**Agenda Item: 2012-63 (Amended)**

**Submitted by: Jim Gosdin and John Rothermel**

**On Behalf of: Stewart Title Guaranty Company**

**Address: 1980 Post Oak Blvd., Suite 710**

 **Houston, Texas 77056**

**Telephone No.: (713) 625-8228**

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Stewart Title Guaranty Company petitions the Commissioner of Insurance to adopt the following revisions to the Restrictions, Encroachments, Minerals Endorsement – Owner Policy (T-19.1):

**Form T-19.1: Restrictions, Encroachments, Minerals Endorsement**

   [Section II Index](http://www.tdi.texas.gov/title/titlemm2.html)

 **Restrictions, Encroachments, Minerals Endorsement – Owner’s Policy (T-19.1)**

 **ENDORSEMENT**

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

**Issued by**

*BLANK TITLE INSURANCE COMPANY*

~~The Company insures against loss or damage sustained by the Insured by reason of:~~

~~1.   The existence, at Date of Policy, of any of the following unless expressly excepted in Schedule B:~~

~~a.   Present violations on the Land of any enforceable covenants, conditions, or restrictions, or any existing improvements on the Land that violate any building setback lines shown on a plat of subdivision recorded or filed ;in the Public Records.~~

~~b.   Any instrument referred to in Schedule B as containing covenants, conditions, or restrictions on the Land that, in addition, (i) establishes an easement on the Land, (ii) provides for an ;option to purchase, a right of first refusal, or the prior approval of a future purchaser or ;occupant, or (iii) provides a right of reentry, possibility of reverter, or right of forfeiture because of violations on the Land of any enforceable covenants, conditions, or restrictions.~~

~~c.  Any encroachment of existing improvements located on the Land onto adjoining land, or any encroachment onto the Land of existing improvements located on adjoining land.~~

~~d.   Any encroachment of existing improvements located on the Land onto that portion of the Land subject to any easement excepted in Schedule B.~~

~~e.   Any notices of violation of covenants, conditions, or restrictions relating to environmental protection recorded or filed in the Public Records.~~

~~2.   Damage to existing buildings that are located on or encroach upon that portion of the Land subject to any easement excepted in Schedule B, which damage results from the exercise of the right to maintain the easement for the purpose for which it was granted or reserved.~~

~~3.  Damage to improvements (excluding lawns, shrubbery, or trees) located on the Land on or after Date of Policy resulting from the future exercise of any right existing at Date of Policy to use the surface of the Land for the extraction or development of minerals excepted from the description of the Land or excepted in Schedule B.~~

~~4.   Any final court order or judgment requiring the removal from any land adjoining the Land of any encroachment, other than fences, landscaping, or driveways, excepted in Schedule B.~~

~~5.   Any final court order or judgment denying the right to maintain any existing building on the Land because of any violation of covenants, conditions, or restrictions, or building setback lines shown on a plat of subdivision recorded or filed in the Public Records.~~

~~Wherever in this endorsement the words "covenants, conditions, or restrictions" appear, they do not include the terms, covenants, conditions, or limitations contained in an instrument creating a lease.~~

~~As used in paragraphs 1.a. and 5, the words “covenants, conditions, or restrictions” do not include any covenants, conditions, or restrictions (a) relating to obligations of any type to perform maintenance, repair, or remediation on the Land, or (b) pertaining to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances, except to the extent that a notice of a violation or alleged violation affecting the Land has been recorded or filed in the Public Records at Date of Policy and is not excepted in Schedule B.~~

1. The insurance provided by this endorsement is subject to the exclusions in Section 5 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For the purposes of this endorsement only:
	1. “Covenant” means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.
	2. “Improvement” means a building, structure, road, walkway, driveway, or curb, affixed to the Land and that by law constitutes real property, but excluding any crops, landscaping, lawn, shrubbery, or trees.

c. “Private Right” means (i) an option to purchase; (ii) a right of first refusal; or (iii) a right of prior approval of a future purchaser or occupant.

3. The Company insures against loss or damage sustained by the Insured by reason of:

 a. A violation on the Land at Date of Policy of an enforceable Covenant, unless an exception in Schedule B of the policy identifies the violation;

b. Enforced removal of an Improvement located on the Land at Date of Policy as a result of a violation, at Date of Policy, of a building setback line shown on a plat of subdivision recorded or filed in the Public Records, unless an exception in Schedule B of the policy identifies the violation;

c. A notice of a violation, recorded in the Public Records at Date of Policy, of an enforceable Covenant relating to environmental protection describing any part of the Land and referring to that Covenant, but only to the extent of the violation of the Covenant referred to in that notice, unless an exception in Schedule B of the policy identifies the notice of the violation; or

1. Enforcement of a Private Right in a Covenant affecting the Title at Date of Policy based on a transfer of Title on or before Date of Policy that causes a loss of the Insured’s Title.

4**.** The Company insures against loss or damage sustained by reason of:

* 1. An encroachment of:

i. an Improvement located on the Land, at Date of Policy, onto adjoining land or onto that portion of the Land subject to an easement; or

1. an Improvement located on adjoining land onto the Land at Date of Policy

 unless an exception in Schedule B of the policy identifies the encroachment otherwise insured against in Sections 4.a.i. or 4.a.ii.; or

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

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

[Witness clause optional]

***BLANK TITLE INSURANCE COMPANY***

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

**Authorized Signatory**

Justification:

Identification of the terms of a covenant, condition, or restrictions should be satisfied by reference to the recorded document. This endorsement separately insures against current violations in paragraph 3.a.