entity exercising a right to extract or develop minerals or other subsurface substances; or,
- c. the exercise of the rights described in: [Insert "None" or identify the interest excepted from the description of the Land in Schedule A and/or specifically excepted in Schedule B that is intended to be excluded from coverage]

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with

an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

\_\_\_\_\_  
TITLE INSURANCE COMPANY

By: \_\_\_\_\_  
Authorized signatory

## **RATE RULE R-29.2**

### **R-29.2. Premium for Energy Project – Minerals and Surface Damage Endorsement (Form T-19.4)**

The premium for the Energy Project–Minerals and Surface Damage Endorsement (Form T-19.4) is 5 percent of the Basic Premium Rate for a single issue policy for the policy Amount.

## P-50.2

### **P-50.2. Energy Project – Minerals and Surface Damage Endorsement (Form T-19.4)**

- A. A Company may issue the Energy Project – Minerals and Surface Damage Endorsement (Form T-19.4) to an Owner’s Policy or Loan Policy upon request of the insured if:
1. The policy includes an exclusion or an exception regarding minerals;
  2. The endorsement is issued simultaneously with an Energy Project – Leasehold/Easement Owner’s Endorsement (T-54), Energy Project – Leasehold/Easement Loan Policy Endorsement (T-54.1), Energy Project – Leasehold Owner’s Endorsement (T-55), Energy Project – Leasehold Loan Policy Endorsement (T-55.1), Energy Project – Fee Estate Owner’s Endorsement (T-56), or Energy Project – Fee Estate Loan Policy Endorsement (T-56.1); and
  3. Its underwriting requirements are met.
- B. Subparagraph c. of the endorsement must be completed according to the instructions in the form by inserting the word “None” or by identifying the interest excepted from the description of the Land in Schedule A and/or specifically excepted in Schedule B that is intended to be excluded from coverage.
- C. Any matter covered in by the Energy Project – Minerals and Surface Damage Endorsement (Form T-19.4) may be insured only by the use of this endorsement, except that coverage regarding minerals may also be insured by the Restrictions, Encroachments, Minerals Endorsements (Forms T-19 or Form T-19.1) or the Minerals and Surface Damage Endorsements (Forms T-19.2 or Form T-19.3).

**TLTA**  
**PROPOSED RULE CHANGES**  
**EXHIBIT 19**  
**RATE RULE R-5. B,C,D,F**

**CITATION**

Section III, Rate Rules, R-5: Simultaneous Issuance of Owner's and Loan Policies, of *The Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas*.

**ISSUE AND JUSTIFICATION**

The new language in R-5.B, C and D make it clear that the simultaneous issue rate for an owner's policy and loan policy is available even when there may be another rate discount applicable. R-1 provides "In no event shall two or more Rate Rules be combined in the calculation of the premium for the subject transaction...." The application of the simultaneous rate was never intended to preclude the use of an available discount, such as with construction, and it is unfair to the consumer to use the language of R-1 in this fashion. The proposed changes make this clear.

In 2019, TLTA proposed and the Texas Department of Insurance (TDI) adopted a change to R-5.F to extend the simultaneous issue rate for certain transactions. Rate Rule R-5.F. was adopted to accommodate frequent large commercial transactions where the buyer and seller had a hard closing date in the contract, but additional time was needed to complete financing. In recent years, there has been increased pressure to close quickly and pay the purchase price in cash, while the lender has needed additional time, even in the context of smaller commercial transactions. In order to accommodate these market realities which also occur at a lower threshold for commercial transactions and ensure uniformity in the application of the credit, TLTA proposes reducing the \$5,000,000 threshold to \$1,000,000 and explicitly clarifying that this rule is not intended for residential transactions. Prices for residential transactions do cross over this lower threshold at times and the Rule was never intended for residential transactions, which notably are primarily purchased with a traditional mortgage pursuant to a TREC contract. Moreover, as treatment as a simultaneous issuance, this 90 day window is only appropriate when the same title insurance company or companies issues both the Owner's Policy and Loan Policy.

## **R-5. Simultaneous Issuance of Owner's and Loan Policies**

- A. An Owner's Policy must be issued at the Basic Rate, and the premium for each Loan Policy must be \$100.00, if:
1. all policies are issued simultaneously;
  2. all policies bear the same date;
  3. each Loan Policy covers the same land—or part of the land—covered by the Owner's Policy and covers no other land;
  4. the Owner's Policy shows the lien(s) insured by each Loan Policy as an exception; and
  5. the amount of the Loan Policy(ies) does not exceed the amount of the Owner's Policy.
- B. When the amount of the Loan Policy(ies) exceeds the amount of the Owner's Policy:
1. the Basic Rate must be charged for the Owner's Policy; and
  2. the premium charged for the Loan Policy(ies) must be:
    - a. the Basic Rate for the combined Loan Policy amounts; minus
    - b. the Basic Rate for the Owner's Policy; plus
    - c. \$100.00 for each Loan Policy; if:
      - i. all policies are issued simultaneously;
      - ii. all policies bear the same date;
      - iii. each Loan Policy covers the same land—or part of the land—covered by the Owner's Policy and covers no other land; and

iv. the Owner's Policy shows the lien(s) insured by each Loan Policy as an exception.

C. When there is an existing Owner's Policy(ies) and improvements are now immediately contemplated:

1. the premium for the new Owner's Policy must be reduced by a credit as provided in Rate Rule R-3, if the new policy:
  - a. covers the identical property covered by the existing Owner's Policy(ies);
  - b. is dated within four years of the existing Owner's Policy(ies); and
  - c. includes the exception and liability paragraph provided in Procedural Rule P-8.a.
2. The credit applies only when the ownership of the property has not changed.
3. The premium for the Owner's Policy must not be less than the minimum Basic Rate.
4. The premium for each Loan Policy must be \$100.00, if:
  - a. all policies are issued simultaneously;
  - b. all policies bear the same date;
  - c. each Loan Policy covers the same land—or part of the land—covered by the Owner's Policy and covers no other land; and
  - d. the Owner's Policy shows the lien(s) insured by each Loan Policy as an exception.

- D. When there is an existing Owner's Policy(ies) insuring residential property that did not include the exception and liability paragraph provided in Procedural Rule P-8.a and improvements are now completed:
1. The premium for a new Owner's Policy(ies) must be reduced by a credit as provided in Rate Rule R-3, if the new Owner's Policy:
    - a. is in an amount greater than the existing Owner' Policy(ies);
    - b. covers the identical property covered by the existing Owner's Policy(ies); and
    - c. is dated within four years of the existing Owner's Policy(ies);
  2. The credit only applies when the ownership of the property has not changed; and
  3. The premium collected for the Owner's Policy must not be less than the minimum Basic Rate.
  4. The premium for each Loan Policy must be \$100.00, if:
    - a. all policies are issued simultaneously;
    - b. all policies bear the same date;
    - c. each Loan Policy covers the same land—or part of the land—covered by the Owner's Policy and covers no other land; and
    - d. the Owner's Policy shows the lien(s) insured by each Loan Policy as an exception.
- E. When an Owner's Policy is issued as provided in Rate Rule R-2.b, and the Loan Policy is Issued as provided in Rate Rule R-2.a,
1. the premium for the Owner's Policy must be \$100.00, and the premium for the Loan Policy must be the Basic Rate, if:
    - a. both policies are issued simultaneously;



- b. both policies bear the same date;
  - c. the amount of the Owner's Policy(ies) does not exceed the amount of the Loan Policy;
  - d. the Owner's Policy covers the same land—or part of the land—covered by the Loan Policy and covers no other land; and
  - e. both policies include the exception and the liability paragraph or the pending disbursement paragraph, as applicable, provided in Procedural Rule P-8.
2. When the amount of the Owner's Policy(ies) exceeds the amount of the Loan Policy, the premium charged for the Owner's Policy must be:
- a. the Basic Rate; plus
  - b. \$100.00; minus
  - c. the Basic Rate for the Loan Policy to be paid as provided in Rate Rule R-2.a.
3. The credit provided in Rate Rule R-3 must be given against the premium for the new Loan Policy, if:
- a. the existing Owner's Policy(ies) covers the identical property to be covered by the new Owner's Policy; and
  - b. ownership of the property has not changed.
- F. When an Owner's Policy is issued with a policy amount of ~~\$5,000,000.00~~ \$1,000,000 or more on land that is not residential real property and bears the date ~~and time of recording~~ of the insured instrument was recorded:
- 1. the premium for each a Loan Policy or policies ~~is~~ must be \$100.00, if:
    - a. the policies are issued no more than 90 days after the date of an Loan Policy(ies) is issued within 90 days after the date of the Owner's Policy covering the same land covered by the Loan Policy or policies, or covering more land;

- b. ~~the policies do not cover any land not Loan Policy(ies) covers the same-land—or part of the land—covered by the Owner's Policy and covers no other land;~~
  - c. ownership of the Land ~~property~~ has not changed since the Owner's Policy was issued; and
  - d. the policies are issued by the same Company that issued the Owner's Policy; and
  - e. ~~d.~~ the amount of the Loan Policy (or the aggregate amount of all loan policies if multiple loan policies are issued) does not exceed the amount of the Owner's Policy, ~~and~~
2. ~~If the conditions in paragraphs F.1.a-1.d, F.1.b, [and] F.1.c,~~ are met, but the amount of the Loan Policy (or the aggregate amount of all loan policies if multiple loan policies are issued)(ies) exceeds the amount of the Owner's Policy, the premium ~~charged for the Loan Policy(ies) must be~~ policies is:
- a. the Basic Rate for the combined Loan Policy amounts; ~~minus~~
  - b. minus the Basic Rate for the Owner's Policy amount; ~~plus~~
  - c. plus \$100.00 for each Loan Policy.

THIS RULE MAY NOT BE APPLIED in connection with the issuance of a series of Loan Policies issued by reason of notes being apportioned to individual units in connection with a master policy covering the aggregate indebtedness, including improvements. Except as otherwise provided in this rule, individual Loan Policies must be issue at the Basic Rate.

**TDI  
PROPOSED RULE CHANGES  
EXHIBIT 20  
MINIMUM ESCROW ACCOUNTING PROCEDURES AND INTERNAL CONTROLS**

**CITATION**

Section V, Minimum Escrow Accounting Procedures and Internal Controls, Internal Control No. 5 of *The Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas*.

**ISSUE AND JUSTIFICATION**

To increase efficiency and lower transaction costs, TDI is proposing to amend Internal Control No. 5 to allow for electronic signatures on escrow checks. Authorized signatories will be able to sign checks without having to be physically present where they are issued.

**PROPOSED REVISIONS**

**MINIMUM ESCROW ACCOUNTING PROCEDURES  
AND INTERNAL CONTROLS**

...

5. Two signatures are required on all escrow checks, but this requirement is waived if the escrow agent has four or fewer employees. Only on signatures must be that of a licensed escrow officer, but this requirement is waived if the escrow agent is a sole proprietorship and the owner or individual partner signs the escrow check. Escrow checks may be signed electronically as permitted by Texas Insurance Code Chapter 35 and Texas Business and Commerce Code Chapter 322.

...

# **Appendix B**

**Table 1.1. Informal Impact Analysis of Volume and Risk Associated with TLTA Rule Proposals**

| Proposal                                                                                | Transaction Volume | Loss Frequency | Loss Severity |
|-----------------------------------------------------------------------------------------|--------------------|----------------|---------------|
| <u>Assignment of Mortgage Endorsement</u> (T-3, R-11a)                                  | Low                | Low            | Low           |
| <u>Loan Modification Endorsement</u> (T-38, R-11b)                                      | Medium             | Low            | Low           |
| <u>Down Date Endorsement Loan Policy</u> (T-3, R-11c)                                   | Low                | Low            | Low           |
| <u>Downdate and completion of Improvements Endorsement</u> (T-3, R-15b)                 | Low                | Low            | Low           |
| <u>Access Endorsement</u> (T-23, R-30)                                                  | Medium             | Low            | Medium        |
| <u>Energy Project Endorsements</u> (T-54, T-54.1, T-55, T-55.1, T-56, and T-56.1, R-37) | Very Low           | Low            | High          |
| <u>Additional Insured Endorsement</u> (T-26, R-33)                                      | Very Low           | Low            | Low           |
| <u>Energy Project – Minerals and Surface Damage Endorsement</u> (T-19.4, R-29.2)        | Very Low           | Low            | High          |
| <u>Simultaneous Issuance</u> (R-5.F)                                                    | High               | Low            | Low           |

**Transaction Volume Codes:**

- High (e.g., requested in nearly all transactions)
- Medium (e.g., requested in more than half of the transactions)
- Low (e.g., requested occasionally)
- Very Low (e.g., requested only rarely for specialized transactions)

**Loss Frequency Codes:**

- High (e.g., most common, happens on a monthly basis or is regularly one of the top five reasons for a claim)
- Medium (e.g., somewhat frequent, happens on a quarterly basis)
- Low (e.g., infrequent, rarely happens, perhaps once a year or every other year)

**Loss Severity Codes:**

- High (e.g., catastrophic losses, total policy loss, excessive high dollar losses and loss adjustment expenses)
- Medium (e.g., moderate losses and loss adjustment expenses)
- Low (e.g., losses and loss adjustment expenses generally less than \$100,000)