**BEFORE THE NEW MEXICO OFFICE OF SUPERINTENDENT OF INSURANCE**

**IN THE MATTER OF THE )**

**PROMULGATION OF UPDATES ) Docket No. 2022-\_\_\_\_\_\_\_\_\_\_\_\_**

**TO TITLE INSURANCE FORMS )**

**)**

**PETITION OF NEW MEXICO LAND TITLE ASSOCIATION**

**FOR PROMULGATION OF UPDATED TITLE INSURANCE FORMS**

Petitioner, New Mexico Land Title Association (NMLTA), by its counsel Miller Stratvert P.A. (Richard L. Alvidrez), respectfully requests that the New Mexico Superintendent of Insurance (“Superintendent”) open a docket and schedule an informal hearing pursuant to Rule 13.1.6 NMAC to promulgate updated title insurance forms and to confirm the final decertification of certain previously decertified title insurance forms as set forth below. As grounds for this Petition, NMLTA states as follows:

1. This Petition is filed pursuant to Rule 13.14.18 NMAC which governs the promulgation of title insurance forms. The Superintendent has jurisdiction over this Petition pursuant to NMSA 1978, §§ 59A-2-8, 59A-2-9, 59A-30-4, 59A-30-5 and 59A-30-8.
2. Rule 13.14.18.8 NMAC provides that “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 and previously promulgated form.”
3. NMLTA is an “interested person” within the meaning of Rule 13.14.18.1 NMAC because it is an industry association with a statewide membership whose members include title insurance underwriters, title insurance agents and others interested in the conduct of the title insurance business in New Mexico. NMLTA’s current membership includes [thirteen (13)] title insurance underwriters authorized to do business in New Mexico, and approximately [forty-five (45)] title insurance agents, affiliates and direct operations, doing business in all [thirty-three (33)] counties in New Mexico. NMLTA’s objectives include, among other things, the advancement of the science of evidencing title to real property and the formulation and maintenance of ethical standards for the guidance of its members in relation to each other and the general public. NMLTA also serves as an advocate for the interests of its members.
4. Pursuant to NMSA 1978 Section 59A-30-5 (1985): “No title insurer or title insurance agent shall use any form of title insurance policy other than the uniform forms promulgated by the superintendent under the New Mexico Title Insurance Law. The superintendent shall not promulgate any uniform form under which the coverage offered is excessive or inadequate in relation to the premium charged for the coverage.” Thus, New Mexico title insurance underwriters and agents may only use title insurance forms promulgated by the Superintendent.
5. Attached as **Exhibit A** is a table with a summary of all of the currently promulgated forms that the NMLTA proposes to be updated, including a description of the associated premium charge, as applicable. NMLTA seeks to update the forms listed on **Exhibit A** for the following reasons:

A. The current New Mexico forms for the Commitment (NM Form 6), Owner’s Policy of Title Insurance (NM Form 1) (“OP”), and the Loan Policy of Title Insurance (NM Form 2) (“LP”) are the forms published by the American Land Title Association (“ALTA”) in 2006. ALTA intends to decertify the 2006 forms on December 31, 2022. ALTA completely updated the OP and LP forms effective July 1, 2021. Since then, the updated forms have been put into widely accepted use across the United States and, as of the end of 2023, the Federal National Mortgage Association (FNMA) will require that the 2021 versions of the ALTA OP and LP forms be used for FNMA guaranteed transactions, subject to limited exceptions. NMLTA requests that the current Commitment, OP and LP be decertified and that the updated ALTA 2021 Commitment, OP and LP forms be promulgated as replacement forms.

B. Some of the forms of endorsements to the OP and LP currently promulgated for use in New Mexico have been updated by ALTA to enable their use with the 2021 ALTA OP and LP forms. The versions of these endorsements currently promulgated in New Mexico must be updated to the 2021 ALTA versions in order to integrate and function properly with the 2021 ALTA OP and LP forms. NMLTA requests that the current endorsements for the current OP and LP be decertified and that the updated ALTA 2021 endorsement forms, as more fully described below, be promulgated as replacement forms.

C. Certain current New Mexico title policy endorsement forms are based on outdated ALTA forms and should be updated to match the most recent ALTA versions. These updates are unrelated to the 2021 change in the OP and LP, but are still necessary. Sophisticated lenders and purchasers who operate on a multi-state basis entering into real estate transactions in New Mexico are familiar with and often request that the updated ALTA endorsements be used for their real estate transactions in the state. Promulgation of the updated ALTA versions of these endorsements will allow the New Mexico forms to better align with title insurance coverage available across the United States and better meet the needs of insureds who operate on a multi-state basis. NMLTA requests that the current outdated endorsement forms be decertified and that the updated ALTA endorsement forms be promulgated as replacement endorsement forms.

D. The current Closing Protection Letter (CPL) letter forms (NM Form 81 and NM form 81.1) are based on outdated ALTA forms and should be updated to match the most recent ALTA versions. These updates are unrelated to the 2021 change in the OP and LP, but are still necessary. Promulgation of the most recent version of the ALTA CPL forms will update the New Mexico CPL forms to conform to the expected and commonly used forms requested and used by insureds who operate on a multi-state basis. NMLTA requests that the current outdated CPL forms be decertified and that the updated ALTA CPL forms be promulgated as the replacement CPL forms.

1. A table of the proposed updated title insurance forms is attached as **Exhibit B** which includes a list of the new forms with summary descriptions of the revisions to [and justifications for???] the corresponding existing forms.
2. Each of the title insurance forms which NMLTA proposes be updated already has an existing approved premium rate (including “no charge” rates) [and rule]. The adoption of the updated forms will not require any change in the existing premium rates [or rules]. Pursuant to Rule 13.14.18.8(B)(1) NMAC, NMLTA requests that the Superintendent determine that the existing rates [and rules], as applicable, be determined to apply to the updated title insurance forms proposed in this Petition.
3. Attached as **Exhibit C** are the proposed updated title insurance forms which NMLTA respectfully requests be promulgated with an effective date of April 1, 2023. Attached as **Exhibit D** is a proposed Forms Table to be used and published as the approved list of promulgated title insurance forms for use in New Mexico.
4. NMLTA also requests that the following previously decertified forms be confirmed as decertified: (1) NM Form No. 10 – Facultative Reinsurance Agreement; (2) NM Form 18 – Construction Loan Policy; (3) NM Form 48 – Truth in Lending Endorsement; and (4) NM Form No. 82 - Inter-Underwriter Indemnification Agreement. These forms were decertified by the Superintendent in the following proceedings: [Provide citations to orders]. However, these forms remain as published forms making it appear they are available for issuance, even though they have been decertified and are not available for use. NMLTA requests that these decertified forms be withdrawn from publication by the Superintendent to avoid confusion and error.
5. [NMLTA has conferred with the Title Insurance Bureau (“Staff”) of the New Mexico Office of Superintendent of Insurance (“OSI”) concerning the updates to the title insurance forms as set forth in **Exhibit C** and is advised that Staff concurs in this Petition.]
6. Under Rule 13.14.8 NMAC, the Superintendent may conduct a hearing in this matter pursuant to either Rule 13.1.5 NMAC (Formal Administrative Hearings) or Rule 13.1.6 NMAC (Informal Administrative Hearings), as the circumstances require. NMLTA respectfully requests that this Petition proceed as an informal hearing pursuant to Rule 13.1.6 NMAC because Staff concurs in this Petition, the Petition involves only updates to existing forms, and there are no requested proposed changes in rates or rules.

**WHEREFORE**, NMLTA respectfully requests that the Superintendent:

1. Docket this Petition for an informal hearing pursuant to Rule 13.1.6 NMAC;
2. Decertify the current title insurance forms in **Exhibit A** effective April 1, 2023;
3. Promulgate for use in New Mexico the title insurance forms attached as **Exhibit C** as updates to the current title insurance forms in **Exhibit A** effective April 1, 2023;
4. Approve **Exhibit D** as the Forms Table to be used and published as the approved list of promulgated title insurance forms for use in New Mexico effective April 1, 2023;
5. Direct that all promulgated title insurance forms set forth in the Forms Table in **Exhibit D** be published and made available to the public on the OSI website;
6. Determine, pursuant to Rule 13.14.18.8(B)(1) NMAC, that the existing rates [and rules], as applicable, shall apply to the updated title insurance forms proposed in **Exhibit C**;
7. Direct that the title insurance forms in **Exhibit C** shall be used by all title insurers and title insurance agents in this state effective April 1, 2023;
8. Confirm the decertification of (1) NM Form No. 10 – Facultative Reinsurance Agreement; (2) NM Form 18 – Construction Loan Policy; (3) NM Form 48 – Truth in Lending Endorsement; and (4) NM Form No. 82 - Inter-Underwriter Indemnification Agreement, and order that these decertified forms be withdrawn from publication;
9. Order such other and further relief as necessary to fully grant the Petition.

Respectfully submitted,

**MILLER STRATVERT P.A.**

By:

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*Attorney for Petitioner New Mexico*

*Land Title Association*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing *Petition of the New Mexico Land Title Association’s for Promulgation of Updated Title Insurance Forms* was served to the following individuals by regular mail and email on this \_\_\_ day of \_\_\_\_\_\_\_\_\_, 2022:

|  |  |
| --- | --- |
| R. Alfred Walker, Acting General Counsel  Office of Superintendent of Insurance  P.O. Box 1689  Santa Fe, NM 87504-1689  [bryan.brock@state.nm.us](mailto:bryan.brock@state.nm.us) | Cholla Khoury, Assistant Attorney General  Office of the Attorney General  P.O. Box 1508,  Santa Fe, NM 87504-1508  [ckhoury@nmag.gov](mailto:ckhoury@nmag.gov) |
| Margaret Caffey-Moquin, Legal Counsel  Office of Superintendent of Insurance  P.O. Box 1689  Santa Fe, NM 87504-1689  [margaret.moquin@state.nm.us](mailto:margaret.moquin@state.nm.us) |  |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**EXHIBIT A**

**ALL PROPOSED UPDATED FORMS**

**This is the master table of changes that Anna has prepared NEED TO ADD RATES**

**EXHIBIT B**

**SUMMARY OF CHANGES TO FORMS**

**have to decide which explanatory table(s) to include and how much explanation to include, i.e., does each form need a “justification?”**

**EXHIBIT C**

**PROPOSED FORMS**

**EXHIBIT D**

**PROPOSED FORMS TABLE**

**This is our proposed table that would be the table of all forms published by the OSI resulting from this order; Anna would need to create this**

**EXHIBIT E**

**PROPOSED ORDER**

**BEFORE THE NEW MEXICO OFFICE OF SUPERINTENDENT OF INSURANCE**

**IN THE MATTER OF THE )**

**PROMULGATION OF UPDATES ) Docket No. 2022-\_\_\_\_\_\_\_\_\_\_\_\_**

**TO TITLE INSURANCE FORMS )**

**)**

**[PROPOSED] STIPULATED FINAL ORDER**

THIS MATTER comes before the New Mexico Office of Superintendent of Insurance (“Superintendent”) following an informal public hearing pursuant to Rule 13.1.6 NMAC upon the *Petition of the New Mexico Land Title Association’s for Promulgation of Updated Title Insurance Forms* (the “NMLTA Petition”) filed in this docket on \_\_\_\_\_\_\_\_\_\_\_\_\_, 2022, and published as required by law.

Having reviewed the NMLTA Petition and supporting exhibits and the record in this matter,

**THE SUPERINTENDENT FINDS AND CONCLUDES:**

1. The Superintendent has jurisdiction over the subject matter and the parties pursuant to the New Mexico Insurance Code, NMSA 1978, Sections 59A-1-1 *et seq*.
2. The statutory authority for decertification of existing title insurance forms and the promulgation of revised and replacement title insurance forms is found in NMSA 1978, §§ 59A-2-8, 59A-2-9, 59A-30-4, 59A-30-5 and 59A-30-8.
3. The NMLTA Petition was filed pursuant to Rule 13.14.18 NMAC which governs the promulgation of title insurance forms.
4. The purpose of the NMLTA Petition is to update specific title insurance forms to be consistent with the latest equivalent forms issued by the American Land Title Association.
5. After considering the NMLTA Petition and supporting exhibits and the comments submitted in this matter at the public hearing conducted on \_\_\_\_\_\_\_\_\_, 2022, the Superintendent finds and concludes that the proposed updates to the title insurance forms as set forth in the NMLTA Petition are well-taken and should be granted.
6. Each of the updated title insurance forms proposed by NMLTA already has an existing approved premium rate (including no charge rates) [and rule], and the adoption of the updated forms will not require any change in the existing premium rates [or rules]. Pursuant to Rule 13.14.18.8(B)(1) NMAC, the Superintendent hereby determines that the existing rates [and rules], as applicable, shall apply to the updated title insurance forms proposed in the NMLTA Petition.

**IT IS THEREFORE ORDERED:**

1. The current title insurance forms described in **Exhibit A** to the NMLTA Petition are hereby decertified effective April 1, 2023;
2. The title insurance forms attached as **Exhibit C** to the NMLTA Petition are hereby adopted and promulgated as updates to the current title insurance forms in **Exhibit A** effective April 1, 2023;
3. The premium rates and rules in effect for the current title insurance forms in **Exhibit A** shall continue in effect and shall be applicable to the updated title insurance forms in **Exhibit C**, as applicable;
4. The Forms Table attached as **Exhibit D** to the NMLTA Petition is hereby approved and shall be published as the approved list of promulgated title insurance forms for use in New Mexico effective April 1, 2023;
5. All promulgated title insurance forms set forth in the Forms Table in **Exhibit D** shall be published and made available to the public on the OSI website;
6. The title insurance forms in **Exhibit C** shall be used by all title insurers and title insurance agents in this state effective April 1, 2023;
7. NM Form No. 10 – Facultative Reinsurance Agreement, NM Form 18 – Construction Loan Policy, NM Form 48 – Truth in Lending Endorsement, and NM Form No. 82 - Inter-Underwriter Indemnification Agreement, are hereby confirmed as decertified and shall be withdrawn from publication as soon as practical;
8. Except as otherwise provided, the Final Order is effective immediately.

**DONE AND ORDERED this \_\_\_\_\_\_\_\_\_\_ day of\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2022.**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**RUSSELL TOAL**

**SUPERINTENDENT OF INSURANCE**