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## Texas Title Insurance Update Regarding Mortgage Policies of Title Insurance and Endorsements April 4, 2002

Jose Montemayor, Commissioner of Insurance, signed an Order on March 15, 2002, effective April 4, 2002, adopting various forms and rules based upon the 2000 Biennial Hearing. The Order adopting amendments to certain sections of the *Basic Manual of Rules Rates, and Forms for the Writing of Title Insurance in the State of Texas* and the forms have been published on the Texas Department of Insurance's Website at <http://www.tdi.state.tx.us/general/pdf/co-02-0240.pdf>. The selected items that follow pertain to Mortgagee Policies of Title Insurance and related matters in connection with one- to four-family residential loans. Items with check marks are followed with a more indepth summary.

| Agenda Item # | Form/Procedural Amendment   | Form #: Procedural Rule; Rate Rule | Comments:  |
|---------------|---|------------------------------------|--|
| 2000-4        | New Planned Unit Development Endorsement  | T-17<br>P-9(b)(14)<br>R-11.I *     | This endorsement provides expanded coverage for restrictions, assessments, right of first refusal, and forcible removal of structures. This form can be used when the lender requires an ALTA Form 5.  |
| 2000-5        | Amendment of Procedural Rule P-9, regarding the endorsement of a Mortgage Policies of Title Insurance | P-9(b)(14)                         | This procedural rule authorizes the use of endorsements described in Item 2000-4 above.  |
| ✓2000-6       | New Restrictions, Encroachments, Minerals Endorsement   | T-19<br>P-50<br>R-29 *             | This endorsement provides coverage for losses arising out of restrictions that have established easements, or provided for an option to purchase, a right of first refusal or the prior approval of a future purchaser or occupant, as well as building setback line violations. This form can be used when a lender's instructions require ALTA Endorsement Form 9. |
| 2000-7        | New Procedural Rule for the new Restrictions, Encroachments, Minerals Endorsement                     | P-50                               | This procedural rule authorizes the use of the endorsement described in Item 2000-6  |
| ✓2000-8       | Texas Short Form Residential Mortgage Policy of Title Insurance (T-2R)                                | T-2R<br>P-9                        | This short form will aid in logistics and speed the delivery of policies by giving the insured a checklist by which to elect various endorsements and make the language more consistent with ALTA forms.   |
| ✓2000-8       | Addendum (T-2R Addendum) to the Texas Short Form Residential Policy of Title Insurance (T-2R)         | T-2R Addendum<br>P-9               | To be used for additional matters not set forth in Schedule B of the Mortgagee Policy of Title Insurance   |
| 2000-9        | Amendment of Procedural Rule P-1 (definitions)  | P-1                                | This amendment revises the definition of <i>abstract plant</i> to direct operations and adds the definition of the new <i>Texas Short Form Residential Mortgage Policy</i>   |

\* Rate not yet set by Texas Insurance Commissioner

| Agenda Item # | Form/Procedural Amendment  | Form #: Procedural Rule; Rate Rule | Comments:  |
|---------------|--|------------------------------------|--|
| 2000-10       | New Procedural Rule for the new Texas Short Form Residential Mortgage Policy   | T-2R<br>P-51                       | The purpose of this new procedural rule is to implement the Texas Short Form Residential Mortgage Policy   |
| 2000-11       | Amendment of Schedule A and B of the Commitment for Title Insurance  | T-7                                | The "Commitment" has been amended to add references to new Short Form Residential Mortgage Policy of Title Insurance (T-2R)  |
| 2000-12       | Amendment of Procedural Rule P-17, regarding electronically produced endorsement forms   | P-17                               | This amendment will allow title companies to electronically produce forms and endorsements and make allowance for electronic signatures while preserving safeguards for document retention and audit |
| 2000-16       | Amendment of the Leasehold Mortgage Policy Endorsement   | T-5                                | The endorsement should allow more flexibility in calculating damages in an eviction.   |
| ✓2000-18      | Amendment of Exception to Area and Boundaries - This amendment includes a new promulgated form T-47 (Residential Real Property Affidavit). | T-47<br>P-2                        |  |
| 2000-19       | Amendment of the Commitment for Title Insurance, regarding area and boundary exception   | T-7                                |  |
| ✓2000-28      | Amendment of Procedural Rule P-27, Disbursement from Trust Fund Accounts   | P-27                               | This rule was amended so the requirements regarding "good funds" are similar to federal requirements.  |
| ✓2000-B       | Supplemental Coverage Manufactured Housing Unit Endorsement (Form T-31.1)  | T-31.1<br>P-9.b(7)<br>R-11.e       | This endorsement to an Owner or Mortgagee Policy of Title Insurance expands the coverage on a manufactured housing unit.   |
| ✓2000-C       | Amendment of Procedural Rule 9.b. to implement the adoption of Form T-31.1   | P-9.b                              |  |

**Item 2000-6 - New Restrictions, Encroachments, Minerals Endorsement (T-19):** This form also covers damage to existing buildings located or encroaching upon any portion of the land subject to any easement excepted in Schedule B of the title insurance policy that results from the future exercise of any right existing on the date of the 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 and from a final court order or judgment requiring removal from the land adjoining the insured land of any encroachment, other than fences, landscaping or driveways, excepted in Schedule B of the title insurance policy.

**Item 2000-8 - Texas Short Form Residential Mortgagee Policy of Title Insurance (T-2R) and Addendum (T-2R Addendum):** This short form will aid in logistics and speed the delivery of policies by giving the insured a checklist by which to elect various endorsements. In addition, it makes the language consistent with the ALTA forms. It will be issued when requested by the lender and will reduce time and expenses for the title companies and the lenders in preparation and review. The premium for T-2R is the same as that for a Mortgagee Policy of Title Insurance (T-2).

A title company may not issue the Short Form Residential Mortgagee Policy of Title Insurance (T-2R) *unless* it receives (i) a survey of the kind described in Subsection a. of Procedural Rule P-2; or (ii) if the transaction qualifies under other Subsections of the same Procedural Rule, a survey and a qualifying affidavit.

The Texas Short Form Residential Mortgagee Policy of Title Insurance Addendum (T-2R Addendum) is for the purpose of adding additional exceptions to Schedule B of the Short Form Policy, pursuant to the following Procedural Rules:

- P-2: Amendment of Exception to Area and Boundaries;
- P-5: Special Exceptions;
- P-8: Issuance of Policy Prior to Completion of Improvements; or
- P-37: Lack of a Right of Access.

[NOTE: Texas was the only state in the nation that did not heretofore provide a short form MTP.]

**Item 2000-18 – Amendment of the Exception to Area and Boundaries:** This amendment to Procedural Rule P-2 implements the requirements of Texas Senate Bill 1707, Laws of 2001. Under the changes to Article 9.07C(b) of the Texas Insurance Code as set out in the subject Senate Bill, the Texas Insurance Commissioner was authorized to adopt rules allowing a title insurance company to accept an existing real property survey and not require a new survey when providing area and boundary coverage if the title insurance company is willing to accept evidence of an existing real property survey, and an affidavit verifying the existing survey, as prescribed by the Commissioner, notwithstanding the age of the survey or the identity of the person for whom the survey was prepared.

Residential Real Property Affidavit (T-47), a promulgated form is included in this Item 2000-18. This Affidavit must be used when the lender requires the deletion of the area and boundary exception (save shortage in area) in a Mortgagee Policy (T-2) or Short Form Mortgagee Policy (T-2R) on residential real property transactions when a new survey is not available.

Amended Article 9.07C(c) provides that a title insurance company may not discriminate in providing area and boundary coverage in connection with residential real property solely because: (1) the real property is platted or unplatted; or (2) a municipality did not accept a subdivision plat in relation to the real property before September 1, 1975. A title insurance company may not require an indemnity from a seller, buyer, borrower, or lender to provide area and boundary coverage.

[Note: Paragraph 6 of the new TREC One to Four Family Residential Contract (Resale) includes a provision for the use of an existing survey.]

**Item 2000-28 - Amendment of Procedural Rule P-27, Disbursement from Trust Fund Accounts:** If a party to the transaction submits too much money, that overage that will not ultimately be a part of the transaction may be refunded at or prior to settlement. A record of all receipts reflecting the date on which the funds are actually received must be entered on the books of the trustee before any disbursements are made. The financial institution or a branch thereof in which the trust funds account is maintained must be located within the geographic bounds of the State of Texas. Even though funds are defined as “good funds” in Rule P-27, a trustee is not required to disburse if reasonable business judgment would indicate that the funds may not be collected.

**Item 2000-B – Adoption of Supplemental Coverage Manufactured Housing Unit Endorsement (T-31.1):** This endorsement insures that:

- A manufactured housing unit is located on the land;
- The manufactured housing unit located on the land is real property;
- The owner of the land as insured in the policy is the owner of the manufactured housing unit;
- No lien for personal property taxes has attached to the manufactured housing unit;
- No federal tax lien, financing statement, or other person property lien has attached to the manufactured housing unit; and
- Any mortgage insured is a valid lien against the manufactured housing unit.

[NOTE: The premium for this endorsement under Rate Rule R-11(e) is currently \$20.]