

**SUBCHAPTER A. Basic Manual of Rules, Rates and Forms
for the Writing of Title Insurance in the State of Texas
28 TAC §9.2**

1. INTRODUCTION. The commissioner of insurance adopts new 28 TAC §9.2, which adopts by reference a new procedural rule (Rule P-73) and form (Form T-64) as amendments to the *Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas*. The form is an addendum--the Texas Disclosure--to the new federal Closing Disclosure form (Closing Disclosure). The procedural rule requires settlement agents to use the Texas Disclosure. The Closing Disclosure helps consumers understand the costs associated with closing on a mortgage loan. The Texas Disclosure is necessary to provide a clear and complete disclosure of costs related to closing and title insurance in Texas.

The commissioner adopts the amendments with a change to Form T-64, which was proposed in the May 1, 2015, issue of the *Texas Register* (40 Tex. Reg. 2391). TDI made a change to the form in response to comment.

2. REASONED JUSTIFICATION. The Dodd-Frank Wall Street Reform and Consumer Protection Act directed the Consumer Financial Protection Bureau (CFPB) to propose a single disclosure form that combines the requirements of the HUD-1 and the final Truth-in-Lending disclosure forms. *See* Dodd-Frank Act §1098 and §1100A, codified at 12 U.S.C. §2603(a) and 15 U.S.C. §1604(b), respectively. In response, the CFPB created the Closing Disclosure and will require settlement agents to use this form in place of the two previous forms.

Some of the changes in the Closing Disclosure conflict with Texas closing requirements and practices. When the CFPB integrated the HUD-1 and the final Truth-in-Lending disclosure to create the new Closing Disclosure, it removed or combined items that were listed individually on the HUD-1. For example, the current HUD-1 includes a section to disclose portions of the real estate commission paid to third parties, but the Closing Disclosure does not. The Texas Disclosure will require agents to list portions of the premium or real estate commission paid to third parties. The Texas Disclosure requires settlement agents to separately itemize other fees and charges paid to the real estate agent that may have been aggregated on the Closing Disclosure. The Texas Disclosure also adds a signature line, authorizing the settlement agent to disburse the funds.

In addition, the Texas Disclosure is necessary to show the actual price for title insurance in a simultaneous-issue transaction in Texas. In approximately half the states, including Texas, title

companies offer a discount on the loan policy when both a loan policy and an owner's policy are purchased in a single transaction. However, the instructions for the Closing Disclosure require the agent to list the loan policy at the full, undiscounted premium and to show the simultaneous-issue discount as if it applied to the owner's policy instead. In Texas and other states, this requirement will cause the owner's and loan policy premiums on the Closing Disclosure to differ from the actual amounts charged for each policy.

This scenario becomes even more confusing for consumers in Texas, as well as in 30 other states, where the seller pays, or is likely to pay, for the owner's policy. Because the Closing Disclosure requires the agent to apply the simultaneous-issue discount to the owner's policy rather than the loan policy, the form will inaccurately state the seller's contribution to the title insurance costs. Further, by showing the higher-priced full loan policy amount rather than the discounted loan policy amount, the borrower's cash-to-close number in the Closing Disclosure is rendered inaccurate and overstated.

Complete disclosures not only help consumers understand real estate transaction costs, they also help TDI auditors verify that agents comply with state law. Texas Insurance Code §2502.051 and the *Basic Manual* prohibit rebates, discounts, and overcharges. By detailing the amounts charged on the Texas Disclosure, agents can show auditors that no rebates, discounts, or overcharges occurred.

For example, TDI's rate rules set the premium that settlement agents must charge for each title insurance policy and endorsement. To ensure that agents are not reducing premiums through escrow fee discounts, auditors must know exactly how much was charged for both the title policy and the escrow fee. The primary way for settlement agents to show they are not charging discounted rates or fees will be by disclosing the escrow fees and other fees paid to the settlement agent on the Texas Disclosure.

Section V of the *Basic Manual*, Specific Areas and Procedures #5, addresses overcharges, requiring that charges for pass-through expenses--such as courier fees, recording fees, and tax certificate fees--equal the cost to the title agency and are not marked up. Title agents have traditionally disclosed each of these pass-through expenses, as well as fees paid to the agent and all other charges, on the HUD-1 settlement statement to show consumers and auditors that they are not overcharging. The Texas Disclosure will allow title agents to continue this practice.

The Texas Disclosure will not replace the Closing Disclosure, but will accompany it whenever agents are required to use the Closing Disclosure. The Texas Disclosure is not designed to function as a "settlement statement," nor does it include all fees and charges in connection with a settlement. The purpose of the Texas Disclosure is to allow settlement agents in Texas to meet state disclosure

requirements, and to provide clear and accurate disclosure of costs related to closing and title insurance in Texas.

The new procedural rule and Texas Disclosure form become effective on August 1, 2015. The federal Closing Disclosure is set to take effect on August 1, 2015. However, on June 17, 2015, the CFPB announced that it intends to propose to delay implementation until October 2015. This rule will not be affected either way because the Texas Disclosure is only required when the federal form is required.

3. SUMMARY OF COMMENTS AND AGENCY RESPONSE.

At the public hearing, two commenters expressed support for the proposal. Both commenters testified that the Texas Disclosure would clarify real estate transactions, helping consumers understand their transactions better.

Comment: A commenter asks that the new Texas Disclosure Form T-64 be amended to change the field, “Property Address” to “Property” to match the Closing Disclosure form.

Agency Response: TDI agrees, and has changed the name of the field from “Property Address” to “Property.” This section of the Texas Disclosure was intended to match the Closing Disclosure form. Further, this change will allow property that does not have an address, such as undeveloped land, to be listed by its legal description.

4. NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For, With Changes: Texas Land Title Association; Janet Minke, Alliant National Title Insurance Company.

Against: None.

5. STATUTORY AUTHORITY. TDI adopts 28 TAC §9.2 under Insurance Code §§2551.003, 2703.002, 2703.208, and 36.001.

Section 2551.003 authorizes the commissioner to adopt and enforce rules that the commissioner determines are necessary to accomplish the purposes of Title 11, Insurance Code, concerning the regulation of title insurance.

Section 2703.002 provides that a title insurance company or title insurance agent may not use a form required under Title 11 to be prescribed or approved until the commissioner has prescribed or approved the form.

Section 2703.208 states that an addition or amendment to the *Basic Manual* may be proposed and adopted by reference by publishing notice of the proposal or adoption by reference in the *Texas Register*.

Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

6. TEXT.**SUBCHAPTER A. BASIC MANUAL OF RULES, RATES AND FORMS FOR THE WRITING OF TITLE INSURANCE IN THE STATE OF TEXAS**

§9.2. Texas Disclosure. The Texas Department of Insurance adopts by reference Form T-64 and Procedural Rule P-73 as part of the *Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas* as amended, effective August 1, 2015. The documents are available from the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, PO Box 149104, Austin, Texas 78714-9104. The documents are also available on the TDI website at www.tdi.texas.gov.

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

Issued in Austin, Texas, on July 2, 2015.



Sara Waitt, General Counsel
Texas Department of Insurance

The commissioner adopts new 28 TAC §9.2.



David C. Mattax
Commissioner of Insurance

4038

TITLE 28. INSURANCE
Part I. Texas Department of Insurance
Chapter 9. Title Insurance

Adopted Sections
Page 5 of 5