

No. 10-0960

**Official Order  
of the  
Commissioner of Insurance  
of the  
State of Texas  
Austin, Texas**

**Date: Nov 04, 2010**

**Subject Considered:**

In the Matter of the 2008  
TEXAS TITLE INSURANCE BIENNIAL RATE HEARING  
Docket No. 2691

**ORDER CORRECTING COMMISSIONER'S ORDER NO. 10-0959**  
**NUNC PRO TUNC**

**General Remarks and Official Action Taken:**

On this day, the Commissioner of Insurance considered the issuance of a *Nunc Pro Tunc* Order to correct a clerical error contained in Commissioner's Order No. 10-0959, entered on November 2, 2010, determining the premium rates for title insurance and other matters with rate implications pursuant to the Insurance Code, Title 11, Chapter 2501, *et seq* and adopting amendments to the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance. Due to a typographical error, Commissioner's Order No. 10-0959 incorrectly reflected the effective date for the rates applicable to title insurance policies written in Texas and the amendments to the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance as November 2, 2010 rather than January 1, 2011. The Commissioner of Insurance has determined that the error should be corrected and Commissioner's Order No. 10-0959 should be modified, corrected and reformed.

IT IS, THEREFORE THE ORDER OF the Commissioner of Insurance that Commissioner's Order No. 10-0959 be and is hereby modified, corrected and reformed *Nunc Pro Tunc* as of November 2, 2010, the date of entry of Commissioner's Order No. 10-0959, to read as follows:

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## **General Remarks and Official Action Taken:**

On this day came on for consideration by the Commissioner of Insurance (Commissioner) the matter of determining the premium rates for title insurance and other matters with rate implications pursuant to the Insurance Code, Title 11, Chapter 2501, *et seq.* The Commissioner has jurisdiction over these matters pursuant to the Insurance Code §§31.021, 2501.001 – 2501.008, 2551.003, and 2703.001 – 2703.208 and the Government Code §§2001.051 – 2001.178, and the Texas Administrative Code, Title 28, Chapter 9.

On July 15, 2008, the Texas Department of Insurance (Department) issued its Notice of Public Hearing in the matter of the 2008 Texas Title Insurance Biennial Rate Hearing, and it was published at 33 TexReg 6202 (August 1, 2008). The ratemaking phase of the 2008 Texas Title Insurance Biennial Rate Hearing was assigned Docket No. 2691, and transferred to the State Office of Administrative Hearings (SOAH) pursuant to the Insurance Code §2703.205(d). An individual, association, or other entity recommending adoption of a premium rate or another matter relating to the regulation of the business of title insurance has the right to seek admission as a party to the hearing under the Insurance Code §2703.204.

On September 12, 2008, Texas Department of Insurance Staff (TDI Staff) filed an Objection to Written Requests filed by Gary P. Lancaster, Michael Champion, and George Roberts, Jr. (Lancaster *et al.*) to Transfer the Ratemaking Phase to SOAH. In its objection, TDI Staff requested that SOAH dismiss the matter from SOAH's docket and refer the ratemaking proceedings back to the Commissioner in accordance with the Insurance Code §2703.205(c). On October 1, 2008, Administrative Law Judge Henry D. Card issued Order No. 1 denying TDI Staff's request. Additionally, Administrative Law Judge Card informed the parties that Administrative Law Judges Howard S. Seitzman and Michael J. O'Malley (hereinafter referred to as the "ALJs") would be the judges assigned to preside over the hearing.

On October 2, 2008, the ALJs issued Order No. 2 setting a prehearing conference for October 16, 2008. On October 17, 2008, the ALJs issued Order No. 3. Party status was granted to the following entities in the ratemaking phase: Stewart Title Guaranty Company (Stewart); Lancaster *et al.*; Texas Land Title Association (TLTA); Texas Association of Abstractors and Title Agents (TAATA); Independent Title Agents of Texas (ITAT); Independent Metropolitan Title Agents of Texas (Metro); The Sierra Group and Metro Title Company (Sierra); Texas Society of Professional Surveyors (TSPS); Fidelity Companies, Lawyers Title Insurance Corporation, and Commonwealth Land Title Insurance Company (Fidelity); TDI Staff; and the Office of Public Insurance

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Counsel (OPIC). During the prehearing conference, the parties were unable to agree on a hearing date; therefore, another prehearing conference was scheduled for December 1, 2008.

On December 30, 2008, the ALJs issued Order No. 4 scheduling the final prehearing conference for May 27, 2009, and the hearing on the merits for June 2, 2009, through June 5, 2009.

On April 20, 2009, OPIC filed a Motion to Compel responses to interrogatories sent to Stewart. Stewart did not respond to the Motion to Compel. On April 27, 2009, OPIC filed a Motion to Compel responses to interrogatories addressed to Fidelity. Fidelity filed a response on May 6, 2009. On May 14, 2009, the ALJs issued Order No. 6 ruling that they would consider the Motions to Compel at the May 27, 2009 final prehearing conference. The ALJs also invited input at the prehearing conference from all the parties regarding the advisability of postponing the hearing on the merits; the need to include the Title Bulletin No. 158 issue in this proceeding; and whether there existed a faster and more economical alternative method of estimating the expenses associated with the alleged conduct and the impact of using the alternative method on the hearing schedule. On May 28, 2009, the ALJs issued Order No. 8, Granting OPIC's Motions to Compel and continuing the hearing to September 14 - 18, 2009.

On June 30, 2009, the ALJs issued Order No. 9, requiring briefing on the following issues: 1) the basis for issuing a title bulletin; 2) the legal import, if any, of Title Bulletin No. 158; 3) the legislative history and any prior decisions or interpretations of the Insurance Code §2501.051; and 4) the legislative history and any prior decisions or interpretations of the Insurance Code §2502.055, with a focus directed primarily on the phrases "promotional and educational activities" and "not conditioned on the referral of title insurance business."

The evidentiary hearing commenced on September 14, 2009, and adjourned on September 16, 2009. The parties filed initial briefs on October 27, 2009, and reply briefs on November 6, 2009. The record closed on November 6, 2009. The ALJs issued a proposal for decision (PFD) containing proposed findings of fact and conclusions of law on December 17, 2009. After a review of the exceptions and responses to the exceptions to the original PFD, the ALJs issued an amended PFD on January 27, 2010.

The Commissioner has the responsibility under the Texas Insurance Code §2703.003 and §§2703.151 – 2703.152 to fix and promulgate the premium rates to be charged by title insurance companies and title insurance agents for policies of title insurance. The prescribed rates are to be reasonable to the public and nonconfiscatory as to the title insurance companies and title insurance agents. Based upon the testimony and evidence

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admitted, the exceptions and amended PFD, the Commissioner adopts the following findings of fact and conclusions of law.

## **JUSTIFICATIONS FOR REVISIONS TO ORDER<sup>1</sup>**

### **FINDINGS OF FACT**

#### **Procedural History**

Proposed Finding of Fact Nos. 3, 4, and 7 are amended to make references to the Texas Department of Insurance Staff read "TDI Staff" rather than "TDI" in order to make clear that the reference relates to the individuals presenting the evidence in this case, including their supporting staff, and does not refer to the Commissioner of Insurance and his advisors. Finding of Fact No. 3 is also amended to better describe the individuals who had filed to transfer the ratemaking phase to SOAH, and Finding of Fact No. 7 is also amended to simplify the reference to their admission as parties. Finding of Fact 4 is also amended to make clear that references to "ALJs" concern the two administrative law judges assigned to preside at the hearing.

New Finding of Fact Nos. 15 and 16 are issued to complete the procedural history.

#### **Counsel and Witnesses**

Proposed Finding of Fact Nos. 15 – 20 are redesignated as Finding of Fact Nos. 17 – 22, respectively.

Finding of Fact No. 17(15) is amended to make the reference to TDI Staff consistent throughout the decision.

#### **Loss Provision**

The heading "Loss Provision" and Proposed Finding of Fact Nos. 66 - 75 related to the loss provision are moved to this portion of the findings of fact because it will improve the readability of the decision, since the final provision for losses affects what cost elements should or should not be included in expenses. Considering the loss provision at this point in the decision simplifies the discussion of expenses later in the decision.

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<sup>1</sup> References to redesignated findings of fact are shown by their new number followed by their original number from the amended PFD in parentheses.

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Proposed Finding of Fact Nos. 66 - 70 and 72 - 75 are redesignated as Finding of Fact Nos. 23, 24, 25, 27, 30, 32, 33, 34, and 36, respectively.

Finding of Fact No. 23(66) is amended to make clear that the provision is intended to provide for these costs under policies that will be issued when the new rates are in effect. Finding of Fact No. 24(67) is amended to identify the parties proposing to use policy year losses and loss adjustment expenses (LAE) developed to ultimate to calculate the loss provision, to eliminate the suggestion that loss development is used in conjunction with calendar year losses, and to reflect that the Commissioner has determined that calendar year and policy year analyses are not equally appropriate.

Finding of Fact No. 25(68) is amended to fully define policy year data. New Finding of Fact No. 26 is adopted to identify the parties that proposed basing the loss provision on calendar year data. Finding of Fact No. 27(69) is amended to more accurately define calendar year data. New Finding of Fact Nos. 28 and 29 are adopted to explain why the use of policy year data in calculating the loss provision is preferable to using calendar year data. Finding of Fact No. 30(70) is amended to reflect the Commissioner's determination that it is reasonable to use policy year data to calculate the loss provision. New Finding of Fact No. 31 is adopted to explain that losses and LAE incurred by agents are not included in the policy year data, and that it is necessary to rely on calendar year data to reflect these losses.

Proposed Finding of Fact No. 71 is deleted because its subject matter is considered in the findings of fact concerning the expense provision of the rate. Finding of Fact Nos. 32(72), 33(73), and 34(74) are amended to clarify these findings of fact. New Finding of Fact No. 35 is adopted to state that the average of the most recent five policy year loss and LAE ratios developed to ultimate provides a reasonable estimate on which to base the loss provision. Finding of Fact No. 36(75) is amended to indicate the final loss provision based on the preceding findings of fact is reasonable.

## **Expense Provision**

### **Introduction**

The subheading "Introduction" is added to describe the contents of the findings of fact that follow. Proposed Finding of Fact Nos. 21 - 23 are redesignated as Finding of Fact Nos. 37 - 39 respectively.

Finding of Fact No. 37(21) is amended to define rating period and to correct the period when the new rates are expected to be in effect. Finding of Fact Nos. 38(22) and 39(23) are amended for clarity. Proposed Finding of Fact No. 24 is deleted because the Commissioner has determined that it is not appropriate to base the rate on an expense

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ratio of 91.25 percent and that it is more appropriate to defer the discussion of the appropriate expense ratio to the end of the Expense Provision section.

## **Data Considerations**

The subheading "Expense Ratio" is changed to "Data Considerations" to describe the subject of the findings of fact that follow. Proposed Finding of Fact Nos. 26, 27, 28 - 32, and 34 are redesignated as Finding of Fact Nos. 40, 41, and 43 - 48, respectively.

Proposed Finding of Fact No. 25 is deleted because it is duplicative of portions of Finding of Fact No. 38(23). Finding of Fact No. 40(26) is amended so that it describes what the parties did regarding the exclusion of particular expenses. Finding of Fact No. 41(27) is amended to make it more precise.

New Finding of Fact Nos. 42 and 43 identify the loss-related cost elements that should not be included with the expenses used to calculate the rates given the Commissioner's determination in Finding of Fact No. 30 that the loss provision should be based on policy year losses and LAE developed to ultimate. New Finding of Fact No. 44 provides that losses and LAE should be excluded from expenses because these are accounted for in the loss provision.

Finding of Fact No. 47(30) is amended to change the reference from "premium" to "income" and to describe the income and expense items involved. Proposed Finding of Fact No. 33 is deleted because it is unnecessary to the decision. Finding of Fact No. 50(34) is amended to reflect that it is reasonable but not imperative to adjust the reported data to account for unreasonable expense allocations among rate-regulated and non-rate regulated operations.

Proposed Finding of Fact No. 35 is deleted because it is unnecessary for the decision.

## **Expense Projection Models**

The subheading "Expense Projection Models" is added to describe the contents of the findings of fact that follow. Proposed Finding of Fact Nos. 46, 47, and 48 are moved to the beginning of this section and are redesignated as Finding of Fact Nos. 51, 52, and 54, respectively. Proposed Finding of Fact No. 39 is redesignated as Finding of Fact No. 67.

Finding of Fact No. 51(46) is amended to fully describe the fixed expenses in title insurance. Finding of Fact No. 52(47) is amended to indicate that certain expenses may vary with either the numbers of policies issued or changes in premium volume.

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New Finding of Fact No. 53 describes how the fixed and variable expenses interact to affect the title insurance expense ratio.

New Finding of Fact No. 55 describes the model used by OPIC to project its recommended expense ratio and to show that it does not reflect the likely impact of changing policy counts or premium volume and is mathematically inconsistent with the expense structure of title insurance.

New Finding of Fact No. 56 indicates that the models recommended by Fidelity, TDI Staff, and TLTA do explicitly reflect changes in the volume of business. New Finding of Fact No. 57 contrasts the general projection approach taken by Fidelity and TDI Staff with that taken by TLTA. New Finding of Fact Nos. 58 and 59 describe the specific mathematical forms of the Fidelity model and the model preferred by TDI Staff among the several they presented. New Finding of Fact No. 60 describes that these models are mathematically inconsistent with the premise that certain expenses in title insurance expense structure are fixed. Finding of Fact No. 61 finds that the mathematical inconsistency of the models with the premise that certain expenses in title insurance are fixed reduces the overall credibility that may be attached to the projections they produce.

New Finding of Fact No. 62 describes the specific mathematical form of the TLTA model. New Finding of Fact No. 63 is adopted to find that the TLTA model is consistent with the fixed and variable expense structure of title insurance.

New Finding of Fact No. 64 describes how TLTA applied its model to project expenses. New Finding of Fact No. 65 describes certain adjustments to the approach used by TLTA that are necessary and reasonable.

Proposed Finding of Fact No. 36 is deleted because it is unnecessary to the final decision, and because the Commissioner finds that it is improper to use any model that is known to be biased, whether that bias is towards the upper range or the lower range of alternative answers. New Finding of Fact No. 66 is adopted to describe the numbers of years of experience each of the parties used in their regression analyses. Proposed Finding of Fact Nos. 37 and 38 are deleted because the Commissioner has not determined that any particular model be used to project the expense ratio. Finding of Fact No. 67(39) is amended to describe the basis of the Commissioner's determination that 10 years of experience should be used in the regression analyses.

Proposed Finding of Fact Nos. 40 and 41 are deleted because the Commissioner finds that it is most appropriate to base the projections on the points on the fitted line itself rather than applying incremental changes derived from the fitted line to the actual experience for the most recent two years.

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## **Reverse Competition and the Reasonableness of Expenses**

The subheading "Reverse Competition and the Reasonableness of Expenses" is added to describe the findings of fact that follow. Proposed Finding of Fact Nos. 42, 43, 45, and 49 are redesignated as Finding of Fact Nos. 68, 69, 71, and 72, respectively.

Finding of Fact No. 68(42) is amended to clarify that the market is not competitive from the standpoint of price, but that there is ample evidence in the record that it may be competitive in other ways, such as in terms of service. New Finding of Fact No. 70 is adopted to describe that OPIC testified that the marketing in title insurance results in reverse competition which increases costs to consumers. Proposed Finding of Fact No. 44 is deleted because it is unnecessary to the decision.

Finding of Fact No. 71(45) is amended to clarify that the finding refers to costs rather than fees. New Finding of Fact No. 73 describes the action OPIC recommended to correct for the effects of reverse competition. New Finding of Fact No. 74 indicates that while the Commissioner finds that reverse competition exists and may affect costs, there was insufficient evidence in the record on which to base any specific numeric adjustment.

Proposed Finding of Fact Nos. 50, 51, and 52 are deleted because the Commissioner finds it not is appropriate to base the indicated rate on expense ratios of 91.25 percent or 93.25 percent and that it is more appropriate to defer the discussion of the appropriate expense ratio to the end of the Expense Provision section.

## **Premium and Policy Count Volume**

The subheading "Premium Volume" was amended to "Premium and Policy Count Volume" to better describe the findings of fact that follow. Proposed Finding of Fact Nos. 53 - 56, 58, 61 - 63, and 65 are redesignated as Finding of Fact Nos. 75 – 78 and 80 - 84, respectively.

Finding of Fact Nos. 75(53) and 78(56) are amended to clarify the findings. Proposed Finding of Fact No. 57 is deleted because it is desirable to neither underestimate nor overestimate premium volumes. Proposed Finding of Fact Nos. 59 and 60 are deleted because they are not necessary to the decision.

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New Finding of Fact No. 79 describes that the evidence indicated that premium and policy counts in 2009 will be approximately 37 percent to 41 percent of the average levels of 2006 and 2007. Finding of Fact No. 80(58) is amended to make clear that the period of time being referenced is that between 2009 and 2010 and 2011. Findings of Fact Nos. 81(61) and 82(62) are amended to clarify that the findings refer both to the numbers of policies issued and to the premiums written.

Finding No. 83(63) is amended to clarify that it refers to both premiums and policy counts. Proposed Finding of Fact No. 64 is deleted because it is unnecessary to the decision. Finding of Fact No. 84(65) is amended to reflect the Commissioner's finding that it is appropriate to assume that the average numbers of policies issued or the average premiums written in 2010 and 2011 based on the available evidence will be 15 percent below the average numbers of policies issued and the average premiums written in 2006 and 2007.

## **Indicated Expense Ratios**

The subheading "Indicated Expense Ratios" is added to describe the finding of fact that follows.

New Finding of Fact No. 85 indicates the expense ratios that are projected using the OPIC, Fidelity, preferred TDI Staff, and TLTA models based on the preceding findings of fact.

## **Profit Provision**

Proposed Finding of Fact Nos. 76 - 80, 83 - 88, and 90 are redesignated as Finding of Fact Nos. 86 - 95, 97, and 101, respectively.

Finding of Fact No. 87(77) is amended to clarify the finding and to eliminate duplicative language. Finding of Fact No. 88(78) is amended to correct the reference to when the new rates will be in effect. Finding of Fact No. 89(79) is amended to eliminate the suggestion that the information going into the model is what determines the most reasonable model; rather, the quality of the information going into the model determines the reasonability of the answers produced by the model.

Proposed Finding of Fact Nos. 81 and 82 are deleted because they are not necessary for the decision. Finding of Fact No. 91(83) is amended to describe that the indicated cost of capital is an after-tax figure. Finding of Fact No. 92(84) is amended to clarify the definition of the investment income component and to clarify that the component itself does not project results over time. Finding of Fact No. 93(85) is amended to clarify the finding and to make the terminology consistent with Finding of Fact No. 92(84). Finding

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of Fact No. 94(86) is amended to make the terminology consistent with Finding of Fact No. 93(85). Finding of Fact No. 96 describes that OPIC recommended a premium leverage ratio of 1.75 and that this value falls within a range of such values in recent years. Finding of Fact No. 97(88) is amended to make the terminology consistent with Finding of Fact Nos. 95(87) and to describe that based on Finding of Fact No. 96 the use of a 1.75 premium leverage ratio is reasonable.

New Finding of Fact No. 98 indicates that underwriter, direct operations, and most affiliated agent profits would be taxed at the corporate tax rate while much of the profits of independent agents would be taxed as ordinary income. New Finding of Fact No. 99 describes that if the average effective tax rate applicable to independent agents' profits were 25 percent, the overall average tax rate for underwriters and all agents combined would be between 30 percent and 31 percent. New Finding of Fact No. 100 indicates the before-tax profit provisions that would result if the effective average tax rates for underwriters and all agents combined were 30 percent and 31 percent.

Proposed Finding of Fact No. 89 is deleted because it is unnecessary given the more complete description of the applicable tax structure in Finding of Fact Nos. 98-100. Finding of Fact No. 101(90) is amended to reflect the profit provision that the Commissioner finds to be reasonable and because there is an error in the formula used to calculate the 6.25 percent profit provision cited in the proposed finding of fact. The formula, which is displayed on page 32 of the January 27, 2010, amended PFD, subtracted an after-tax investment return (line 4 of the formula) from a before-tax target return (line 3). The correct application would involve either an after-tax or a before-tax calculation. A corrected formula<sup>2</sup> would have yielded an indicated profit provision of 5.48 percent rather than 6.25 percent given the 25 percent tax rate cited in the original formula (line 2). Finding of Fact No. 91 is deleted because it is duplicative of Finding of Fact No. 101(90).

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<sup>2</sup> Since the average effective tax rates applicable to different sources of income (investments and underwriting profit) will generally differ, it is simplest to perform the calculations on an after-tax basis and then convert the underwriting profit provision to a before-tax figure as a final step. Applying the corrected application in this matter the formula would be the following:

- (i) Subtract the after-tax investment return on net worth (line 4) from the after-tax target return on net worth (line 1);
- (ii) Divide the result of (i) by the net worth leverage ratio (line 6); and
- (iii) Divide the result of (ii) by one minus the average effective tax rate on underwriting profits to obtain the before-tax underwriting provision.

Note: Line references in the footnote relate to lines 4, 1, and 6 in the page 32 formula in the amended PFD.

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## **Indicated Rate Change**

Proposed Finding of Fact No. 92 is deleted because its subject matter is covered in new Finding of Fact Nos. 102 - 104. New Finding of Fact No. 102 is adopted to show the rate changes resulting from the expense ratios projected by the OPIC, Fidelity, TDI Staff, and TLTA models and the decisions concerning the appropriate loss and profit provisions. New Finding of Fact No. 103 is adopted to point out that the model most consistent with title insurance expense structure would call for a rate decrease, while of the other three models, one would indicate the need for a rate decrease while the other two models would indicate the need for an increase. New Finding of Fact No. 104 is adopted to reflect the Commissioner's determination that no change in rates is appropriate at this time.

## **Agenda Items**

Proposed Finding of Fact Nos. 93 - 96 are redesignated as Finding of Fact Nos. 105 - 108, respectively.

Finding of Fact No. 105(93) is amended to fully describe Agenda Item 2008-55. Finding of Fact No. 108(96) is amended to clarify that a new Rate Rule R-35 is being adopted and that the rate is not dependent on whether the property is in a platted subdivision.

Proposed Finding of Fact Nos. 97 - 99 are redesignated as Finding of Fact Nos. 110 - 112, respectively.

Finding of Fact No. 110(97) is amended to fully describe Agenda Item 2008-60. Finding of Fact No. 112(99) is amended to clarify that an amendment to Rate Rule R-35 is being adopted to provide a rate for the new Non-Imputation Endorsement (Mezzanine Financing) (T-24.1).

New Finding of Fact Nos. 109 and 113 are adopted to explain that Agenda Items 2008-58, 2008-59, 2008-62, 2008-63, and 2008-64 were withdrawn by the parties that originally proposed the Agenda Items.

Proposed Finding of Fact Nos. 100 and 101 are redesignated as Finding of Fact Nos. 114 and 115, respectively, and are amended.

Finding of Fact No. 114(100) is amended to fully describe Agenda Item 2008-66. Finding of Fact 115(101) is amended to provide additional background relating to the use of the exceptions and general exclusions referred to in the finding of fact. Proposed Finding of Fact No. 102 is deleted because the Commissioner finds it is appropriate to

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apply a credit to the base rate credit when the exception or general exclusion is contained in the policy.

New Finding of Fact No. 116 is adopted to explain that before exceptions or general exclusions were permitted by Procedural Rule P-5.1, it is reasonable to believe that the agent would have devoted time and effort in reviewing mineral estate-related records, and that this work would no longer be necessary if the exception or general exclusion is contained in the policy. New Finding No. 117 is adopted to indicate that there might be loss and LAE savings if the exception or general exclusion permitted by Procedural Rule P-5.1 is contained in the title insurance policy. New Finding No. 118 is adopted to reflect the Commissioner's finding that there will be expense and loss and LAE savings if the exception or general exclusion is contained in the title insurance policy; to indicate that a premium credit of 2 percent is a reasonable reflection of these savings; and that such a credit will be adopted in new Rate Rule R-36.

Proposed Finding of Fact Nos. 103 and 104 are deleted because they do not contain the necessary information to ensure that the action that the Commissioner is taking is clearly explained. In order to clarify the action that the Commissioner is taking, several separate findings of fact (New Finding of Fact Nos. 119 – 124) that identify the Agenda Items and explain the reasons for approving the Agenda Items have been substituted for the deleted findings of fact.

New Finding of Fact No. 119 is adopted to fully describe Agenda Item 2008-56 relating to an amendment to Rate Rule R-15 and to explain that it is reasonable to remove the inadvertent inclusion of T-31 from Rate Rule R-15.

New Finding of Fact No. 120 is adopted to more explicitly identify and describe Agenda Item 2008-61 relating to an amendment to Rate Rule R-11. Additionally, this finding of fact explains that it is reasonable to delete R-11j pertaining to the rate for the Last Dollar Endorsement (T-15) since this endorsement was rescinded in the rulemaking phase of the 2008 Biennial Hearing and that references to the Mortgagee Policy have been updated to reflect the current name, Loan Policy.

New Finding of Fact No. 121 is adopted to fully describe Agenda Item 2008-57 relating to an amendment to Rate Rule R-5 that will allow the Rate Rule R-3 credit to be combined with a simultaneous-issue rate for the policy to insure a construction loan.

New Finding of Fact Nos. 122 - 124 are adopted to fully describe Agenda Item 2008-65 relating to proposed amendments to Rate Rule R-3 Owner's Policy and a conforming amendment to Procedural Rule P-66 Determination of Amount of Insurance (Policy Amount). This agenda item rescinds the State Board of Insurance Bulletin No. 120 and

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adopts amendments to Rate Rule R-3 and an amendment to Procedural Rule P-66 to replace the Bulletin.

## **Conclusions of Law**

Proposed Conclusion of Law No. 1 is amended to delete §31.007 of the Insurance Code and replace it with §31.021 of the Insurance Code. These amendments are necessary because §31.007 is not relevant to the decision since there are no references to State Board of Insurance in this order and §31.021 more accurately reflects the Commissioner's general powers and duties which are relevant to the Commissioner's authority to fix and promulgate the premium rates to be charged by title insurance companies and title agents. Additionally, a reference to §2501.008 is added to Proposed Conclusion of Law No. 1 because §2501.008 has as much bearing on the rate decision as the other portions of Chapter 2501 in that it allows for certain charges outside of the promulgated rate structure, which would have a bearing on what is included in the rate.

Proposed Conclusion of Law No. 5 is deleted because it is unnecessary for the decision.

Proposed Conclusion of Law Nos. 6, 7, and 8 are redesignated Conclusion of Law Nos. 5, 6, and 7, respectively.

## **FINDINGS OF FACT**

### **Procedural History**

1. On July 15, 2008, The Texas Department of Insurance (Department) issued its Notice of Public Hearing in the matter of the 2008 Texas Title Insurance Biennial Rate Hearing, and it was published at 33 *TexReg* 6202 (August 1, 2008).
2. The ratemaking phase of the 2008 Texas Title Insurance Biennial Rate Hearing was assigned Docket No. 2691, and transferred to the State Office of Administrative Hearings (SOAH) pursuant to TEX. INS. CODE ANN. §2703.205(d).
3. On September 12, 2008, Texas Department of Insurance Staff (TDI Staff) filed an Objection to Written Requests filed by Gary P. Lancaster, Michael Champion, and George Roberts, Jr. (Lancaster *et al.*) to Transfer the Ratemaking Phase to SOAH. In its objection, TDI Staff requested that SOAH dismiss the matter from

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SOAH's docket and refer the ratemaking proceedings back to the Commissioner of Insurance in accordance with TEX. INS. CODE ANN. §2703.205(c).

4. On October 1, 2008, SOAH Administrative Law Judge Henry D. Card issued Order No. 1 denying TDI Staff's request. Additionally, Administrative Law Judge Card informed the parties that SOAH Administrative Law Judges Howard S. Seitzman and Michael J. O'Malley (hereinafter referred to as the "ALJs") would be the judges assigned to the hearing.
5. On October 2, 2008, the ALJs issued Order No. 2 setting a prehearing conference for October 16, 2008.
6. On October 17, 2008, the ALJs issued Order No. 3, Memorializing Prehearing Conference and Scheduling Second Prehearing Conference. The ALJs granted party status to all parties who had filed motions to intervene.
7. The following entities were admitted as parties in the ratemaking phase: Stewart Title Guaranty Company (Stewart); Lancaster *et al.*; Texas Land Title Association (TLTA); Texas Association of Abstractors and Title Agents (TAATA); Independent Title Agents of Texas (ITAT); Independent Metropolitan Title Agents of Texas (Metro); The Sierra Group and Metro Title Company (Sierra); Texas Society of Professional Surveyors (TSPS); Fidelity Companies, Lawyers Title Insurance Corporation, and Commonwealth Land Title Insurance Company (Fidelity); TDI Staff; and the Office of Public Insurance Counsel (OPIC). During the prehearing conference, the parties were unable to agree on a hearing date; therefore, another prehearing conference was scheduled for December 1, 2008.
8. On December 30, 2008, the ALJs issued Order No. 4, Memorializing Prehearing Conference, Setting Procedural Schedule, Scheduling Prehearing Conference, and Setting Hearing on the Merits.
9. The final prehearing conference was scheduled for May 27, 2009, and the hearing on the merits was set to begin on June 2, 2009, and continue through June 5, 2009.
10. On April 20, 2009, OPIC filed a Motion to Compel responses to interrogatories sent to Stewart. Stewart did not respond to the Motion to Compel. On April 27, 2009, OPIC filed a Motion to Compel responses to interrogatories addressed to Fidelity. Fidelity filed a response on May 6, 2009.
11. On May 14, 2009, the ALJs issued Order No. 6, ruling that they would consider the Motions to Compel at the May 27, 2009 final prehearing conference.

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12. On May 28, 2009, the ALJs issued Order No. 8, Granting OPIC's Motions to Compel and Continuing the Hearing to September 14 - 18, 2009.
13. On June 30, 2009, the ALJs issued Order No. 9, requiring briefing on the following issues: 1) the basis for issuing a title bulletin; 2) the legal import, if any, of Title Bulletin No. 158; 3) the legislative history and any prior decisions or interpretations of TEX. INS. CODE ANN. §2501.051; and 4) the legislative history and any prior decisions or interpretations of TEX. INS. CODE ANN. §2502.055, with a focus directed primarily on the phrases "promotional and educational activities" and "not conditioned on the referral of title insurance business."
14. The evidentiary hearing commenced on September 14, 2009, and adjourned on September 16, 2009. The record closed on November 6, 2009.
15. On December 17, 2009, the ALJs issued a Proposal for Decision (PFD) for the ratemaking phase of the 2008 Texas Title Insurance Biennial Rate Hearing.
16. After a review of the Exceptions and the Responses to the Exceptions to the PFD filed by the parties, the ALJs issued an Amended PFD on January 27, 2010.

### **Counsel and Witnesses**

17. TDI Staff was represented by David Muckerheide and Elisabeth C. Ret and presented the following witnesses: Betty Flores and Mark Crawshaw, Ph.D.
18. Stewart was represented by Catherine Brown Fryer of Bickerstaff Heath Delgado Acosta L.L.P., and presented the following witnesses: Ted C. Jones, Ph.D., and John F. Rothermel, III.
19. TLTA was represented by Thomas A. Rutledge and Ron Eudy of Sneed, Vine & Perry, P.C., and presented the following witnesses: Bruce D. Liesman, Terry L. Grantham, Brian Pitman, Jared E. Hazleton, Ph.D., and Nelson R. Lipshutz, Ph.D.
20. Fidelity was represented by Todd L. Padnos of Dewey & LeBoeuf and Peter A. Nolan of Winstead P.C, and presented the following witnesses: David Appel, Ph.D., and Michael J. Miller.
21. OPIC was represented by Kergin B. Bedell and Deeia Beck and presented the following witness: Kenneth Lovoy.

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22. Several parties did not present witnesses. Those parties were Metro, represented by Will D. Davis of Heath, Davis & McCalla, P.C.; ITAT, represented by Bert V. Massey, II, of Massey, Shaw and West; Sierra, represented by John R. King; TSPS, represented by Mark J. Hanna of Hanna & Anderson, P.C.; and Lancaster, *et al.*, represented by Stephen A. Hester, Jr.

## **Loss Provision**

23. The loss provision of the rate provides for anticipated losses and loss adjustment expense (LAE) that will be incurred under policies issued using the new rates (cost of claims against the policies).
24. Fidelity and TLTA based their projected loss and LAE on policy year data developed to ultimate using traditional actuarial loss development analyses.
25. Policy year data is loss data where the losses and associated LAE are assigned to the year in which the policy under which the loss was incurred was issued, regardless of when the loss was reported or paid. For example, if a claim were reported in 2009 on a policy issued in 1989, the claim would be assigned as a loss for policy year 1989.
26. OPIC and TDI Staff based their projected loss and LAE provision on calendar year data.
27. Calendar year loss data reflects all loss and LAE activity occurring in a particular calendar year regardless of the year in which the policy giving rise to the loss was issued. It is defined from an accounting standpoint as all losses and LAE paid in a particular year plus the reserves for unpaid losses and LAE on known claims held at the end of that year minus the reserves for unpaid losses and LAE on known claims held at the beginning of that year.
28. Calendar year data would tend to underestimate the losses and LAE on policies issued in periods when the volume of business is increasing and overestimate the losses and LAE on policies issued in periods when the volume of business is decreasing.
29. Policy year data developed to ultimate best matches the losses and LAE to the actual volume of business written in a particular year.
30. It is reasonable to base the loss and LAE ratio on policy year data developed to ultimate.

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31. The policy year data described in Finding of Fact Nos. 24, 29, and 30 does not include losses and LAE incurred by agents. However, the ten-year average of agents' calendar year losses and LAE is 0.32 percent.
32. The upward adjustment on the loss ratio provision proposed by TLTA to reflect recent adverse loss reserve developments experienced by certain underwriters is not reasonable.
33. It is not reasonable to trend the loss ratio upward to calculate the rates for 2010/2011, a period of time after the mortgage industry has tightened its lending practices and mortgage fraud is less likely.
34. Most of the foreclosure activity in the near future would relate to properties insured under policies issued in prior years and therefore would have little bearing on the losses and LAE likely to be incurred on policies issued in 2010/2011.
35. It is reasonable to base the loss and LAE provision on the most recent five-year average of policy year losses and LAE developed to ultimate.
36. A 5.0 percent loss and LAE provision in the rates, which includes the provision for agents' losses and LAE and an additional loading for catastrophic losses, is reasonable.

## **Expense Provision**

### **Introduction**

37. The rating period (the period in which the new rates will be in effect) is expected to be 2010 through 2011.
38. The expense provision is intended to account for all reasonable costs associated with a title insurance policy issued during this period except for those costs associated with the profit and loss provisions.
39. The expense provision is derived by projecting the ratio of expenses to premium that will be incurred under policies issued during the rating period.

### **Data Considerations**

40. Damages arising from bad faith claims, fines and penalties, donation and lobbying expenses, and trade association fees were excluded by all parties from expenses used to calculate the expense ratio.

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41. Recording fees and tax certificates, which are pass-through income and expenses, are properly excluded in calculating the expense ratio.
42. The traditional loss development analyses referenced in Finding of Fact No. 24 adjust known policy year claims to their ultimate settlement level and account for policy year claims that had not yet been reported (sometimes referred to as incurred but not reported (IBNR) claims) at the time of the most recent evaluation of the data.
43. It is therefore reasonable to exclude the provisions for the net addition to the unearned premium reserve, which in title insurance is the functional equivalent of the IBNR reserve, from expenses since these are accounted for in the developed ultimate policy year losses.
44. It is also reasonable to exclude the underwriters' and agents' incurred losses from expenses since these are accounted for in the loss provision.
45. It is necessary to adjust the historical data to arrive at on-level premiums.
46. On-level premiums represent the amount that would have been earned had the current rates and current premium splits been in effect for the entire period of time.
47. It is reasonable to adjust the income and expenses used in projections to eliminate double counting of income and expenses when underwriters or agents pay another agent for title services.
48. The title insurance industry reports income and expense data to the Department.
49. The data reported to the Department contains errors and requires adjustments.
50. It is reasonable to adjust the reported data to account for unreasonable expense allocations among rate-regulated operations and non-rate regulated operations.

### **Expense Projection Models**

51. A certain portion of title expenses are fixed due in part to the statutory requirement that agents maintain or lease an abstract plant; they do not vary depending on the numbers of policies issued or premiums written.
52. Other expenses are variable: they depend on the number of policies issued or premiums written during a particular period of time.

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53. Finding of Fact Nos. 51 and 52 mean that as the numbers of policies and the dollars of premium increase, the expense ratio would tend to decrease since the fixed expenses described in Finding of Fact No. 51 would be spread over a larger premium base; conversely, as the numbers of policies and the dollars of premium decrease, the expense ratio would tend to increase since the fixed expenses would be spread over a smaller premium base.
54. The data collected by the Department does not segregate or distinguish fixed expenses from variable expenses.
55. The model employed by OPIC (an average of (i) the average of the expense ratios at current rate levels for each of the ten most recent years; and (ii) a regression of the most recent 15 expense ratios at current rate levels against time (the year)) does not explicitly reflect likely changes in the numbers of policies issued or premium volumes, and would therefore appear to be mathematically inconsistent with Finding of Fact Nos. 51 – 53.
56. The models employed by Fidelity, TDI Staff, and TLTA explicitly reflect likely changes in the numbers of policies issued or premium volumes.
57. The Fidelity and TDI Staff models predict the anticipated expense ratios directly, whereas the model used by TLTA predicts the expense dollars, and then converts this to an expense ratio by dividing by the anticipated premium.
58. The functional forms of the model employed by Fidelity and the one preferred by TDI Staff are  $ER = a \times P + b \times Y + c$  and  $ER = a \times P + b$ , respectively, where ER is the expense ratio at current rate levels, P is the premium at current rate levels, Y is the year (a time-related variable), and a, b, and c are coefficients derived from the regression analyses.
59. The expense ratio (ER) equals the dollars of expense (E) divided by premium (P); substituting this in the equations in Finding of Fact No. 58, and multiplying both sides of the equation by P, produces  $E = a \times P^2 + (b \times Y + c) \times P$  and  $E = a \times P^2 + b \times P$  for the Fidelity and preferred TDI Staff models, respectively.
60. The models described in Finding of Fact Nos. 58 and 59 are logically incompatible with Finding of Fact No. 51 at more extreme premium volumes. Specifically:
  - (i) since premium (P) appears multiplicatively in every term to the right of the equals sign (=) in the equations in Finding of Fact No. 59, as the premiums approach zero the projected dollars of expense will approach zero, implying there are no fixed expenses; and

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(ii) since the premium squared ( $P^2$ ) term in the equations in Finding of Fact No. 59 will completely overwhelm in size the other terms to the right of the equals sign (=) as premiums increase beyond certain levels (approximately \$5.5 billion in the case of the Fidelity model and approximately \$7.7 billion in the case of the preferred TDI Staff model), and since the coefficients "a" in the two models are negative<sup>3</sup>, the models predict that the expense dollars will be negative, again implying there are no fixed expenses.

61. While these models may produce plausible expense ratio estimates within a limited premium volume range, their incompatibility with the underlying title insurance expense structure reduces the credibility that can be assigned to the results they produce.
62. The functional form of the model employed by TLTA is  $E = a \times N + b \times D + c$ , where E is the dollars of expense adjusted to 2009 cost levels through the application of the Gross Domestic Product (GDP) Deflator, N is the number of policies issued, D is a dummy variable with the value of zero for years prior to 1997 and a value of one thereafter, and a, b, and c are coefficients derived from the regression analyses.
63. The model described in Finding of Fact No. 62 is consistent with Finding of Fact Nos. 51 – 53, provided that the total of the coefficients "c" calculated for agents is positive and that the total of the coefficients "c" calculated for agents and underwriters is positive<sup>4</sup>, and it is the model, among those proposed in this proceeding, most consistent with the actual title insurance expense structure.
64. TLTA projected the anticipated expenses separately for underwriters and each of the three categories of agents (direct operations, affiliated, and independent), and then combined the results to produce total overall expenses.
65. It is reasonable to combine the experience for all agents and use this combined data to project expenses for agents as a whole rather than separately projecting the expenses for each category of agent since the reasons cited in testimony for projecting the expenses separately are not persuasive and the adjustment in the

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<sup>3</sup> If the coefficients "a" were positive, the equations in Finding of Fact No. 58 would predict that the expense ratio would increase as the premium increased, which is inconsistent with how the expense ratio should behave given the title insurance expense structure, as described in Finding of Fact No. 53. In the Fidelity and TDI Staff regressions described in the pre-filed testimony and in the corresponding regressions described later in this decision in Finding of Fact No. 86, the coefficients "a" were negative.

<sup>4</sup> In the regressions described in the prefiled testimony and in the corresponding regressions described later in this decision in Finding of Fact No. 86, these conditions for the coefficients "c" were satisfied.

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experience described in Finding of Fact No. 47 is not possible if each category of agent is considered separately.

66. Fidelity and TLTA used the most recent 19 years of historical data in their regressions, OPIC used the most recent ten and 15 years of historical data in its expense ratio projections, and TDI Staff presented the results of regressions that were based on either the most recent ten or 18 or 19 years of historical data, although its preferred model was based on the use of the most recent ten years of historical data.
67. It is reasonable to use a regression model that uses the most recent ten years' experience as the basis for its projections because the most recent ten years is more representative of the current business practices and expenses of the title industry than the longer periods and the use of the shorter time period precludes the oldest experience from being equally weighted with the most recent experience in projecting future conditions.

## **Reverse Competition and the Reasonableness of Expenses**

68. The title insurance market in Texas is price regulated and not price competitive.
69. For the most part, the title insurance industry markets to persons other than the ultimate consumer of its product and services.
70. OPIC testified that this situation, sometimes referred to as reverse competition, serves to unreasonably and unnecessarily drive up costs.
71. The data collected by the Department does not allow a determination of whether unreasonable or unnecessary marketing costs are incurred.
72. The collected data by the Department does not allow for a reasonable calculation of unnecessary expenses.
73. OPIC recommended that the projected expense ratios be reduced by ten percent to account for unnecessarily and unreasonably incurred expenses resulting from reverse competition.
74. The evidence in the record supports a conclusion that reverse competition exists and has impacted title insurance expenses, but does not support any specific adjustment to reported or projected expenses such as that proposed by OPIC.

## **Premium and Policy Count Volume**

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75. While Texas real estate sales and real estate values have declined, the decline in Texas has been less than that generally experienced in the rest of the nation.
76. Texas property values did not see the magnitudes of increase experienced in other parts of the country.
77. While unemployment in Texas had increased, Texas unemployment is lower than other parts of the nation.
78. From the data it is reasonable to conclude that Texas home values and prices will not decrease as much as in other parts of the country.
79. Based on the economic evidence presented, it is reasonable to conclude that policy issuances and premium volume in 2009 will be approximately 37 percent to 41 percent below the average levels of 2006 and 2007.
80. It is unlikely real estate activity will remain flat in 2010 and through 2011 relative to the immediately preceding year or that the volume of business experience during the rating period when the new rates will be in effect will be a continuing decline.
81. Based upon the economic evidence presented, it is reasonable to conclude that policy issuances and premium volume will increase in 2010 and 2011 relative to 2009.
82. It is reasonable and appropriate to utilize a projected number of policies issued or a premium volume that accounts for an anticipated increase in policy issuances or premium volume during 2010 and 2011 relative to 2009.
83. A projected number of policies issued and a premium volume in 2010 and 2011 that are 15 percent lower than the average number of policies issued and the average premium volume of 2006 and 2007 reasonably reflect anticipated changes in policy counts and premium volume throughout the rating period.
84. In determining the indicated basic rate, it is reasonable and most appropriate to assume a 15 percent reduction in the average numbers of policies issued and the premium volume in 2010 and 2011 relative to the average numbers of policies issued in and the average premium volume of 2006 and 2007.

### **Indicated Expense Ratios**

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85. Based on Finding of Fact Nos. 40 – 50, 67, 74, and 84, the OPIC model produces an indicated expense ratio of 87.6 percent; the Fidelity model produces an indicated expense ratio of 91.2 percent; the TDI Staff preferred model produces an indicated expense ratio of 91.3 percent; and the TLTA model produces an indicated expense ratio of 86.1 percent.

### **Profit Provision**

86. The profit margin component represents a margin in the rate that, together with investment and miscellaneous income, provides a sufficient return to the agent or underwriter given the capital risks.
87. The general methodology for determining the profit factor includes the following components: estimating the cost of capital or fair rate of return, determining the portion of the rate of return that will be provided from investments, and then calculating the amount that must be collected from premiums to achieve the fair rate of return.
88. A goal of any cost analysis should be to predict the market conditions when the new rates will be in effect, 2010 and 2011.
89. The Discounted Cash Flow, Fama-French 3 Factor, and Capital Asset Pricing Model are all reasonable cost of capital models.
90. Use of a weighted cost of capital is reasonable because it considers both the higher cost of equity and the lower cost of debt.
91. The market conditions and credible evidence indicate that an 11.25 percent after-tax cost of capital is reasonable.
92. The investment income component is the product of the average expected return on assets and the average expected ratio of assets to equity.
93. The investment income component should reflect realized capital gains and unrealized capital gains.
94. An after-tax investment income component of 4.06 percent is reasonable.
95. The premium leverage ratio is the ratio of premiums written to equity.

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96. OPIC recommended a premium leverage ratio of 1.75, which falls within a range of such ratios during the past five years.
97. Based on Finding of Fact No. 96, a 1.75 premium leverage ratio is reasonable.
98. The underwriting profits of underwriters, direct operations, and most affiliated agents would be taxed at the 35 percent corporate tax rate while a considerable portion of independent agents' profits would be taxed as ordinary income rather than at the corporate rate.
99. If the average effective tax rate applicable to the profits of independent agents approximates 25 percent, then the overall average effective tax rate applicable to the profits of underwriters and all agents combined would be between 30 percent and 31 percent, given that 46 percent of 2007 premiums were retained by independent and non-subsidary agents.
100. Based on Finding of Fact Nos. 91, 94, and 97, the indicated before-tax profit provision would be 5.87 percent based on a 30 percent tax rate and 5.95 percent based on a 31 percent tax rate.
101. Based on Finding of Fact No. 100, a 6.0 percent profit provision is reasonable.

### **Indicated Rate Change**

102. Based on Finding of Fact Nos. 36, 85, and 101, the indicated rate change based on the OPIC model is -1.5 percent, on the Fidelity model is +2.4 percent, on the TDI Staff model is +2.4 percent, and on the TLTA model is -3.1 percent.
103. The model most consistent with the actual title insurance expense structure indicates that a rate decrease would be appropriate; of the other three models, which are mathematically inconsistent with the title insurance expense structure and are therefore less credible, one indicates that a rate decrease would be appropriate while the other two indicate that a rate increase would be appropriate.
104. Given these conflicting results and the general uncertainty surrounding the economic conditions that will prevail when the new rates will be in effect, it is reasonable to make no change in the existing base rates at this time.

### **Agenda Items**

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105. Agenda Item 2008-55 was submitted to adopt new Rate Rule R-35 for the new Texas Limited Coverage Residential Chain of Title Policy. The Texas Limited Coverage Residential Chain of Title Policy was adopted in the rulemaking phase of the 2008 Biennial Hearing. The Texas Limited Coverage Residential Chain of Title Policy insures that the grantee named in a title policy is the same as the latest grantee on the most current deed recorded in the public records, that the description of land in the policy is the same as the description in the most current deed recorded in the public records, and that all deeds or leases in the chain of title during the sixty months prior to the issuance of the policy are listed.
106. The maximum liability on the Texas Limited Coverage Residential Chain of Title Policy is \$100.00.
107. The purpose of the Texas Limited Coverage Residential Chain of Title Policy is to detect and combat mortgage fraud.
108. The Texas Limited Coverage Residential Chain of Title Policy has very little production/research cost and the loss potential seems minimal; therefore, a nominal rate of \$15.00 for this policy is reasonable regardless of whether the property is platted. New Rate Rule R-35 is adopted and the premium for the Texas Limited Coverage Residential Chain of Title Policy is \$15.00 regardless of whether the property is platted.
109. Agenda Items 2008-58 and 2008-59 were withdrawn by the party that originally proposed the Agenda Items.
110. Agenda Item 2008-60 was submitted to propose the adoption of an amendment to Rate Rule R-31 to include a reference to the new Non-Imputation Endorsement (Mezzanine Financing) (T-24.1) in R-31. The new Non-Imputation Endorsement (Mezzanine Financing) (T-24.1) was adopted in the rulemaking phase of the 2008 Biennial Hearing. The new Non-Imputation Endorsement (Mezzanine Financing) (T-24.1) will be used in commercial mezzanine financing transactions in which the lender is taking an equity position in the property as part of its collateral for a loan.
111. Through the mezzanine financing endorsement, any title defects known to the buyer of the property will not be attributed to the lender receiving equity in the property.
112. A rate of 5 percent of the Basic Rate for the Owner's Policy with a minimum premium of \$25.00 is reasonable for the Non-Imputation Endorsement.

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Therefore, an amendment to Rate Rule R-31 to include a reference to the new Non-Imputation Endorsement (Mezzanine Financing) (T-24.1) in R-31 and a rate of 5 percent of the Basic Rate for the applicable Owner's Policy with a minimum premium of \$25.00 is adopted.

113. Agenda Items 2008-62, 2008-63, and 2008-64 were withdrawn by the party that originally proposed the Agenda Items.
114. Agenda Item 2008-66, relating to A Credit for Exclusion of or General Exception for Minerals, proposes the adoption of an unspecified credit if there is an exclusion of the mineral estate in Schedule A, or a general exception to such estate in Schedule B, that limits coverage under the policy.
115. The adoption of Procedural Rule P-5.1 Exception or Exclusion Regarding Minerals in 2009 in Commissioner's Order 09-0760 permitted the use of the exclusions or general exceptions described in Finding No. 114.
116. It is reasonable to believe that prior to the adoption of Procedural Rule P-5.1 agents would have expended time and effort in their diligent examination of records related to the mineral estate as required under the general rules, and that the associated costs would have been reflected in the expenses reported to the Department and used to promulgate the base rate. This work would no longer be necessary if the exception or general exclusion is contained in the policy.
117. A review of the claims statistics contained in the exhibit Form 10, Title Insurance Claims by ALTA Risk Codes, included in the Title Insurance Experience Report for Calendar Years 2003 – 2007, reveals that there were a number of claims that might be precluded by the use of the exclusions or general exceptions described in Finding No. 114.
118. It is therefore reasonable to believe that the use of the exclusions or general exceptions described in Finding No. 114 will result in savings from the expenses and losses and LAE contemplated in the base rates adopted in this decision. A credit of 2 percent in Rate Rule R-36 is reasonable. Therefore, new Rate Rule R-36 is adopted which provides that if the Company excludes the mineral estate from the interest in land being insured in Schedule A, or makes a general exception to the mineral estate in Schedule B, of the Owner's Policy, the premium shall be at the basic rate, but a credit shall reduce the premium in the amount of 2%.

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119. Agenda Item 2008-56 relates to an amendment to Rate Rule R-15, Owner Policy Endorsement. This Item proposes the adoption of an amendment to subsection c (Manufactured Housing Unit) to remove the inadvertent inclusion of the T-31 Manufactured Housing Endorsement in this subsection of the rule. The Manufactured Housing Endorsement is only attached to a Loan Policy and is not covered by Procedural Rule P-9a(4). Therefore, it is reasonable to remove the reference to this endorsement from Rate Rule R-15c. Agenda Item 2008-56 is adopted as filed.
120. Agenda Item 2008-61 relates to Rate Rule R-11j pertaining to the rate for the Last Dollar Endorsement. The Last Dollar Endorsement (T-15) was rescinded in the rulemaking phase of the 2008 Biennial Hearing. It is therefore reasonable to delete R-11j pertaining to the rate for the Last Dollar Endorsement from R-11. Rate Rule R-11 is amended to delete the current subsection j concerning the premium for the Last Dollar Endorsement (T-15). The last three subsections in R-11 have been redesignated as j, k, and l to reflect the deletion of current subsection j. References to the "Mortgagee Policy" in the Rate Rule have been updated to reflect the current name "Loan Policy." Agenda Item 2008-61 is adopted.
121. Agenda Item 2008-57 relates to proposed amendments to Rate Rule R-5 that will allow the Rate Rule R-3 credit to be combined with a simultaneous-issue rate for the policy to insure a construction loan. Rate Rule R-3 was amended in 2008 to assist consumers by allowing credit for the surrender of multiple owner's policies toward a new owner's policy when improvements to the property are added. These circumstances most often occur in connection with the creation of a loan to finance construction. The proposed amendments to R-5 also conform the names of the policies referenced in the rule to new policy names that were adopted in 2008, rearrange and renumber the existing paragraphs for clarity, remove redundant language by adopting references to Rate Rule R-3, and adopt conforming changes to paragraph D for criteria already established in paragraph C. Agenda Item 2008-61 is adopted.
122. Agenda Item 2008-65 as amended by Fidelity National Title Group, Inc. on February 24, 2009, relates to proposed amendments to Rate Rule R-3, Owner's Policy, and a conforming amendment to Procedural Rule P-66, Determination of Amount of Insurance (Policy Amount). This Agenda Item proposes the repeal of State Board of Insurance Bulletin No. 120 and the adoption of amendments to Rate Rule R-3 and an amendment to Procedural Rule P-66 to replace the Bulletin.

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123. The amendments proposed in Agenda Item 2008-65 incorporate the language of Bulletin No. 120 into the Procedural and Rate Rules of the Basic Manual where such information is easier to find than in the Appendix of the Basic Manual. Currently, Bulletin No. 120 is the only guidance to title agents in determining the proper premium to charge when there are sales of two or more tracts of land to a single purchaser.
124. The amendments proposed in Agenda Item 2008-65 clarify that simply aggregating the multiple tracts does not result in an "additional chain of title" charge for each additional tract, but that if a single transaction would have resulted in such a charge, then the charge should be collected. The Item also provides a method of calculating the premium if the purchaser desires to include the cost of immediately contemplated improvements in the aggregated Owner's Policy. The amendments to Rate Rule R-3, Owner's Policy, and the conforming amendment to Procedural Rule P-66, Determination of Amount of Insurance (Policy Amount), are adopted as amended on February 24, 2009, and Bulletin No. 120 is rescinded.

## II. CONCLUSIONS OF LAW

1. The Commissioner of Insurance has jurisdiction over this matter pursuant to the TEX. INS. CODE ANN. §§31.021, 2501.001 – 2501.008, 2551.003, and 2703.001 – 2703.208; TEX. GOV'T CODE ANN. §§2001.051 – 2001.178; and 28 TEX. ADMIN. CODE §9.1
2. Proper and timely notice of the 2008 Texas Title Insurance Biennial Rate Hearing (Hearing) was given pursuant to the TEX. INS. CODE ANN. §2703.203 and TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
3. An individual, association or other entity recommending adoption of a premium rate or another matter relating to the regulation of the business of title insurance has the right to seek admission as party to the hearing. TEX. INS. CODE §2703.204.
4. The Commissioner of Insurance has the duty to fix and promulgate the premium rates to be charged by title insurance companies and title insurance agents pursuant to TEX. INS. CODE ANN. §2703.151.
5. The premium rates fixed by the Commissioner of Insurance must be reasonable to the public and nonconfiscatory as to the title insurance companies and title insurance agents pursuant to TEX. INS. CODE ANN. §2703.152.

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6. The premium rates fixed and promulgated by the Commissioner of Insurance specified in the findings of fact in this order are reasonable to the public and nonconfiscatory as to the title insurance companies and title insurance agents as required by TEX. INS. CODE ANN. §§2703.152.
7. The fixing of rates in accordance with the findings of fact and conclusions of law in this order is in compliance with the provisions of the TEX. INS. CODE ANN. §§2703.001 – 2703.208.
8. The amendment and adoption of the rules, rates, and forms in accordance with the findings of fact and conclusions of law in this order are in compliance with the provisions of the TEX. INS. CODE ANN. §§2703.001 – 2703.208.

IT IS, THEREFORE, THE ORDER OF the Commissioner of Insurance that, based upon the testimony and evidence admitted, the Commissioner adopts the foregoing findings of fact and conclusions of law.

IT IS THE FURTHER THE ORDER OF the Commissioner of Insurance that effective 12:01 a.m. January 1, 2011, rates applicable to title insurance policies written in Texas will be calculated based on these findings of fact and conclusions of law.

IT IS THE FURTHER THE ORDER OF the Commissioner of Insurance that new Rate Rules R-35 and R-36 be adopted and that Rate Rules R-5, R-11, R-15, and R-31 be amended and that amendments to Rate Rule R-3 and the conforming amendment to Procedural Rule P-66 be adopted and that all of the said rate rules and the conforming amendment to the procedural rule be adopted by reference as indicated in Appendix A attached hereto. These rate rules and procedural rule are adopted as part of the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas, effective January 1, 2011.

SIGNED and ENTERED this 4<sup>th</sup> of November, 2010, at Austin, Texas.



MIKE GEESLIN  
COMMISSIONER OF INSURANCE

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**APPENDIX A**

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**Item 2008-55**

**R-35. Texas Limited Coverage Residential Chain of Title**

A premium of \$15.00 shall be charged for the issuance of each Texas Limited Coverage Residential Chain of Title Policy with respect to deeds and leases recorded in the public records in the period not exceeding sixty (60) months immediately preceding the Date of Policy.

**Item 2008-56**

**R-15. Owner Policy Endorsement**

- 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 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 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** - 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).
- 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).

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

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. Individual Loan Policies must be issued at the Basic Rate.

- A. Except as otherwise provided in this rule, when an Owner's Policy and Loan Policy(ies) are issued simultaneously, bearing the same date, and covering the same land, or a portion thereof, covered by the Owner's Policy and covering no other land, the Owner's Policy showing the lien(s) as an exception therein shall be issued at the Basic Rate, and the premium for the Loan Policy(ies) shall be \$100.00 each.
- B. Should the amount of the Loan Policy(ies) exceed the amount of the Owner's Policy, the Basic Rate shall be charged for the Owner's Policy and the premium for the Loan Policy(ies) shall be at the Basic Rate plus \$100.00 for each Loan Policy, less the Basic Rate for the Owner's Policy.
- C. If an Owner's Policy or Policies were previously issued:
  - 1. Covering the identical property to be covered by the Owner's Policy to be issued and
  - 2. The Owner's Policy is to be issued in accordance with P-8a and
  - 3. Within four (4) years after the date of the previously issued Owner's Policy or Policies and
  - 4. There has been no change in ownership of such property,

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credit shall be given against the premium of the Owner's Policy to be issued as provided in Rate Rule R-3; however, in no event shall the premium collected for such Owner's Policy be less than the regular minimum promulgated rate for an Owner's Policy.

- D. An insured under an existing Owner's Policy or Policies not issued in accordance with P-8a may, after completion of improvements on the property insured, receive credit as provided in Rate Rule R-3 toward a new Owner's Policy in an amount greater than the existing Owner's Policy or Policies; however, in no event may the Owner's Policy be issued for less than the minimum promulgated basic premium rate.

This subsection applies only if, in addition to the criteria established in R-5.C. above, the land is residential property.

- E. When an Owner's Policy meeting the requirements of Rule R-2(b) is issued in the manner provided in Rule P-8a, and is issued simultaneously with a Loan Policy described in Rule R-2(a), bearing the same date, and covering the same land covered by the Loan Policy, or a portion thereof, and covering no other land, the premium for the Owner's Policy shall be \$100.00. Should the amount of the Owner's Policy exceed the amount of the Loan Policy, the premium for the Owner's Policy shall be at the Basic Rate plus \$100.00 less the Basic Rate (to be paid as provided in Rule R-2(a) for the Loan Policy).

In the application of this rule, if an Owner's Policy or Policies were previously issued covering the identical property to be covered by the owner's Policy to be issued and provided there has been no change in ownership of such property, credit shall be given against the premium for the Loan Policy to be issued as provided in R-3.

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**Item 2008-60**

**R-31 PREMIUM FOR NON-IMPUTATION ENDORSEMENT (T-24, T-24.1).**

When a Non-Imputation Endorsement (T-24) or Non-Imputation Endorsement (Mezzanine Financing) (T-24.1) is issued with an Owner's Policy (T-1) in accordance with Rule P-55, the premium for the Non-Imputation Endorsement (T-24) or Non-Imputation Endorsement (Mezzanine Financing) (T-24.1) shall be 5% of the Basic Rate for the applicable Owner's Policy. The minimum premium for the Non-Imputation Endorsement shall be not less than \$25.00.

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### **R-11. Loan Policy Endorsement**--Applicable only as provided in rule P-9.

- a. Endorsement issued as provided in Rules P-9b(1) and P-9b(2)--The minimum Basic Premium Rate shall be charged for each Endorsement issued after the date of the original policy. In no event, however, shall such premium exceed 50% of the premium applicable to the original Loan Policy under the Schedule of Basic Rates.
- b. Endorsement issued as provided in Rule P-9b(3)--A premium of \$100.00 shall be charged for each Endorsement issued within one year after the date of the original policy. If issued after said one year period, an additional \$10.00 shall be charged for each twelve-month period thereafter, or a part thereof. In no event, however, shall such premium exceed 50% of the premium applicable to the original Loan Policy under the Schedule of Basic Rates.
- c. Endorsement issued as provided in Rule P-9b(4)--A premium of \$50.00 shall be charged for the issuance of each endorsement provided for in Rule P-9b(4).
- d. Endorsement issued as provided in Rule P-9b(6)--A premium of \$20.00 shall be charged for the issuance of each endorsement authorized by Rule P-9b(6) except that such additional premium charge shall not be made if an additional premium charge has been made for the Loan Policy (to which the Endorsement is attached) under the second paragraph of Rate Rule R-4.
- e. Endorsement issued as provided in Rule P-9b(7)--A premium of \$20.00 shall be charged for the issuance of endorsement form T-31 as provided for in

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Rule P-9b(7). A premium of \$50.00 shall be charged for the issuance of endorsement form T-31.1 as provided for in Rule P-9b(7).

- f. Endorsement issued as provided in Rule P-9b(8)--A premium of \$50.00 shall be charged for the issuance of each endorsement provided for in Rule P-9b(8).
- g. Endorsement issued as provided in Rule P-9b(9)--A premium of \$25.00 shall be charged for the issuance of each endorsement provided for in Rule P-9b(9).
- h. Endorsement issued as provided in Rule P-9b(10)--A premium of \$25.00 shall be charged for the issuance of the endorsement provided for in Rule P-9b(10) if the endorsement is issued at the time of the issuance of the loan policy. A premium of \$50.00 shall be charged for the issuance of the endorsement provided for in Rule P-9b(10) if the endorsement is issued subsequent to the issuance of the loan policy.
- i. Endorsement issued as provided in Rule P-9b(11)--When the First Loss Endorsement (T-14) is issued with a Loan Policy of Title Insurance (T-2) in accordance with Rule P-9 b(11), the premium for the First Loss Endorsement (T-14) shall be \$25.00.
- j. Endorsement issued as provided in Rule P-9b(13)--When the Loan Policy Aggregation Endorsement (T-16) is issued with a Loan Policy of Title Insurance (T-2) in accordance with Rule P-9b(13), the premium for the Loan Policy Aggregation Endorsement (T-16) shall be \$25.00.
- k. Endorsement issued as provided in Rule P-9b(14)--When the Planned Unit Development Endorsement (T-17) is issued with a Loan Policy in accordance with Rule P-9b(14), the premium for the Planned Unit Development Endorsement (T-17) shall be \$25.00. If the Company issues the Planned Unit Development Endorsement (T-17) on two or more title

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insurance policies which are issued simultaneously covering the same land, then the premium for the Planned Unit Development Endorsement (T-17) shall be charged only for one Planned Unit Development Endorsement (T-17).

- I. Endorsement as provided in Rule P-9b(15)--When the Condominium Endorsement (T-28) is issued with a Loan Policy in accordance with Rule P-9b(15), the premium for each Condominium Endorsement (T-28) shall be \$0.00.

**Item 2008-65**

**P-66. Determination of Amount of Insurance (Policy Amount)**

**A. Owner's Policy**

– Owner's Policies shall be written to protect the estate or interest in the land, e.g. fee simple, leasehold, or easement.

**1. Fee Simple**

a. All Owner's Policies shall be issued for the amount of the current sales price of the land and any existing improvements appurtenant thereto, plus, at the option of the insured, the cost of improvements immediately contemplated to be erected thereupon. In the last instance, such policy is permitted only if the applicable exception and clause provided for in Rule P-8 are placed in the policy.

b. If no sale is being made, all Owner's Policies shall be issued for an amount equal to the value of the land and any existing improvements appurtenant thereto, plus, at the option of the insured, the cost of the improvements immediately contemplated to be erected thereupon. In the last instance, such policy is permitted only if the applicable exception and clause provided for in Rule P-8 are placed in the policy.

c. If improvements are subsequently added, a new Owner's Policy may be issued in the aggregate amount of the original Owner's Policy, plus the cost of improvements. The premium for such policy shall be as provided in R-3.

**2. Leasehold:** The amount of the Owner's Policy covering a leasehold estate shall, at the option of the Insured, be based upon:

a. the total amount of the rentals payable under the lease contract; or

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- b. the value of the land and any existing improvements; or
- c. the value of the land and any existing improvements and the cost of improvements immediately contemplated to be erected thereupon. In this instance, the policy must contain the applicable exception and clause provided for in Rule P-8.

**3. Easement:** An Owner's Policy covering an easement estate shall be written for the amount of the value of the easement at the time the policy is issued.

**4. Acquisition by the United States of America:** Where improvements are located on land acquired by the United States of America and such improvements will be removed or destroyed, at the option of the United States, an Owner's Policy (Form T-11) shall be issued for the stated amount of the sales price of the land only, which price shall not include the amount paid for the existing improvements which are to be removed or destroyed.

**5. Increased Value:** When the value of the insured land and improvements has increased and when requested by the Insured, upon compliance with Rule P-9a(2), endorsement form T-34 shall be attached to the Owner's Policy upon payment of the premium set forth in R-15a.

**6. Multiple Tracts:** When multiple tracts of land are conveyed pursuant to separate contracts to a single purchaser and a single owner's policy is issued covering all the land conveyed, the conveyances shall be treated as separate transactions and the premiums shall be charged accordingly.

## **B. Loan Policy –**

1. Except as otherwise provided in this rule, all Loan Policies shall be for the amount of the loan(s) insured, when the land covered in the policy represents all of the security of the loan(s).

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2. When the land covered in the policy represents only part of the security of the loan(s), then the policy shall be written in the amount of the value of such land or the amount of the loan, whichever is the lesser.

3. When requested by the insured, the policy may be issued in an amount equal to the original principal amount of the indebtedness plus legal interest (capitalized or otherwise) not to exceed twenty-five percent (25%) of the said principal amount.

4. A previously issued loan policy insuring variable rate mortgage loan may, when providing for negative amortization, be reissued (or endorsed), effective as of the date of the original Loan Policy, increasing the face amount of the Loan Policy from the original principal amount of the loan to an amount not to exceed one hundred twenty-five percent (125%) of the original principal amount upon the payment of additional premium as provided in R-4.

5. When a Loan Policy is issued subsequent to either an Owner's Policy or Loan Policy pursuant to Rate Rule R-6, it shall be issued in the amount of the current unpaid balance of said indebtedness.

6. When the insured lien secures a **reverse mortgage loan**, the Loan Policy may be issued in an amount not exceeding:

1. 150% of the total advances to be made according to a plan established by the original loan agreement; or

2. the maximum amount that may be secured by the lien of the insured mortgage, as estimated by the lender according to the written lender instructions; or

3. in the case of an FHA-insured loan, the Maximum Claim Amount as established by FHA.

## **R-3. Owner's Policy-**

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**A. Improvements Subsequently Added** - If improvements are subsequently added, a new Owner's Policy may be issued in the aggregate amount of the original Owner's Policy or Policies, plus the cost of improvements, as provided in Rule P-66.

- 1) If a single original Owner's Policy was issued, the premium for the new policy shall be the Basic Rate less the premium which was paid for the surrendered, original policy.
- 2) If multiple original Owner's Policies were issued, the premium for the new policy shall be at the Basic Rate less the currently promulgated Basic Rate for the aggregate of the surrendered original policies.

## **B. Single Owner's Policy for Separate Purchases**

- 1) When multiple tracts of land are conveyed pursuant to separate contracts to a single purchaser and a single Owner's Policy is issued covering all the land conveyed for the aggregate of the separate sales prices, the premium for the single Owner's Policy shall be the aggregate of the Basic Premium Rate as applied to each sales price.
- 2) Additional Chains of Title, as Defined by Rate Rule R-9.
  - 1) No "additional chain of title" charge shall be made as a result of the aggregation of multiple tracts according to this rule; however.
  - 2) Should the land covered by a single contract constitute more than one "chain of title", the applicable "additional chain of title" charge(s) shall be added to the aggregated premium.
- 3) Immediately Contemplated Improvements – When the cost of immediately contemplated improvements is to be included, the premium shall be increased by the Basic Premium Rate as applied to the cost of improvements.

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**Item 2008-66**

**R-36. Credit for Exclusion of or General Exception for Minerals.**

Unless a conveyance or other document limits or reserves the mineral estate or the Company specifically excepts to inclusion of the mineral estate in the manner authorized in Rule P-5, if the Company excludes the mineral estate from the interest in land being insured in Schedule A, or makes a general exception to the mineral estate in Schedule B, of the Owner's Policy as authorized in Rule P-5.1, the premium shall be at the basic rate, but a credit shall reduce the premium by the following amount: 2%.