**Agenda Item: 2012-51 (Amended)**

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

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

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Stewart Title Guaranty Company petitions the Commissioner of Insurance to adopt the following revisions to Form T-26, Additional Insured Endorsement (T-26):

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| ADDITIONAL INSURED ENDORSEMENT (T-26) |

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| Attached to and Made a Part of Policy No.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Issued by  BLANK TITLE INSURANCE COMPANY  The policy is hereby amended by adding as a named insured therein: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  This endorsement does not extend the coverage of the policy to any later date than Date of Policy, nor does it impose any liability on the Company for loss or damage resulting from (1) failure of such added insured to acquire an insurable estate or interest in the land, or (2) any defect, lien or encumbrance attaching by reason of the acquisition of an estate or interest in the land by such added insured.  [ ] **Optional Coverage for Limited Liability Companies: [if box is checked]**  The Company hereby agrees that, notwithstanding anything to the contrary contained in this policy, in the event of loss or damage insured under this policy, the Company shall not deny liability under this policy or raise a defense to any claim made under this policy solely on the ground that, after the Date of Policy, a dissolution or termination of the limited liability company has occurred or a new limited liability company or other entity has been created by reason of any one or more:   (i)  transfer(s) of all or any part of the limited liability company members' interests in the insured to any transferee(s), (ii) withdrawal(s) of one or more of the members from the limited liability company, or (iii) addition(s) of one or more persons or entities as members of the limited liability company;   provided that the insured limited liability company remains the record title holder and no new limited liability company is explicitly formed.   The Company reserves all of its rights and defenses under this policy which the Company would have had against the named insured or its constituent members before or after any withdrawal, transfer or substitution.  This endorsement is issued as ~~made a~~ part of the policy.  ~~and is subject to all of the terms and provisions thereof and of any prior endorsements thereto.~~ Except as it expressly states, it does not (i)  ~~to the extent expressly stated, it neither modifies~~ modify any of the terms and provisions of the policy, (ii) modify ~~and~~ any prior endorsements, (iii) ~~nor does it~~ extend the ~~effective~~ ~~d~~Date of ~~the~~ ~~p~~Policy, or (iv) ~~and any prior endorsements, nor does it~~ increase the ~~face~~ ~~a~~Amount ~~thereof~~ 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. |

Justification:

The Fairway Endorsement ("Fairway") for an owner's policy of title insurance was developed in the early 1990s to address customers' concerns that a title insurance company would apply the holding in Fairway Development Company v. Title Insurance Company of Minnesota5 to owner's policies issued to limited liability companies.

In the Fairway case, a federal district court in Ohio, applying that state's uniform partnership law, held that the assignment of partnership interests from two partners to the remaining partner and a new, third-party purchaser resulted in the termination of the title insured partnership and the creation of a "new" partnership, which "new" partnership lacked the standing to bring an action under the title policy issued to the original partnership. The endorsement provided, in effect, that the transfer of an interest in an Insured under an owner's policy would not be deemed to create a new entity, not entitled to the benefits of the policy.

The 2006 ALTA owner's policy, subsequently adopted in Texas, added to the definition of the "Insured" successors by "reorganization." An "Insured" is defined, in part, to include "successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization." Nevertheless, Companies are requested from time to time to provide such coverage, and no form of the coverage is currently available in Texas.

This proposal would allow as an optional coverage the inclusion of Fairway language to the existing Additional Insured Endorsement T-26.

The issuing office would be required by sound underwriting practices to review the Limited Liability Agreement to determine that there is no contravening language that could cause the LLC to be terminated or wound up simply because there is or will be a partial change in the ownership of the LLC. It is estimated that it would entail approximately 45 minutes to review such document.

It is considered highly unlikely that a company would be called upon to issue a T-26 where there is both a LLC with certain interests being changed and there being (1) a trustee or successor trustee of a Living Trust to whom the insured transfers title, or the beneficiaries of the Living Trust, or (2) a partner, member or stockholder that acquires interests of the other owners of the insured pursuant to an agreement in effect **at Date of Policy**, or (3) a family partnership or corporation composed of the insured and family members. This new Endorsement may be issued Owner Policies covering residential real property, farmland, commercial land or any other type of land. The optional language would be available even if there were no existing agreement at the date of policy.

A company may add the additional language as an additional checkbox in a printed form of promulgated T-26 or it may add such language to an electronically produced form T-26 at the option of the Company.