

**Subchapter A. Basic Manual of Rules, Rates and Forms
for the Writing of Title Insurance in the State of Texas**

28 TAC §9.1

Subchapter C. Texas Title Insurance Statistical Plan

28 TAC §9.401

1. **INTRODUCTION.** The Texas Department of Insurance proposes amendments to §9.1 and §9.401 which concern the adoption by reference of certain amendments to the *Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas* (Basic Manual) and to the Texas Title Insurance Statistical Plan (Statistical Plan). The proposed amendments to §9.1 and §9.401 revise the date of the amended Basic Manual and the Statistical Plan. The amendments to the Basic Manual and Statistical Plan, which the proposed amended sections will adopt by reference were considered at the rulemaking phase of the 2004 Texas Title Insurance Biennial Hearing. Adopting new rules and forms and modifying or replacing currently existing rules and forms in the Basic Manual and Statistical Plan facilitate the administration and regulation of title insurance in this state. The proposed amendments to the Basic Manual and Statistical Plan will clarify and standardize the rules and forms regulating the writing and the business of title insurance in the State of Texas. The proposed amendments to the Basic Manual and Statistical Plan are identified by item number and are a republication of items published for consideration at the 2004 Texas Title Insurance Biennial Hearing, Rulemaking Phase, Docket Number 2600, (rulemaking

hearing), held on December 15, 2004, together with proposed amendments and typographical and formatting changes to the items. Republication is necessary to incorporate these items into the Basic Manual and Statistical Plan, to give notice of the changes to the various proposed items, and to give notice of the decision not to adopt Items 2004-13, 2004-16, 2004-17, 2004-19, 2004-27, 2004-28, and 2004-32, which decision is set forth in a separate Commissioner's Order. The republication is also necessary to conclude Docket Number 2599 which involved a petition and request to withdraw, amend, and/or modify Procedural Rule P-53, the anti-rebating rule adopted by the Commissioner effective April 1, 2004. By agreement of the petitioner and all participants in the 2004 Texas Title Insurance Biennial Hearing, the petition was consolidated into the 2004 biennial rulemaking hearing.

The items which are the subject of this proposal are as follows:

The proposals generally relate to: clean up and clarification of insuring forms and procedural rules, new or amended forms and procedural rules to conform to American Land Title Associate forms, updates and modernization of certain administrative rules, definitions, and reporting forms in the Basic Manual, and revisions to the rebating and discounts procedural rule, P-53, resulting from legislation by the 79th Legislature. House Bill (HB) 2565 amended §2502.055 of the Texas Title Insurance Act to define four specific activities that are not rebating activities and to provide a definition of "market rate." Other activities not defined or identified by HB 2565 may be violations of the Texas Title Insurance Act and continue to be prohibited. The proposed revisions to P-53 continue to prohibit promotional and educational

activities that are conditioned on the referral of title insurance business. The department has made corrective and clarifying changes to certain of these items, has added the words "if any" to the references to "premium" in the procedural rules, and has assigned form and rule numbers to each item. A brief description of each item follows its listing:

Item 2004-1 – Submission to amend the Limited Pre-Foreclosure Policy Form T-40 to change the number of the form.

Item 2004-2 – Submission to amend the Limited Pre-Foreclosure Policy Down Date Endorsement Form T-41 to change the number of the form and make other conforming amendments.

Item 2004-3 – Submission to amend Procedural Rule P-43 to make conforming changes based on amendments to the Limited Pre-Foreclosure Policy and Limited Pre-Foreclosure Policy Down Date Endorsement.

Item 2004-4 – Submission to amend the Verification of Services Rendered Form T-00 by updating and clarifying the form to comply with new and existing reporting requirements.

Item 2004-5 – Submission to amend the Endorsement Instructions in Section II of the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas and Procedural Rule P-8 to allow for issuance or affirmation of coverage under Forms T-19 or T-19.1 upon completion of contemplated improvements.

Item 2004-6 – Submission to adopt a new Procedural Rule P-59 regarding recodification of the Texas Insurance Code and the reconciliation of references.

Item 2004-7 – Submission to amend the First Loss Endorsement Form T-14 to conform to a new American Land Title Association form and to eliminate the 10% threshold loss requirement.

Item 2004-8 – Submission to adopt a new Assignment of Rents/Leases Endorsement (Form T-27) to insure that the assignment of rents or leases was properly executed and that no existing prior assignment, unless excepted, appears in the public records.

Item 2004-9 – Submission to adopt a new Procedural Rule (P-60) for the proposed new Assignment of Rents/Leases Endorsement.

Item 2004-10 – Submission to repeal the Adjustable Mortgage Loan Endorsement Form T-33 and adopt a new Variable Rate Mortgage Endorsement Form T-33 and adopt a new Variable Rate Mortgage – Negative Amortization Endorsement Form T-33.1 to conform to American Land Title Association forms.

Item 2004-11 – Submission to amend Procedural Rule P-9 to conform to the issuance of the proposed new Variable Rate Mortgage – Negative Amortization Endorsement.

Item 2004-12 – Submission to amend the Texas Short Form Residential Mortgagee Policy – One-to-Four Family Form T-2R to conform to the issuance of the proposed new variable rate mortgage endorsements and other endorsements.

Item 2004-14 – Submission to adopt a new Condominium Endorsement (Form T-28) in accord with an American Land Title Association endorsement.

Item 2004-15 – Submission to amend Procedural Rule P-9 to add a new subparagraph b (15) to conform to the issuance of the proposed new Condominium Endorsement form.

Item 2004-18 – Submission to withdraw certain Bulletins in the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.

Item 2004-20 – Submission to amend Procedural Rule P-16, Mortgagee Title Policy Binder on Interim Construction Loan (Interim Binder) to re-define situations in which an Interim Construction Binder may be issued.

Item 2004-21 – Submission to adopt a new Texas Master Indemnity Agreement (Form T-29) that will provide a standard master indemnity to address the most often encountered potential defects, such as unreleased liens, thus relieving an underwriter from executing separate indemnity letters on a transaction by transaction basis. Separate indemnity letters will still be required as to potential defects that are not covered by the terms of the standard promulgated master indemnity agreement.

Item 2004-22 – Submission to amend Procedural Rule P-11 to conform to the proposed new Texas Master Indemnity Agreement form.

Item 2004-23 – Submission to amend the Texas Title Insurance Statistical Plan. This agenda item has been combined with agenda item 2004-43 in this proposal.

Item 2004-24 – Submission to amend Administrative Rule L-1, Title Insurance Agent, in the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.

Item 2004-25 – Submission to amend Administrative Rule L-2, Title Insurance Escrow Officer, in the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.

Item 2004-26 – Submission to amend Procedural Rule P-58, Report on Directly Issued Policy to clarify that the reporting of gross premium is for policy and all endorsements.

Item 2004-29 – Submission regarding the exceptions from coverage in the forms of title insurance policies as they relate to “filled-in lands.” The department will not go forward with this submission at this time but will continue to work with interested parties in revising this submission for further proposal at a later date.

The department has combined Item 2004-30 – Submission to withdraw Procedural Rule P-53 of the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas, amended by its submitter to request a modification of the current P-53, and Item 2004-31 – Submission to amend Procedural Rule P-53 of the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas regarding prohibitions of rebates and discounts and specifying parameters of allowed activities.

The department proposes to amend and revise P-53 to conform to the amendment by HB 2565, 79th Legislature, Regular Session, to Insurance Code §2502.055 regarding certain promotional and educational activities that are statutorily permitted and to make additional clarifying and formatting changes. The department has also added a termination date to P-53. The newly amended statute is self-executing

and enforceable as written. The department notes that promotional activities engaged in by a person on the condition of referral of title insurance business remains a violation of the statute, and the department will also scrutinize promotional activities that are clearly excessive or beyond what is considered reasonable in accord with the new wording of the statute. The department will continue to gather information and collect data on promotional expenditures, including types and amounts, in furtherance of its statutory requirement to make recommendations to the legislature to improve the efficiency and effective regulation of title insurance business in Texas. Additionally, the department may make further exploration of rebating issues in other forums to better address continuing issues related to improper rebating and improper promotional activities.

Item 2004-33 – Submission to amend Procedural Rule P-1. Definitions, aa. Directly Issued Policy and cc. Commitment for Title Insurance.

Item 2004-34 – Submission to amend Minimum Standards, Specific Instructions and Report Forms for Audit of Trust Funds Required of Texas Title Insurance Agents, Direct Operations, Title Attorneys and Attorneys Licensed as Escrow Officers.

Item 2004-35 – Submission to repeal the existing and adopt a new Policy Guaranty Remittance Form (T-G1) in Section V of the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.

Item 2004-36 – Submission to amend Procedural Rule P-28, Requirements for Continuing Education for Title Agents and Escrow Officers.

Item 2004-37 – Submission to adopt a new procedural rule regarding persons or entities using the word “Title” in the name of their businesses. The department has withdrawn this item in light of existing statutory prohibitions against false information and advertising.

Item 2004-38 – Submission to amend Section VI, Administrative Rules of the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.

Item 2004-39 – Submission to adopt a new procedural rule regarding the timely issuance of title policies.

Item 2004-40 – Submission to adopt a new procedural rule regarding the licensing and location of title agents and direct operations. The department has added additional clarifying language resulting from input at the rulemaking hearing.

Item 2004-41 – Submission to amend Mortgage Title Policy Binder on Interim Construction Loan Form T-13 to clarify number references in response to inquiries concerning what number to include on the binder.

Item 2004-42 – Submission to amend Procedural Rule P-21, Additional Requirements for Contents of Commitment for Title Insurance to conform this procedural rule with the Commitment for Title Insurance.

Item 2004-43 – Submission to amend the Texas Title Insurance Statistical Plan to update references with conforming changes from the 2004 rulemaking hearing.

The department has filed a copy of each of the proposed items with the Secretary of State’s Texas Register section. Persons desiring copies of the proposed

items can obtain them from the Office of the Chief Clerk, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78714-9104. To request copies, please contact Sylvia Gutierrez at 512/463-6327.

2. FISCAL NOTE. Robert R. Carter, Jr., deputy commissioner for the title division, has determined that, for each year of the first five years the amendments are in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the amendments. Mr. Carter has also determined that there will be no measurable effect on local employment or the local economy.

3. PUBLIC BENEFIT/COST NOTE. Mr. Carter has also determined that for each year of the first five years the amendments are in effect there are a number of public benefits anticipated as a result of the amendments to the Basic Manual and Statistical Plan. Providing more uniform endorsements for mortgagee policies will allow for more efficient closing of transactions. The updating and revising of the administrative rules, definitions, reporting forms, and Statistical Plan, allow for consistent administration, facilitate the efficiencies of the department, and the closing of title transactions. The proposals adapt the Basic Manual to changing business practices. Revising Procedural Rule P-53 regarding rebating and discounts will conform the rule with the anti-rebating statute, as amended by the 79th Legislature, Regular Session, in the Texas Title Insurance Act (Insurance Code §§2502.051 - 2502.056) and will allow self-executing statutory direction to the public and the title industry as well as fostering the

department's data collection initiatives to make further legislative recommendations on what are promotional expenditures. The new and updated promulgated forms will impose no additional regulatory costs on companies participating in the title insurance market, and the costs of reproducing such forms, estimated to be no more than \$.15 per form for the cost of a photocopy, should be fully compensated by the existing premium schedule. As to all the proposals, the department anticipates no differential impact between small, large, and micro-businesses. The cost per hour of labor should not vary between small, large, and micro-businesses. Further, it is neither legal nor feasible to exempt small or micro-businesses or to waive compliance considering the purpose of the efficient regulation of title insurance for which the amendments are to be adopted and which forms are promulgated by the department for use in the title insurance business.

4. REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on September 12, 2005, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be submitted simultaneously to Robert R. Carter, Jr., Deputy Commissioner, Title Division, Mail Code 106-2T, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Request for a public hearing should be submitted separately to the Chief Clerk's office. It should be noted that any comments

received during the previous rulemaking hearing will be considered part of the record regarding these proposed amendments.

5. STATUTORY AUTHORITY. The amended sections are proposed pursuant to Insurance Code §§2502.051 – 2502.056, 2551.003, Chapter 2703, and 36.001 and HB 2565. Chapter 2703 authorizes and requires the commissioner to promulgate or approve rules and policy forms of title insurance and otherwise to provide for the regulation of the business of title insurance. Section 2551.003 authorizes the commissioner to promulgate and enforce rules prescribing underwriting standards and practices, and to promulgate and enforce all other rules necessary to accomplish the purposes of Chapter 9, concerning regulation of title insurance. Sections 2502.051 – 2502.056 prohibit the giving, allowance, acceptance or receipt of a rebate, discount, commission, or other thing of value directly or indirectly or for solicitation or referral of title insurance business. HB 2565, enacted by the 79th Legislature, Regular Session, amended §2502.055 to set forth specific promotional and educational activities that may be engaged in by a title insurance company or a title insurance agent. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

6. CROSS REFERENCE TO STATUTES. The following statutes are affected by this proposal:

<u>Rule Number</u>	<u>Statute</u>
§9.1 and §9.401	Insurance Code §§2502.051 – 2502.056, 2551.003, and Chapter 2703

7. TEXT.

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

§9.1. Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas. The Texas Department of Insurance adopts by reference the *Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas* as amended effective November 1, 2005 [~~2004~~]. The document is available from and on file at the Texas Department of Insurance, Title Division, Mail Code 106-2T, 333 Guadalupe Street, Austin, Texas 78701-1998.

Subchapter C. Texas Title Insurance Statistical Plan

§9.401. Texas Title Insurance Statistical Plan. The Texas Department of Insurance adopts by reference the rules contained in the *Texas Title Insurance Statistical Plan* as amended effective November 1, 2005 [~~2004~~]. This document is published by the Texas Department of Insurance and is available from the Property and Casualty Data Services Division, Mail Code 105-5D, Texas Department of Insurance, William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104.

FOR COPIES OF THE AGENDA ITEMS CONTACT THE CHIEF CLERK'S OFFICE AT
ChiefClerk@tdi.state.tx.us

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

Issued in Austin, Texas, on _____, 2005.

Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance