

BEFORE THE NEW MEXICO SUPERINTENDENT OF INSURANCE

**IN THE MATTER OF AMENDMENTS TO)
THE NEW MEXICO TITLE INSURANCE RULES) Docket No. 2023-0028
TITLE 13, CHAPTER 14 NMAC TO ADOPT)
MODERN TITLE INSURANCE FORMS)
_____)**

**FINAL ORDER AMENDING TITLE INSURANCE RULES
AND ADOPTING MODERN TITLE INSURANCE FORMS**

THIS MATTER comes before the New Mexico Superintendent of Insurance (“Superintendent”) following a public hearing for comment pursuant to the Notice of Proposed Rulemaking (“NOPR”) filed in this docket and published on June 27, 2023. The Superintendent has reviewed the record, has considered the proposed amendments to the rule and the proposed forms to be adopted, has considered applicable laws, has considered the comments submitted in this rulemaking, has reviewed the findings, conclusions, and recommendations of the Hearing Officer assigned to this matter, and has considered the joint and separate post-recommendation filings of the Title Bureau Staff (“Staff”) of the Office of Superintendent of Insurance (“OSI”) and of the New Mexico Land Title Association (“NMLTA”). Having been advised in the premises,

THE SUPERINTENDENT FINDS AND CONCLUDES:

1. The Superintendent has jurisdiction over the subject matter and the parties in this proceeding pursuant to the New Mexico Insurance Code, 1978 NMSA Sections 59A-1-1 *et seq.* (“Insurance Code”).
2. Statutory authority for promulgation of the proposed rule and forms is found at New Mexico Constitution, Article XI, Sec. 20, and NMSA 1978, Section 59A-2-9 of the Insurance Code. Subject matter regulation authority is found at NMSA 1978, Sections 59A-30-4, 59A-30-6, 59A-30-6.1, and 59A-30-8 of the New Mexico Title Insurance Law.
3. In the NOPR published June 27, 2023, the Superintendent appointed R. Alfred Walker as the Hearing Officer to preside over the matter.

4. Hearing Officer Walker conducted a public hearing on July 27, 2023.
5. After considering the proposed amended rule and proposed forms for adoption, the written comments filed, and the oral comments made at the public hearing, Hearing Officer Walker issued his Findings, Conclusions, and Recommendations on September 15, 2023.
6. On October 20, 2023, Staff and NMLTA submitted their Joint Compliance Filing of Staff and NMLTA.
7. On October 27, 2023, Staff submitted its Motion for Leave to File Motion and Motion for Reconsideration of PACA-PSA Trust Issue.
8. On October 30, 2023, NMLTA submitted its Opposition to OSI Staff's Motion for Leave to File Motion and Motion for Reconsideration of PACA-PSA Trust Issue.
9. On November 6, 2023, Staff submitted its Reply to NMLTA's Response in Opposition to OSI Staff's Motion for Leave to File Motion and Motion for Reconsideration of PACA-PSA Trust Issue.
10. On November 7, 2023, NMLTA submitted its Amended Opposition to OSI Staff's Motion for Leave to File Motion and Motion for Reconsideration of PACA-PSA Trust Issue.
11. The Superintendent grants Staff's motion for leave to file a motion for reconsideration, denies Staff's motion for reconsideration, and denies any other request for relief made by Staff or NMLTA.
12. Hearing Officer Walker's Findings, Conclusions, and Recommendations are well supported, legally sound, and should be adopted.

IT IS THEREFORE ORDERED:

- A. The Superintendent adopts Hearing Officer Walker's Findings, Conclusions, and Recommendations as her own.
- B. The Superintendent adopts the amended rule in the form attached hereto as Exhibit 1.

C. The Superintendent adopts the Table of Modern Title Forms and the Modern Title Forms in the form attached to the Joint Compliance Filing of Staff and NMLTA.

D. The amended rule shall be submitted to the New Mexico Register no later than December 7, 2023 for publication on December 19, 2023.

E. The Table of Modern Title Forms and the Modern Title Forms shall be published on the OSI website as soon as practicable.

F. A copy of this Final Order, including its exhibits, shall be sent via electronic mail to all persons on the attached Certificate of Service if their electronic mail addresses are known. If electronic mail addresses are not known, then the same materials shall be mailed to such persons via regular United States mail.

G. This Final Order is effective immediately.

H. This docket is closed.

DONE AND ORDERED this 7th day of December, 2023.



HON. ALICE T. KANE
Superintendent of Insurance

CERTIFICATE OF SERVICE

I hereby certify that the foregoing *Final Order Amending Title Insurance Rules and Adopting Modern Title Insurance Forms*, together with all exhibits, was served via email upon all persons listed below on this 7th day of December, 2023.

The Hon. Alice T. Kane
Superintendent of Insurance
Office of Superintendent of Insurance
1120 Paseo de Peralta
Santa Fe, NM 87501
alice.kane@osi.nm.gov

Stephen Thies
Acting General Counsel
Office of Superintendent of Insurance
1120 Paseo de Peralta
Santa Fe, NM 87501
stephen.thies@osi.nm.gov


R. Alfred Walker
Hearing Officer
Office of Superintendent of Insurance
1120 Paseo de Peralta
Santa Fe, NM 87501
alfred.walker@osi.nm.gov

Margaret Caffey-Moquin
Chief Staff Counsel
Office of Superintendent of Insurance
1120 Paseo de Peralta
Santa Fe, NM 87501
margaret.moquin@osi.nm.gov

Spencer L. Edelman
Shareholder
Modrall Sperling
500 Fourth St., N.W.
Albuquerque, NM 87102
sle@modrall.com

Orlando Lucero
Vice-President & Regional Counsel
FNF Family of Companies
8500 Menaul Blvd. NE, Suite B150
Albuquerque, NM 87112
Orlando.Lucero@fnf.com

Steven Gold
Attorney
American Land Title Association
1800 M Street, N.W. 300S
Washington, DC 20036
sgold@alta.org



Jennifer Romero, Law Clerk
NM Office of Superintendent of Insurance

TITLE 13 INSURANCE
CHAPTER 14 TITLE INSURANCE
PART 1 DEFINITIONS AND GENERAL PROVISIONS

13.14.1.1 ISSUING AGENCY: Office of Superintendent of Insurance (“OSI”).
[13.14.1.1 NMAC – Rp, 13.14.1.1 NMAC, 1/1/2021]

13.14.1.2 SCOPE: This rule applies to all title insurers, title insurance agencies, and title insurance agents conducting the business of title insurance in New Mexico.
[13.14.1.2 NMAC – Rp, 13.14.1.2 NMAC, 1/1/2021]

13.14.1.3 STATUTORY AUTHORITY: Sections 59A-2-8, 59A-2-9, 59A-30-4, 59A-30-6, 59A-30-6.1, 59A-30-6.2 and 59A-30-8 NMSA 1978.
[13.14.1.3 NMAC – Rp, 13.14.1.3 NMAC, 1/1/2021]

13.14.1.4 DURATION: Permanent.
[13.14.1.4 NMAC – Rp, 13.14.1.4 NMAC, 1/1/2021]

13.14.1.5 EFFECTIVE DATE: January 1, 2021, unless a later date is cited at the end of a section.
[13.14.1.5 NMAC – Rp, 13.14.1.5 NMAC, 1/1/2021]

13.14.1.6 OBJECTIVE: The purpose of this rule is to define terms applicable throughout Title 13, Chapter 14 of the New Mexico Administrative Code.
[13.14.1.6 NMAC – Rp, 13.14.1.6 NMAC, 1/1/2021]

13.14.1.7 DEFINITIONS: For definitions of terms contained in this rule, refer to Section 59A-30-3 NMSA 1978, unless otherwise noted below.

- A. “Abstract plant”** means title plant.
- B. “Agency”** means a business entity as defined in Subsection B of Section 59A-12-2 NMSA 1978, including a sole proprietorship that transacts title insurance business.
- C. “ALTA”** means the American Land Title Association.
- D. “Basic premium rate”** means the premiums set from time to time by the superintendent for an original owner’s policy.
- E. “Commitment”** means an NM form 6 issued to a customer.
- F. “Day or Days”** means, unless otherwise specified:
 - (1)** one to five days excludes weekends and state holidays; and
 - (2)** six days or more, includes weekends and holidays.
- G. “Down date”** means the date that a subsequent search and examination of the public records affecting title to property is completed and effective.
- H. “Escrow”** means a transaction in which funds are delivered or given to a person not otherwise having any right, title, or interest in them, to be held by that person for delivery or disbursement to another person upon the happening of a specified event or the performance of a specified condition.
- I. “Escrow account”** means an account established pursuant to Sections 58-28-4 or 59A-12-22 NMSA 1978.
- J. “Escrow funds”** means all monies the issuing title insurance agency or title insurer receives when conducting escrows, settlements, closings or tax deferred exchanges in connection with the issuance of a title insurance policy.
- K. “Escrow instructions”** means a dated, written, and signed agreement of the parties to an escrow, including a duly appointed agent or attorney-in-fact, specifying the event or condition upon which the escrowed funds shall be delivered or disbursed. This term shall include a purchase agreement, or lender’s instructions, and modifications of escrow instructions.

L. “Escrow officer” means an individual affiliated with a title insurance agency or title insurer who is directly responsible for the settlement of a real estate transaction, as evidenced by their signature on a settlement statement.

M. “Extra chain of title” means a parcel having a separate chain of title from the original chain being searched.

N. “Funds subject to immediate withdrawal” as used in Subsection F of Section 59A-30-3 means money collected and deposited in an escrow account with a financial institution held in the name of and subject to the control of a title insurance agency, a title insurer, or third party fiduciary for a real estate closing, that can be totally disbursed immediately by cash withdrawal or cashier’s checks without relying on the balance created by other deposit in the account not made as part of the real estate closing for which disbursement is being made.

(1) The following funds are subject to immediate withdrawal collected on the day of deposit:

(a) cash;

(b) received wired funds managed by the federal reserve system;

(c) a cashier’s check or certified check which is issued payable to the title insurance agency, title insurer, or third party fiduciary and has been deposited to its account at the financial institution which issued it; and guaranteed by the financial institution as collected funds for immediate disbursement;

(d) a cashier’s check which is payable to and was purchased by the title insurance agency, title insurer, or third party fiduciary, and has been deposited to its account at a financial institution and guaranteed by the financial institution for immediate disbursement.

(2) The following funds are considered available funds on the next business day after day of deposit:

(a) treasury checks, postal money orders, federal reserve bank checks and federal home loan bank checks;

(b) state of New Mexico and local government checks which have been deposited at a financial institution located in New Mexico using a special deposit slip if required by the depository institution for next day availability;

(c) cashier’s checks, certified check and teller’s checks which have been deposited at a financial institution located in New Mexico using a special deposit slip if required by the depository institution for next day availability.

(d) All other modes used for the transfer of monies will be available funds on the earliest date they are considered collected funds in accordance with Regulation CC, “Availability of Funds and Collection of Checks” established by the board of governors of the federal reserve system as amended.

(e) Any funds received under the automated clearing house (ACH) network shall not be considered “available funds” until collected.

O. “HECM” means a home equity conversion mortgage administered by the federal housing administration (FHA).

P. “HUD” means the United States department of housing and urban development.

Q. “Loan policy” means an NM form 2 issued to a customer.

R. “Mortgage” means either a mortgage or deed of trust.

S. “One to four family residential property” means any real property primarily designed and used for residential occupancy of from one to four families, including a residential unit in a condominium if such unit is designed and used primarily for occupancy by one to four families, regardless of the total number of units in the condominium complex.

T. “Owner’s policy” means an NM form 1 or NM form 34, as applicable, issued to a customer.

U. “Pro forma policy” means a sample of an owner’s or loan policy prepared prior to issuance of the policy, with completed schedules A and B and endorsements, identifying the proposed insured, the exceptions that are proposed to be placed in the final policy to be issued, and the name of the title insurer and title insurance agency, including samples of endorsements.

V. “Referrer” means any person in a position to refer business to a title insurer or title insurance agency.

W. “Simultaneous Issue” means issuing two or more policies bearing the same effective date and insuring part or all of the same land.

X. “**Title plant**” means a collection of real estate records meeting the requirements of Section 59A-12-13 NMSA 1978.

Y. “**Title rate case**” means a proceeding that results in the establishment of rates, or charges pertaining to the business of title insurance and includes, without limitation, the title rate case required by Section 59A-30-8 NMSA 1978.

Z. “**Unusual complexity**” means when circumstances cause an unusually long search or complicated examination as determined by a reasonable title insurance agent or title insurer.

AA. “**Vestee**” means the person or persons in whom title to the land is vested.
[13.14.1.7 NMAC – Rp, Sections 7 through 33 of 13.14.1 NMAC, 1/1/2021; A, 1/1/2024]

13.14.1.8 GENERAL PROVISIONS:

A. Every title insurer shall establish written instructions and underwriting standards consistent with these rules, including, without limitation, underwriter approval requirements and underwriting approval record retention requirements. Unless otherwise specifically required or limited by these rules, a title insurer in its discretion may determine what risks the insurer is willing to insure.

B. Unless otherwise specified, whenever these rules allow modification or deletion of provisions of a form of policy or endorsement or permit the modification of language required by these rules to be included in policies (including pro forma policies), commitments or endorsements, that change may be made by:

- (1) striking through the language of the form;
- (2) deleting the language of the form; or
- (3) attaching an endorsement to the policy that makes the change.

C. The premiums and charges authorized by these rules shall be established by order of the superintendent in a title rate case conducted pursuant to Subsection A of Section 59A-30-8 NMSA 1978, or as amended or supplemented by order issued after a hearing conducted pursuant to Subsection B of Section 59A-30-8 NMSA 1978. All references to premiums and charges shall mean the premiums and charges established by the superintendent’s order in the most recent title rate case and in effect at the time the premium or charge is incurred.

D. When a statute or rule requires a title insurer or title insurance agency to deliver a document, or otherwise provide notice, to a person, delivery or notice to an authorized agent of that person satisfies that requirement.

E. Except as expressly authorized in these rules, it shall not be permissible to insure around any adverse matter or document by intentionally omitting it from any commitment or policy.

[13.14.1.8 NMAC – N, 1/1/2021]

13.14.1.9 RULE NONCOMPLIANCE: Failure to comply with any provision of these rules is punishable under the applicable provisions of the Insurance Code.

[13.14.1.9 NMAC – N, 1/1/2021]

HISTORY OF 13.14.1 NMAC:

Pre-NMAC History.

ID 74-1, Article 10, Chapter 58, Rule 2, Regulations for Filing Title Insurance Forms and Rates, filed 3/7/1974.

SCC-85-6, Insurance Department Regulation 30 - Title Insurance, filed 9/6/1985.

SCC-86-1, Insurance Department Regulation 30 - Title Insurance, filed 5/9/1986.

History of Repealed Material. 13.14.1 NMAC, General Provisions, (filed 5/15/2000), was repealed and replaced by 13.14.1 NMAC, Definitions and General Provisions effective 1/1/2021.

Other History.

Re-promulgated a portion of SCC-86-1, Insurance Department Regulation 30 - Title Insurance (filed 5/9/1986) and renumbered, reformatted and replaced as 13 NMAC 14.1, General Provisions, effective 11/01/1996.

13 NMAC 14.1, General Provisions (filed 10/2/1996) was renumbered, reformatted, amended and replaced by as 13.14.1 NMAC, General Provisions, effective 5/15/2000.

13.14.1 NMAC, General Provisions (filed 4/28/2000), amended effective 7/31/2014.

13.14.1 NMAC, General Provisions (filed 7/31/2014), amended effective 3/1/2016.

13.14.1 NMAC, General Provisions, (filed 5/15/2000), was repealed and replaced by 13.14.1 NMAC, Definitions and General Provisions effective 1/1/2021.

TITLE 13 INSURANCE
CHAPTER 14 TITLE INSURANCE
PART 8 ENDORSEMENTS

13.14.8.1 ISSUING AGENCY: Office of Superintendent of Insurance (“OSI”).
[13.14.8.1 NMAC – Rp, 13.14.8.1 NMAC, 1/1/2021]

13.14.8.2 SCOPE: This rule applies to all title insurers, all title insurance agencies, and all title insurance agents conducting title insurance business in New Mexico.
[13.14.8.2 NMAC – Rp, 13.14.8.2 NMAC, 1/1/2021]

13.14.8.3 STATUTORY AUTHORITY: Sections 59A-2-8, 59A-2-9, 59A-30-4, 59A-30-5, 59A-30-6, 59A-30-6.1, 59A-30-6.2 and 59A-30-8 NMSA 1978.
[13.14.8.3 NMAC – Rp, 13.14.8.3 NMAC, 1/1/2021; A, 1/1/24]

13.14.8.4 DURATION: Permanent.
[13.14.8.4 NMAC – Rp, 13.14.8.4 NMAC, 1/1/2021]

13.14.8.5 EFFECTIVE DATE: January 1, 2021, unless a later date is cited at the end of a section.
[13.14.8.5 NMAC – Rp, 13.14.8.5 NMAC, 1/1/2021]

13.14.8.6 OBJECTIVE: The purpose of this rule is to establish requirements for endorsements to title insurance policies.
[13.14.8.6 NMAC – Rp, 13.14.8.6 NMAC, 1/1/2021]

13.14.8.7 DEFINITIONS: See 13.14.1 NMAC.
[13.14.8.7 NMAC – Rp, 13.14.8.7 NMAC, 1/1/2021]

13.14.8.8 USE OF CORRECTION/MULTIPURPOSE ENDORSEMENT: NM form 11 may be used only as follows:

- A.** to modify any promulgated form if the modification is authorized by these rules;
 - B.** to insert, delete or add to a commitment, policy or endorsement, language required or authorized by any of these rules when appropriate to do so; or
 - C.** to correct errors in the information inserted in the appropriate spaces of any preprinted commitment, policy or endorsement (but not to change, alter or waive the promulgated terms) in the following manner: “This endorsement amends (commitment, policy or endorsement) numbered _____, dated _____ to read as follows: [here insert language identifying the specific item being corrected and the specific correction information.”] No other amendments are made by this endorsement.”
- [13.14.8.8 NMAC – Rp, 13.14.8.8 NMAC, 1/1/2021]

13.14.8.9 [RESERVED]
[13.14.8.9 NMAC - Rn, 13 NMAC 14.8.9, 5/15/2000; A, 3/1/2002; Repealed 1/1/2021]

13.14.8.10 [RESERVED]
[13.14.8.10 NMAC - Rn, 13 NMAC 14.8.11, 5/15/2000; A, 7/1/2006; A, 8/17/2009; Repealed 1/1/2021]

13.14.8.11 IDENTIFIED RISK COVERAGE ENDORSEMENT: NM form 85 may be attached to a policy only when authorized by order of the superintendent and subject to such terms, conditions and rate(s) specified by the superintendent.
[13.14.8.11 NMAC – Rp, 13.14.8.12 NMAC, 1/1/2021]

13.14.8.12 INSURING AROUND ENDORSEMENT:
A. NM form 43 may be attached to a policy to insure around a lien or other adverse matter excepted to in Schedule B if the title insurer has determined that the lien or other adverse matter does not pose a material risk under the policy.

B. In lieu of attaching NM form 43, the exception to the lien or other adverse matter may be omitted from the policy provided the insured requests the omission, and the request and approval are documented or otherwise memorialized in writing.

[13.14.8.12 NMAC – Rp, 13.14.8.13 NMAC, 1/1/2021]

13.14.8.13 CO-INSURANCE ENDORSEMENTS: NM form 77 shall be attached to a policy to provide coordinated and proportionate coverage by two or more title insurers. Such coverage may be provided, either by endorsement attached to a single policy and executed by or on behalf of the co-insuring title insurers, or by the issuance of separate policies by or on behalf of each of the co-insuring title insurers.

[13.14.8.13 NMAC – Rp, 13.14.8.14 NMAC, 1/1/2021;A, 1/1/24]

13.14.8.14 RESTRICTIONS, ENCROACHMENTS, AND MINERALS ENDORSEMENTS:

A. Upon being furnished with a satisfactory survey:

- (1) NM form 50 and NM form 50.1 may be attached to a loan policy;
- (2) NM form 56 and NM form 56.1 may be attached to an owner’s policy covering unimproved land;
- (3) NM form 57 and NM form 57.1 may be attached to an owner’s policy covering improved land; and
- (4) NM Forms 50, 50.1, 56, 56.1, 57, and 57.1 shall not be attached to policies issued on one to four family residential property.

B. Each endorsement is to be issued only in conjunction with the issuance of survey coverage pursuant to Subsection C of 13.14.5.12 NMAC.

C. Paragraph (3)(b) of NM form 50, Paragraph 4 of NM form 50.1, Paragraph (2) of NM form 56 and NM form 56.1, Paragraph (2)(b) of NM form 57, or Paragraph 3 of NM form 57.1, as appropriate, may be deleted if minerals rights have been severed and the insurer, in its discretion, deems the risk of such coverage to be acceptable.
[13.14.8.14 NMAC – Rp, 13.14.8.16 NMAC, 1/1/2021]

13.14.8.15 LAND ABUTS STREET ENDORSEMENT: NM form 51 may be attached to a policy, upon being furnished with a satisfactory survey. This endorsement may not be attached to a policy that insures one to four family residential property.

[13.14.8.15 NMAC - Rp, 13.14.8.17 NMAC, 1/1/2021]

13.14.8.16 LOCATION ENDORSEMENT: NM form 52 may be attached to a policy upon being furnished with a satisfactory survey. This endorsement may not be attached to a policy that insures one to four family residential property.

[13.14.8.16 NMAC - Rp, 13.14.8.18 NMAC, 1/1/2021]

13.14.8.17 SAME AS SURVEY AND SAME AS PORTION OF SURVEY ENDORSEMENTS: NM form 78 or 79 may be attached to a policy upon being furnished with a satisfactory survey if the policy provides survey coverage. These endorsements may not be attached to a policy that insures one to four family residential property.

[13.14.8.17 NMAC - Rp, 13.14.8.19 NMAC, 1/1/2021]

13.14.8.18 CONTIGUITY OF PARCELS ENDORSEMENTS: NM form 54 or 66 may be attached to a policy upon being furnished with a satisfactory survey. These endorsements may not be attached to a policy that insures one to four family residential property.

A. For an owner’s policy, the insured shall, have an interest (in fee, leasehold, or easement) in both parcels referred to in NM form 54, or in all parcels referred to in NM form 66.

B. For a loan policy the insured lender shall, have a lien upon an interest (in fee, leasehold, or easement) on both parcels referred to in NM form 54, or on all parcels referred to in NM form 66.

[13.14.8.18 NMAC - Rp, 13.14.8.20 NMAC, 1/1/2021]

13.14.8.19 FIRST LOSS ENDORSEMENT: NM form 58 may be attached to a loan policy. This endorsement may not be attached to a policy that insures one to four family residential property.

[13.14.8.19 NMAC - Rp, 13.14.8.21 NMAC, 1/1/2021]

13.14.8.20 AGGREGATION ENDORSEMENTS: NM form 60 or NM form 60.1 may be attached to a loan policy. These endorsements may not be attached to a policy that insures one to four family residential property.
[13.14.8.20 NMAC – N, 1/1/2021]

13.14.8.21 FOUNDATION ENDORSEMENT: NM form 61 may be attached to a loan policy upon being provided a satisfactory survey.
[13.14.8.21 NMAC - Rp, 13.14.8.24 NMAC, 1/1/2021]

13.14.8.22 ASSIGNMENT OF RENTS OR LEASES ENDORSEMENT: NM form 62 may be attached to a loan policy. This endorsement may not be attached to a policy that insures one to four family residential property.
[13.14.8.22 NMAC - Rp, 13.14.8.25 NMAC, 1/1/2021]

13.14.8.23 ZONING UNIMPROVED LAND ENDORSEMENTS: NM form 64 or NM form 64.1 may be attached to a policy. These endorsements shall not be attached to a policy that insures one to four family residential property.
[13.14.8.23 NMAC - Rp, 13.14.8.26 NMAC, 1/1/2021]

13.14.8.24 ZONING - COMPLETED STRUCTURE ENDORSEMENT, ZONING - LAND UNDER DEVELOPMENT ENDORSEMENT, AND ZONING -COMPLETED STRUCTURE - NO APPLICABLE ZONING ORDINANCES ENDORSEMENT: NM form 65, 65.1 or 65.2 may be attached to a policy upon being furnished with a satisfactory survey.

A. These endorsements shall not be attached to a policy that insures one to four family residential property.

B. The coverage provided by any part of each endorsement may not be increased, but may be deleted.
[13.14.8.24 NMAC - Rp, 13.14.8.27 NMAC, 1/1/2021]

13.14.8.25 ACCESS AND ENTRY ENDORSEMENT: NM form 67 may be attached to a policy upon being furnished a satisfactory survey. A separate endorsement shall be issued for each public street, road or highway for which the insured wants access and entry coverage, and a separate premium shall be paid for each endorsement issued.
[13.14.8.25 NMAC - Rp, 13.14.8.28 NMAC, 1/1/2021]

13.14.8.26 INDIRECT ACCESS AND ENTRY ENDORSEMENT: NM form 68 may be attached to a policy upon being furnished a satisfactory survey. A separate endorsement shall be issued for each public street, road or highway for which the insured wants access and entry coverage, and a separate premium shall be paid for each endorsement issued.
[13.14.8.26 NMAC - Rp, 13.14.8.29 NMAC, 1/1/2021]

13.14.8.27 UTILITY ACCESS ENDORSEMENT: NM form 69 may be attached to a policy upon satisfactory proof that the insured property has access to specified public utilities.
[13.14.8.27 NMAC - Rp, 13.14.8.30 NMAC, 1/1/2021]

13.14.8.28 COMMERCIAL ENVIRONMENTAL PROTECTION LIEN ENDORSEMENT: NM form 70 may be attached to a policy. This endorsement shall not be attached to a policy that insures one to four family residential property.
[13.14.8.28 NMAC - Rp, 13.14.8.31 NMAC, 1/1/2021]

13.14.8.29 REVERSE MORTGAGE ENDORSEMENT: NM form 71 may be attached to a loan policy that insures one to four family residential property.

A. The loan policy issued on a reverse mortgage may be issued in either the total amount of advances or one hundred fifty percent of the total amount of advances as requested by the lender. Schedule B of the loan policy issued on a reverse mortgage shall contain the following special exception: “pending disbursement of the full proceeds of the loan secured by the mortgage or deed of trust set forth under schedule A hereof, this policy insures only to the extent of the amount actually disbursed but increases as each disbursement is made, in good faith, and without knowledge of any defect in or objections to, the title, up to the full amount of the policy.”

B. The two mortgages filed on a HUD HECM reverse mortgage loan may be insured on one loan policy if the priority of the mortgages is disclosed when describing the mortgages being insured in schedule A. The bracketed language in Subsection F of Paragraph 4 of NM form 71 may be deleted from the endorsement with the approval of the title insurer if:

(1) the risk is deemed acceptable; and

(2) standard exception No. 4 from schedule B of the underlying loan policy has been deleted, at no additional premium. Otherwise, the brackets themselves shall be removed and the language of Subsection F of Paragraph 4 of NM form 71 shall be included in the endorsement.

[13.14.8.29 NMAC - Rp, 13.14.8.32 NMAC, 1/1/2021]

13.14.8.30 SINGLE TAX PARCEL ENDORSEMENT: NM form 72 may be attached to a policy. This endorsement shall not be attached to a policy that insures one to four family residential property.

[13.14.8.30 NMAC - Rp, 13.14.8.33 NMAC, 1/1/2021]

13.14.8.31 MULTIPLE TAX PARCEL ENDORSEMENT: NM form 73 may be attached to a policy. This endorsement shall not be attached to a policy that insures one to four family residential property.

[13.14.8.31 NMAC - Rp, 13.14.8.35 NMAC, 1/1/2021]

13.14.8.32 DOING BUSINESS ENDORSEMENT: NM form 74 may be attached to a loan policy. This endorsement shall not be attached to a policy that insures one to four family residential property.

[13.14.8.32 NMAC - Rp, 13.14.8.35 NMAC, 1/1/2021]

13.14.8.33 SUBDIVISION ENDORSEMENT: NM form 75 may be attached to a policy. This endorsement shall not be attached to a policy that insures one to four family residential property.

[13.14.8.33 NMAC - Rp, 13.14.8.36 NMAC, 1/1/2021]

13.14.8.34 EASEMENT - DAMAGE OR ENFORCED REMOVAL ENDORSEMENT: NM form 76 may be attached to a policy. This endorsement shall not be attached to a policy that insures one to four family residential property.

[13.14.8.34 NMAC - Rp, 13.14.8.37 NMAC, 1/1/2021]

13.14.8.35 [RESERVED]

[13.14.8.35 NMAC – N, 9/15/2010; Repealed, 1/1/2021]

13.14.8.36 ENERGY PROJECT ENDORSEMENTS: NM form 88, 88.1, 88.2, 88.3, 88.4, 88.5, 88.6, 88.7, or 88.8 may be attached to a policy, as applicable. These endorsements shall not be attached to a policy that insures one to four family residential property.

[13.14.8.36 NMAC - Rp, 13.14.8.39 NMAC, 1/1/2021]

13.14.8.37 MEZZANINE FINANCING ENDORSEMENT: NM form 89 may be attached to an owner's policy. This endorsement shall not be attached to a policy that insures one to four family residential property.

[13.14.8.37 NMAC - Rp, 13.14.8.40 NMAC, 1/1/2021]

13.14.8.38 [RESERVED]

[13.14.8.38 NMAC – N, 9/15/2010; Repealed, 1/1/2021]

13.14.8.39 [RESERVED]

[13.14.8.39 NMAC - N, 3/1/2016; Repealed, 1/1/2021]

13.14.8.40 [RESERVED]

[13.14.8.40 NMAC - N, 3/1/2016; Repealed, 1/1/2021]

13.14.8.41 [RESERVED]

[13.14.8.41 NMAC - N, 7/1/2018; Repealed, 1/1/2021]]

13.14.8.42 CONDOMINIUM ENDORSEMENTS: NM form 12 and NM form 30 may be attached to a policy, as applicable. Paragraph 3 of NM form 30 may be deleted at the option of the title insurer.
[13.14.8.42 NMAC – N, 1/1/2021]

13.14.8.43 PLANNED UNIT DEVELOPMENT ENDORSEMENTS: NM form 13 and NM form 13.1 may be attached to a policy, as applicable. Paragraph 1 of NM form 13 may be deleted at the option of the title insurer.
[13.14.8.43 NMAC - N, 1/1/2021]

13.14.8.44 [RESERVED]
[13.14.8.44 NMAC - N, 1/1/2021]

13.14.8.45 DOWN DATE ENDORSEMENT TO RESIDENTIAL LIMITED COVERAGE JUNIOR LOAN POLICY JR 1:

- A. NM form 46 may be issued one or more times after issuance of NM form 45.
 - B. NM form 46 may not be issued more than one year after the date of policy stated in NM form 45.
 - C. Upon request of the named insured and the proper recording of all necessary documents meeting the title insurer’s underwriting standards, the amount of the loan secured by the insured’s mortgage insurance previously stated in NM form 45 may be increased by adding a Paragraph D, which shall read as follows: “D. The amount of insurance of the policy is hereby amended to be \$____,” subject to the payment of the applicable premium, for the additional insurance.
- [13.14.8.45 NMAC - N, 1/1/2021]

13.14.8.46 [RESERVED]
[13.14.8.46 NMAC - N, 1/1/2021]

HISTORY OF 13.14.8 NMAC:

Pre-NMAC History.

ID 74-1, Article 10, Chapter 58, Rule 2, Regulations for Filing Title Insurance Forms and Rates filed 3/7/1974.
SCC-85-6, Insurance Department Regulation 30 - Title Insurance, filed 9/6/1985.
SCC-86-1, Insurance Department Regulation 30 - Title Insurance, filed 5/9/1986.

History of Repealed Material. 13.14.8 NMAC, Endorsements, (filed 5/15/2000), was repealed and replaced by 13.14.1 NMAC, Endorsements effective 1/1/2021.

Other History.

Re-promulgated a portion of SCC-86-1, Insurance Department Regulation 30 - Title Insurance (filed 5/9/1986) and renumbered, reformatted and replaced as 13 NMAC 14.8, Endorsements, effective 11/01/1996.

13 NMAC 14.8, Endorsements (filed 10/2/1996), was renumbered reformatted, amended and replaced by 13.14.8 NMAC, Endorsements, effective 5/15/2000, amended effective 7/31/2014.

NMAC Endorsements, effective 7/31/2014, amended effective 3/1/2016.

NMAC Endorsements, effective 3/1/2016, amended effective 7/1/2018.

TITLE 13 INSURANCE
CHAPTER 14 TITLE INSURANCE
PART 18 FORMS

13.14.18.1 ISSUING AGENCY: Office of Superintendent of Insurance (“OSI”).
[13.14.18.1 NMAC – Rp, 13.14.18.1 NMAC, 1/1/2021]

13.14.18.2 SCOPE: This rule applies to all title insurers, title agencies, and title insurance agents conducting title insurance business in New Mexico.
[13.14.18.2 NMAC – Rp, 13.14.18.2 NMAC, 1/1/2021]

13.14.18.3 STATUTORY AUTHORITY: Sections 59A-2-8, 59A-2-9, 59A-30-4, 59A-30-5, 59A-30-6, 59A-30-6.1, 59A-30-6.2 and 59A-30-8 NMSA 1978.
[13.14.18.3 NMAC – Rp, 13.14.18.3 NMAC, 1/1/2021; A, 9/28/2022]

13.14.18.4 DURATION: Permanent.
[13.14.18.4 NMAC – Rp, 13.14.18.4 NMAC, 1/1/2021]

13.14.18.5 EFFECTIVE DATE: January 1, 2021, unless a later date is cited at the end of a section.
[13.14.18.5 NMAC – Rp, 13.14.18.5 NMAC, 1/1/2021]

13.14.18.6 OBJECTIVE: The purpose of this rule is to provide conditions and restrictions regarding the use of promulgated forms.
[13.14.18.6 NMAC – Rp, 13.14.18.6 NMAC, 1/1/2021; A, 9/28/2022]

13.14.18.7 DEFINITIONS: See 13.14.1 NMAC.
[13.14.18.7 NMAC – Rp, 13.14.18.7 NMAC, 1/1/2021]

13.14.18.8 PROMULGATED FORMS: For purposes of Section 59A-30-5 NMSA 1978, the superintendent shall promulgate title insurance forms by order after conducting a hearing pursuant to 13.1.5 NMAC or 13.1.6 NMAC, as the circumstances require. On their own motion, or at the request of an interested person, the superintendent may, at any time, conduct a hearing to consider whether to promulgate a new form, to revoke a previously promulgated form, or to modify a previously promulgated form. The forms compiled and filed with the New Mexico State Rules Center and Archives as the New Mexico Title Insurance Forms shall be the promulgated forms, and those forms are incorporated into this rule by reference. The superintendent shall publish a table of the promulgated title insurance forms with the corresponding rates in a form that is easily accessible by the public on the OSI’s website.

- A.** A title insurer or title insurance agency shall not use any new promulgated form unless:
- (1)** the superintendent promulgates a rate for the form, if the order promulgating the form states that a rate is required to issue the form;
 - (2)** the superintendent has promulgated a rule for the form, if the order promulgating the form states that use of the form is contingent on promulgating a rule; and
 - (3)** the title insurer has provided to its title insurance agencies underwriting guidelines, compliant with these rules, to govern the use of the form.
- B.** A title insurer or title insurance agency shall not use any modified or replacement form unless:
- (1)** the superintendent determines that the existing rate and rule, if applicable, for the form applies to the modified or replacement form, or the superintendent has promulgated a new rate and rule, if applicable, for the modified or replacement form; and
 - (2)** the title insurer has provided to its title insurance agencies underwriting guidelines, compliant with these rules, to govern the use of the form.
 - (3)** A title insurer shall only issue forms that match in all substantive respects the promulgated forms authorized by these rules.

[13.14.18.8 NMAC – Rp, 13.14.18.8 NMAC, 1/1/2021; A, 1/1/24]

13.14.18.9 ALTERATION OF FORMS PROHIBITED; EXCEPTIONS; AND LETTERS OF INTERPRETATION OR WAIVER THAT CHANGE THE TERMS, PROHIBITED:

A. No person, firm or organization may alter or otherwise change any title insurance form promulgated by the superintendent, or use any non-promulgated endorsement, whether by deletion or omission of terms, except:

(1) upon a determination by the superintendent following a hearing pursuant to 13.1.5 or 13.1.6 NMAC, as applicable, that the same be proper; or

(2) in a manner specifically authorized by these regulations.

B. Factual information required to identify and describe the risk being undertaken may be inserted in an authorized form. This includes, but is not limited to, information necessary to identify the insured, the insured's estate or interest of record, the property description, all matters of record affecting the insured's interest which are exceptions to the policy, all matters, facts and circumstances, whether or not shown by the public records, constituting a lien, claim, encumbrance, impairment or limitation upon the estate to be insured, whether arising by operation of law or by reason of no recorded information establishing the insured matters, the amount of liability of the policy and, in case of a commitment, any matter constituting a requirement prior to issuance of a policy, may be inserted in the proper places in the various forms, provided that other information necessary to complete each form is inserted in the form prior to its issuance.

C. Additions to language in the promulgated form, if required to correctly identify and describe the risk being undertaken may be inserted in an authorized form. Any such modification must be approved by:

(1) Legal counsel for the insured; or

(2) An authorized representative of the insured in a transaction that does not involve one to four family residential property.

D. Nothing in this rule shall prevent a title insurer from:

(1) adding blanks, spaces, labels or brief instructions to the promulgated forms; or

(2) from typesetting a promulgated form utilizing type styles, margins or paginations different from the promulgated forms; provided, however, that all language contained in each promulgated form must appear verbatim in each form, and further provided that nothing may be added to a promulgated title insurance form which changes any of the terms of such form except as specifically provided by these rules.

E. Nothing in these rules prohibits use of translated language other than English, provided, however, that any translated form shall contain the following language in bold-face type on the first page of the form in English and in the translated language: "This translation is provided as a convenience only. The English language version of this form shall control and shall be the operative document for all legal purposes."

F. The following language shall be added at the top of schedule A of all commitments and policies in a font not less than the font size of the remaining print of schedule A and be in bold italicized print "Pursuant to the New Mexico title insurance law Section 59A-30-4 NMSA 1978, and title insurance rule 13.14.18.9 NMAC, no part of any title insurance commitment, policy or endorsement form promulgated by the New Mexico superintendent of insurance may be added to, altered, inserted in or typed upon, deleted or otherwise changed from the title insurance form promulgated by the New Mexico superintendent of insurance, nor issued by a person or company not licensed with regard to the business of title insurance by the New Mexico superintendent of insurance, nor issued by a person or company who does not own, operate or control an approved title abstract plant as defined by New Mexico law and regulations for the county wherein the property is located, except as authorized by law."

G. No title insurer or title insurance agency shall issue, publish or circulate a letter, memorandum or other writing which directly or indirectly modifies or waives the terms or any part of the terms of any promulgated form, nor shall any such person agree to directly or indirectly do or not do anything, the effect of which is or would be to offer insurance coverages other than those in the promulgated title insurance forms, whether the same be more, less, substitute, alternative, negative or affirmative coverages or risks, except as specifically authorized by these rules.

[13.14.18.9 NMAC – Rp, 13.14.18.9 NMAC, 1/1/2021; A, 1/1/24]

13.14.18.10 ADDITIONAL AFFIRMATIVE COVERAGES: In a commitment issued for a loan policy, but not with respect to any other type of commitment or policy:

A. The following language may be added to each covenant, deed, or other recorded restriction exception: "Violations of this restriction (or these restrictions), if any, and any future violation thereof shall not cause a forfeiture or reversion of title and will not affect the validity or priority of the lien of the mortgage herein

insured. This assurance does not extend to restriction(s) relating to environmental protection unless a notice of a violation thereof has been recorded or filed in the public records and is not referenced in Schedule B. However, this policy insures that any violation of this restriction (or these restrictions) relating to environmental protection shall not cause a forfeiture or reversion of title and will not affect the validity or priority of the lien of the mortgage insured herein.”

B. When protrusions, encroachments or overlaps into or upon easements, rights-of-way, adjacent property, the property to be insured, or building set-back lines (as described in restrictive covenants or plats filed of record) are revealed by a survey, the following paragraph may be added as a separate specific exception: “Encroachment (protrusion or overlap) of the improvements over (on, onto, in, into or upon) the (here describe the easement, right-of-way, adjacent property, the land to be insured, or building set-back line) as shown on a survey prepared by _____ dated _____. This policy insures against loss or damage as defined in this policy by reason of the entry of any final decree entered in a court of competent jurisdiction and of last resort ordering the removal of said improvements presently situate on the land which constitute the (protrusion, overlap or encroachment).” This affirmative coverage language may also be inserted into the NM form 61. [13.14.18.10 NMAC – Rp, 13.14.18.10 NMAC, 1/1/2021]

13.14.18.11 PRINTING OF FORMS: Each title insurance form shall contain the headings and form designations included on the promulgated form. [13.14.18.11 NMAC – Rp, 13.14.18.12 NMAC, 1/1/2021]

13.14.18.12 [RESERVED]
[13.14.18.12 NMAC – Rp, 13.14.18.12 NMAC, 3/1/2016; Repealed 1/1/2021]

13.14.18.13 [RESERVED]
[13.14.18.13 NMAC - Rp, 13.14.18.13 NMAC, 3/1/2016; A, 7/1/2018; Repealed 1/1/2021]

HISTORY OF 13.14.18 NMAC:

Pre-NMAC History.

ID 74-1, Article 10, Chapter 58, Rule 2, Regulations for Filing Title Insurance Forms and Rates, filed 3/7/1974.
SCC-85-6, Insurance Department Regulation 30 - Title Insurance, filed 9/6/1985.
SCC-86-1, Insurance Department Regulation 30 - Title Insurance, filed 5/9/1986.

History of Repealed Material.

13.14.18 NMAC, Forms, filed 5/9/1986 - Repealed effective 3/1/2016 and replaced with 13.14.18 NMAC, Forms, effective 3/1/2016.

Other History.

Re-promulgated portions of SCC-86-1, Insurance Department Regulation 30 - Title Insurance (filed 5/9/1986), was renumbered, reformatted, amended and replaced as 13 NMAC 14.2, Forms Provisions; 13 NMAC 14.2.A, Miscellaneous Forms; 13 NMAC 14.6.A, NM Form 1, Owner’s Policy; 13 NMAC 14.6.B, NM Form 4, Leasehold Owner’s Policy; 13 NMAC 14.6.C, NM Form 7, US Policy, ALTA 1963; 13 NMAC 14.6.D, NM Form 34, US Policy, ALTA 1991; 13 NMAC 14.7.A, NM Form 2, Loan Policy; 13 NMAC 14.7.B, NM Form 3, Construction Loan Policy; 13 NMAC 14.7.C, NM Form 5, Leasehold Loan Policy; 13 NMAC 14.7.D, NM Form 36, Limited Title Search Policy; 13 NMAC 14.7.E, NM Form 41, Foreclosure Guarantee Policy; 13 NMAC 14.7.F, NM Form 45, Residential Limited Coverage Junior Loan Policy; 13 NMAC 14.8.A, Endorsement Forms; effective 11/01/1996. 13 NMAC 14.2, Forms Provisions (filed 10/2/1996); 13 NMAC 14.2.A, Miscellaneous Forms (filed 10/2/1996); 13 NMAC 14.6.A, NM Form 1, Owner’s Policy (filed 10/2/1996); 13 NMAC 14.6.B, NM Form 4, Leasehold Owner’s Policy (filed 10/2/1996); 13 NMAC 14.6.C, NM Form 7, US Policy, ALTA 1963 (filed 10/2/1996); 13 NMAC 14.6.D, NM Form 34, US Policy, ALTA 1991 (filed 10/2/1996); 13 NMAC 14.7.A, NM Form 2, Loan Policy (filed 10/2/1996); 13 NMAC 14.7.B, NM Form 3, Construction Loan Policy (filed 10/2/1996); 13 NMAC 14.7.C, NM Form 5, Leasehold Loan Policy (filed 10/2/1996); 13 NMAC 14.7.D, NM Form 36, Limited Title Search Policy (filed 10/2/1996); 13 NMAC 14.7.E, NM Form 41, Foreclosure Guarantee Policy (filed 10/2/1996); 13 NMAC 14.7.F, NM Form 45, Residential Limited Coverage Junior Loan Policy (filed 10/2/1996); and 13 NMAC 14.8.A, Endorsement Forms (filed 10/2/1996) were all renumbered, reformatted, amended and replaced by 13.14.18 NMAC, Forms, effective 5/15/2000, amended effective 7/31/2014. 13.14.18 NMAC, Forms, filed 3/1/2016, was repealed and replaced by 13.14.18 NMAC, Forms, effective 1/1/2021.

BEFORE THE NEW MEXICO SUPERINTENDENT OF INSURANCE

IN THE MATTER OF AMENDMENTS TO)	
THE NEW MEXICO TITLE INSURANCE RULES,)	
TITLE 13, CHAPTER 14 NMAC TO ADOPT)	Docket No. 2023-0028
MODERN TITLE INSURANCE FORMS)	
<hr/>)	

HEARING OFFICER’S FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

THIS MATTER comes before the New Mexico Office of Superintendent of Insurance (“OSI”) following a public hearing for comment pursuant to the Notice of Proposed Rulemaking (“NOPR”) filed in this docket on June 9, 2023 and published as required by law in the New Mexico Register on June 27, 2023 and in the *Albuquerque Journal* and in the *Santa Fe New Mexican* on June 27, 2023 and distributed via OSI’s Newsletter to a list of potentially interested parties.

The Hearing Officer, having reviewed the NOPR and the proposed rule, having conducted a public hearing, having reviewed the written comments submitted to the docket, and being otherwise fully informed in the premises, makes the following findings, conclusions, and recommendations:

FINDINGS:

Procedural Matters: Notice

1. The New Mexico Superintendent of Insurance (“the Superintendent”) has jurisdiction over the subject matter and the parties pursuant to the New Mexico Insurance Code, Chapter 59A NMSA 1978.
2. OSI issued a NOPR on June 9, 2023 and published the NOPR in the New Mexico Register on June 27, 2023 and in the *Albuquerque Journal* and in the *Santa Fe New Mexican* on June 27, 2023, and OSI distributed the NOPR via OSI’s Newsletter to a list of potentially interested persons.

3. The NOPR gave notice of a public hearing, scheduled for July 27, 2023, to accept oral comments on proposed amendments to Title 13, Chapter 14 NMAC, the Title Insurance Rules and proposed amendments to title insurance forms promulgated by the Superintendent.

4. OSI filed a copy of the proposed amended rule and proposed amended title insurance forms to this docket on June 9, 2023.

5. The NOPR informed interested persons and the public of the process by which the Hearing Officer would conduct the hearing and how interested persons and the public could make comments on the proposed amendments and have the comments considered.

6. The NOPR further advised that a copy of the text of the proposed amended rule and proposed amended title insurance forms was available on the OSI website or the New Mexico Sunshine portal, or by requesting a copy from OSI.

7. In the NOPR, the Superintendent designated R. Alfred Walker as the Hearing Officer to preside over this matter.

8. The purpose of the proposed amendments is to promulgate forms and endorsements in accordance with the New Mexico Title Insurance Law, NMSA 1978, Chapter 59A, Article 30.

9. Statutory authority for the proposed amendments is found at NMSA 1978, Section 59A-30-5 (1985).

Procedural Matters: Comment

10. The comment period began with the publication of the NOPR on June 27, 2023 and concluded at 4:00 p.m. on July 27, 2023.

11. On July 21, 2023, Margaret Caffey-Moquin, OSI Chief Staff Counsel, filed Staff's Initial Comments.

12. On July 26, 2023, the New Mexico Land Title Association (“NMLTA”) filed Comments of the New Mexico Land Title Association in Response to OSI’s Request for Comments (“NMLTA Initial Comments”).

13. On July 27, 2023, OSI conducted the public hearing.

14. Orlando Lucero on behalf of NMLTA, Dale Rycraft on behalf of First American Title Company, Christopher Cullen on behalf of WFG National Title Insurance Company, Timothy Vigil on behalf of the OSI Title Bureau, and Ms. Caffey-Moquin made oral comments at the public hearing.

15. Written comments on the proposed amendments were timely submitted to OSI by Title Bureau Staff and NMLTA.

16. NMLTA and Title Bureau Staff timely submitted response comments.

17. All comments, oral and written, have been made part of the record.

18. OSI has adopted rules for rulemaking, which are applicable to this proceeding, and which state:

The superintendent may adopt, amend, or reject the proposed rule. Any amendments to the proposed rule must fall within the scope of the current rulemaking proceeding. Amendments to a proposed rule are within the scope of the rulemaking if the amendments:

- (1) are a logical outgrowth of the rule proposed in the notice; or
- (2) are proposed, or are reasonably suggested, by comments made during the comment period, and the 10 day response period after the close of the comment period has been provided; and
 - (a) any person affected by the adoption of the rule, if amended, should have reasonably expected that any change from the published proposed rule would affect that person's interest; or
 - (b) the subject matter of the amended rule or the issues determined by that rule are the same as those in the published proposed rule.

13.1.4.13(C) NMAC. The “10 day response period after the close of the comment period” is ten calendar days. 13.1.4.11(B) NMAC.

19. 13.1.4.13(C) NMAC contemplates that OSI may amend a proposed rule if the amendment is a “logical outgrowth” of the proposed rule *or* the amendment is proposed during the comment period, with ten calendar days to respond to the proposed amendment.

20. The NOPR informed interested persons and the public that the comment period ended at 4:00 p.m. on July 27, 2023 and that the response comment period ended at 4:00 p.m. on August 7, 2023. Thus, the “10 day response period after the close of the comment period” was provided.

21. Although there appears to be no New Mexico case law addressing the issue, federal courts have recognized that administrative agencies may make changes in the proposed rule after the comment period without a new round of hearings, as long as the final rule is a “logical outgrowth” of the proposed rule. *Market Synergy Group, Inc. v. U.S. Dep’t of Labor*, 885 F.3d 676, 681 (10th Cir. 2018); *Zen Magnets, LLC v. Consumer Prod. Safety Comm’n*, 841 F.3d, 1141, 1154 (10th Cir. 2016); *see also Long Island Care at Home v. Coke*, 551 U.S. 158, 174 (2007) (“the final rule the agency adopts must be a logical outgrowth of the rule proposed.” (internal quotation marks omitted)). “A final rule qualifies as a logical outgrowth if interested parties should have anticipated that the change was possible, and thus reasonably should have filed their comments on the subject during the notice-and-comment period.” *Market Synergy* at 681 (internal quotation marks omitted); *Zen Magnets* at 1154.

General Comments

22. Ms. Caffey-Moquin stated in Staff’s Initial Comments that the proposed amendments to Parts 1, 8, and 18 of the Title Insurance Rules consist of minor changes made to accommodate the adoption of new title insurance forms and endorsements.

23. Ms. Caffey-Moquin stated that the new title insurance forms are based on forms published by the American Land Title Association (“ALTA”), a national trade association.

24. Ms. Caffey-Moquin also proposed a major substantive change to the proposed and existing title insurance forms and endorsements by removing arbitration terms.

25. Ms. Caffey Moquin pointed out that title insurance in New Mexico is governed by the New Mexico Title Insurance Law and is a form of indemnity insurance that protects against the risk of defective title to real property. However, a title insurance policy does not constitute a guarantee or warranty of title but rather transfers risk from the policyholder to the insurer.

26. Ms. Caffey-Moquin stated that Staff’s recommendations for adoption of, and changes to, the 2021 ALTA forms are based on the values of both financial stability of title insurers and the benefit of their insureds.

27. Ms. Caffey-Moquin took the position that the title insurance forms should be incorporated into the rules promulgated by OSI so they are easily accessible.

28. Ms. Caffey-Moquin reported that OSI Title Bureau Staff revised the 2021 ALTA forms proposed for this rulemaking and refer to the revised forms as the “Modern Title Forms.”

29. In the NMLTA Initial Comments, NMLTA stated that it is an industry association with a statewide membership of title insurance underwriters, title insurance agents, affiliates, and direct operations, with the objective to advance the development of title plants, maintain ethical standards, and advocate for its members.

Effective Date of Amended Rule and Forms

30. In NMLTA’s Initial Comments, NMLTA requested that the effective date of the proposed rule amendments be changed from September 28, 2023 to January 1, 2024. In its Response Comments, Staff stated that it no objection to the request.

Hearing Officer’s Findings, Conclusions, and Recommendations

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31. The Hearing Officer finds that it is reasonable to make the effective date of the amended rule and forms January 1, 2024, in order to prepare for the changes. NMLTA proposed changing the effective date to January 1, 2024 during the comment period and the ten-day response period was provided. The Hearing Officer finds that the subject matter of the amended rule or the issues determined by that rule are the same as those in the published proposed rule. NMLTA's proposed change may be adopted. Therefore, the Hearing Officer recommends changing the effective date of the amended rule and forms to January 1, 2024.

Use and Reference to ALTA Forms

32. In Staff's Initial Comments, Staff reported that ALTA has given OSI written permission to use and adapt the 2021 ALTA forms.

33. In NMLTA's Initial Comments, NMLTA requested that the Modern Title Forms refer to the ALTA form numbers on which the Modern Title Forms are based, even if the corresponding ALTA form has been significantly modified. NMLTA supported its request on the basis that: a) the ALTA form references have been part of the New Mexico promulgated forms since New Mexico has promulgated forms, making it easier for insurers, consumers, and others to confirm the corresponding ALTA information; b) it is easier to explain to lenders and purchasers who frequently operate in numerous states how the New Mexico forms relate to the corresponding ALTA forms; and c) the information will assist ALTA in evaluating and revising its forms for the benefit of insurers and their customers.

34. In its Initial Comments, NMLTA proposed that, to clarify that the Modern Title Forms are not identical to ALTA forms, the footer in each New Mexico form should include: "Modeled on ALTA [form number], effective [date of particular ALTA form version]."

35. In Staff's Response Comments, Staff agreed with NMLTA's recommendation that the Modern Title Forms refer to any corresponding ALTA form. Staff proposed that the language of the footer state: "Modeled on, but not necessarily identical to, ALTA Form [number]."

36. In its Response Comments, Staff recommended that its proposed language be placed in the footer of each form and blended with the "used by permission" language Staff previously proposed. The problem is that Staff did not previously propose "used by permission" or "used with permission" language in the filed proposed rules and forms or in Staff's Initial Comments.

37. Staff attached as Exhibit D to Staff's Initial Comments a letter signed by Steven Gold, Staff Liaison to the ALTA Forms Committee, which stated that ALTA is not expecting OSI to maintain the copyright notice found at the bottom of the ALTA forms. Rather, Mr. Gold requested that OSI place the following text on OSI's website where the Modern Title Forms will be accessed: "Certain of the policy forms promulgated by the New Mexico Office of Superintendent of Insurance are based on the copyrighted forms of the American Land Title Association, and are used with permission." The Hearing Officer recommends that this statement appear on the OSI website in an appropriate place and that a "used by permission" notice not appear on the New Mexico promulgated forms.

38. The Hearing Officer finds that the Modern Title Forms should refer to the ALTA form numbers on which the Modern Title Forms are based, even if the corresponding ALTA form has been significantly modified.

39. The Hearing Officer further finds that NMLTA's proposed language is appropriate to use. NMLTA proposed this language during the comment period and the ten-day response period was provided. The Hearing Officer finds that the subject matter of the amended rule or the issues

determined by that rule are the same as those in the published proposed rule. NMLTA's proposed change may be adopted.

40. The Hearing Officer also finds that Staff's proposed language is appropriate to use. Staff's proposed language meets the "logical outgrowth" test because interested parties should have anticipated that the change was possible and because the change is based on comments received during the comment period. Staff's proposed change may also be adopted.

41. The Hearing Officer additionally finds that the NMLTA language has the advantage of specificity, and the Staff language has the advantage of cautioning those using the forms. The Hearing Officer therefore recommends combining and editing the language to place in the footer of each form to state: "Modeled on, but not necessarily identical to, ALTA Form [number] effective [year of particular ALTA form version]." This proposed language meets the "logical outgrowth" test because interested parties should have anticipated that the change was possible and because the change is based on comments received during the comment period.

Arbitration Requirements

42. In its Initial Comments, OSI Title Bureau Staff recommended that the mandatory arbitration clause in the 2021 ALTA Forms be removed in the New Mexico revision, because the mandatory arbitration clause violates New Mexico law. Staff also recommended that the optional arbitration clause now appearing in New Mexico forms and in the 2021 ALTA Forms for claims of \$2,000,000 or above be removed in the revised New Mexico forms.

43. The proposed forms filed to the docket for this rulemaking do not contain any arbitration clause, consistent with Staff's recommendation. However, the proposed amended rule filed to the docket, specifically unamended 13.14.18.9(G) NMAC, continues to allow the optional arbitration clause, which is inconsistent with Staff's position. In addition, Title 13, Chapter 14, Part 5,

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specifically 13.14.5.10(F) NMAC, which was not originally proposed to be amended, also allows the optional arbitration clause.

44. In Staff's Initial Comments, Staff stated that it "overlooked" changes that should have been made in other existing rules to make those rules consistent with the removal of arbitration clauses from the New Mexico Modern Forms.

45. Staff recommended removal of 13.14.5.10(F) NMAC in its entirety as a "logical outgrowth" of the proposed forms, because the Modern Forms will contain no arbitration clause of any nature, and 13.14.5.10(F) NMAC permits an optional arbitration clause, in conflict with the proposed new forms.

46. Staff further recommended removal of the language following the semi-colon in the first sentence of 13.14.5.18(G) NMAC to the end of that section, for the same reasons as removing 13.14.5.10(F) NMAC.

47. In NMLTA's Response Comments, NMLTA concurred with OSI's proposal on removing arbitration clauses from the Modern Title Forms.

48. The Hearing Officer finds that mandatory arbitration clauses are contrary to New Mexico law and should not be included in the Modern Title Forms. The Hearing Officer further finds that there is no objection to Staff's proposal to remove the optional arbitration clause, and that clause should also not be included in the Modern Title Forms. Thus, the Hearing Officer recommends that the Modern Title Forms should be adopted without arbitration clauses as proposed.

49. The Hearing Officer additionally finds and recommends that the references to arbitration clauses in 13.14.5.10(F) NMAC, 13.14.5.18(G) NMAC, and 13.14.18.9(G) NMAC should be removed from the rule. These amendments meet the "logical outgrowth" test because interested

parties should have anticipated that the changes were possible and because the changes are based on comments received during the comment period.

Class Action Prohibition

50. In its Initial Comments, OSI Title Bureau Staff noted that the New Mexico Arbitration Act declares that arbitration clauses that require consumers to decline participation in class actions are unenforceable and void. Because the 2021 ALTA Forms contain a class action prohibition in their arbitration clauses, Staff recommended that such language be omitted from the New Mexico forms.

51. In NMLTA's Response Comments, NMLTA concurred with OSI's proposal on not including class action prohibitions in the Modern Title Forms.

52. The Hearing Officer finds that arbitration clauses that require consumers to decline participation in class actions are contrary to New Mexico law and should not be included in the Modern Title Forms. The Hearing Officer further finds that there is no objection to Staff's proposal that arbitration clauses that require consumers to decline participation in class actions not be included in the Modern Title Forms. Thus, the Hearing Officer recommends that the Modern Title Forms should be adopted without arbitration clauses that require consumers to decline participation in class actions.

Conditions Related to Negligence or Negligent Misrepresentation

53. In its Initial Comments, OSI Title Bureau Staff quoted NMSA 1978, Section 59A-30-11(A): "The New Mexico Title Insurance Law is not intended and should not be construed to create any duty to search and examine that runs to the benefit of, or to create any right or cause of action in favor of, any person other than a title insurer." Staff also cited *Barrington Reins. Ltd. v. Fidelity Nat'l Title Ins. Co.*, 2007-NMCA-147, 143 N.M. 31, 172 P.3d 168, for the proposition

that a claim against a title insurer is not barred where it is based on a duty other than the duty to use reasonable care in conducting a title search.

54. Without quoting the language it was addressing, Staff asserted: “The 2021 ALTA verbiage *could* conflict with statutory language and interpreting case law and therefore should not be included in the New Mexico forms.” (Emphasis added.)

55. The language that Staff appeared to address is found at the end of language added by ALTA to Condition 8 of the 2021 ALTA Form. The language states: “The Company is not liable for any claim alleging negligence or negligent misrepresentation arising from or in connection with this policy or the determination of the insurability of the Title.”

56. In NMLTA’s Initial Comments, NMLTA objected to the omission of the ALTA Form language in Condition 8 and in NM Form 60 and NM Form 60.1. NMLTA stated that the language is consistent with New Mexico title insurance law, should be retained as a clarifying statement of existing law, and its omission could be erroneously construed as support for a change in existing law. In NMLTA’s Response Comments, NMLTA stated that the omitted language “accurately reflects New Mexico law and removing the language does not serve any useful purpose, and rather may introduce ambiguity into what is a clear legal standard in New Mexico.”

57. In Staff’s Response Comments, Staff disagreed with NMLTA’s statement that the omitted language is consistent with New Mexico title insurance law, and Staff argued that including the language would impermissibly limit the duty described in statute, would be contrary to the holding of *Barrington Reins.*, 2007-NMCA-147, and would create a conflict between the form and the statute.

58. The Hearing Officer finds that the language in dispute is an incorrect statement of New Mexico law and therefore recommends that this language should be omitted from the Modern Title

Forms. There is no question that “an insurer or its agent who issues a title insurance policy owes no duty of reasonable care in conducting a title search and examination to anyone but a title insurer.” *Barrington Reins.*, 2007-NMCA-147, ¶ 11. However, under the facts of *Barrington Reins.*, Section 59A-30-11(A) did not bar a claim against the title insurer for negligent misrepresentation. 2007-NMCA-147, ¶ 17. The Legislature has circumscribed the duty of title insurers, the courts will apply the statute to any factual circumstances that come before the courts, and OSI should not attempt to either expand or limit that application.

Shortages in Area of Land

59. Without quoting the language of the exclusion, in its Initial Comments, OSI Title Bureau Staff asserted that adopting a new exclusion for shortages in area of land as contemplated by the 2021 ALTA forms would create unnecessary contradictions with the existing insurance rules addressing the issue, 13.14.5.10 NMAC and 13.14.5.12 NMAC.

60. The language that Staff appeared to address is the 2021 ALTA exclusion for: “Any discrepancy in the quantity of the area square footage of the Land or any improvement to the Land.”

61. In its proposed amended NM Form 1 and NM Form 2, Staff proposed to add an exclusion that does not appear in the current NM Form 1 or current NM Form 2, to state: “Any discrepancy in the quantity of area, [sic] square footage of any improvement to the Land.”

62. 13.14.5.10(A)(3) NMAC requires Schedule B to contain the following exception: “Encroachments, overlaps, conflicts in boundary lines, shortages in area, or other matter which would be disclosed by an accurate survey and inspection of the premises.”

63. 13.14.5.12(C) NMAC allows, under limited circumstances, the exception to be eliminated or to simply state, “shortages in area.”

64. In NMLTA's Response comments, NMLTA disagreed with Staff's position that there would be a conflict between the rule and the forms if the 2021 ALTA exclusion were used.

65. NMLTA stated that it proposed promulgating a rule that would conform to the 2021 ALTA exclusion.

66. If NMLTA proposed promulgating a rule that would conform to the 2021 ALTA exclusion, NMLTA's proposal does not appear in the record for this docket. In fact, in its Initial Comments, NMLTA included the current language of 13.14.5.10(A)(3) NMAC in its "red-line" proposed changes to the rule, without any proposed changes whatsoever to that language. In its Response Comments, NMLTA stated that 13.14.5.12(C) NMAC should be amended, but NMLTA did not propose specific language for such an amendment.

67. The Hearing Officer finds that there is no proposal in this rulemaking to amend 13.14.5.10(A)(3) NMAC. Further, the Hearing Officer cannot recommend amending 13.14.5.12(C) NMAC without a party proposing a specific amendment.

68. The Hearing Officer finds that the only potential conflict between the language of 13.14.5.10(A)(3) NMAC and the language of the 2021 ALTA forms is that 13.14.5.10(A)(3) NMAC only excepts shortages in area of land that would be disclosed by an accurate survey and inspection of the premises.

69. The Hearing Officer therefore recommends that the language of the 2021 ALTA forms be used in NM Form 1 and NM Form 2 and be amended by adding the provision that the shortages would be disclosed by an accurate survey and inspection. This amendment to the proposed forms meets the "logical outgrowth" test because interested parties should have anticipated that the change was possible and because the change is based on comments received during the comment period. The Hearing Officer recommends that this exclusion appear in NM Form 1 and NM Form

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2: “Any discrepancy in the quantity of the area square footage of the Land or any improvement to the Land which would be disclosed by an accurate survey and inspection of the Land or any improvement to the Land.”

PACA-PSA Trusts

70. In Staff’s Initial Comments, Staff extensively described and discussed trusts imposed under the Perishable Agricultural Commodities Act of 1930 (“PACA”) and the Packers and Stockyards Act of 1921 (“PSA”). Staff noted that courts in New York have extended PACA-PSA trusts to real estate, creating an unrecorded lien superior to recorded interests in property. Staff pointed out that there is contrary authority in other states and stated that general trust principles “would not necessarily create a lien on real estate.” “That tends to give at least some comfort that a ‘super-lien’ on real estate of the type feared by ALTA and the lending industry would be unlikely to survive judicial review in [New Mexico].”

71. Despite Staff stating “that the state of the law on real estate as part of PACA-PSA trusts remains obscure at this time[,]” and that later legislative clarity may require additional expensive and time-consuming rulemaking for OSI, Staff recommended that title insurers include a specific PACA-PSA trust exception in a policy where applicable and that the ALTA PACA-PSA exception be omitted from the New Mexico Modern Title Forms, as Staff has proposed.

72. In his oral comments at the public hearing, Mr. Rycraft requested that the 2021 ALTA PACA-PSA exception be included in the Modern Title Forms, because a PACA-PSA trust is “a silent lien, one that we cannot detect or determine by diligent search of any records because they are not recorded.” Mr. Rycraft reported that “it’s out there and we see it from time to time. We have been taking a specific exemption for PACA-PSA risk when we identify it, but because it’s a silent lien that’s not out there that we can find, we may not always catch it.” Mr. Rycraft went on

to state that keeping the 2021 ALTA PACA-PSA exception would create no risk to the average consumer, because it would only apply in the context of agricultural products.

73. In Staff's Response Comments, Staff stated that a blanket PACA-PSA exclusion would unfairly shift the burden of risk to consumers and that title insurers are in a much better position to research the matter than any ordinary consumer could possibly be.

74. In its Response Comments, Staff also pointed out that Mr. Rycraft did not state at the public hearing under what circumstances he discovered PACA-PSA issues, how they were dealt with, whether they arose in New Mexico, and whether there were any adverse results in those circumstances.

75. Staff relied on NMSA 1978, Section 14-9-3 (1990) and Section 14-9-9 (1923) in its Response Comments to note that unrecorded property liens do not affect title to real estate.

76. Staff further asserted in its Response Comments that when a PACA-PSA trust lien arises in connection with a New Mexico real estate transaction, the underwriter can decide whether to issue the policy and can tailor the policy to address the situation by using an exception specific to the property in question rather than relying on a blanket exclusion.

77. In NMLTA's Response Comments, NMLTA asserted that Staff's conclusion that the PACA-PSA trust lien "would be unlikely to survive judicial review in this state" is "mere speculation" because the question has not been addressed in New Mexico.

78. In its Response Comments, NMLTA engaged in extensive legal counterarguments to Staff's extensive legal arguments in Staff's Initial Comments. Having reviewed some of the authorities cited by Staff and by NMLTA, the Hearing Officer can confidently conclude that "that the state of the law on real estate as part of PACA-PSA trusts remains obscure at this time[.]" not just in New Mexico but throughout the United States. The uncertainty in the state of the law, and

therefore the uncertainty of the risk of a PACA-PSA trust under a title insurance policy, argues in favor of keeping the 2021 ALTA exclusion rather than removing it.

79. Staff's assertion that a title insurer is more capable of discovering the existence of an unrecorded lien statutorily created by an unwritten constructive trust may theoretically be true. But there may be nothing about the nature of the property being insured that would flag the danger of an agricultural trust. For example, in *Mid-Valley Produce Corp. v. 4-XXX Produce Corp.*, 833 F.Supp. 193 (E.D.N.Y. 1993), a PACA constructive trust was imposed on the wife's house where the husband's corporation provided PACA trust funds to the wife without her knowledge for the purpose of making some of the mortgage payments. Setting aside the question whether a New Mexico state or federal court would impose the same constructive trust, Staff have not explained how a title insurer would research whether any mortgage (or home improvement?) payments on a residence could be traced to PACA-PSA trust funds.

80. The danger to the title insurer is not that there is a risk it needs to insure against or exclude from the policy. The danger is that the insurer does not know whether the risk exists, the extent of the risk, and where to look for the risk. The insurer cannot insert a specific exclusion against a risk unless the insurer knows specifically what the risk is. The title insurers seek to keep an exclusion found in the 2021 ALTA forms, which NMTLA states every other state adopting those forms has kept, in order to exclude a risk the insurers cannot be sure they could discover if the risk existed.

81. Staff has also not explained how a New Mexico law protecting title from unrecorded liens would operate to block a constructive trust created by a Federal statute. Again, the uncertainty in the law counsels in favor of the exclusion.

82. The Hearing Officer finds that the PACA-PSA exclusion of the 2021 ALTA forms should be included in the Modern Title Forms. This would require adopting the ALTA language defining

“Enforcement Notice” and defining “PACA-PSA Trust.” The Hearing Officer notes that the ALTA language requires coverage if the PACA-PSA trust appears in the Public Records, but excludes the PACA-PSA Trust if it does not.

83. Mr. Rycraft’s suggested change was made during the comment period and the ten-day response period was provided. The Hearing Officer finds that the subject matter of the amended rule or the issues determined by that rule are the same as those in the published proposed rule. The proposed change may be adopted, and the Hearing Officer recommends that it be adopted.

Standard Exceptions to Leases and Easements

84. In Staff’s Initial Comments, Staff recommended that ALTA’s standard exception to leases and easements be omitted from the Modern Title Forms because any exception should be closely tailored to the provisions of the particular leases or easements belonging to the insured property; otherwise there would be a high risk of confusion between the general terms of the policy and its particularized lease or easement provisions.

85. In NMTLA’s Initial Comments, NMLTA requested that OSI keep the exception for “terms and conditions of any lease or easement identified in Schedule A.” NMLTA stated that this language confirms the industry practice of including a specific Schedule B exception for the terms and conditions of an instrument creating an insured leasehold or easement estate and eliminates the need to include a specific exception for each insured leasehold or easement.

86. In Staff’s Response Comments, Staff reiterated its proposed removal of general exceptions related to leaseholds and easements due to the danger of consumer confusion. Staff stated that any objection to a leasehold or easement can be added by the agent as a specific exception on a case-by-case basis.

87. The Hearing Officer admits to some confusion concerning this dispute between Staff and NMLTA. In the Proposed Rule with accompanying forms filed to this docket on June 9, 2023, the exception which is the bone of contention is found in the Schedule B proposed by OSI to be adopted. That exception, on the forty-third page of the filing, states: “The Policy will not insure against loss or damage resulting from the terms and conditions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:” This language is taken directly from American Land Title Association Commitment for Title Insurance [2021 v. 01.00 (07-01-2021)], undesignated page 7, <https://www.alta.org/policy-forms/download.cfm?formID=531&type=word> (last visited August 17, 2023). It is unclear to the Hearing Officer why Staff is arguing for the omission of language Staff included in the proposed forms and why NMLTA is arguing for the inclusion of language that is included in the proposed forms.

88. The Hearing Officer finds and recommends that the language regarding leases and easements that appears in the proposed Modern Title Forms and that is identical to the language of the 2021 ALTA forms should remain. The Hearing Officer further finds that the language is neither too broad nor too narrow for the concerns expressed by both Staff and NMLTA.

Water Rights

89. In Staff’s Initial Comments, Staff recommended keeping the exception for water rights found in current New Mexico title forms but omitted from the 2021 ALTA forms, because of the unique difficulty of determining water rights in New Mexico.

90. No person responded to Staff’s recommendation to keep the exception for: “Water rights, claims or title to water.”

91. The Hearing Officer finds and recommends that the exception for water rights, claims or title to water should remain in the Modern Title Forms.

Form Definition of Public Records

92. In NMLTA's Initial Comments, NMLTA objected to the omission in the proposed Modern Title Forms of the last sentence of the definition of "Public Records" found in the 2021 ALTA forms. That sentence states: "The term 'Public Records' does not include any other recording or filing system, including any pertaining to environmental remediation or protection, planning, permitting, zoning, licensing, building, health, public safety, or national security matters." <https://www.virtualunderwriter.com/en/forms/2021-7/alta-owner-s-policy-of-title-insurance--7-1-21-.html> (last visited August 18, 2023).

93. In its Initial Comments, NMLTA alternatively proposed that the definition of Public Records be changed to: "The recording or filing system established under Section 14-9-1 NMSA 1978, as amended to the Date of Policy, under which a document must be recorded or filed to impart constructive notice of matters relating to the Title to a purchaser for value without Knowledge."

94. NMLTA stated that this proposed alternative language would set out the New Mexico statute that requires recording to provide constructive notice. NMLTA also pointed out that existing New Mexico law does not require that a title plant contain more than indexing of the records filed pursuant to Section 14-9-1.

95. In Staff's Response Comments, Staff agreed with NMLTA's alternative proposal.

96. NMLTA proposed the alternative language during the comment period and the ten-day response period was provided. The Hearing Officer finds that the subject matter of the amended rule or the issues determined by that rule are the same as those in the published proposed rule.

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NMLTA's proposed change may be adopted, and the Hearing Officer finds that it should be adopted. The Hearing Officer therefore recommends that the Modern Title Forms define "Public Records" as: "The recording or filing system established under Section 14-9-1 NMSA 1978, as amended to the Date of Policy, under which a document must be recorded or filed to impart constructive notice of matters relating to the Title to a purchaser for value without Knowledge."

Proposed Amendments to 13.14.1.7 NMAC (Definitions)

97. The proposed amended rule filed to the docket on June 9, 2023 added two new definitions. In Staff's Initial Comments, Staff explained that adding a definition of "HECM" as re-lettered 13.14.1.7(O) and a definition of "HUD" as re-lettered 13.14.1.7(P), and re-lettering the remaining definitions accordingly, is to provide definitions missing from the existing rules.

98. No person responded to Staff's proposed new definitions. Staff's definitions may be adopted, and the Hearing Officer finds that they should be adopted. The Hearing Officer therefore recommends that the rule add a definition of "HECM" as re-lettered 13.14.1.7(O) and a definition of "HUD" as re-lettered 13.14.1.7(P), and that the remaining definitions be re-lettered accordingly.

99. In NMLTA's Initial Comments, NMLTA provided a red-lined rule proposing to remove the definition of "ALTA" found in 13.14.1.7 NMAC. However, NMLTA did not explain its reason for this proposal. The Hearing Officer has no basis to recommend removal of the definition of "ALTA" and therefore recommends against its removal.

Proposed Amendment to 13.14.8.3 NMAC (Statutory Authority)

100. The red-line version of the rule amendments filed to the docket on June 9, 2023 proposed to add Section 59A-30-5 to the statutory authority listed in 13.14.8.2 NMAC. There is no response to this proposal. The Hearing Officer finds that the amendment is appropriate and recommends its adoption.

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Proposed Amendment to 13.14.8.5 NMAC (Effective Date)

101. The red-line version of the rule amendments filed to the docket on June 9, 2023 proposed to change the effective date of Part 8 to September 28, 2023 from the original date of January 1, 2021. The Hearing Officer finds that it is unnecessary to change the effective date of the entirety of Part 8, and may be confusing, when only 13.14.8.2 NMAC is being slightly changed. The Hearing Officer recommends that this amendment not be adopted.

Proposed Amendment to 13.14.8.29(A) NMAC (Reverse Mortgage Endorsement)

102. In Staff’s Initial Comments, Staff indicated that its proposed change to 13.14.8.29(A) NMAC is not actually a change, since the existing rule contains the language Staff thought it was adding. Therefore, the Hearing Officer finds that no change to this section is necessary and recommends against any change.

Proposed Amendment to 13.14.18.8 NMAC (Promulgated Forms)

103. In the proposed amendments to the rule, Staff recommended changing “his” to “their” in the second sentence of the introductory paragraph of 13.14.18.8 NMAC. In Staff’s Initial Comments, Staff stated that the change is to provide a gender-neutral reference to the Superintendent. There was no response to this proposed amendment. The Hearing Officer recommends adoption of the amendment.

104. Staff also recommended adding the following sentence at the end of the introductory paragraph of 13.14.18.8 NMAC: “The forms compiled and filed with the New Mexico State Rules Center and Archives as the New Mexico Title Insurance Forms shall be the promulgated forms, and those forms are incorporated into this rule by reference.” Staff stated that this sentence provides a clear statement that the official forms consist only of those forms that have

been formally adopted in accordance with general rulemaking standards. NMLTA generally agreed with this approach, and the Hearing Officer recommends adoption of the amendment.

105. In NMLTA's Initial Comments, NMLTA recommended adding another sentence after the new sentence proposed by Staff. That new sentence would state: "The superintendent shall publish a table of the promulgated title insurance forms with corresponding rates in a form that is easily accessible by the public on the OSI's website." There was no response to this recommendation. NMLTA proposed the additional sentence during the comment period and the ten-day response period was provided. The Hearing Officer finds that the subject matter of the amended rule or the issues determined by that rule are the same as those in the published proposed rule. NMLTA's recommended amendment may be adopted, and the Hearing Officer finds that it should be adopted. The Hearing Officer therefore recommends that the following sentence be added at the end of the introductory paragraph of amended 14.14.18.8: "The superintendent shall publish a table of the promulgated title insurance forms with corresponding rates in a form that is easily accessible by the public on the OSI's website."

Decertification of New Mexico Forms No Longer in Use

106. In Staff's Initial Comments, Staff recommended agreeing to a request by NMLTA that current NM Form 10, NM Form 18, NM Form 48, and NM Form 82, which are no longer in use, be decertified. It appears that these forms have previously been revoked but remain in the catalog of published forms. In NMLTA's Response Comments, NMLTA agreed with Staff's recommendation.

107. In NMLTA's Initial Comments, NMLTA recommended decertifying current NM Form 63, because it may be unnecessary and contains provisions contrary to New Mexico law. In Staff's Response Comments, Staff agreed with this recommendation.

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108. The Hearing Officer finds that the bases for decertifying current NM Form 10, NM Form 18, NM Form 48, NM Form 63, and NM Form 82 are sound, and the Hearing Officer recommends that those forms be decertified and not included in the Modern Title Forms. Staff and NMLTA proposed decertifying the forms during the comment period and the ten-day response period was provided. The Hearing Officer finds that the subject matter of the amended rule or the issues determined by that rule are the same as those in the published proposed rule. The proposed decertifications may be adopted, and the Hearing Officer finds that they should be adopted.

Proposed Amendment to 13.14.8.13 NMAC

109. In its Initial Comments, NMLTA recommended deleting all references to NM Form 77.1 in 13.14.8.13 NMAC. OSI Staff agreed with NMLTA’s recommendation and that amendment of the rule in this way meets the logical outgrowth test. However, application of the logical outgrowth test is unnecessary because NMLTA proposed the changes during the comment period and the ten-day response period was provided. The Hearing Officer finds that the subject matter of the amended rule or the issues determined by that rule are the same as those in the published proposed rule. NMLTA’s recommended amendment may be adopted, and the Hearing Officer finds that it should be adopted. The Hearing Officer therefore recommends that all references to NM Form 77.1 in 13.14.8.13 NMAC be deleted.

Proposed Amendment to 13.14.7.8 NMAC

110. In its Initial Comments, NMLTA recommended deleting all references to NM Form 63 in 13.14.7.8 NMAC. OSI Staff agreed with NMLTA’s recommendation and that amendment of the rule in this way meets the logical outgrowth test. Although Part 7 of the rules was not noticed for comment, the Hearing Officer agrees that deleting all references to NM Form 63 in 13.14.7.8 NMAC meets the “logical outgrowth” test because interested parties should have anticipated that

the change was possible and because the change is based on comments received during the comment period. The Hearing Officer therefore recommends deleting all references to NM Form 63 in 13.14.7.8 NMAC.

Additional Comments

111. OSI and NMLTA recommended numerous changes to the proposed rule and to portions of the rule that were not originally noticed for comment. OSI and NMLTA have modified some of their respective recommendations based on the exchange of comments. The Hearing Officer has made other recommendations.

112. Rather than compile, collate, and transcribe all the changes discussed in this Recommended Decision, the Hearing Officer requests that Title Bureau Staff and NMLTA collaborate on developing an amended rule as set forth in this Recommended Decision. The Hearing Officer requests that, in consultation with NMLTA, Title Bureau Staff file to the docket by October 2, 2023 an amended rule and amended forms incorporating the recommendations adopted by the Hearing Officer. If NMLTA disagrees that Title Bureau Staff has accurately represented those recommendations, NMLTA may file to the docket exceptions explaining its view by October 9, 2023. The Superintendent will then determine the final version of the rule to submit to the Administrative Law Division.

113. Consistent with NMSA 1978, Section 14-4-3(A) (2017), to the extent that the Administrative Law Division may require formatting of the final rule different from originally proposed or as amended by this decision, the Hearing Officer recommends following those formatting requirements.

CONCLUSIONS:

A. The Superintendent has jurisdiction over the subject matter and the parties.

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B. OSI caused the NOPR to be published on June 27, 2023 in the New Mexico Register and in a newspaper of general circulation in compliance with NMSA 1978, Section 14-4-5.2.

C. The NOPR provided interested persons and the public appropriate notice of the hearing and the opportunity to offer oral and written comments.

D. The Hearing Officer has considered all oral and written comments.

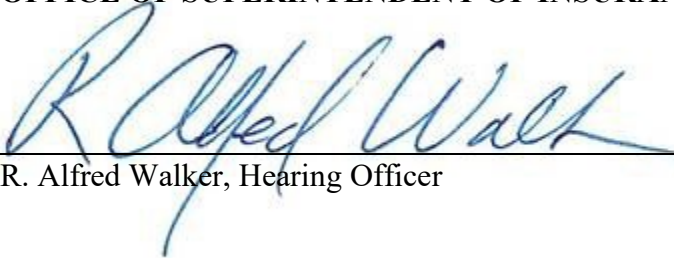
E. The amendments to the rule and to the forms should be adopted with changes set forth above, effective January 1, 2024.

WHEREFORE, in light of the findings and conclusions above, the Hearing Officer **RECOMMENDS** that the Superintendent should sign a Final Order that permanently adopts the proposed amendments to the rule and forms as set forth above.

The Hearing Officer also **RECOMMENDS** that a copy of this Hearing Officer's Findings, Conclusions, and Recommendations, with its attachments, be sent to all interested persons.

ISSUED at Santa Fe, New Mexico this 15th day of September, 2023.

OFFICE OF SUPERINTENDENT OF INSURANCE



R. Alfred Walker, Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of September 2023, I caused the foregoing *Hearing Officer's Findings, Conclusions and Recommendations* to be filed into the OSI e-filing system, which should cause the persons listed below to be served by electronic means, as more fully reflected on the eService recipients list for this case.

The Hon. Alice T. Kane, Superintendent
NM Office Of Superintendent of Insurance
Alice.kane@osi.nm.gov

Stephen Thies, Acting General Counsel
NM Office of Superintendent of Insurance
Stephen.Thies@osi.nm.gov

R. Alfred Walker, Hearing Officer
NM Office Of Superintendent of Insurance
Alfred.walker@osi.nm.gov

Timothy Vigil, Bureau Chief, Title Insurance
NM Office Of Superintendent of Insurance
Timothy.vigil@osi.nm.gov

Margaret Caffey-Moquin, Chief Staff Counsel
NM Office Of Superintendent of Insurance
Margaret.moquin@osi.nm.gov


Cholla Khoury, Assistant Attorney General
Office of the Attorney General
ckhoury@nmag.gov

Patty Padon
President & CEO
Independent Insurance Agents of New Mexico
1511 University Blvd. NE
Albuquerque, NM 87102
Tel. (505) 999-5806
patty@iianm.org

Spencer L. Edelman, Esq.
Modrall Sperling Roehl Harris & Sisk, P.A.
500 Fourth Street NW
Bank of America Centre
Suite 1000
Albuquerque, NM 87102
P.O. Box 2168
Albuquerque, NM 87103-2168
(505) 848-1857
Spencer.edelman@modrall.com
Attorney for NM Land Title Association

Steve Gold
Product Director – Legal and Regulatory Publications
Staff Liaison - Forms Committee, Best Practices Standards
American Land Title Association
1800 M St. NW, Suite 300S
Washington, DC 20036
Ph: (202) 261-0317/ (800) 787-ALTA (2582) (ext. 226)
Fax: (202) 223-5843 / (888) FAX-ALTA (329-2582)
sgold@alta.org

Dolores Serna
Modrall Sperling
dolores@modrall.com



Jennifer Romero, Law Clerk
NM Office of Superintendent of Insurance

TABLE OF PROMULGATED NEW MEXICO TITLE INSURANCE FORMS (effective January 1, 2024)

NM Form Number	Name of Form	ALTA Form Number	ALTA Form Version*	History	Premium Rate** (Effective July 1, 2022)
1	Owner's Policy of Title Insurance		v. 01.00 07-01-2021	Rev. 2006	FBPR, subject to applicable discounts
2	Loan Policy of Title Insurance		v. 01.00 07-01-2021	Rev. 2006	FBPR, subject to applicable discounts
6	Commitment For Title Insurance		v. 01.00 07-01-2021	Rev. 2006	\$100 for initial 6 months; \$100 for each version
9	Notice of Availability of Owner's Title Insurance	N/A	N/A		No Charge
11	Multipurpose endorsement	NA	NA		\$0, \$25, \$65, \$100, or additional premium for increased amount of policy.
12	Condominium - Assessments Priority Endorsement	4	v. 01.00 07-01-2021	Rev. 2008	\$25
13	Planned Unit Development - Assessments Priority Endorsement	5-06	A 10-16-2008 TC 12-01-2017		\$25
13.1	Planned Unit Development - Current Assessments Endorsement	5.1-06	A 10-16-2008 TC 12-01-2017		\$25
14	Variable Rate Mortgage Endorsement	6	v. 01.00 07-01-2021		\$25 with policy, or \$50 if issued after Date of Policy
15	Variable Rate Mortgage - Negative Amortization Endorsement	6.2	v. 01.00 07-01-2021		\$25 with policy, or \$50 if issued after Date of Policy
16	Manufactured Housing Unit Endorsement	7-06	06-17-2006		\$75
16.1	Manufactured Housing - Conversion - Loan Policy Endorsement	7.1	v. 01.00 07-01-2021	Rev. 2006	\$75
16.2	Manufactured Housing - Conversion - Owner's Policy Endorsement	7.2	v. 01.00 07-01-2021	Rev. 2006	\$75
17	Revolving Credit Endorsement	N/A	N/A		\$25 with policy, or \$50 if issued after Date of Policy
20	Leasehold - Owner's Policy Endorsement	13-06	04-02-2012		No Charge
21	Leasehold - Loan Policy Endorsement	13.1-06	04-02-2012		No Charge
22	Pending Disbursement Down Date Loan Policy Endorsement	NA	NA		\$25
23	Pending Improvements Owner's Policy Endorsement	NA	NA		\$25
24	Assignment of Mortgage Loan Policy Endorsement	10	v. 01.00 07-01-2021		\$25 within 6 months of Date of Policy; \$65 if more than 6 months of Date of Policy
24.1	Assignment of Mortgage and Date Down Loan Policy Endorsement	10.1	v. 01.00 07-01-2021	Rev. 2008	\$25 within 6 months of Date of Policy; \$65 if more than 6 months of Date of Policy
25	Additional Advance Loan Policy Endorsement	NA	NA		\$25, subject to additional premium; \$100 minimum
26	Partial Coverage Endorsement	NA	NA		\$25
28	Non-Imputation - Full Equity Transfer Endorsement	15-06	06-17-06		\$1 per each \$1000 of insurance
28.1	Non-Imputation - Additional Interest Endorsement	15.1-06	06-17-06		\$1 per each \$1000 of insurance

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NM Form Number	Name of Form	ALTA Form Number	ALTA Form Version*	History	Premium Rate** (Effective July 1, 2022)
28.2	Non-Imputation - Partial Equity Transfer Endorsement	15.2-06	06-17-06		\$1 per each \$1000 of insurance
29	Environmental Protection Lien Endorsement	8.1	v. 01.00 07-01-2021	Rev. 2006	\$25
30	Condominium Endorsement - Current Assessments	4.1	v. 01.00 07-01-2021	Rev. 2006	\$25
31	Leasehold Conversion Owner's Policy Endorsement	N/A	N/A		50% of FBPR
33	Change of Name Endorsement	N/A	N/A		No Charge
34	U.S.A. Policy Form		12-03-2012		100% of FBPR
35	Notice to Purchaser Insured	N/A	N/A		No Charge
41	Limited Pre-Foreclosure Title Insurance Policy		12-03-2012		55% of FBPR
42	Limited Pre-Foreclosure Title Insurance Policy Down Date Endorsement		12-03-2012		\$25
43	Insuring Around Endorsement	N/A	N/A		No Charge
44	Revolving Credit - Increased Credit Limit Loan Policy Endorsement	N/A	N/A		\$25 plus additional premium; \$50 minimum
45	Residential Limited Coverage Jr Loan Policy (JR)		v. 01.00 04-02-2022	Rev. 2012	40% of FBPR; \$65 minimum
46	Down Date Endorsement for JR	JR 1	v. 01.00 04-02-2022	Rev. 2012	\$25
47	Future Advance Endorsement for JR	JR 2	v. 01.00 04-02-2022	Rev. 2012	\$25
49	Notice of Availability of Future Increase in Coverage and Potential Premium Discount for Future Policies	N/A	N/A		No Charge
50	Restrictions, Encroachments, Minerals Loan Policy Endorsement	9-06	06-17-2006		10% of FBPR; \$250 minimum up to \$27M of Coverage
50.1	Restrictions, Encroachments, Minerals Loan Policy Endorsement	9.3-06	06-17-2006		10% of FBPR; \$250 minimum up to \$27M of Coverage
51	Land Abuts Street Endorsement	N/A	N/A		\$25
52	Location Endorsement	22-06	06-17-2006		\$25
54	Contiguity - Single Parcel Endorsement	19.1-06	06-17-2006		\$100
55	Named Insured Endorsement (1992 OP only)	N/A	N/A		\$25 if issued before 8-1-2001; No Charge if after
56	Restrictions, Encroachments, Minerals (Unimproved Land - Buildings) Owner's Policy Endorsement	9.1-06	06-17-2006		10% of FBPR; \$250 minimum up to \$27M of Coverage
56.1	Restrictions, Encroachments, Minerals (Unimproved Land - Improvements) Owner's Policy Endorsement	9.4-06	06-17-2006		10% of FBPR; \$250 minimum up to \$27M of Coverage
57	Restrictions, Encroachments, Minerals (Improved Land - Buildings) Owner's Policy Endorsement	9.2-06	06-17-2006		10% of FBPR; \$250 minimum up to \$27M of Coverage

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NM Form Number	Name of Form	ALTA Form Number	ALTA Form Version*	History	Premium Rate** (Effective July 1, 2022)
57.1	Restrictions, Encroachments, Minerals (Improved Land Improvements) Owner's Policy Endorsement	9.5-06	06-17-2006		10% of FBPR; \$250 minimum up to \$27M of Coverage
58	First Loss Loan Policy Endorsement	20-06	A 06-17-2006 TC 10-13-2011		\$25
60	Aggregation Loan Policy Endorsement	12	v. 01.00 07-01-2021	Rev. 2006	\$25
60.1	Aggregation (Stated Limits) Loan Policy Endorsement	12.1	v. 01.01 07-01-2021 TC 08-30-2021	Rev. 2006	\$25
61	Foundation Loan Policy Endorsement	N/A	N/A		\$25 for 1-4 Family Residential; \$50 for all others
62	Assignment of Rents/Leases Loan Policy Endorsement	37-06	12-03-2012		\$100
64	Zoning Endorsement (Unimproved Land)	3	v. 01.00 07-01-2021	Rev. 2006	10% of FBPR; \$250 minimum up to \$27M of Coverage
64.1	Zoning Endorsement (Unimproved Land - No Applicable Zoning Ordinance)	N/A	N/A		10% of FBPR; \$250 minimum up to \$27M of Coverage
65	Zoning Endorsement (Completed Structure)	3.1	v. 01.00 07-01-2021	Rev. 2009	10% of FBPR; \$250 minimum up to \$27M of Coverage
65.1	Zoning Endorsement (Land Under Development)	3.2	v. 01.00 07-01-2021	Rev. 2012	10% of FBPR; \$250 minimum up to \$27M of Coverage
65.2	Zoning Endorsement (Completed Structure - No Zoning Ordinance)	N/A	N/A		10% of FBPR; \$250 minimum up to \$27M of Coverage
66	Contiguity Endorsement (Multiple Parcels)	19-06	06-17-2006		\$100
67	Access and Entry Endorsement	17-06	06-17-2006		\$25 (Separate endorsement for each named street)
68	Indirect Access and Entry Endorsement	17.1-06	06-17-2006		\$25 (Separate endorsement for each named street)
69	Utility Access Endorsement	17.2-06	06-17-2006		\$25
70	Commercial Environmental Protection Lien Endorsement	8.2-06	10-16-2008		\$25
71	Reverse Mortgage Loan Policy Endorsement	14.3	v. 01.00 07-01-2021		\$25
72	Single Tax Parcel Endorsement	18-06	06-17-2006		\$25
73	Multiple Tax Parcel - Easements Endorsement	18.1-06	A 06-17-2006 TC 12-01-2016		\$25
74	Doing Business Endorsement	24-06	10-16-2008	Rev. 2006	\$25
75	Subdivision Endorsement	26	v. 01.00 07-01-2021	Rev. 2006	\$25
76	Easement - Damage or Enforced Removal Endorsement	28-06	10-16-2008		\$25
77	Co-Insurance - Single Policy Endorsement	23-06	10-16-2008		\$25

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NM Form Number	Name of Form	ALTA Form Number	ALTA Form Version*	History	Premium Rate** (Effective July 1, 2022)
78	Same as Survey Endorsement	25-06	10-16-2008		\$25
79	Same as Portion of Survey Endorsement	25.1-06	06-17-2006		\$25
80	Mortgage Modification Loan Policy Endorsement	11	v. 01.00 07-01-2021	Rev. 2006	\$125
80.1	Mortgage Modification with Subordination Loan Policy Endorsement	11.1	v. 01.00 07-01-2021	Rev. 2009	\$125
80.2	Mortgage Modification with Additional Amount of Insurance Loan Policy Endorsement	11.2	v. 01.00 07-01-2021	Rev. 2013	\$125 plus additional premium for increased amount
81	Closing Protection Letter - Single Transaction		04-02-2021	Rev. 2014	No Charge
81.1	Closing Protection Letter - Multiple Transactions		04-02-2021	Rev. 2014	No Charge
83	Construction Loan Policy Endorsement	32	v. 01.01 07-01-2021 TC 09-27-2021	Rev. 2011	No Charge plus cost of applicable mechanic's lien coverage
83.1	Construction Loan Policy Endorsement (Direct Payment)	32.1	v. 01.01 07-01-2021 TC 09-27-2021	Rev. 2013	No Charge plus cost of applicable mechanic's lien coverage
83.2	Construction Loan Policy Endorsement (Insured's Direct Payment)	32.2	v. 01.01 07-01-2021 TC 09-27-2021	Rev. 2013	No Charge plus cost of applicable mechanic's lien coverage
84	Disbursement - Loan Policy Endorsement	33-06	06-17-2006		\$25
85	Identified Risk Endorsement	N/A	N/A		(See NMAC § 13.14.8.11)
86	Policy Authentication Endorsement	39-06	06-17-2006		No Charge
88	Energy Project (Leasehold/Easement) Owner's Policy Endorsement	36-06	04-02-2012		10% of FBPR; \$250 minimum up to \$27M of Coverage
88.1	Energy Project (Leasehold/Easement) Loan Policy Endorsement	36.1-06	04-02-2012		10% of FBPR; \$250 minimum up to \$27M of Coverage
88.2	Energy Project (Leasehold) Owner's Policy Endorsement	36.2-06	04-02-2012		10% of FBPR; \$250 minimum up to \$27M of Coverage
88.3	Energy Project (Leasehold) Loan Policy	36.3-06	04-02-2012		10% of FBPR; \$250 minimum up to \$27M of Coverage
88.4	Energy Project (CC&Rs - Land Under Development) Owner's Policy Endorsement	36.4-06	04-02-2012		10% of FBPR; \$250 minimum up to \$27M of Coverage
88.5	Energy Project (CC&Rs - Land Under Development) Loan Policy Endorsement	36.5-06	04-02-2012		10% of FBPR; \$250 minimum up to \$27M of Coverage
88.6	Energy Project (Encroachments) Endorsement	36.6-06	04-02-2012		10% of FBPR; \$250 minimum up to \$27M of Coverage
88.7	Energy Project (Fee Estate) Owner's Policy Endorsement	36.7-06	04-02-2012		10% of FBPR; \$250 minimum up to \$27M of Coverage

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NM Form Number	Name of Form	ALTA Form Number	ALTA Form Version*	History	Premium Rate** (Effective July 1, 2022)
88.8	Energy Project (Fee Estate) Loan Policy Endorsement	36.8-06	04-02-2012		10% of FBPR; \$250 minimum up to \$27M of Coverage
89	Mezzanine Financing Owner's Policy Endorsement	16-06	06-17-2006		\$100
90	Residential Limited Coverage Mortgage Modification Policy	MMP	04-02-2022	Rev. 2014	\$175 up to \$1 million coverage; \$175 per \$500,000 of coverage up to \$20 million