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TITLE INSURANCE ENDORSEMENTS UPDATE

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T-19 and T-19.1. RESTRICTIONS, ENCROACHMENTS, MINERALS

Effective January 3, 2014, Endorsements T-19 and T-19.1 were substantially revised. Although the changes to the substance of the coverage provided by the endorsements were modest, the format of the endorsements was completely overhauled. Most importantly, the appropriate Schedule B language for title companies to use to either provide or exclude one or more of the particular items of coverage has been clarified.

A. History

Prior to the early 1990s, affirmative coverage against encroachments and similar matters was not available in Texas. If a material encroachment existed, the title company would make an exception to coverage for it on the policy, and the risk of loss was borne by the insured. In 1992, the Texas Department of Insurance adopted Procedural Rule 39, which permitted the title company to affirmatively insure against loss caused by a particular title exception. The exception was noted on Schedule B, but promulgated language was added that insured against any loss resulting from such encroachment.

In 2002, the Insurance Department promulgated endorsements T-19 (for owner policies) and T-19.1 (for loan policies). These endorsements were modeled after the ALTA 9 and 9.1 comprehensive endorsements. Originally, T-19.1 was permitted only on nonresidential properties. In 2009, the Insurance Department authorized the issuance of T-19.1 on residential owner policies.

Prior to this year, because of differences in interpretation of the promulgated language of the endorsements, different title companies had different views how to properly provide or exclude T-19 and T-19.1 coverage on the policies. One interpretation was that the listing of an encroachment on Schedule B of the policy removed the encroachment from coverage. Another interpretation was that all encroachments were to be shown on Schedule B, and that the language of T-19 and T-19.1 gave affirmative coverage against the encroachment, unless Schedule B also contained language expressly negating the coverage. Now, the forms have been revised so that it is clear that the listing of an encroachment or similar matter on Schedule B of the policy will mean that, for the most part, such matter will not be covered by the endorsement.

B. Provisions of the Endorsements.

1. **What's Not Covered.** Paragraph 1 of the current forms set forth what is not covered thereunder. The insurance provided by the endorsement is subject to the exclusions in Section 5 of the endorsement, the Exclusions from Coverage (as defined in the policy), the Conditions in the policy, and the Exceptions from Coverage contained in Schedule B of the policy.
2. **Definitions.** The previous version of the forms did not contain affirmative definitions of the terms used (although some matters were expressly excluded by definition). Paragraph 2 of the current forms now contain the following definitions:

- a. Covenant: A covenant, condition, limitation or restriction in a document. (The most common is a deed restriction.)
 - b. Improvement (Loan Policy): Matters affixed to or adjoining the land that by law constitute real property, **including** landscaping, lawn, shrubbery or trees.
 - b.1. Improvement (Owner Policy): Building, structure, road, walkway, driveway or curb affixed to the Land or adjoining land that by law constitutes real property, but **excluding** crops, landscaping, lawn, shrubbery or trees.
 - c. Private Right (Loan Policy): A purchase option, right of first refusal, right of prior approval of a future purchaser or occupant, or private charge or assessment.
 - c.1. Private Right (Owner Policy): A purchase option, right of first refusal, right of prior approval of a future purchaser or occupant. (Excludes private charges or assessments.)
- 3 Insurance against violations of Covenants; Loan Policy. T-19 provides coverage for loss sustained by reason of:
- a. Violation of a Covenant that (i) divests, subordinates or extinguishes the lien of the insured mortgage, (ii) results in the invalidity, unenforceability or lack of priority of the lien of the mortgage, or (iii) causes a loss of the title acquired in full or partial satisfaction of the debt (i.e., foreclosure). A common example is a maintenance assessment that is not subordinate to the mortgage.
 - b. Violation on the Land at Date of Policy of an enforceable Covenant, unless a Schedule B exception is taken for it (e.g., a commercial building in a residentially restricted subdivision). Note that this coverage pertains only to a violation in existence when the policy is issued. It does not insure against a violation created in the future (e.g., construction of a McMansion on a lot restricted to single story structures).
 - c. Enforced removal of an Improvement located on the Land at Date of Policy as a result of a violation of a building setback line shown on a recorded plat, unless a Schedule B exception is taken for the violation. Note that this paragraph pertains to setbacks created by plats, while the previous paragraph pertains to setbacks created by restrictive covenants.
 - d. Recorded notice of a violation of a Covenant relating to environmental protection, unless a Schedule B exception is taken for it.

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