

**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 Texas Department of Insurance proposes new 28 TAC §9.2, which would adopt by reference amendments to the *Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas (Basic Manual)*. The new section creates an addendum--the Texas Disclosure--to the new federal Closing Disclosure form (Closing Disclosure) and a procedural rule requiring 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.

For over 30 years, federal law has required lenders to provide two forms to consumers at or shortly before closing on a federally insured mortgage loan: the HUD-1 and the final Truth in Lending disclosure. One major purpose of these forms is to provide effective advance disclosure of closing costs to home buyers. However, the information on these forms overlaps and the language is inconsistent. In response, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) directed the Consumer Financial Protection Bureau (CFPB) to propose a single disclosure form that combines the requirements of the HUD-1 and the Truth in Lending disclosure. *See* Dodd-Frank Act §1098 and §1100A, codified at 12 U.S.C. §2603(a) and 15 U.S.C. §1604(b), respectively. The CFPB adopted the Closing Disclosure and requires settlement agents to begin using it on August 1, 2015.

Although the Closing Disclosure is designed to provide consumers with a better understanding of the costs of their real estate transactions, some of the changes conflict with Texas closing requirements and practices. The Texas Disclosure adds important information to fully disclose the details of closing and of title insurance transactions. The Texas Disclosure will not replace the Closing Disclosure.

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. The Texas Disclosure requires that all relevant details are itemized, including identifying who receives any part of the title insurance premium or real estate commission, and itemizing all fees that may have been aggregated on the federal form. The Texas Disclosure also adds a signature line, which authorizes the title agent to disburse the funds.

In addition, the Texas Disclosure is necessary to disclose the actual price for title insurance in a simultaneous issue transaction. 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 show the simultaneous issue discount as if it applied to the owner's policy instead. In Texas and similar 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.

While the CFPB recognized this concern, it reasoned that "the clear disclosure of the required cost for the lender's title insurance alone, and the additional incremental cost to be paid by the consumer for the optional owner's title insurance premium outweighs the benefit of a technical disclosure of the owner's and lender's title insurance premiums." *Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z)*. While this may make sense on the Loan Estimate form when consumers are deciding whether to buy an owner's policy, once the decision has been made and the consumer comes to the closing, they are best served by seeing the actual amounts they will pay. Texas rules require complete and correct disclosure of all costs, so the Texas Disclosure is necessary to disclose the actual premiums charged.

In addition to helping consumers understand real estate transaction costs, TDI auditors need complete disclosures to verify that title agents comply with state law. Texas Insurance Code §2502.051 and §9.1 of this title prohibit rebates, discounts, and overcharges. By detailing the amounts charged on the Texas Disclosure, title agents can show auditors that no rebates, discounts, or overcharges occurred.

For example, TDI's rate rules set the premium that title agents must charge for each title insurance policy and endorsement. To ensure that title 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 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 settlement 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.

For the reasons above, TDI proposes adoption of the new Form T-64, Texas Disclosure, and new Procedural Rule P-73, Texas Disclosure.

2. FISCAL NOTE. Marilyn Hamilton, director of the Personal and Commercial Lines Office for the Property and Casualty Section, has determined that, for each year of the first five years the new rule and form are in effect, there will be no fiscal impact to state and local governments as a result of the

enforcement or administration of this proposal. Additionally, Ms. Hamilton does not anticipate the proposal will have any measurable effect on local employment or the local economy.

3. PUBLIC BENEFIT/COST NOTE. Ms. Hamilton has determined that, for each year of the first five years the rule and form are in effect, enforcing or administering the proposed rule and form will have the public benefit that consumers will receive a clear and complete disclosure of costs when they close on a real estate transaction. The rule and form also provide lenders and settlement agents with a way to show TDI auditors they are complying with state law.

The new rule and form will impose minimal additional costs on entities engaged in the business of title insurance. The CFPB is requiring the new Closing Disclosure, so title agents and insurers will incur programming costs to change from the HUD-1. There may be some additional costs related specifically to the Texas Disclosure. Some companies program their own forms, while others use commercial services to produce forms, and a few use preprinted forms.

The costs required to comply with the proposal may include administrative and computer programming costs. Companies may calculate the total cost of labor for each category by multiplying the number of estimated hours for each cost component by the median hourly wage for each category of labor. The median hourly wage for each category is published online by the Texas Workforce Commission as follows:

- (a) a computer programmer: \$40.33
- (b) an administrative assistant: \$15.05.

Administrative expenditures may also include the cost of printing the new form. TDI expects the cost of reproducing forms to be between 6 and 8 cents per page. It is not feasible for TDI to estimate the total increased costs attributable to compliance with this proposal because of the variety of methods that companies will use to produce the new form. TDI expects that most costs should be fully compensated by the existing premium schedule. If companies experience significantly increased costs, they may provide that information in the next rate hearing.

4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. Under Government Code §2006.002(c), TDI has determined that the proposal may have an adverse economic effect on small or micro businesses resulting from the costs to comply with the proposed rule. There are approximately 570 title agents, many of which are small or micro businesses. The cost of compliance with the proposal varies between large businesses and small or micro businesses based on the number of policyholders. Costs to title agents or companies with

more policyholders will total more than those with few policyholders, but may be less per customer due to volume. TDI's cost analysis and resulting estimated costs in the Public Benefit/Cost Note portion of this proposal apply equally to small and micro businesses.

Under Government Code §2006.002(c-1), TDI has considered other regulatory methods to accomplish the objectives of this proposal while minimizing adverse impacts on small and micro businesses. The primary purpose of this proposal is to provide a clear and accurate disclosure of real estate closing and title insurance transaction costs. Disclosing these costs helps consumers understand the transaction and also gives title agents a way to show TDI auditors that they have complied with state law. The other regulatory methods considered by TDI to accomplish the objectives of this proposal and to minimize any adverse impact on small and micro businesses include:

- (a) not proposing the amendments;
- (b) proposing different requirements for small and micro businesses; and
- (c) excluding small and micro businesses from this proposal.

Not proposing the amendments. As previously noted, the purpose of this rule proposal is to provide consumers with a clear and accurate disclosure of real estate closing and title insurance transaction costs. If TDI did not propose this rule, consumers would not receive complete or accurate itemized disclosures when closing on a federally insured mortgage loan. Clear and accurate disclosures are important so the consumer knows exactly what they paid and to whom. The disclosure of costs is necessary to correct the way the Closing Disclosure applies the discount in a simultaneous issue transaction. The Texas Disclosure is also necessary to provide critical documentation for audits. For these reasons, TDI has rejected this option.

Proposing different requirements for small and micro businesses. TDI believes that proposing different standards than those included in this proposal would not provide a better option. Consumers would not know that a small or micro business would follow different disclosure requirements. In addition, because title insurance is completely regulated in Texas, consumers and TDI auditors may be confused if some title agents provide different disclosures than others.

Further, TDI has determined that the Texas Disclosure will result in minimal additional costs. The Texas Disclosure provides the least expensive means of achieving the objectives of this proposal by requiring information that is currently provided, and that can be easily calculated and provided to consumers. Creating a different requirement for small and micro businesses that would result in lower costs than the Texas Disclosure yet still serve the objectives of this proposal is not feasible. TDI believes that the potential harm of lessened regulatory requirements would outweigh the potential benefit to small or micro businesses. For these reasons, TDI has rejected this option.

Excluding small and micro businesses from this proposal. If TDI excluded small and micro businesses from this proposal, they would not be required to provide the Texas Disclosure to consumers. Excluding small and micro businesses would mean that some consumers would receive a Texas Disclosure providing the additional, more accurate disclosures, and other consumers would not. TDI believes that this lack of consistency within a highly regulated industry would create potential harm to policyholders and consumers that would outweigh the potential benefit to small and micro businesses. For these reasons, TDI has rejected this option.

5. TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal. This proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and so does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

6. REQUEST FOR PUBLIC COMMENT. If you wish to comment on this proposal you must do so in writing no later than 5 p.m., Central time, on June 1, 2015. TDI requires two copies of your comments. Send one copy to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, or by email to chiefclerk@tdi.texas.gov before the close of the public comment period. Send the other copy to Marilyn Hamilton, Director, Personal and Commercial Lines Office, Property and Casualty Section, Mail Code 104-PC, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, or by email to marilyn.hamilton@tdi.texas.gov. The commissioner will also consider written comments and public testimony presented in a public hearing under Docket No. 2778 at 9:30 a.m., Central time, on May 27, 2015, in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin, Texas.

7. STATUTORY AUTHORITY. TDI proposes 28 TAC §9.2 under Insurance Code §§36.001, 2551.003, 2703.002, and 2703.208. Section 36.001 provides that the commissioner 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. 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, which concerns title insurance regulation. Section 2703.002 provides that a title insurance company or 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 allows additions or

amendments to the *Basic Manual* to be proposed and adopted by reference by publishing notice of the proposal and adoption in the Texas Register.

8. CROSS REFERENCE TO STATUTE. This proposal implements the following statutes:

<u>Rule</u>	<u>Statute</u>
28 TAC §9.2	Insurance Code §§2551.003, 2703.002, 2703.208, and 36.001

9. TEXT.

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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, P.O. Box 149104, Austin, Texas 78714-9104. The documents are also available on the TDI website at www.tdi.texas.gov.

10. CERTIFICATION. This agency certifies that legal counsel has reviewed the proposed amendments and found them to be within the agency's legal authority to adopt.

Issued in Austin, Texas, on April 12, 2015.



Sara Waitt
General Counsel
Texas Department of Insurance