

SUMMARY OF NEW MEXICO TITLE INSURANCE REGULATORY CHANGES – 2018

The effective date for the following regulatory changes is **July 1, 2018**. Unless otherwise stated, all references to regulations are to the new rules, which can be found at: <http://164.64.110.239/nmregister/xxvi/xxvi24/xxvi24adopted.html>. All promulgated forms are the ALTA forms unless otherwise noted. This Summary includes highlights of the significant changes of interest to agents; there are also changes made to correct reference and formatting inconsistencies in the rules which can be found at the New Mexico Registry website listed above.

AGENCY AGREEMENTS:

Premium Division with Agents – Other Fees and Expenses: NMAC 13.14.3.11 was revised to clarify that fees for additional chains of title and unusual complexity are retained by the agents and the underwriter does not receive any percentage of those fees. *NMAC 13.14.3.11 (G)*.

COMMITMENTS OR BINDERS:

Issuance Upon Request and Receipt of Bona Fide Order: The plain language commitment, NM form 6.1, is depromulgated. *NMAC 13.14.5.8(B)*. The updated ALTA commitment form dated August 1, 2016, is now promulgated and replaces the prior NM Form 6 version dated June 17, 2006. The substantive changes in the commitment include:

- A “Notice” at the top of the form that limits any liability to breach of contract claims only, states that the commitment is an offer and is not an abstract, opinion or report, and states that the determination of title by the Company creates no liability to any person, including the proposed insured.
- Condition 3 adds definitions of “Knowledge,” “Known,” “Land” and other definitions to tie items on Schedule A to their use in the Commitment Conditions.
- Condition 4 reserves a general right to amend the Commitment and limits liability for amendments for defects, liens, encumbrances, adverse claims or other matters recorded prior to the Commitment date as stated in Condition 5.
- Condition 6(d) states that deletion or change of an exception is not an agreement to cover the matter deleted or modified.
- Condition 7 states that the agent is the insurer’s agent only for issuing title insurance commitments and policies, and is not the insurer’s agent for closing or settlement services.
- Condition 8 states that a pro forma policy may be provided but that the pro forma policy is neither a statement of the status of title nor is it a commitment to insure.
- Condition 5(e) states that there is no liability for the content of the new field on Schedule A labeled “Transaction Identification Data for reference only.”

- Schedule B, Part II begins with a disclaimer that covenants that include violations of state or federal law based on race, color, religion, sex, sexual orientation, gender identity, handicap, familial status, or national origin are not republished by the commitment referring to any such covenant document.
- Schedule B, Part II also states: The Policy will not insure against loss or damage resulting from the terms and provisions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:”
- The arbitration provision is deleted.
- The optional exception 1 for matters appearing after the date of the Commitment is deleted because our exception 8 is substantially the same exception. *NMAC 13.14.5.9(A)*.

LOAN, LEASEHOLD LOAN, AND CONSTRUCTION LOAN POLICIES:

Mortgage Modification Policy NM 90: The amount of the policy is the amount of the outstanding principal balance of the loan on the date of policy and the policy may not be issued to increase coverage if an additional advance is included in the loan modification agreement. *NMAC 13.14.7.27.*

ENDORSEMENTS:

Insuring Around Endorsement (NM 43): The endorsement may be issued when an insurer has determined that a lien does not pose a material risk under the policy. In addition, at the discretion of the insurer, the lien or other adverse matter may be omitted from any commitment or policy. Underwriter approval is required to issue the Insuring Around Endorsement or to omit any record matter from a commitment or policy.

Truth in Lending Endorsement (NM 48): This endorsement has been depromulgated.

Notice of Availability of Future Increase in Coverage and Potential Premium Discounts for Future Policies (NM 49): Minor changes were made to the Notice so that it is consistent with the regulations.

Restrictions, Encroachments, and Minerals Endorsements (NM 50, 50.1, 56, 56.1, 57 and 57.1): Coverage of surface disturbance for mineral extraction is now permitted in appropriate situations, with underwriter approval, even if there is no waiver of the right of entry or surface usage. *NMAC 13.14.8.16 (C)*.

Other minor rule changes to make the references to the form names consistent with the titles of the promulgated forms.

RATE PROVISIONS: The premium rates decreased by a net amount of 4%, made up of a policy premium decrease of 9.5% and selected coverage and endorsement rate increases discussed below. The split remains unchanged.

- The simultaneous issue rate for a loan policy is raised from \$30 to \$100. *NMAC 13.14.9.30(B)*.
- Survey coverage on a loan policy is now provided at a premium of \$50. *NMAC 13.14.10.10 (B)*.
- Mechanic's lien coverage on owner's and loan policies is raised from \$25 to \$50. *NMAC 13.14.9.40 (E) and 13.14.10.9(A)*.
- Mortgage Modification Policy (NM 90) premium is raised from \$125 to \$175 up to \$1M and \$175 for each \$500,000 amount of policy over that amount, up to a maximum policy amount of \$20M. *NMAC 13.14.9.42*.
- Mortgage Modification Endorsements (NM 80, 80.1 and 80.2) premiums are raised from \$65 to \$125, with a minimum charge of \$175 for the NM 80.2.
- Additional Advance Endorsement (NM 25) minimum premium has been raised from \$50 to \$100. *NMAC 13.14.10.11*.
- Additional Advance Endorsement (NM 25) and Mortgage Modification Endorsement – Additional Advance (NM 80.2) premiums shall include a charge pfor the increase in coverage for the percentage-based endorsements and coverages provided on the original loan policy. *NMAC 13.14.10.11 and 13.14.10.61(B)*.

In addition:

- The additional charge for unusual complexity is no longer limited to unplatted tracts. *NMAC 13.14.9.16*.
- A fee of \$100 shall be charged for each version of a pro forma policy, unless the change is required because of an error by the issuing agent. *NMAC 13.14.9.19(C)*.
- The substitution rate is available when the borrower would be an “insured” as defined in the owner’s policy form (for example, an heir, a trust, a wholly-owned LLC, etc.), and “same property” means the identical property or any portion thereof, with proration if it is less than the entire parcel. *NMAC 13.14.9.39*.
- The premium for issuance of the Partial Coverage Endorsement (NM 26) is \$25. *NMAC 13.14.10.64*.

FORMS: A new process is adopted for the promulgation of forms. The promulgated forms are now shown only on the OSI website; the table of forms in the rule has been deleted. New forms will be submitted for approval by the OSI through the statutory process set out for the adoption of rules. The promulgated forms will be maintained by the Office of the Superintendent of Insurance and will be available at the OSI website, www.osi.state.nm.us. *NMAC 13.14.18.13*.

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