

**SUBCHAPTER A. BASIC MANUAL OF RULES, RATES AND FORMS FOR THE
WRITING OF TITLE INSURANCE IN THE STATE OF TEXAS
28 TAC §9.1**

INTRODUCTION. The Texas Department of Insurance proposes amendments to 28 TAC §9.1, 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 amendments would update, correct, clarify, and harmonize existing rules and forms in the Basic Manual to facilitate the operation and regulation of title insurance in Texas.

The item numbers below identify the proposed amendments. Each item number represents amendments to a specific rule or form in the Basic Manual. The item numbers are for organizational purposes only and do not represent formal agenda items from a call for rulemaking.

EXPLANATION. Throughout, TDI is replacing the TDI Agency/Direct Operation Company ID Number (TDI Number) with the Firm ID Number. TDI now typically uses Firm ID Numbers instead of the TDI Agency/Direct Operation Company ID Numbers. TDI assigns each title agent a unique Firm ID Number, which appears on title agent licenses.

Additionally, in a number of items, TDI is changing the term "Mortgagee Policy" to "Loan Policy," and "Owner Policy" to "Owner's Policy," to be consistent with the rest of the Basic Manual. These terminology changes were made in most places in the Basic Manual in previous rulemakings.

TDI proposes the following items:

Item 2017-1: Amends Procedural Rule P-58, Report on Directly Issued Policy, to replace the term "TDI Agency/Direct Operation Company Number" with "Firm ID Number."

Item 2017-2: Amends Form T-00, Verification of Services Rendered, to clarify that title insurance companies and title agents completing the form must list Firm ID Numbers where indicated. TDI also changes "#" to "Number" on the form.

Item 2017-3: Amends Form T-G1, Policy Guaranty Fee Remittance Form, to clarify that title agents completing the form must list Firm ID Numbers where indicated.

Item 2017-4: Amends Form T-S3, Solvency Account Release Request, to specify that a title agent may request the release of funds held in a solvency account if the agent later uses an

alternative form of unencumbered assets to comply with Insurance Code §2651.012. This amendment, along with Item 2017-20, provides a mechanism allowing a title agent to request the release of funds held in a solvency account if the agent uses another permissible means of meeting the minimum capitalization requirements in Insurance Code §2651.012. This allows title agents greater flexibility to continue meeting financial requirements.

The amendments also clarify that the requesting title agent must list its Firm ID Number where indicated. Finally, the amendments clarify that the written notice to interested parties by a title agent ceasing operations must identify the companies that have custody or control of the files, and require that the notice include the contact information of those companies. This amendment helps ensure that interested parties in pending transactions know which companies are taking custody and control of the files for their transactions when a title agent ceases business.

Item 2017-5: Amends Form T-S4-A, Financial Matter Disclosure Report, to clarify that title insurance companies must list a title agent's Firm ID Number when providing information to TDI under Administrative Rule S.4 of the Basic Manual. TDI also changes "#" to "Number" on the form.

Item 2017-6: Amends Form T-S1, Title Agent's Unencumbered Assets Certification, to remove the "Reporting for Year" field on Form T-S1 to help ensure that title agents report the minimum capitalization compliance method currently used by the agency (in other words, the current year's information), and not information that applies to the previous year. This amendment will provide TDI with current information about a title agent's method of compliance with the requirements of Insurance Code §2651.012. Form T-S1 already contains a field for "Date of Review," which will identify the current year, so the "Reporting for Year" field is unnecessary and has been deleted.

The amendments also clarify that a title agent completing Form T-S1 must list its Firm ID Number.

Item 2017-7: Amends Administrative Rule S.1, Minimum Capitalization Standards for Title Agents Pursuant to §2651.012 and Certification and Procedure to Determine Value of Assets Pursuant to §2651.158.

Paragraph II.C of the rule is amended to provide that, when determining the time that a title agent has been licensed for the purpose of applying the rule's schedule for compliance with

minimum capitalization amounts, the start date is the date on which the title agent was first assigned either a Firm ID or a Title Agent Company ID Number. This amendment will reduce confusion about how to determine the start date.

The amendments delete Paragraph III.B to remove an obsolete provision requiring title agents to submit Form T-S1 between September 1, 2014, and August 31, 2015. That paragraph explained that sending Form T-S1 in with the annual escrow audit report was only a one-time requirement, in 2014 and 2015. Current Paragraph III.C (proposed Paragraph III.B) of the rule explains that Form T-S1 is now due in September every year.

Amendments to current Paragraph III.C (proposed Paragraph III.B) provide that title agents must report on Form T-S1 the minimum capitalization compliance method currently used by the agent (in other words, the current year's information), and not information that applies to the previous year. This amendment will provide TDI with current information about a title agent's method of compliance with the requirements of Insurance Code §2651.012.

Amendments to current Paragraph III.E. (proposed Paragraph III.D) specify that title agents that file the form electronically should send it by email to the TDI Title Examinations email address. This amendment will reduce confusion about where and how to file the form electronically.

Item 2017-8: Amends Form T-S5, Title Agent Certification of Agent's Quarterly Tax Reports, to clarify that the identification number a title agent completing Form T-S5 must list is the title agent's Firm ID Number.

Item 2017-9: Amends Administrative Rule S.5, Filing of Title Agent's Quarterly Withholding Tax Report, to clarify that agents must file Form T-S5, Title Agent Certification of Agent's Quarterly Tax Reports when submitting their quarterly withholding tax reports and evidence that taxes have been paid. The certification in Form T-S5 already indicates that the form must be filed at the same time that a copy of the quarterly withholding tax report is submitted to TDI. Accordingly, the amendments to Administrative Rule S.5 specifically discuss the submission of Form T-S5 and will reduce the chance of confusion about the timing of submission.

This item also clarifies that agents must use Form T-S5 when certifying that they do not have any employees for whom withholding taxes were required. The certification in Form T-S5 already indicates that this form is used to certify when an agent did not have any employees for

whom withholding taxes were required. Accordingly, the amendments to Administrative Rule S.5 specify the use of Form T-S5 to make the certification. The amendments also clarify that the certification must be submitted by the same deadlines required for the submission of withholding tax reports. This will reduce the chance of confusion about the timing of submission and make the deadlines consistent regardless of whether the agent has or does not have withholding tax reports.

Finally, the amendments specify that title agents that file electronically should send the reports and certification by email to the TDI Title Examinations email address. This amendment will reduce confusion about where and how an agent can file electronically.

Item 2017-10: Amends Procedural Rule P-19 to:

--more clearly reference the "Pending Disbursement" paragraph in Procedural Rule P-8.b.(1),

--change "Mortgagee Policy" to "Loan Policy" to conform with the rest of the Basic Manual, and

--add the title "Pending Disbursements" to the rule. Procedural Rule P-19 is the only rule that does not currently have a title.

Item 2017-11: Amends Procedural Rule P-64, Subordinate Liens and Leases - Pursuant to Rule P-11.b.(8), to:

--add the word "Procedural" to the title to clarify that the referenced rule is a procedural rule,

--correct the reference to the Loan Policy form number from T-1 to T-2, and

--change the term "Mortgagee Policy" to "Loan Policy."

Item 2017-12: Amends Form T-44, Texas Residential Limited Coverage Junior Mortgagee Policy Combined Schedule, to change the term "Mortgagee Policy" to "Loan Policy" and to add the form number after the form name to conform with the rest of the Basic Manual.

Item 2017-13: Amends Form T-45, Texas Residential Limited Coverage Junior Mortgagee Down Date Endorsement, to conform with the rest of the Basic Manual by:

--changing the term "Mortgagee Policy" to "Loan Policy,"

--adding the form number after the form name, and

--capitalizing "Company" in the one place where it is lowercase.

Item 2017-14: Amends Procedural Rule P-9, Endorsement of Owner or Mortgagee Policies, to:

--change the terms "Owner Policy" to "Owner's Policy" and "Mortgagee Policy" to "Loan Policy,"

--update references to government agency loan programs to use the current names of the programs,

--update or clarify other references, such as updating endorsement names in a consistent manner and clarifying references to applicable parts of the Form T-3 Endorsement Instructions,

--specify in Procedural Rule P-9.b.(1) and (2) that companies may issue a General Endorsement (Form T-3) upon payment of the premium prescribed by Rate Rule R-11.a., and may issue the endorsements described in Procedural Rule P-9.b.(6) upon payment of any premium prescribed by Rate Rule R-11.d.

--delete Part b.(12) of Procedural Rule P-9 because it refers to an endorsement that was deleted in 2010,

--update the reference to Rate Rule R-11.j (formerly R-11.k) in current Procedural Rule P-9.b.(13) (proposed P-9.b.(12)),

--update the reference to Rate Rule R-11.k (formerly R-11.l) in current Procedural Rule P-9.b.(14) (proposed P-9.b.(13)),

--update the reference to Rate Rule R-11.l (formerly R-11.m) in current Procedural Rule P-9.b.(15) (proposed P-9.b.(14)), and

--in current Procedural Rule P-9.b.(15) (proposed P-9.b.(14)), remove the stipulation that a company may issue a Condominium Endorsement on or after the effective date of Rate Rule R-11.m because that rule is already effective.

Item 2017-15: Amends Procedural Rule P-27, Disbursement From Escrow or Trust Fund Accounts, to revise capitalization in two places, simplify a reference to location, and update two statutory references.

Items 2017-16 and 2017-17: Amend Procedural Rule P-45 and Form T-43, Texas Reverse Mortgage Endorsement, to conform the rule and form to current constitutional law. Senate Joint Resolution 18, 83rd Legislature, Regular Session (2013), amended Article XVI, Section 50(k) of the Texas Constitution, which authorizes reverse mortgages on homestead property. The

constitutional amendment revised some of the requirements for reverse mortgages, including requirements related to the coverage offered under the Texas Reverse Mortgage Endorsement (Form T-43).

In Item 2017-17, Form T-43, the coverage provisions in subsections 3.(iii) and 3.(iv) are affected by the amendment of Article XVI, Section 50(k) of the Texas Constitution. Subsection 3.(iii) provides coverage against loss resulting from the invalidity or unenforceability of an insured mortgage lien by reason of the failure of the owner to sign a document purporting to be made pursuant to Subsection (k)(8) of Section 50, Article XVI, Texas Constitution. SJR 18 changed the documentary requirement in Subsection (k)(8) of Section 50, Article XVI, Texas Constitution, to apply to the owner and owner's spouse instead of just the owner. The proposal amends Form T-43 to reflect that change.

The proposal makes a similar change in Item 2017-16 to Procedural Rule P-45.G, which includes the procedural requirements for providing coverage under subsection 3.(iii) of Form T-43. Amendments to Procedural Rule P-45.G reduce confusion by more clearly referencing the document to be signed by the borrower and borrower's spouse and more closely tracking the language in Subsection 3.(iii) of Form T-43.

Additionally, Form T-43, Subsection 3.(iv) provides coverage for the lender against loss resulting from the invalidity or unenforceability of an insured mortgage lien by reason of the failure of the title insurance company or its title agent to furnish the owner, on the date that the owner executed the insured mortgage and the promissory note secured by that mortgage, with a copy of the written notice purporting to be made pursuant to Subsection (k)(9) of Section 50, Article XVI, Texas Constitution. SJR 18 changed the content and timing of the written notice. As amended, Subsection (k)(9) requires the written notice to be provided at least 12 days before the closing. Form T-43 is designed to affirmatively insure against matters that the title company can verify at closing. Because the written notice under Subsection (k)(9) must now be provided at least 12 days before closing, rather than at closing, title companies cannot reasonably verify the buyer's timely receipt of that notice. Accordingly, the proposal amends Form T-43 to delete subsection 3.(iv).

Procedural Rule P-45 is amended to reflect the proposed deletion of subsection 3.(iv) from Form T-43, by deleting Subsection H. and revising Subsection G. It is also amended to update a statutory reference.

Finally, Procedural Rule P-45 is amended to conform with the rest of the Basic Manual by:

--changing "Mortgagee Policy" to "Loan Policy,"

--making other minor editorial changes, and

--more clearly referencing form and procedural rule numbers.

Item 2017-18: Amends Form T-51, Purchaser/Seller Insured Closing Service Letter, to update statutory references and make editorial changes.

Item 2017-19: Amends Form T-52, Abstract Plant Information, to provide captions under certain questions, to conform the language in the form to the rest of the Basic Manual, and to make editorial changes. The captions provide guidance and clarity to help ensure that TDI receives the correct information.

Item 2017-20: Amends Administrative Rule S.3, Title Agent Requirements, Procedures, and Forms for Obtaining Release of Assets in Accordance With Insurance Code §2651.012(B) or §2651.0121, to add a provision allowing a title agent to request a release of unencumbered assets held in a solvency account if the title agent begins using an alternative form of unencumbered assets to comply with Insurance Code §2651.012. This amendment, along with Item 2017-4, provides a mechanism allowing a title agent to request the release of funds held in a solvency account if the agent uses another permissible means of meeting the minimum capitalization requirements in Insurance Code §2651.012. This allows title agents greater flexibility to continue meeting financial requirements.

Administrative Rule S.3 is also amended to harmonize with certain changes to Form T-S3 proposed in Item 2017-4. Those changes will clarify that the written notice to interested parties by a title agent ceasing operations should identify the companies that have custody or control of the files, and require the title agent to include the contact information of those companies. This amendment helps ensure that interested parties in pending transactions know which companies are taking custody and control of the files for their transactions when a title agent ceases business. Finally, amendments to Administrative Rule S.3 correct a statutory citation in the title and more clearly reference a form number to conform with the rest of the Basic Manual.

Item 2017-21: Amends Rate Rule R-11, Loan Policy Endorsements, to update references to Procedural Rule P-9.b.(13), b.(14), and b.(15). These parts in Procedural Rule P-9 were renumbered because Procedural Rule P-9.b.(12) is proposed for deletion in Item 2017-14. Rate

Rule R-11 is also amended to more clearly reference form and rule numbers, to conform with the rest of the Basic Manual.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Marianne Baker, director of the Property and Casualty Lines Office, has determined that, for each year of the first five years the amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of the enforcement or administration of this proposal. Additionally, Ms. Baker does not anticipate a measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Ms. Baker expects the public benefits of clearer, updated title rules and forms, which are easier to understand and administer consistently.

Ms. Baker expects that the proposed amendments will not increase costs to title agents or underwriters. The only cost attributable to this proposal is the cost of electronically updating the amended forms. All title forms are promulgated in Texas, which means all title agents and underwriters must use the same forms. Title agents and underwriters subscribe to software vendors, and these vendors electronically update any form changes and provide the most current form. Vendors like SoftPro, one of the leading title software vendors in Texas, typically do not charge additional money to update forms. These kinds of updates are typically included in the regular fee that title agents and underwriters pay to vendors. Therefore, the proposed amendments should not impose an added cost to regulated persons.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.

TDI has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. As discussed in the Public Benefit and Cost Note section, the only cost attributable to this proposal is the cost to update amended title forms. The cost to electronically update amended title forms is included in the regular fee that title companies pay to software vendors, and so this proposal does not add costs to regulated persons. Additionally, the purpose of the proposed amendments is to clarify and update certain title rules

and forms, and will not produce an adverse economic effect on small or micro businesses, or on rural communities. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a cost on regulated persons. As discussed in the two sections above, the proposed amendments will clarify and update title rules and forms, and will not impose additional costs.

GOVERNMENT GROWTH IMPACT STATEMENT. During the first five years that the proposed rule would be in effect, the proposed rule or its implementation does not:

- create or eliminate a government program;
- require creating new employee positions or eliminating existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit, or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; or
- positively or adversely affect the Texas economy.

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

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 April 2, 2018. TDI requires two copies of your comments. Send one copy to ChiefClerk@tdi.texas.gov, or to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Send

the other copy to CommercialPC@tdi.texas.gov, or to Marianne Baker, Director, Property and Casualty Lines Office, Regulatory Policy Division, Mail Code 104-PC, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. To request a public hearing on the proposal, submit a request—separate from any comments—before the end of the comment period to ChiefClerk@tdi.texas.gov, or to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

STATUTORY AUTHORITY. TDI amends 28 TAC §9.1 under Insurance Code §§2551.003, 2703.208, and 36.001.

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

Section 2703.208 allows additions or amendments to the Basic Manual to be proposed and adopted by reference by publishing notice of the proposal or adoption 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.

CROSS-REFERENCE TO STATUTE. The proposed amendment to §9.1 implements Insurance Code §2551.003 and §2703.208.

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 July 1, 2018 [~~January 3, 2014~~]. The document is available from and on file at the Texas Department of

Insurance, Mail Code 104-PC, P.O. Box 149104, Austin, Texas 78714-9104. The document is also available on the TDI website at www.tdi.texas.gov, and by email from ChiefClerk@tdi.texas.gov.

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

Issued in Austin, Texas, on February 16, 2018.

/s/ Norma Garcia _____

Norma Garcia, General Counsel
Texas Department of Insurance