2015 Real Property Institute

December 3, 2015

STATE BAR of NEW MEXICO
CENTER FOR LEGAL EDUCATION

2015 Real Property Institute

5.0 G 1.0 EP

Thursday, December 3, 2015 • 9 a.m.-4:45 p.m.
State Bar Center, Albuquerque

$249 Standard Fee
$219 Co-sponsoring section members, government and legal services attorneys, and Paralegal Division members
$279 Webcast Fee

Co-sponsor: *Real Property, Trust and Estate Section*

Topics for the 2015 Real Property Institute include a title insurance hearing update, recent real property litigation, electronic transactions and more.

8:30 a.m. Registration and Continental Breakfast
9 a.m. **Introduction**
Edward J. Roibal, Roibal Law Firm, P.A.
9:05 a.m. **Title Insurance Biennial Hearing Update**
Richard Alvidrez, Miller Stratvert, P.A.
9:35 a.m. **Professionalism: Six Issues on Access to Justice (No. 3 Will Shock you!)** (1.0 EP)
Sandra Morgan Little, Esq., Little Gilman-Tepper & Batley, P.A., Robert M. St. John, Esq., Rodey, Dickason, Sloan, Akin, & Robb, P.A.
10:35 a.m. Break
10:50 a.m. **TILA-RESPA Integrated Disclosures Rule**
Donald E. Partington, executive vice president legal and strategic affairs, Fidelity National Title Group, Santa Ana, Calif. Warren Hill, county manager, Old Republic National Title, NMLTA president
11:50 a.m. Real Property, Trust and Estate Section Annual Meeting
J. Matthew Myers, chair of the Real Property, Trust and Estate Section
Noon Lunch (provided at the State Bar Center)
1 p.m. **Recent Real Property Litigation**
Spencer Reid, Keleher & McLeod, P.A.
1:45 p.m. **The New World of Residential Mortgage Foreclosures**
Donald Walcott, Walcott Law Firm PC
2:45 p.m. Break
3 p.m. **Dirty Deeds**
Mark Styles, Esq., Hurley Toevs Styles Hamblin & Panter PA
3:45 p.m. **The Electronic Real Estate Transaction: From Soup to Nuts**
Panel: Edward J. Roibal, Esq., Bill Wooten, Fidelity National Title of NM
4:45 p.m. Adjournment and Section Reception (State Bar Center Lobby)

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STATE BAR of NEW MEXICO
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CENTER FOR LEGAL EDUCATION

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2015 Real Property Institute

Presenter Biographies

Richard "Rick" Alvidrez is a shareholder and director in the Albuquerque office of Miller Stratvert PA where he also serves on the firm's executive committee. He received his B.S. from Texas A&M University-Commerce in 1980, and his J.D. from Southern Methodist University School of Law in Dallas in 1983. Alvidrez has more than 30 years of experience in a variety of legal areas, primarily representing public utility companies and other regulated industries in business, litigation and regulatory matters. His professional recognitions include multi-year listings in Best Lawyers in America, Southwest Super Lawyers and AV rating from Martindale-Hubble.

Sandra Morgan Little is a New Mexico native Sandra has been involved in some of the largest family cases in New Mexico and nine of her cases have been reported by the New Mexico Supreme Court. Sandra is a skilled and successful family trial attorney and believes more than 35 years of trial experience has allowed her to settle most cases through negotiation, facilitation or the Collaborative process.

Robert St. John's current practice focuses on a broad range of commercial and civil litigation areas. His experience includes financial and real estate transactions, banking, commercial transactions, securities, contracts, general corporate matters, insurance coverage disputes and trust and estate disputes. St. John has significant experience in employment litigation in both state and federal courts. He is listed in Best Lawyers in America under Banking and Finance Law and was named Albuquerque Litigation-Banking & Finance Lawyer of the year-2013 by Best Lawyers in America.

Donald E. Partington serves as Executive Vice President, Legal and Strategic Affairs for the Fidelity National Financial Inc., where he is responsible for the coordination of the company's strategic product and process development. Previous to his current position, he served as Executive Vice President and General Counsel for the FNF Title Insurers. He has been a counsel in the title insurance industry since 1978, is a frequent lecturer on title insurance, escrow, real property exchanges and other real estate related areas for the American Bar Association, the California State Bar, the State Bar of Arizona, the North Carolina Bar Association and other organizations. He is licensed to practice in California and Arizona.

Warren Hill is currently county manager for Old Republic National Title and NMLTA president. Old Republic Title is the national vendor management division and the bundled service provider of Old Republic National Title Insurance Company and services the title insurance needs of every major market in the country, providing centralized title, settlement, appraisal and ancillary services.

Edward Roibal is a licensed attorney practicing in real estate law, focusing on the areas of real property, probate, title insurance law and related litigation. He is recognized by the New Mexico Board of Legalization as a Specialist in Real Estate Law. He is former Counsel for various title insurance companies supervising the administration of claims and underwriting throughout the

State of New Mexico. He graduated from the University of New Mexico School of Law in 1987 and has served as Executive Director and Past President for the New Mexico Land Title Association.

Spencer Reid joined Keleher and McLeod in 1978 as a clerk and as a lawyer in 1979. He represents clients at all judicial levels, and in arbitration proceedings. His practice focuses primarily on commercial disputes, including complex matters. He earned his B.A. in Political Science in 1974 and his J.D. in 1979 from the University of New Mexico. Reid is listed in the most recent edition of Best Lawyers in America in the categories of commercial litigation, litigation-banking and finance and litigation – trusts and estates. Appearing on the Best Lawyers list since 2007, he was also honored as a 2015 Lawyer of the Year by Best Lawyers for litigation-banking and finance. Reid is also listed in Best's Recommended Insurance Attorneys.

Donald Walcott currently practices in the areas of bankruptcy, business and trade, commercial real estate, and federal trial practice. He has been in practice since 1996 and is a current member of the State Bar of New Mexico.

Mark Styles practices commercial real estate law at the firm of Hurley, Toevs, Styles, Hamblin and Panter, P.A. In 1990 while serving on the Board of Directors of the Real Property, Probate and Trust Section, he founded the Real Property Institute. He was chair of the Section in 1995. While chair, the Opinion Letters Task Force was formed which project resulted in the 2003 publication by the State Bar of New Mexico of "Lawyers' Opinion Letters in Mortgage Loan Transactions." March Styles received his B.A., *cum laude*, from Vanderbilt University and a J.D. from Southern Methodist University. He is a Real Estate Law Specialist, as certified by the New Mexico Board of Legal Specialization, and presently serves as chair of the Real Property Specialization Committee. Since 2013 he has been a member of the American College of Real Estate Lawyers. He is listed in Super Lawyers, Best Lawyers in America and Chambers USA: America's Leading Lawyers for Business. He has a CCIM Designation from the CCIM Institute of the National Association of Realtors, is a frequent speaker on real estate topics and has spoken on many occasions at the Real Property Institute.

William K. Wooten is a vice president with Fidelity National Title in Albuquerque. A 1977 graduate of the University of New Mexico, he has more than 36 years experience in the title insurance industry. He is updated on current events in the industry by the annual educational hours required by the Department of Insurance and gives back to the industry by teaching at New Mexico Land Title Association, underwriter and local real property education offerings. He has served twice as president of the New Mexico Land Title Association.

New Mexico Title Insurance: Biennial Hearing Update

State Bar of New Mexico

Real Property Section

2015 Real Property Institute

Thursday, Dec. 3, 2015 • State Bar Center, Albuquerque, NM

Presenter: Rick Alvidrez, Esq., Miller Stratvert PA

New Mexico Title Insurance: Biennial Hearing Update

DISCLAIMER

The positions and opinions expressed in this outline and the associated presentation are solely those of the presenter and do not necessary represent those of his clients.

New Mexico Title Insurance: Biennial Hearing Update

BACKGROUND ON TITLE INSURANCE[1]

- **$67 Million per year business in New Mexico**
- **13 Underwriters (9 Active)**
- **62 Agents**
  - **2 Direct Agencies**
  - **4 Affiliated Agencies**
  - **56 Independent Agencies**

[1] Source 2014 Title Insurance Industry Statistical Reports

New Mexico Title Insurance: Biennial Hearing Update

TITLE INSURANCE REGULATION

- **Highly Regulated**
- **New Mexico Title Insurance Law NMSA 1978, § 59A-30-1 through 59A-30- 15 (1985).**
- **Purpose and Intent of New Mexico Title Insurance Law:**
  - **Provide a comprehensive body of law for the effective regulation and active supervision of the business of title insurance transacted within this state in accordance with the McCarran-Ferguson Act (P.L. 79-15, 15 U.S.C. Sections 1011-1015).**

New Mexico Title Insurance: Biennial Hearing Update

- **Legislature intends that title insurance be regulated to provide for the protection of consumers and purchasers of title insurance policies and the financial stability of the title insurance industry.**

- **Legislature intends that the title insurance market be competitive for all title insurance agents, that regulation of the title insurance industry does not disproportionately impact independent title agencies and that regulation of the industry does not place independent title insurance agents at a competitive disadvantage with underwriter-owned title companies.**

§ 59A-30-2 (A)-(C).

New Mexico Title Insurance: Biennial Hearing Update

TITLE INSURANCE REGULATION

- **Title insurers and title insurance agents shall operate under the control and supervision of the superintendent.**

- **The superintendent shall promulgate rules and regulations as necessary to carry out the provisions of the New Mexico Title Insurance Law.**

- **No title insurer or title insurance agent shall collect any premium, issue any title insurance policy or agency agreement other than in conformance with the New Mexico Title Insurance Law and regulations.**

§59A-30-4

New Mexico Title Insurance: Biennial Hearing Update

TITLE INSURANCE RATEMAKING

- **Superintendent is required to convene a hearing for purposes of determining title insurance premium rates and any other matters pertaining to the business of title insurance during November of each odd-numbered calendar year. §59A-30-8**

- **Premium rates "shall not be excessive, inadequate or unfairly discriminatory and shall contain an allowance permitting a profit that is not unreasonable in relation to the risks incurred in the business of title insurance." §59A-30-6(C)**

TITLE INSURANCE RATEMAKING

- **Title insurance agents shall retain not less than eighty percent[2] of the gross premiums collected on commitments, policies and endorsements issued for one to four family residential property transactions with a liability amount of not more than $2 million. §59A-30-6(D).**

- **The portion of the premium to be retained by the title insurance agent for policies with a liability amount greater than $2 million shall be set by rule. *Id.***

- **13.14.3.11 NMAC provides for split for liability amounts above $2 million**

[2] Not less than 81% from July 1, 2009 until otherwise ordered by the Superintendent

New Mexico Title Insurance: Biennial Hearing Update

TITLE INSURANCE RATEMAKING

- Premium rates and charges determined through actuarial analysis.
- General components of actuarial analysis:
  - Underwriting and agent profits
  - Loss adjustment expense – expected policy claims
  - Expense Ratio - Underwriter and Agent Expense
  - Transaction volume (Explicit or Implicit)

New Mexico Title Insurance: Biennial Hearing Update

TITLE INSURANCE RATEMAKING

- **2015 Rate Hearing**
  - **Industry proposed a rate increase of 8.1%**
  - **Industry proposed premium rate split of 80% agents and 20% underwriters**
  - **OSI Staff proposed rate decrease of 7.2%**
  - **OSI Staff proposed premium split of 83.5% to independent agents and 16.5% to underwriters and 80% to direct and affiliate agents and 20% to underwriters**

New Mexico Title Insurance: Biennial Hearing Update

TITLE INSURANCE RATEMAKING

- **Parties settled for the following:**
  - **No change to current basic premium rates**
  - **No change to current rate split of 80% to agents and 20% to underwriters**
  - **Final Order approving settlement issued November 16, 2015.**
  - **Title insurance rates will remain the same for the period from 2011 through July 1, 2018.**

New Mexico Title Insurance: Biennial Hearing Update

HISTORY OF TITLE INSURANCE RATE ADJUSTMENT 2003 TO PRESENT

CASE NO.	EFFECTIVE DATE	RATE ADJUSTMENT
02-00172-IN	July 1, 2003	-1.0%
03-00200-IN	July 1, 2004	-2.0%
04-00184-IN	July 1, 2005	-0.9%
05-00240-IN	July 1, 2006	-5.0%
06-00277-IN	July 1, 2007	-7.0%
07-00279-IN	July 1, 2008	-3.1%
08-00242-IN	August 1, 2009	+10.7%
09-00123-IN	N/A	No Change
11-00162-IN	July 1, 2012	+2.5%*
13-00228-UT	July 30, 2014	No Change
15-00006-RATE- PC	November 19, 2015	No Change

***The total rate adjustment was +5.7%. Base rates were increased by +2.5% and the balance of the rate increase was an increase of the rate for title commitments from $50 to $100.**

New Mexico Title Insurance: Biennial Hearing Update

TITLE INSURANCE RATEMAKING

- **Cost of residential title insurance policy with $175,000 in coverage in 2003 was $1,202**

- **Cost of a residential title insurance policy with $175,000 in coverage through 2018 will be $1202**

- **Just to keep up with inflation since 2003 a tile insurance policy with $175,000 in coverage would need to cost $1,554 in 2015**

New Mexico Title Insurance: Biennial Hearing Update

2015 TITLE INSURANCE RULEMAKING

- **Rulemaking is handled in separate proceeding from the rate proceeding**

- **Rulemaking is not subject to the same procedural requirement as rate hearings and is regarded as an "informal" hearing due to legislative nature of hearing**

- **NMLTA and the Title Insurance Bureau Staff of the Office of Superintendent of Insurance both had proposed rulemakings in 2015**

- **Many of the regulatory changes were "clean-up" or clarifying changes**

New Mexico Title Insurance: Biennial Hearing Update

2015 TITLE INSURANCE RULEMAKING

- **13.14.1 NMAC**
  - **13.14.1.7(C) NMAC Amends definition of "agent" to clarify that both individuals and business entities are licensed as agents (OSI Staff)**
  - **13.14.1.8(C) NMAC includes new definition of "bona fide order" to clarify the meaning of this term used throughout the regulations (NMLTA)**
  - **13.14.1.11(E) NMAC includes a definition for "escrow officer" because the escrow function will be subject to OSI licensing requirements under 13.14.2.10 NMAC (OSI Staff)**

New Mexico Title Insurance: Biennial Hearing Update

2015 TITLE INSURANCE RULEMAKING

- **13.14.1.18(F) NMAC includes new definition for "loan policy" to clarify where the terms "loan policy" and "standard loan policy" are used in the regulations that they have the same meaning (NMLTA)**

- **13.14.1.19(A) and (B) includes new definitions for "mortgage" and "mortgagee's policy" to clarify that these terms also apply to deeds of trust (NMLTA)**

New Mexico Title Insurance: Biennial Hearing Update

2015 TITLE INSURANCE RULEMAKING

- **13.14.2 NMAC (OSI Staff)**
  - **13.14.2.1 NMAC changed to reflect that OSI is the issuing agency**
  - **13.14.2.9 NMAC revises requirements relating to the licensing of persons and entities that conduct the business of title insurance**
  - **13.14.2.10 NMAC will now require escrow officers to be licensed as title insurance agents effective October 1, 2016**

New Mexico Title Insurance: Biennial Hearing Update

2015 TITLE INSURANCE RULEMAKING

- **13.14.3 NMAC includes conforming changes**

- **13.14.4 NMAC (NMLTA)**

  - **13.14.4.9(E) will require that title insurance and escrow records be maintained for fifteen years to be consistent with NMSA 1978, § 59A-30-11(B) which imposes a fifteen year period for evidence of insurability**

  - **13.14.4.10 (L) and (O) NMAC reduces time for reimbursement from escrow from forty-five days to thirty days after receipt of monthly escrow bank account statement**

New Mexico Title Insurance: Biennial Hearing Update

2015 TITLE INSURANCE RULEMAKING

- **13.14.5 NMAC (NMLTA)**
  - **13.14.5.8 NMAC provides for the issuance of a "to be determined title commitment" upon receipt of a bona fide order**
  - **13.14.5.9 NMAC are conforming changes**
  - **13.14.5.13 NMAC authorizes the issuance of pro forma policies in commercial transactions (non-1 to 4 residential and more than $500,000) to provide an example of the form of policy to be issued**

New Mexico Title Insurance: Biennial Hearing Update

2015 TITLE INSURANCE RULEMAKING

- **13.14.6 NMAC (NMLTA)**
  - **13.14.6.9(E) NMAC clarifies that the use of NM form 55 is no longer appropriate for NM form 1, but should remain available for leasehold owner policies issues prior to August 1, 2008**
  - **13.14.6.10 NMAC provides for automatic conversion of contract purchase policies to owners policies upon filing of the deed from the contract seller with no change in the date of the policy or additional premium**

New Mexico Title Insurance: Biennial Hearing Update

2015 TITLE INSURANCE RULEMAKING

- **13.14.7 NMAC (NMLTA)**
  - **13.14.7.14 NMAC provides for deletion of standard exception 4 from any loan policy to remove the need for issuance of an endorsement to insure against mechanics' liens**
  - **13.14.7.19 NMAC provides for inclusion of a pending disbursement clause in a loan policy insuring the lien of a construction loan mortgage to clarify the amount of coverage after each disbursement and require a down date to disclose any liens or objections recorded since the date of the policy**

New Mexico Title Insurance: Biennial Hearing Update

- **13.14.7.27 NMAC provides for the issuance of the Residential Limited Coverage Mortgage Modification Policy endorsement which will permit one title insurance underwriter to endorse the prior issued policy of another underwriter**

- **Other conforming changes**

New Mexico Title Insurance: Biennial Hearing Update

2015 TITLE INSURANCE RULEMAKING

- **13.14.8 NMAC (NMLTA)**
  - **13.14.8.25 NMAC adopts the ALTA form endorsement for assignment of rents or leases**
  - **13.14.8.26 NMAC allows for the issuance of an unimproved land endorsement specific to counties or municipalities without zoning codes**
  - **13.14.8.28 NMAC allows for issuance of an endorsement in situations where zoning requirements are met in part, but not in total and allows the title insurance underwriter to determine which coverages to delete and which to include**

New Mexico Title Insurance: Biennial Hearing Update

2015 TITLE INSURANCE RULEMAKING

- **13.14.8.39 NMAC authorizes a new ALTA form endorsement to address the sometimes unique characteristics of renewable energy facilities such as solar and wind farms**

- **13.14.8.40 NMAC authorizes a new endorsement for large and complex commercial transactions where there is mezzanine financing**

New Mexico Title Insurance: Biennial Hearing Update

2015 TITLE INSURANCE RULEMAKING

- **13.14.9 NMAC (NMLTA)**
  - **13.14.9.19 (C) NMAC allows for a $100 charge for the preparation and issuance of a pro forma policy pursuant to 13.14.5.13 NMAC**
  - **13.14.9.40 NMAC includes conforming and clarifying changes**
  - **13.14.9.42 NMAC sets premium for residential limited coverage mortgage modification policy (NM form 90) of $125 for each policy in amounts between $0.00 and $1,000,000, and an additional $125 per $500,000 for policies above $1,000,000 up to $20,000,000**

New Mexico Title Insurance: Biennial Hearing Update

2015 TITLE INSURANCE RULEMAKING

- **13.14.10 NMAC (NMLTA)**
  - **13.14.10.60 NMAC provides for the premium associated with the energy project endorsement of 10% of the full basic premium rate for all endorsements and in any case not less than $250**
  - **13.14.10.61 NMAC provides for the premium associated with mortgage modification endorsement of $65 plus an additional premium calculated by determining the difference between the charge for a loan policy in the current amount before the insurance is increased and charge for the loan policy amount of the increased insured amount**

New Mexico Title Insurance: Biennial Hearing Update

2015 TITLE INSURANCE RULEMAKING

- **13.14.10.62 NMAC provides for the premium associated with the mezzanine financing endorsement of $100 for each endorsement issued**

- **13.14.10.63 NMAC provides for the premium associated with the owner's contract purchaser's conversion endorsement of 50% of the basic premium rate**

- **Includes a number of conforming and clarifying changes**

New Mexico Title Insurance: Biennial Hearing Update

2015 TITLE INSURANCE RULEMAKING

- **13.14.16 NMAC**
  - **Conforming change to the rules relating to the agent's statistical reports**
- **13.14.17 NMAC (NMLTA)**
  - **Conforming changes to the rules relating to the underwriter's statistical reports**
- **13.14.18 NMAC**
  - **Conforming changes to table of approved forms**

New Mexico Title Insurance: Biennial Hearing Update

- 13.14.18.13 NMAC now provides that the approved forms are accessed on the OSI website rather than published as part of the rules.

- **13.14.19 NMAC**
  - Conforming changes to title insurance rate filings

TITLE 13 INSURANCE
CHAPTER 14 TITLE INSURANCE
PART 1 GENERAL PROVISIONS

13.14.1.1 ISSUING AGENCY: Office of Superintendent of Insurance, Title Insurance Bureau.
[4-1-96; 13.14.1.1 NMAC - Rn & A, 13 NMAC 14.1.1, 5-15-00; A, 7-31-14]

13.14.1.2 SCOPE: This rule applies to all title insurers and title insurance agents conducting title insurance business in New Mexico.
[4-1-96, 11-1-96; 13.14.1.2 NMAC - Rn, 13 NMAC 14.1.2, 5-15-00]

13.14.1.3 STATUTORY AUTHORITY: NMSA 1978, Section 59A-30-4.
[6-16-86, 4-1-96; 13.14.1.3 NMAC - Rn, 13 NMAC 14.1.3, 5-15-00; A, _-_-_]

13.14.1.4 DURATION: Permanent.
[4-1-96; 13.14.1.4 NMAC - Rn, 13 NMAC 14.1.4, 5-15-00]

13.14.1.5 EFFECTIVE DATE: March 1, 2016. [~~June 16, 1986, unless a later date is cited at the end of a section.~~]
[6-16-86...11-1-96; 13.14.1.5 NMAC - Rn & A, 13 NMAC 14.1.5, 5-15-00; A, _-_-_]

13.14.1.6 OBJECTIVE: The purpose of this rule is to set forth general provisions applicable throughout Title 13, Chapter 14 of the New Mexico Administrative Code.
[11-1-96; 13.14.1.6 NMAC - Rn & A, 13 NMAC 14.1.6, 5-15-00]

13.14.1.7 DEFINITIONS "A": As used in 13 NMAC Chapter 14, and also in interpreting the New Mexico Title Insurance Act, the following terms shall have the following meanings.

A. "Abstract [~~P~~]plant"[.] A title plant meeting the requirements of NMSA 1978, Section 59A-12-13.

B. "Actual [~~C~~]charge"[.] A charge approximating the cost of the actual time, equipment, and expenses incurred.

C. "Agent"[.] A person licensed as a title insurance agent in New Mexico including [~~This term may also refer to the agent's company or employees.~~] [~~A~~] a corporation, partnership, joint venture, limited liability [~~corporation~~]company, affiliate, direct operation, or other business entity in New Mexico (except for title insurers authorized under the laws of New Mexico to transact as insurer the business of title insurance) that hold themselves out as being engaged in the business of title insurance. A sole proprietorship entity may also be referred to as an agent.

D. "Applicant"[.] The person, firm or organization applying for or requesting that a policy of title insurance be issued.

E. "Available [~~F~~]funds"[.]

(1) For purposes of the title insurance article of the New Mexico Insurance Code only (NMSA 1978, Chapter 59A, Article 30), available funds is money deposited in a depository account with a financial institution held in the name of and subject to the control of a title insurance agent, 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 deposits in the account not made as part of the real estate closing for which disbursement is being made.

(2) It is prohibited for title insurance agents, title insurers or third party fiduciaries to guaranty the collectability of funds or indemnify their financial institutions from loss due to uncollected funds. This prohibition shall not affect the authority of title insurers to issue closing protection letters as authorized under the rules and regulations promulgated by the superintendent of insurance; nor the ability of title insurance agents, title insurers, or third party fiduciaries to endorse without qualification, restriction or limitation, checks, drafts, or other similar items for deposit into its account at any financial institution.

(3) The following funds are "available funds" 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 agent, 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 for immediate disbursement;

(d) a cashier's check which is payable to and was purchased by the title insurance agent, 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.

(4) The following funds are "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 depository institution for next day availability;

(c) cashier checks, certified checks and teller's checks which have been deposited at a financial institution using a special deposit slip if required by depository institution for next day availability.

(5) All other modes used for the transfer of monies will be made available on the earliest date they are considered "available 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.

(6) Any funds received under the automated clearing house (ACH) network shall not be considered "available funds".

[6-16-86...4-1-94; 13.14.1.7 NMAC - Rn, 13 NMAC 14.1.7, 5-15-00; A, 7-1-06; A, 09-15-10; A, _-_-_]

13.14.1.8 DEFINITIONS "B": As used in 13 NMAC Chapter 14, and also in interpreting the New Mexico Title Insurance Act, the following terms shall have the following meanings:

A. **"Basic [P]premium [R]rate ([S]schedule)"** [.] The premium rates set from time to time by the [S]superintendent for an original Owner's Policy of title insurance.

B. **"Binder"**[.] A commitment for title insurance.

C. **"Bona fide order"** For purposes of 13.14.5.8 NMAC, a "bona fide order" is defined as follows:

(1) Receipt by a title insurance agent of a fully executed sales and purchase agreement, whether an original, photocopy, facsimile copy or email attachment, signed by the seller and purchaser, either on one document or in counterparts, for the sale of real property supported by an earnest money deposit or other consideration; or,

(2) A title order received by a title insurance agent, whether delivered in writing by letter, memorandum, facsimile, electronically or orally, for a new or refinance loan, whether closed end or open end, to be secured by a lien on real property from a lender or lender's representative, including a mortgage broker; or,

(3) A title order received by a title insurance agent, whether delivered in writing by letter, memorandum, facsimile, electronically or orally, from a lender, lender's representative, real estate servicing company for the lender or attorney representing the lender dealing with real property which has been foreclosed and is Real Estate Owned (REO) property held as foreclosed property; or,

(4) A title order received by a title insurance agent, whether delivered in writing by letter, memorandum, facsimile, electronically or orally, from a listing real estate agent or owner where there is a signed listing agreement for sale of the real property that is the subject of the title order; or,

5) Any other type of order for title insurance which the receiving title insurance agent reasonably believes will lead to a closing of the sale or financing of real property in due course.

(6) If any order for title insurance is missing one or more terms such as the identity of the proposed insured or the amount of insurance, the title insurance agent shall issue a commitment with one or more terms denominated as "to be determined" or "tbd" along with an additional requirement as follows: "This title commitment is not effective until Schedule A is completed and the company reserves the right to amend and supplement this commitment with additional information, requirements and exceptions based upon the provision of additional information."

(7) A title order from an owner, lender, lender's representative or attorney for the purpose of determining the status of title indicating an intention to file for judicial foreclosure on an existing mortgage or deed of trust, quiet title suit or other litigation in the future, but where the customer has no present intention to purchase a title insurance policy, is not a "bona fide order for title insurance". A title order while a judicial foreclosure, quiet title suit or other litigation is pending shall be considered a "bona fide order for title insurance" under the circumstances.

[6-16-86...4-1-94; 13.14.1.8 NMAC - Rn, 13 NMAC 14.1.8, 5-15-00; A, _-_-_]

13.14.1.9 DEFINITIONS "C": As used in 13 NMAC Chapter 14, and also in interpreting the New Mexico Title Insurance Act, the following terms shall have the following meanings:

A. "Company"[.] An insurer, a title insurance underwriter, a title insurance agent, the organization employing a title insurance agent or any entity authorized to issue title insurance policies as either an underwriter or an agent.

[6-16-86...4-1-94; 13.14.1.9 NMAC - Rn, 13 NMAC 14.1.9, 5-15-00; A, _-_-_]

13.14.1.10 DEFINITIONS "D": [Reserved]

13.14.1.11 DEFINITIONS "E": As used in 13 NMAC Chapter 14, and also in interpreting the New Mexico Title Insurance Act:

A. "[e] 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.

B. "[e] Escrow account" means an account established pursuant NMSA 1978, Section 58-28-4 or 59A-12-22.

C. "[e] 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 pursuant to [s]Subsection B of 13.14.4.8 NMAC.[~~NMAC.~~]

D. "[e]Extra chain of title" means a non-contiguous parcel having a separate chain from the original chain being searched, except that two or more lots in the same platted subdivision having the same plat recording data and belonging to the same owner shall be treated as one chain. Contiguous parcels of land shall be treated as one chain provided the title is vested in one owner at the time application for title insurance is made.

E. "Escrow officer" means an individual associated with a title insurance agent who is responsible directly or indirectly for the escrow closing and settlement functions of a real estate transaction.

[6-16-86...4-1-94; 13.14.1.11 NMAC - Rn, 13 NMAC 14.1.11, 5-15-00; 13.14.1.11 NMAC - A, 1-1-01; A. _-_-_]

13.14.1.12 DEFINITIONS "F": [Reserved]

13.14.1.13 DEFINITIONS "G": "Generally accepted accounting principles" means professional standards of accounting practice as promulgated from time to time by the Financial Accounting Standards Board and administered by the American Institute of Certified Public Accountants.

[13.14.1.13 NMAC - N, 1-1-01; A, _-_-_]

13.14.1.14 DEFINITIONS "H": [Reserved]

13.14.1.15 DEFINITIONS "I": As used in 13 NMAC Chapter 14, and also in interpreting the New Mexico Title Insurance Act, the following terms shall have the following meanings:

A. "Interim [F]title [I]insurance [B]binder"[.] See Binder.

[6-16-86...4-1-94; 13.14.1.15 NMAC - Rn, 13 NMAC 14.1.15, 5-15-00; A, _-_-_]

13.14.1.16 DEFINITIONS "J": [Reserved]

13.14.1.17 DEFINITIONS "K": [Reserved]

13.14.1.18 DEFINITIONS "L": As used in 13 NMAC Chapter 14, and also in interpreting the New Mexico Title Insurance Act:

A. "[H]Leasehold policy" [.] A Leasehold Owner's Policy or a Leasehold Loan Policy.

B. "[H]Leasehold loan policy" [.] NM [F]form 2, Loan Policy and NM [F]form 21, Leasehold Loan Endorsement.

C. "[H]Leasehold owner's policy"[.] NM [F]form 1, Owner's Policy and NM [F]form 20, Leasehold Owner's Endorsement.

D. "[H]Ledger" means a chronological record of dated debits and credits maintained either in a bookkeeping ledger book or a readily retrievable magnetic medium from which the balance of funds for each particular escrow can be calculated at any given time.

E. **"[l]Liability (amount)"** means the stated amount of liability on Schedule A of the policy, binder or commitment or, in the case of a pending disbursement clause, the amount which has been disbursed as stated in the policy.

F. **"Loan policy"** The terms "loan policy" or "standard loan policy" shall refer to NM form 2, Loan Policy.

[6-16-86...4-1-94; 13.14.1.18 NMAC - Rn, 13 NMAC 14.1.18, 5-15-00; 13.14.1.18 NMAC - A, 1-1-01; A, 3-1-02; A, _-_-_]

13.14.1.19 DEFINITIONS "M": [Reserved] As used in 13 NMAC Chapter 14, and also in interpreting the New Mexico Title Insurance Act, the following terms shall have the following meanings:

A. **"Mortgage"** The term "mortgage" shall refer to either a "mortgage" or "deed of trust".

B. **"Mortgagee's policy"** NM form 2, Loan Policy.

[13.14.1.19 NMAC – N, _-_-_]

13.14.1.20 DEFINITIONS "N": [Reserved]

13.14.1.21 DEFINITIONS "O": As used in 13 NMAC Chapter 14, and also in interpreting the New Mexico Title Insurance Act, the following terms shall have the following meanings:

A. **"One to [F]four [F]family [R]residential [P]property"[.]** Any real property which meets the following conditions:

(1) the property will be owned at date of policy issuance by individual natural persons, and not by corporations, partnerships or other artificial legal entities; and

(2) the improvements to the insured property are primarily designed and used for residential occupancy of from one to four families. This provision applies to each 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.

B. **"Original [O]owner [P]policy [P]remium"[.]** See Basic [P]premium [R]rate.

[6-16-86...4-1-94; 13.14.1.21 NMAC - Rn, 13 NMAC 14.1.21, 5-15-00; A, _-_-_]

13.14.1.22 DEFINITIONS "P": As used in 13 NMAC Chapter 14, and also in interpreting the New Mexico Title Insurance Act, the following terms shall have the following meanings.

A. **"Person"[.]** "Person" includes individuals, corporations, associations, partnerships, trusts and estates.

B. **"Policy"[.]** A policy of title insurance promulgated by the superintendent. Policies include commitments or binders and all endorsements.

C. **"Producer"[.]** A real estate broker, qualifying broker, real estate sales person, lender, mortgage broker, mortgage company, builder, developer, attorney, architect, or any person or entity in a position to refer business to a title insurer or title insurance agent.

[6-16-86...4-1-94; 13.14.1.22 NMAC - Rn, 13 NMAC 14.1.22, 5-15-00; A, 7-1-06; A, _-_-_]

13.14.1.23 DEFINITIONS "Q": [Reserved]

13.14.1.24 DEFINITIONS "R": As used in 13 NMAC Chapter 14, and also in interpreting the New Mexico Title Insurance Act, the following terms shall have the following meanings:

A. **"Reissue"[.]** The issuing of title insurance to all or a portion of property previously insured.

[6-16-86...4-1-94; 13.14.1.24 NMAC - Rn, 13 NMAC 14.1.24, 5-15-00, A; _-_-_]

13.14.1.25 DEFINITIONS "S": As used in [~~13.14~~] 13 NMAC Chapter 14, and also in interpreting the New Mexico Title Insurance Act, the following terms shall have the following meanings:

A. **"Schedule of basic premium rates"[.]** See basic premium rates (schedule).

B. **"Simultaneous (issue)"[.]** Issuing two or more policies bearing the same effective date and insuring the same land.

C. **"Superintendent"[.]** The superintendent of insurance, acting on behalf of the office of the superintendent, or anyone acting in an official capacity on the superintendent's behalf.

D. **"Supplementary rate information"**[.] Rate schedules and manuals, rating rules, and all other information needed to determine the applicable rate in effect or to be in effect.

E. **"Supporting information"**[.] The experience and judgment of the filer and its appointed New Mexico agents, if any, and the experience or data of other insurers and agents relied upon by the filer; the interpretation of any other data relied upon by the filer; descriptions of methods used in making the rates; and any other information required by the superintendent to be filed.

F. **"Survey (recent)"**[.] "Recent survey" as used in 13.14.6.14 NMAC and 13.14.7.13 NMAC is a survey which meets the requirements of the insurer; provided that:

(1) for condominium units, the term also includes the most recently filed as-built or as-modified survey, confirmed by such site inspections, review of documents including condominium by-laws and regulations, and affidavits, if any, as the underwriter may require; and

(2) for improved land, the term also includes the most recent survey made which shows the improvements on the land.

[6-16-86...4-1-94; 13.14.1.25 NMAC - Rn & A, 13 NMAC 14.1.25, 5-15-00; A, 12-30-10; A, 10-1-12; A, 7-31-14; A, _-_-_]

13.14.1.26 DEFINITIONS "T": As used in 13 NMAC Chapter 14, and also in interpreting the New Mexico Title Insurance Act, the following terms shall have the following meanings:

A. **"Title [P]plant"**[.] See Abstract [P]plant.

[6-16-86...4-1-94; 13.14.1.26 NMAC - Rn, 13 NMAC 14.1.26, 5-15-00; A_-_-_]

13.14.1.27 DEFINITIONS "U": As used in 13 NMAC Chapter 14, and also in interpreting the New Mexico Title Insurance Act, the following terms shall have the following meanings:

A. **"Unusual [C]complexity"**[.] As used in determining additional charges, other unusual complexity may exist when the property being searched is described by metes and bounds or by map and tract and when that same property as described has not been previously searched or examined using that same description and where that description causes an unduly long search or complicated examination.

[6-16-86...4-1-94; 13.14.1.27 NMAC - Rn, 13 NMAC 14.1.27, 5-15-00; A, _-_-_]

13.14.1.28 DEFINITIONS "V": As used in 13 NMAC Chapter 14, and also in interpreting the New Mexico Title Insurance Act, the following terms shall have the following meanings:

A. **"Vestee"**[.] The name or names of the person or persons in whom title to the land is vested (item 3, Schedule A, Loan Policy).

[6-16-86...4-1-94; 13.14.1.28 NMAC - Rn, 13 NMAC 14.1.28, 5-15-00; A, _-_-_]

13.14.1.29 DEFINITIONS "W": [Reserved]

13.14.1.30 DEFINITIONS "X": [Reserved]

13.14.1.31 DEFINITIONS "Y": [Reserved]

13.14.1.32 DEFINITIONS "Z": [Reserved]

13.14.1.33 STATUTORY DEFINITIONS: See NMSA 1978, Section 59A-30-3 for definitions of "agency agreement", "business of title insurance", "charge", "premium", "title insurance agent", "title insurance policy" or "policy" and "title insurer". These definitions are incorporated herein by reference.

[6-16-86; 13.14.1.33 NMAC - Rn, 13 NMAC 14.1.33, 5-15-00; A, _-_-_]

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 3-7-74.
SCC-85-6, Insurance Department Regulation 30 - Title Insurance, filed 9-6-85.
SCC-86-1, Insurance Department Regulation 30 - Title Insurance, filed 5-9-86.

History of Repealed Material. [Reserved]

Other History.
Re-promulgated a portion of SCC-86-1, Insurance Department Regulation 30 - Title Insurance (filed 5-9-86) and renumbered, reformatted and replaced as 13 NMAC 14.1, General Provisions, effective 11-01-1996.
13 NMAC 14.1, General Provisions (filed 10-2-96) 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 7-31-14.
13.14.1.NMAC, General Provisions (filed 7-31-2014), amended effective _ - -

TITLE 13 INSURANCE
CHAPTER 14 TITLE INSURANCE
PART 2 LICENSING AND REPORTING REQUIREMENTS

13.14.2.1 ISSUING AGENCY: [~~Public Regulation Commission, Insurance Division,~~] Office of Superintendent of Insurance, Title Insurance Bureau.
[4-1-96; 13.14.2.1 NMAC - Rn, 13 NMAC 14.3.1 & A, 5-15-00; A, _-_-_]

13.14.2.2 SCOPE: This rule applies to all title insurers and title insurance agents conducting title insurance business in New Mexico.
[4-1-96, 11-1-96; 13.14.2.2 NMAC - Rn, 13 NMAC 14.3.2, 5-15-00]

13.14.2.3 STATUTORY AUTHORITY: NMSA 1978, Sections 59A-30-4, 59A-30-7, and 59A-30-12.
[6-16-86...11-1-96; 13.14.2.3 NMAC - Rn, 13 NMAC 14.3.3, 5-15-00; A, _-_-_]

13.14.2.4 DURATION: Permanent.
[4-1-96; 13.14.2.4 NMAC - Rn, 13 NMAC 14.3.4, 5-15-00]

13.14.2.5 EFFECTIVE DATE: March 1, 2016 [~~June 16, 1986~~], unless a later date is cited at the end of a section.
[6-16-86, 11-1-96; 13.14.2.5 NMAC - Rn, 13 NMAC 14.3.5 & A, 5-15-00; A, _-_-_]

13.14.2.6 OBJECTIVE: The purpose of this rule is to establish licensing and reporting requirements.
[11-1-96; 13.14.2.6 NMAC - Rn, 13 NMAC 14.3.6 & A, 5-15-00]

13.14.2.7 DEFINITIONS: See 13.14.1 NMAC.
[11-1-96; 13.14.2.7 NMAC - Rn, 13 NMAC 14.3.7, 5-15-00]

13.14.2.8 LICENSING:

A. **Abstracts and title plants:** Licensed New Mexico title insurance agents, or authorized title insurers in the case of direct operations must own, operate, or control an abstract or title plant meeting the requirements of NMSA 1978, Section 59A-12-13. Such abstract or title plant must be maintained for a period of not less than twenty (20) years immediately prior to date of application for license of certificate of authority, in the case of direct operations, or date of inspection of such abstract or title plant by the superintendent of insurance as provided for in Subsection B of 13.14.3.8 NMAC. No such abstract or title plant may be more than thirty (30) days in arrears in posting unless such arrearage is caused by delay in indexing of the public records in the county for which such plant is maintained, or by other factors that the superintendent deems as being undue hardships in obtaining the public records or facsimiles thereof, in which event the abstract or title plant must at least be current with the public records as then indexed.

B. **Inspection and approval of abstract or title plants.** The superintendent of insurance shall inspect, or cause to be inspected, each and every abstract or title plant owned, operated, or controlled within this state, and if such plant is not in compliance with the provisions of NMSA 1978, Section 59A-12-13 and Subsection A of 13.14.3.8 NMAC at the time of such inspection, shall require that such plant be brought into compliance within a period of time, which in his discretion is appropriate and sufficient. A title insurance agent shall not rely on a new or inactive title plant in the issuance of a policy of title insurance without the title plant first being inspected.
[3-1-89, 6-1-98; 13.14.2.8 NMAC - Rn, 13 NMAC 14.3.8, 5-15-00; A, 10-1-12; A, _-_-_]

13.14.2.9 TITLE INSURANCE AGENT'S LICENSE: An "agent" or "nonresident agent," as defined by NMSA 1978, Section 59A-12-2, who is (1) appointed by a title insurer; (2) is transacting the business of title insurance as defined by NMSA 1978, Section 59A-30-3C; and, (3) who owns, operates or controls a title abstract plant as defined in NMSA 1978, Section 59A-12-13A, must hold a title insurance agent's license. The scope of such license is limited to property located in a county or counties for which the licensee has the necessary title abstract plant as specified in NMSA 1978, Section 59A-12-13. For purposes of this definition, the terms "owns, operates, or controls" include the following activities:

A. "Owns" - holding legal or equitable title or controlling interest in a title abstract plant, either as sole or joint proprietor, any partner of a general partnership, or the general partner of a limited partnership, holder of

more than ten percent (10%) of the voting stock of a corporation, or as a lessee under a written lease agreement or lease-purchase agreement.

B. "Operates" - directly responsible for the maintenance, updating or retrieval of information contained in a title abstract plant or the searching, abstracting, or examining of title to real property or preparation of abstracts, searches, or commitments relating to real property derived from research from a title abstract plant.

C. "Controls" - ultimate regulating authority or any intermediate supervisory authority over any person directly responsible for the operation of a title abstract plant, who promulgates or administers the general policies providing for the direction and management of a title abstract plant, including general policies of maintenance, updating, and retrieval of information from a title abstract plant or the purchase, sale, or leasing of a title abstract plant.

D. All corporations, partnerships, joint ventures, or other business entities (except for title insurers authorized under the laws of New Mexico to transact as insurer the business of title insurance) that hold themselves out as being engaged in the business of title insurance, or who receive or collect premium for title insurance policies, must hold a title insurance agent license. Applications for a title insurance agent license shall comply with NMSA 1978, Section 59A-12-15B.

E. Title insurers transacting the business of title insurance in New Mexico shall notify the superintendent of insurance in writing, within thirty (30) days of the effective date of the cancellation of any appointment of any individual or entity as an agent of said insurer.

F. Title agents engaged in the business of title insurance in New Mexico shall provide written notification to title insurers that have currently appointed them as an agent, within thirty (30) days of the effective date of the termination of any employee appointed as an individual agent by said title insurer.

[3-1-90; 13.14.2.9 NMAC - Rn, 13 NMAC 14.3.9, 5-15-00; A, 10-1-12; A, _-_-_]

13.14.2.10 [~~TITLE INSURANCE~~] TITLE INSURANCE [~~SOLICITOR'S LICENSE:~~] AGENT LICENSE FOR ESCROW OFFICER: [~~Persons not holding a Title Insurance Agent's License who, with authority from a title insurance agent, solicit or negotiate the issuance of a title insurance policy for compensation shall hold a Title Insurance Solicitor's License. The term "compensation" includes payment of wages, salary, or commission, whether provided in money or non-monetary consideration, inducement, or privileges. The licensing requirements of this paragraph do not apply to salaried administrative or clerical employees of a title insurance agent performing functions in the office under the supervision of the employer who do not receive commissions; and, those salaried employees rendering solely clerical and administrative services in the employer's office.~~]

A. The escrow officer shall be licensed as a title insurance agent.

B. This section shall have an effective date of October 1, 2016.

[3-1-90; 13.14.2.10 NMAC - Rn, 13 NMAC 14.3.10, 5-15-00; A, _-_-_]

13.14.2.11 [~~TITLE INSURANCE AGENCY LICENSE:~~] [Reserved]

[~~A. All corporations, partnerships, joint ventures, or other business entities (except for title insurers authorized under the laws of New Mexico to transact as insurer the business of title insurance) that hold themselves out as being engaged in the business of title insurance, or who receive or collect premium for title insurance policies, must hold a title insurance agency license. Applications for a title insurance agency license shall comply with NMSA 1978 Section 59A-12-15B.~~

~~B. Title insurers transacting the business of title insurance in New Mexico shall notify the superintendent of insurance in writing, within thirty (30) days of the effective date of the cancellation of any appointment of any individual or entity as an agent of said insurer.~~

~~C. Title agents engaged in the business of title insurance in New Mexico shall provide written notification to an underwriter that has currently appointed them as an agent, within thirty (30) days of the effective date of the termination of any employee appointed as an individual agent by said underwriter.~~]

[3-1-90; 13.14.2.11 NMAC - Rn, 13 NMAC 14.3.11, 5-15-00; A, 10-1-12; Repealed, _-_-_]

13.14.2.12 MAINTENANCE ASSESSMENTS AND FEES: The maintenance fee assessment authorized by NMSA 1978, Section 59A-30-12 on policies written during the preceding calendar year insuring property or interests in property in New Mexico shall be established for each fiscal year commencing on July 1 and ending on June 30 by directive of the [S]superintendent. The directive shall be issued at least thirty (30) days before it is to become effective, and shall contain or be accompanied by a brief statement as to how the maintenance fee was determined. Title insurers shall correctly calculate their assessments based upon their New Mexico gross premiums for the most recent preceding full calendar year and shall remit the same to the [~~S~~]superintendent of [~~I~~]insurance on

or before May 1 or such other date as may be specified in the [~~S~~]superintendent's directive. Any person aggrieved by the [~~S~~]superintendent's directive may appeal to the [~~S~~]superintendent in accordance with NMSA 1978, Section 59A-4-15 within thirty (30) days after the date of the directive. Title insurers' assessments may be rounded to the nearest dollar after computation has been performed. Fifty cents or more may be rounded up; forty-nine cents or less may be rounded down.
[2-16-87...4-3-95; 13.14.2.12 NMAC - Rn, 13 NMAC 14.3.12, 5-15-00; A, _-_-_]

13.14.2.13 UNDERWRITER'S EXPERIENCE REPORT: Each underwriter shall maintain such minimum basic records on each New Mexico transaction as shall be necessary to accurately report such transactions annually pursuant to the New Mexico Title Insurance Underwriter's Experience Report, 13.14.17 NMAC, and incorporated herein by reference. The [~~S~~]superintendent shall annually fix the date and location for the filing of each company's Underwriter's Experience Report of transactions during the preceding year and shall notify each company of the same at least sixty (60) days prior to the filing deadline.
[6-16-86...4-3-95, 7-1-97; 13.14.2.13 NMAC - Rn, 13 NMAC 14.3.13.1, 5-15-00; A, _-_-_]

13.14.2.14 AGENT'S STATISTICAL REPORT: Each title insurance agent, including agents which are independent or direct operations of insurers, shall report income and expenses annually on both county-by-county and summary-of-all-counties bases using the agent's statistical report form set forth in 13.14.16 NMAC, Agent's Statistical Report. The superintendent shall annually fix the date and location for the filing of each agent's statistical report for the calendar year and shall notify each agent of the date at least sixty (60) days prior to the filing deadline; provided, however, that in no event shall an agent be required to file its statistical report prior to May 15th of the year following the end of the calendar year being reported.
[6-16-86...4-3-95, 7-1-97; 13.14.2.14 NMAC - Rn, 13 NMAC 14.3.13.3 & A, 5-15-00; 13.14.2.14 NMAC - A, 1-1-01; A, 3-1-02; A, 7-1-05]

13.14.2.15 AUDITS: On a random basis, agent and insurers experience reporting will be audited in order to confirm the accuracy of their reports, and not as, or in lieu of, an examination pursuant to NMSA 1978, Chapter 59A, Article 4[~~, NMSA 1978 et. seq~~]. The cost of said examination will be paid by the Title Maintenance Fund. The [~~S~~]superintendent may bill the agent or insurer for all or part of the cost of said audit if insufficiency of the records of the agent or insurer causes excess difficulty or time in performing the audit.
[3-1-91; Rn, 13 NMAC 14.3.13.4, 7-1-97; 13.14.2.15 NMAC - Rn, 13 NMAC 14.3.14, 5-15-00; A, _-_-_]

13.14.2.16 [RESERVED]
[4-1-96; Rn, 13 NMAC 14.3.13.5, 7-1-97; 13.14.2.16 NMAC - Rn, 13 NMAC 14.3.15, 5-15-00; Repealed, 1-1-01]

HISTORY OF 13.14.2 NMAC:
Pre-NMAC History.
ID 74-1, Article 10, Chapter 58, Rule 2, Regulations for Filing Title Insurance Forms and Rates, 3-7-74
SCC-85-6, Insurance Department Regulation 30 - Title Insurance, 9-6-85
SCC-86-1, Insurance Department Regulation 30 - Title Insurance, 5-9-86

NMAC History.
Re-promulgated a portion of SCC-86-1, Insurance Department Regulation 30 - Title Insurance, as 13 NMAC 14.3, Licensing and Reporting Requirements, filed 10-2-96
Recompiled 13 NMAC 14.3, Licensing and Reporting Requirements, as 13.14.2 NMAC, Licensing and Reporting Requirements, filed 4-28-00
13.14.2 NMAC, Licensing and Reporting Requirements, filed 5-15-00, amended _-_-_

History of Repealed Material.
ID 74-1, Article 10, Chapter 58, Rule 2, Regulations for Filing Title Insurance Forms and Rates - Superseded 9-6-85
SCC-85-6, Insurance Department Regulation 30 - Title Insurance - Superseded 5-9-86
13 NMAC 14.3.13.2 - Repealed 7-1-97
13.14.2.16 NMAC - Repealed 1-1-01]
13.14.2.11 NMAC – Repealed _-_-_

TITLE 13 INSURANCE
CHAPTER 14 TITLE INSURANCE
PART 3 AGENCY AGREEMENTS

13.14.3.1 **ISSUING AGENCY:** Office of Superintendent of Insurance, Title Insurance Bureau.
[4-1-96; 13.14.3.1 NMAC - Rn, 13 NMAC 14.4.1 & A, 5-15-00; A, 7-31-14]

13.14.3.2 **SCOPE:** This rule applies to all title insurers and title insurance agents conducting title insurance business in New Mexico.
[4-1-96, 11-1-96; 13.14.3.2 NMAC - Rn, 13 NMAC 14.4.2, 5-15-00]

13.14.3.3 **STATUTORY AUTHORITY:** NMSA 1978, Section 59A-30-4.
[6-16-86...4-1-96; 13.14.3.3 NMAC - Rn, 13 NMAC 14.4.3, 5-15-00; A, _-_-_]

13.14.3.4 **DURATION:** Permanent.
[4-1-96; 13.14.3.4 NMAC - Rn, 13 NMAC 14.4.4, 5-15-00]

13.14.3.5 **EFFECTIVE DATE:** March 1, 2016. [~~June 16, 1986, unless a later date is cited at the end of a section.~~]
[6-16-86, 11-1-96; 13.14.3.5 NMAC - Rn, 13 NMAC 14.4.5 & A, 5-15-00; A, _-_-_]

13.14.3.6 **OBJECTIVE:** The purpose of this rule is to establish requirements for agency agreements between title insurance agencies and title insurance agents.
[11-1-96; 13.14.3.6 NMAC - Rn, 13 NMAC 14.4.6 & A, 5-15-00]

13.14.3.7 **DEFINITIONS:** See 13.14.1 NMAC.
[11-1-96; 13.14.3.7 NMAC - Rn, 13 NMAC 14.4.7, 5-15-00]

13.14.3.8 **ASSUMPTION OF RISKS BY AGENTS:** On and after October 7, 1985, no agency [~~contract, agency~~] agreement or other contract between a licensed New Mexico title insurance agent and an Insurer admitted to write title insurance in New Mexico shall directly or indirectly require said agent to assume either partial or total liability for a risk insured pursuant to these regulations and in accordance with the underwriting standards of the Insurer, except as follows:

A. Gross negligence of agent. If the agent, or any person employed by the agent on his behalf, is grossly negligent by error or omission in the title search or examination, or in preparation or issuance of the policy, binder or commitment, or in the determination that the insured estate has been created, conveyed or modified as insured, or in the recording of the instruments creating, modifying or conveying the insured estate and such error or omission causes a loss to the Insurer under the terms of the policy issued by the agent, said agent may be liable to the Insurer for all or part of any payment made by the Insurer to an Insured under a claim or claims arising from said error or omission. The laws of New Mexico determine the current standards and definition of gross negligence (from time to time).

B. Disregard of written instructions. If the agent, or any person employed by the agent on his behalf, shall disregard the written instructions of the Insurer (including, but not limited to, specific underwriting standards or instructions, risk determinations, liability limitations or prior approval requirements) or of an Insured or other party to a transaction resulting in the issuance of a title insurance policy, and such written instructions are not contrary to, or in contravention of, these regulations or the laws of New Mexico and/or the United States of America, and the failure to follow said written instructions results in a loss to the Insurer under the terms of the policy issued by the agent, said agent may be liable to the Insurer for all or part of any payment made by the Insurer to an Insured under a claim or claims arising from said disregard of written instructions.

C. Fraud, deceit, theft, etc. If the agent, or any person employed by the agent on his behalf, shall be guilty of fraud, deceit, theft or any similar intentional act for which a person may be prosecuted criminally or sued (but not negligence) and such act results in a loss to the Insurer under the terms of the policy issued by the agent, said agent may be liable to the Insurer for all or part of any payment made by the Insurer to an Insured under a claim or claims arising from said intentional act of the agent or his employee.

D. Matters covered by New Mexico closing protection letter. If the agent, or any person employed by the agent on his behalf, shall do or fail to do any act which results in the Insurer paying a claim (based upon said act

or failure to act) to any person pursuant to a New Mexico Closing Protection Letter issued by the Insured, said agent may be liable to the Insurer for all or part of any claim payment made by the Insurer to a person protected by said Closing Protection Letter.
[6-16-86, 5-1-88; 13.14.3.8 NMAC - Rn, 13 NMAC 14.4.8, 5-15-00; A, - - -]

13.14.3.9 PAYMENTS OF CLAIMS BY INSURERS: No Insurer shall deny or postpone the payment of a valid claim made pursuant to a title insurance policy or closing protection letter by reason of liability of its agent under the terms of its agency agreement or any other agreement between the Insurer and its agent. It is the express intention of these rules that all Insureds (and parties covered by a closing protection letter) shall be compensated for just claims by said Insurer irrespective of any actual or pending determination of liability between said Insurer and its agent.
[6-16-86; 13.14.3.9 NMAC - Rn, 13 NMAC 14.4.9, 5-15-00]

13.14.3.10 PAYMENTS OF PREMIUM AND MAINTENANCE TAXES OR ASSESSMENTS BY INSURERS: In order to provide for a uniform percentage of premiums to be retained by title insurers and a uniform method of payment of all taxes and assessments made pursuant to the New Mexico Insurance Code, as amended from time to time, all title insurance agency agreements shall require (and all Insurers shall comply whether or not there is an agreement) that the Insurer shall pay all premium taxes or assessments and all maintenance taxes or assessments as the same may come due and payable, and the said Insurers shall report all premiums received by it directly or by its agents on a one hundred percent (100%) gross basis for the purposes of said taxes and assessments.
[6-16-86, 3-1-92; 13.14.3.10 NMAC - Rn, 13 NMAC 14.4.10, 5-15-00]

13.14.3.11 PREMIUM DIVISION WITH AGENTS -- OTHER FEES AND EXPENSES:

A. All agency contracts, agency agreements and other contracts between licensed New Mexico title insurance agents and insurers admitted to write title insurance in New Mexico shall provide that agents shall retain the following amounts of all gross premiums on policies, and shall remit to the insurer the remainder of all gross premiums:

(1) for amounts of insurance up to two million dollars ($2,000,000.00), agents shall retain eighty percent (80%);

(2) for additional amounts of insurance over two million dollars ($2,000,000.00) and up to five million dollars ($5,000,000.00), agents shall retain seventy-five percent (75%);

(3) for additional amounts of insurance over five million dollars ($5,000,000.00) and up to ten million dollars ($10,000,000.00.00), agents shall retain seventy percent (70%);

(4) for additional amounts of insurance over ten million dollars ($10,000,000.00) and up to twenty-five million dollars ($25,000,000.00), agents shall retain sixty-five percent (65%);

(5) for additional amounts of insurance over twenty-five million dollars ($25,000,000.00) and up to fifty million dollars ($50,000,000.00), agents shall retain sixty percent (60%); and

(6) for additional amounts of insurance over fifty million dollars ($50,000,000.00), agents shall retain fifty percent (50%).

B. Agents shall retain eighty percent (80%) of all gross premiums paid for the following coverages and shall remit to the insurer the remainder of the gross premiums:

(1) all title commitments and binders as provided for in Subsection A of 13.14.9.19 NMAC;

(2) deletion of standard exception 4 from the title commitment or binder for mechanics' lien coverage where there is no loss of insured priority over mechanics' liens as provided for in 13.14.6.15 NMAC and 13.14.10.9 NMAC for owner's policies or 13.14.7.14 NMAC and 13.14.9.40 NMAC for loan policies; and

(3) any endorsements providing for fixed premiums of one hundred dollars ($100.00) or less.

C. Agents shall retain the amounts attributable to the pro-rata premium for each level of the amounts of insurance as set forth in Subsection A above for the following coverages and shall remit to the insurer the remainder of the gross premiums:

(1) premium for deletion of standard exception 3 from the title commitment or binder for survey coverage in owner's or leasehold owner's policies as provided for in 13.14.6.14 NMAC and 13.14.10.10 NMAC;

(2) extra-hazardous premium for deletion of standard exception 4 from the title commitment or binder for mechanics' lien coverage where there is a loss of insured priority over mechanics' liens as provided for

in 13.14.6.15 NMAC and 13.14.10.9 NMAC for owner's policies or 13.14.7.14 NMAC and 13.14.9.40 NMAC for loan policies; and,

(3) any endorsements providing for fixed premiums of more than one hundred dollars ($100.00) or variable premiums based upon a percentage of the basic premium rate.

D. In addition, agents shall retain no part of the additional twenty-five cents ($0.25) per one thousand dollars ($1,000.00) collected on policy amounts in excess of ten million dollars ($10,000,000.00) as provided for in 13.14.9.18 NMAC.

E. This premium division shall not apply to replacement policies in the case of insolvent insurers issued pursuant to 13.14.6.22 NMAC, 13.14.7.20 NMAC and 13.14.9.26 NMAC. Agents shall retain forty-two and one-half percent (42.5%) of the gross premium collected for such replacement policies and shall remit to the insurer the remainder of said gross premium.

F. These premium divisions shall remain in effect until altered by the superintendent who shall review the same biennially at the title insurance hearing held in November of every odd numbered year or as otherwise specifically provided by these regulations.

G. Fees, which are not premium, such as inspection fees, cancellations fees, escrow fees and other charges (whether mentioned in these regulations or not) are not subject to division between agent and insurer.

H. No agent or insurer shall pay or receive any consideration for title insurance business (or referral of business) other than that division of premiums set forth herein. Insurers shall not reward or otherwise compensate agents (or vice versa) directly or indirectly for business other than as herein provided.

I. No agent shall be required to contribute or pay any amount to an insurer for reinsurance or otherwise, and any contractual provision to the contrary shall be void and unenforceable.

J. Title insurers may pay on behalf of, or reimburse their agents for expenses associated with any instruction, lectures or seminars conducted by that title insurer for its agents, if such instruction, lectures or seminars have been approved in advance by the office of the superintendent of insurance for continuing education credit under NMSA 1978, Section 59A-12-26 [~~NMSA 1978~~]. An insurer conducting such instruction, lectures or seminars shall submit to the superintendent for approval, in advance, an agenda and detailed budget for such instruction, lectures or seminars. Such courses of instruction, lectures or seminars shall be offered by the title insurer to all of its agents on a non-discriminatory basis.

[6-16-86...4-3-95; 13.14.3.11 NMAC - Rn, 13 NMAC 14.4.11 & A, 5-15-00; A, 7-1-05; A, 9-1-07; A, 7-1-08; A, 7-31-14; A, _-_-_]

13.14.3.12 AGENCY [~~CONTRACTS~~] AGREEMENTS: All insurers shall amend existing agency [~~contracts~~] agreements with each of their respective licensed New Mexico agents after March 1, 1988 but before May 1, 1988 to conform with the provisions of these regulations as last amended, and shall file the same with the [S]superintendent on or before May 1, 1988. Such amendment may be in the form of an Addendum to the existing agreement, attached to and made a part thereof. All such [~~contracts~~] agreements entered into henceforth shall conform with the provisions of these regulations as last amended, and shall be filed with the [S]superintendent promptly upon execution.

[6-16-86, 5-1-88; 13.14.3.12 NMAC - Rn, 13 NMAC 14.4.12, 5-15-00; A, _-_-_]

13.14.3.13 CHARGE TO BE MADE FOR ALL SERVICES:

A. No person doing the business of title insurance shall furnish or offer to furnish services, information, appraisals, subdivision ownership lists, farm packages, estimates or income production potential, pre-search or listing packages, information kits or similar packages containing information about one or more parcels of real property without making an actual charge for the same.

B. Title insurers and title insurance agents shall collect actual charges in the ordinary course of their business operations. Title insurers and title insurance agents shall not provide additional or new services to individuals who have failed to pay actual charges for prior services.

[4-1-93, 4-1-94; 13.14.3.13 NMAC - Rn, 13 NMAC 14.4.13, 5-15-00; A, 7-1-06]

13.14.3.14 PAYMENT OF PREMIUM OF INSURERS: The title insurance agent will render accounts to the title insurer detailing all insurance transactions and remit the title insurer's share of premiums collected to the title insurer by the latter of forty-five (45) days after the end of the month of the effective date of the policy, or, forty-five (45) days following the issuance of a policy as to which the issuance is delayed due to the transaction closing prior to the time at which all requirements for issuance of the policy have been fulfilled.

[4-1-96; 13.14.3.14 NMAC - Rn, 13 NMAC 14.4.14, 5-15-00]

13.14.3.15 MARKETING ACTIVITIES: A title insurer or title insurance agent conducting the business of title insurance shall not:

A. make any monetary payment to any producer, unless the payment is for the actual cost of bona fide supplies or services received by the title insurer or agent;

B. make any in kind payment to any producer or provide any free products or services, including but not limited to postage, postage machines, facsimile machines, computer hardware or software, copy machines, telephones, or office space to any producer;

C. engage in joint advertising by any means of communication or media that names a specific producer unless the producer pays its share of the advertising cost in direct proportion to its prominence in the advertisement;

D. provide video equipment or any other type of electronic or cyber equipment or services, such as "virtual tours" unless the producer pays at least the actual cost for the equipment or services;

E. provide advertising by any means of communication or media for a producer unless the producer pays at least the actual cost for the advertisement to the title insurer or agent;

F. sponsor, co-sponsor, provide free door prizes, refreshments or meals at any producer's open house, tour of open houses, awards banquet, or company party unless a representative of the title insurer or agent is present and educational or marketing materials and signage are on-site for the function; at no time shall the cost of any sponsorship exceed the commensurate advertising benefit of the educational or marketing materials and signage provided;

G. sponsor, co-sponsor, provide free door prizes, refreshments or meals at any producer's open house unless the title insurer or agent receives commensurate advertising benefit;

H. provide free meals to any producer unless the title insurer or agent is present, title insurance business is discussed and the meals are not a regular occurrence; a title insurer or agent shall not provide free recreational activities or entertainment to any producer under any circumstance;

I. enter into any lease or rental agreement for office space with a producer unless:

(1) the lease or rental agreement is for commercially reasonable terms and at least the fair market rental rate of the property; and

(2) the property is physically occupied by at least one bona fide full time employee of the title insurer or agent if the producer is the lessor or by one bona fide full time employee of the producer if the title insurer or agent is the lessor;

J. provide a career continuing education course for producers, unless each producer in attendance pays at least the actual per person cost for the course to the title insurer or agent; or

K. engage in any other activity otherwise prohibited by NMSA 1978, Section 59A-16-17 [~~NMSA 1978~~].

[13.14.3.15 NMAC - N, 7-1-06; A, _-_-_]

HISTORY OF 13.14.3 NMAC:

Pre-NMAC History.

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

SCC-85-6, Insurance Department Regulation 30 - Title Insurance, 9-6-85

SCC-86-1, Insurance Department Regulation 30 - Title Insurance, 5-9-86

NMAC History.

Re-promulgated a portion of SCC-86-1, Insurance Department Regulation 30 - Title Insurance, as 13 NMAC 14.4, Agency Agreements, filed 10-2-96

Recompiled 13 NMAC 14.4, Agency Agreements, as 13.14.3 NMAC, Agency Agreements, filed 4-28-00, amended effective 7-31-14.

13.14.3 NMAC, Agency Agreements, filed 7-31-14, amended effective _-_-_

History of Repealed Material.

ID 74-1, Article 10, Chapter 58, Rule 2, Regulations for Filing Title Insurance Forms and Rates - Superseded 9-6-85

SCC-85-6, Insurance Department Regulation 30 - Title Insurance- Superseded 5-9-86.

TITLE 13 INSURANCE
CHAPTER 14 TITLE INSURANCE
PART 4 ESCROW SERVICES

13.14.4.1 ISSUING AGENCY: [~~New Mexico Public Regulation Commission, Insurance Division,~~] Office of Superintendent of Insurance, Title Insurance Bureau.
[13.14.4.1 NMAC - Rp, 13.14.4.1 NMAC, 7-1-05; A, _-_-_]

13.14.4.2 SCOPE: This rule applies to title insurers, title insurance agents, and their owners, officers, directors, partners or employees whose duties include or relate to the provision of escrow services.
[13.14.4.2 NMAC - Rp, 13.14.4.2 NMAC, 7-1-05]

13.14.4.3 STATUTORY AUTHORITY: NMSA 1978, Sections 59A-12-22 and 59A-30-4.
[13.14.4.3 NMAC - Rp, 13.14.4.3 NMAC, 7-1-05; A, _-_-_]

13.14.4.4 DURATION: Permanent.
[13.14.4.4 NMAC - Rp, 13.14.4.4 NMAC, 7-1-05]

13.14.4.5 EFFECTIVE DATE: March 1, 2016. [~~July 1, 2005, unless a later date is cited at the end of a section.~~]
[13.14.4.5 NMAC - Rp, 13.14.4.5 NMAC, 7-1-05; A, _-_-_]

13.14.4.6 OBJECTIVE: The purpose of this rule is to establish requirements for title insurers and title insurance agents who provide escrow services and to protect parties to transactions who deposit funds with title insurers or agents.
[13.14.4.6 NMAC - Rp, 13.14.4.6 NMAC, 7-1-05]

13.14.4.7 DEFINITIONS: See 13.14.1 NMAC.
[13.14.4.7 NMAC - Rp, 13.14.4.7 NMAC, 7-1-05]

13.14.4.8 REQUIREMENTS FOR PROVIDING SERVICES: A title insurer or title insurance agent providing escrow services shall:

A. only accept funds pursuant to escrow instructions;

B. not solicit or accept any material addition to, or alteration of, original, amended or supplemental escrow instructions, unless the addition or alteration is signed or initialed, or consented to in writing or by electronic transmission by the affected parties or their duly appointed agent or attorney in fact; minor additions or alterations to escrow instructions may be solicited or accepted if consented to by the affected parties, provided a written memorandum of instructions is prepared and maintained in the escrow file;

C. receive and handle all funds pursuant to the requirements of NMSA 1978, Sections 58-28-1 et seq. and 59A-12-22;

(1) all escrow accounts shall be fiduciary accounts separate from all operating accounts, and shall be designated as a fiduciary account, an escrow account, a trust account, or a custodial account on the account signature card and in the books and records of the title insurer or title insurance agent;

(2) title insurers and title insurance agents are prohibited from receiving for their own use interest from escrow accounts or money accepted for escrow, except that nothing herein shall preclude participation in the Land Title Trust Fund Act pursuant to NMSA 1978, Section 58-28-1 et seq.[;]

D. except as provided in this rule, disburse or deliver funds only in accordance with escrow instructions;

E. disburse funds out of an escrow account only if the funds are available funds;

F. interplead or hold any funds which are the subject of conflicting demands by the parties to an escrow until the title insurer or title insurance agent receives written instructions signed by all parties to the escrow which resolve the conflict or until a court of competent jurisdiction has determined the rights of all parties to the escrow or has ordered the funds released;

G. upon completion of an escrow, have delivered to each affected party a written statement of the escrow specifying all receipts and disbursements of funds made by or on behalf of each affected party to or from the escrow account, including from whom received and to whom made; and

H. not act with partiality toward any of the parties to an escrow as it relates to the disbursement of funds.

[13.14.4.8 NMAC - Rp, 13.14.4.8 NMAC, 7-1-05; A, _-_-_]

13.14.4.9 BOOKS AND RECORDS: In addition to the requirements of 13.14.16 NMAC, Agent's Statistical Report, and 13.14.17 NMAC, Underwriter's Statistical Report, a title insurer or title insurance agent shall, on a current basis and in accordance with accounting principles generally accepted in the United States of America:

A. establish and maintain a separate subsidiary ledger for each escrow;

B. post all receipts and disbursements from each subsidiary ledger to a control ledger and prepare a trial balance of all subsidiary ledgers at least once each calendar month;

C. at least once each calendar month, reconcile all bank accounts for escrowed funds to the appropriate control ledger and to the appropriate subsidiary ledger trial balance; and preserve and file in a logical sequence the trial balances and reconciliations necessary to trace an individual escrow in an examination;

D. maintain for each escrow file and record which meets the requirements of 1.13.70 NMAC, Performance Guidelines for the Legal Acceptance of Public Records Produced by Information Technology Systems and 1.12.7 NMAC, Electronic Authentication, copies of all receipts for escrowed funds and items, deposit slips, checks, and closing or settlement statements signed by the parties; and

E. preserve for at least [~~six (6)~~] fifteen years all escrow account bank statements and all books and records required by this section and 13.14.4.10 NMAC including copies of cancelled checks and wire transfer verifications, as evidence of insurability of title pursuant to NMSA 1978, Section 59A-30-11(B) (collectively "escrow records"). This fifteen year requirement for escrow records shall apply with respect to title policies issued on or after June 1, 2010.

[13.14.4.9 NMAC - Rp, 13.14.4.9 NMAC, 7-1-05; A, _-_-_]

13.14.4.10 ACCOUNTING PROCEDURES AND INTERNAL CONTROLS: A title insurer or title insurance agent shall, on a current basis and in accordance with accounting principles generally accepted in the United States of America:

A. require each reconciliation to be approved by a manager, a supervisor, or, if neither of those managerial employees are available, another employee;

B. require each reconciliation to be prepared by someone not associated with the receipt and disbursement function; where size does not permit this, a manager or owner shall review each reconciliation;

C. require two signatures on all escrow checks; one signature must be that of a licensed agent or that of a person authorized by a licensed agent to sign escrow checks; this requirement is waived if an insurer or agent requires a manager, supervisor, or owner to review a list of monthly disbursements from escrow accounts; the manager, supervisor or owner must sign the list of monthly disbursements indicating his or her approval of the monthly disbursements;

D. assign each escrow file a unique number; name identification is not acceptable;

E. thoroughly investigate escrow accounts open for longer than six months and only allow disbursements from these accounts with management approval;

F. remove the signature blocks from voided checks or otherwise render them ineffective;

G. require management approval for any transfers of funds between escrow files or escrow accounts and document transfers between escrow files or accounts in both files;

H. notify the seller by written notice deposited in the mail and addressed to the seller's address as shown in the escrow file within seven (7) business days after an earnest money check deposited in the account is returned by the financial institution to the insurer or agent due to insufficient funds, unless the check is replaced by collected funds within the seven-day time period; the insurer or agent shall retain copies of written notices;

I. display related escrow file numbers directly on all escrow checks and deposit tickets to provide a clear and direct connection between the document and the related escrow file;

J. maintain in each escrow file a complete, current disbursement sheet that lists the date, source and type of all receipts; date, check number, item description, payee and amount of all checks; date, amount and type of any other disbursements (i.e.; outgoing wire-transfers) and any remaining balance; voided checks that have been canceled where funds have been credited back to the account shall be shown on the disbursement sheet;

K. keep invoices substantiating, or sufficient evidence to support, all disbursements in the escrow files;

L. require reimbursement of all escrow receivables and other shortages by the appropriate party or from the title insurer's or title agent's operating account within [~~forty-five (45)~~] thirty (30) days from the closing

date of the bank statement of the account that reflects the transaction creating the escrow receivable or shortage;

M. if a settlement statement requires changes, prepare a new statement or have all parties affected by the changes initial pen and ink changes, or maintain sufficient evidence to support the changes in the escrow file;

N. issue a signed, pre-numbered receipt for any escrow funds received in cash; and

O. if a bank does not return actual cancelled checks with bank statements, then copies of all checks must be available in [~~agency~~] agent's records, or the [~~agency~~] agent must obtain a signed acknowledgment from the bank that copies of checks will be provided upon request and will meet the following criteria:

(1) copies of checks must be clearly legible;

(2) both sides of every check will be copied so that endorsements can be verified; and

(3) front and back images of the checks will be copied and provided in a manner that makes it clear they belong together.

[13.14.4.10 NMAC - N, 7-1-05; A, _-_-_]

13.14.4.11 INDEPENDENT ACCOUNTANT'S ANNUAL ESCROW COMPLIANCE PROCEDURES: Title insurers and title insurance agents shall, at their own expense, have an independent certified public accountant perform the procedures in this section.

A. Minimum standards.

(1) The accountant shall perform the agreed-upon procedures to determine whether the title insurer or title agent maintains adequate escrow books and records and whether the title insurer or title agent is in compliance with the requirements of NMSA 1978, Sections 59A-12-22 and 59A-30-4 [~~NMSA 1978~~] and this rule. The accountant shall perform the agreed-upon procedures in accordance with attestation standards established by the American institute of certified public accountants and the requirements of this section.

(2) The accountant may use sampling procedures to examine the contents of escrow files. Based on the results of the examination of the sample, the accountant shall determine the number of files to be examined and the appropriate degree of detail to be used.

(3) The accountant shall confirm individual escrow funds, accounts where funds have not been fully disbursed, and escrow bank accounts. Since complete confirmation of all escrow accounts would be impractical, the accountant may adopt a spot-check system of confirmations, consider evidence generated by the title insurer or title agent, and use his or her judgment in accordance with sound attestation and auditing practices to determine the extent to which confirmations are needed. Although positive confirmations and specific replies are desirable, the accountant may use negative confirmations if, in the accountant's judgment, the circumstances warrant.

B. Instructions. The accountant shall:

(1) determine that available funds (as defined in Subsection D of 13.14.1.7 NMAC) for a transaction are received and deposited before any disbursements are made in accordance with NMSA 1978, Section 59A-30-5.1[~~NMSA 1978~~];

(2) closely scrutinize funds which remain in an escrow account in a dormant condition for a long period of time;

(a) title insurers and title agents must comply with the Uniform Unclaimed Property Act, NMSA 1978, Section 7-8A-1, et[~~.~~] seq. [~~NMSA 1978~~];

(b) all credit balances open for three (3) years or longer as of December 31 of the year in question must be explained in detail on [~~s~~]Schedule B;

(3) carefully examine checks written from an escrow account to the agency's operating account or to another escrow account, especially if the checks appear to be disbursements for a purpose other than normal charges to a specific escrow;

(a) transfer of funds from one account to another is permissible providing both files contain proper authorization;

(b) the accountant shall examine a judgmentally determined number of cancelled checks to determine properly authorized signatures, payees and endorsements;

(4) itemize and thoroughly explain all escrow receivables in excess of two-hundred dollars ($200.00) on [~~s~~]Schedule C and thoroughly explain any irregularities such as bank overdrafts on [~~s~~]Schedule D in light of the requirements of NMSA 1978, Sections 59A-12-22 and 59A-30-4;

(5) determine that support for each disbursement is in the escrow file and that disbursements were made to logical payees;

(a) if there are charges shown on the closing statement for overnight mail service, messenger service, copies of documents, recording fees or tax certificates, the accountant shall determine that these

charges are actual charges or reasonable estimates of charges that must be made prior to closing;

(b) if there is evidence of a prior lien in the escrow file, such as a payoff statement from a lending institution, the accountant shall determine that a check was written for the payoff of the loan and a release was received; the accountant shall determine if there is a closing statement in the file and if the entries on the closing statement can be traced to the escrow accounting records; the accountant shall determine if the insurer's or agent's records include copies of all invoices, receipt items and disbursement checks; and

(6) inspect the monthly bank reconciliations on all escrow bank accounts to ensure compliance with the requirements of 13.14.4.9 NMAC.

C. Required report forms. Insurers and agents shall require the independent accountant to use the report forms prescribed in 13.14.4.13, 13.14.4.14, 13.14.4.15, and 13.14.4.16 NMAC when filing their report on applying agreed-upon procedures; facsimiles of the required report forms may be used, but the formats must be identical to the required report forms. The report shall include:

(1) [s]Schedule A: the form of opinion should be as set forth in [s]Schedule A unless circumstances dictate otherwise;

(a) the opinion letter must be signed by an independent certified public accountant or by a firm composed of independent certified public accountants;

(b) the firm name and address must be provided on [s]Schedule A;

(2) [s]Schedule B:

(a) [s]Schedule B requires detailed information regarding escrow files that have been open for three (3) years or longer, including the reason the file is still open, such as "disputed earnest money," "funds escrowed for repairs," "error at closing," etc. and the status of the file - active or inactive;

(b) if a file is inactive or has been dormant for more than three (3) years, the insurer or agent should consider clearing the file pursuant to the Unclaimed Property Act or through interpleader with the court;

(c) individual escrow files with dormant balances of two-hundred dollars ($200.00) or less may be reported in the aggregate for each specific reason the balances remain in the files;

(3) [s]Schedule C:

(a) the accountant shall provide a detailed explanation of every debit balance or receivable in excess of two-hundred dollars ($200.00) occurring throughout the year, even if cleared before the year's end; the explanation should include the date the shortages were created, the cause of the shortages, the date the shortages were cleared, and the method of clearance;

(b) [s]Schedule C provides columns for debit balances to be carried forward under each month they remained open; debit balances up to and including two-hundred dollars ($200.00) should be included as a lump sum, without separate explanations;

(4) [s]Schedule D:

(a) Section A: the accountant shall provide detailed information regarding any overdrafts occurring during the fiscal year; the information should include the following: bank name and account number, related escrow file number, amount of overdraft, dates of origin and clearance, and an explanation that includes the method of disposition; if an overdraft situation was caused by an escrow receivable that has already been reported in [s]Schedule C, the accountant shall make reference to this explanation;

(b) Section B: the accountant shall provide a complete explanation of any irregularity discovered during the course of applying the agreed-upon procedures that has not been explained elsewhere in the report.

D. Negative reports. All reports or exhibits reflecting no activity shall be filed and noted as "none."

E. Filing reports. The accountant shall provide the title insurer or title agent with an adequate number of reports in sufficient time to allow the insurer or agent to review them and mail copies with cover letters to the [~~New Mexico insurance division~~] title insurance bureau, by certified mail, within 180 days of the fiscal year end. In addition, each agent shall simultaneously mail, by certified mail, a copy of the report to each insurer that the agent represents. The [~~insurance division~~] title insurance bureau will not grant filing extensions.

[13.14.4.11 NMAC - Rp, 13.14.4.10 NMAC, 7-1-05; A, _-_-_]

13.14.4.12 NOTICE TO THE SUPERINTENDENT:

A. A title insurer or title insurance agent shall notify the superintendent of:

(1) the entry of a judgment in any civil action against the title insurer or title insurance agent involving the misconduct or liability of the title insurer or title insurance agent concerning an escrow;

(2) the entry of a judgment in any civil action against an owner, officer, director, partner, or

employee of the title insurer or title insurance agent involving the misconduct or liability of the owner, officer, director, partner, or employee concerning an escrow handled by the title insurer or title insurance agent;

(3) the entry of a judgment of conviction in any criminal proceeding involving the misconduct of the title insurer or title insurance agent or of any owner, officer, director, partner, or employee of the title insurer or title insurance agent concerning an escrow handled by the title insurer or title insurance agent; and

(4) any disciplinary action taken by the disciplinary board or the supreme court of New Mexico involving misconduct concerning an escrow by a title insurer or title insurance agent who is a licensed attorney.

B. Title insurers and title insurance agents who have actual knowledge of judgments entered or disciplinary actions taken after January 1, 2001, shall be required to notify the superintendent within ten (10) days after the date judgment is entered or disciplinary action taken, or within ten (10) days after acquiring actual knowledge thereof, whichever is later, by filing a written notice, which includes the names of the parties to the escrow, a brief description of the escrow, and a copy of the judgment entered or disciplinary action taken.

C. If a judgment or disciplinary action is appealed, each subsequent decision of an appellate court shall be subject to the notice requirements of this section.

D. If a title insurer or title insurance agent detects a defalcation regarding its escrow funds, the insurer or agent must file the following notice with the superintendent within forty-five (45) days of the end of the month in which the defalcation is detected: "We have detected circumstances regarding our escrow funds that may warrant an investigation by the [~~insurance division~~] title insurance bureau. The amount of funds involved is believed to be $_____."

[13.14.4.12 NMAC - Rp, 13.14.4.11 NMAC, 7-1-05; A, _-_-_]

13.14.4.13 SCHEDULE A - INDEPENDENT ACCOUNTANT'S REPORT ON APPLYING AGREED-UPON PROCEDURES:

[Print on CPA firm letterhead]

SCHEDULE A - INDEPENDENT ACCOUNTANT'S REPORT ON APPLYING AGREED-UPON PROCEDURES

To ***[Name of agent]*** and the [~~New Mexico Public Regulation Commission, Insurance Division:~~] Office of Superintendent of Insurance, Title Insurance Bureau:

We have performed the procedures required by 13.14.4.11 NMAC, which were agreed to by the [~~Insurance Division of the New Mexico Public Regulation Commission~~] office of superintendent of insurance, title insurance bureau, solely to assist the [~~Insurance Division~~] title insurance bureau in evaluating ***[name of agent]***'s compliance with the provisions of NMSA 1978, Sections 59A-12-22 and 59A-30-4 [~~NMSA 1978~~] and 13.14.4 NMAC relating to escrow services provided during the period of January 1, 20__ through December 31, 20__. Management is responsible for ***[name of agent]***'s compliance with those requirements. This engagement, based on agreed-upon procedures, was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of the parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures for either the purpose for which this report has been requested or for any other purpose. Any findings or other items requiring disclosure have been detailed on the schedules attached to this report.

We were not engaged to, and did not, conduct an examination, the objective of which would be the expression of an opinion on compliance. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of ***[name of agent]*** and the [~~Insurance Division~~] title insurance bureau and is not intended to be and should not be used by anyone other than these specified parties.

_____

[Name of CPA firm]

_____

[Date of Accountant's Report]

[13.14.4.13 NMAC - N, 7-1-05; A, _-_-_]

13.14.4.14 SCHEDULE B - DESCRIPTION OF CREDIT BALANCES OPEN THREE YEARS OR LONGER:

SCHEDULE B - DESCRIPTION OF CREDIT BALANCES OPEN THREE YEARS OR LONGER As of December 31, 20__			
File Number	Date of Origin	Amount in Escrow	Reason for amount held

[13.14.4.14 NMAC - N, 7-1-05]

13.14.4.15 SCHEDULE C - ANALYSIS OF ESCROW RECEIVABLES AND SHORTAGES

SCHEDULE C - ANALYSIS OF ESCROW RECEIVABLES AND SHORTAGES For the Year Ended December 31, 20__														
File No.	1st month	2nd month	3rd month	4th month	5th month	6th month	7th month	8th month	9th month	10th month	11th month	12th month	Date of Clearance	Explanation & Disposition

[13.14.4.15 NMAC - N, 7-1-05]

13.14.4.16 SCHEDULE D - ANALYSIS OF BANK OVERDRAFTS AND OTHER IRREGULARITIES

SCHEDULE D - ANALYSIS OF BANK OVERDRAFTS AND OTHER IRREGULARITIES

For the Year Ended December 31, 20__

Section A.

Bank Name and Account Number	Amount	Date of Origin	Date of Clearance	Explanation

Section B. Please provide a complete explanation of any other irregularities that are not explained in Section A.

[13.14.4.16 NMAC - N, 7-1-05]

HISTORY OF 13.14.4 NMAC:

History of Repealed Material.
13.14.4 NMAC, Escrow Services (filed 10-06-2000), repealed 7-15-05.

NMAC History.
13.14.4 NMAC, Escrow Services (filed 10-06-2000), replaced by 13.14.4 NMAC, Escrow Services, effective 7-01-05.
13.14.4 NMAC, Escrow Services (filed 7-01-05) amended, _-_-_.

TITLE 13 INSURANCE
CHAPTER 14 TITLE INSURANCE
PART 5 COMMITMENTS OR BINDERS

13.14.5.1 ISSUING AGENCY: Office of Superintendent of Insurance, Title Insurance Bureau.
[4-1-96; 13.14.5.1 NMAC - Rn & A, 13 NMAC 14.5.1, 5-15-00; A, 7-31-14]

13.14.5.2 SCOPE: This rule applies to all title insurers and title insurance agents conducting title insurance business in New Mexico.
[4-1-96, 11-1-96; 13.14.5.2 NMAC - Rn, 13 NMAC 14.5.2, 5-15-00]

13.14.5.3 STATUTORY AUTHORITY: NMSA 1978, Section[s] 59A-30-4.
[6-16-86, 4-1-96; 13.14.5.3 NMAC - Rn, 13 NMAC 14.5.3, 5-15-00; A, _-_-_]

13.14.5.4 DURATION: Permanent.
[4-1-96; 13.14.5.4 NMAC - Rn, 13 NMAC 14.5.4, 5-15-00]

13.14.5.5 EFFECTIVE DATE: March 1, 2016. [~~June 16, 1986, unless a later date is cited at the end of a section.~~]
[6-16-86...11-1-96; 13.14.5.5 NMAC - Rn & A, 13 NMAC 14.5.5, 5-15-00; A, _-_-_]

13.14.5.6 OBJECTIVE: The purpose of this rule is to establish requirements for commitments and binders issued for title insurance.
[11-1-9; 13.14.5.6 NMAC - Rn & A, 13 NMAC 14.5.6, 5-15-00]

13.14.5.7 DEFINITIONS: See 13.14.1 NMAC.
[11-1-96; 13.14.5.7 NMAC - Rn, 13 NMAC 14.5.7, 5-15-00]

13.14.5.8 ISSUANCE UPON REQUEST AND RECEIPT OF BONA FIDE ORDER:

A. Upon receipt of a bona fide order for any type of title insurance policy or policies to be issued pursuant to 13.14.6 NMAC, an insurer or title insurance agent must deliver to the proposed insured, its authorized agent, other person in a fiduciary relationship with the proposed insured, or the proposed insured's attorney, and if none of the aforementioned persons are available after using the insurer's or title insurance agent's best efforts, then to the person designated by the person opening the order for insurance, a commitment showing the exceptions which will appear in the proposed policy as of the date of the commitment and requirements to be met to insure the title in accordance with the order for insurance. Such commitment shall be delivered as soon as practicable, using the insurer's or title insurance agent's best efforts, allowing reasonably sufficient time for review prior to the completion of closing of the transaction. No commitment may be issued except upon receipt by the insurer or title insurance agent of a bona fide order for title insurance as set out above.

B. The term "binder" is defined in Subsection B of 13.14.1.8 NMAC as "a commitment for title insurance" and the use of the terms [~~"binder"~~] "binder" and [~~"commitment"~~] "commitment" shall refer to the same thing. The term "commitment" includes the NM form 6.1 plain language commitment. This regulation shall not apply if the bona fide order is placed after the transaction has been closed. A commitment or binder shall not be issued for the purpose of determining the state of the title of property subject to or to be subject in the future to a foreclosure action, quiet title suit or other litigation.

C. When a commitment or binder for one to four family residential property is required to be produced and delivered in accordance with this regulation it shall be delivered with a notice to purchaser/insured NM form 35, 13.14.18.48 NMAC, as the cover page. However, the purchaser(s) need not be identified nor sign the notice until closing. The notice, when required, shall be signed by purchaser(s) at or before the time of closing and retained in the closing file. The notice to purchaser/insured is not required if, prior to the delivery of the commitment or binder, the proposed insured(s) sign a contract for sale of the insured land that includes substantially identical language to that included in NM form 35 and that is completed by checking all appropriate blanks.

D. When requested by a proposed insured lender the following language may be added to a title commitment "note: according to the public records, there have been no deeds conveying the property in this commitment within a period of (six to twenty-four) months prior to the date of this commitment, except as follows:"

E. When a to be determined title commitment is issued, an additional requirement to the commitment must be added as follows: "This title commitment is not effective until Schedule A is completed and the company reserves the right to amend and supplement this commitment with additional information, requirements and exceptions based upon the provision of additional information."

[6-16-86...4-3-95; 13.14.5.8 NMAC - Rn, 13 NMAC 14.5.8, 5-15-00; A, 9-1-07; A, 8-17-09; A, _-_-_]

13.14.5.9 STANDARD EXCEPTIONS IN SCHEDULE B:

A. All commitments issued on New Mexico property will contain each of the following numbered exceptions verbatim and in the same order stated herein.

(1) Rights or claims of parties in possession not shown by the public records.

(2) Easements, or claims of easements, not shown by the public records.

(3) 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.

(4) Any lien, claim or right to a lien, for services, labor or materiel heretofore or hereafter furnished, imposed by law and not shown by the public records.

(5) Community property, survivorship, or homestead rights, if any, of any spouse of the insured (or vestee in a leasehold or loan policy).

(6) ~~[RESERVED]~~ Water rights, claims or title to water.

(7) ~~[Water rights, claims or title to water]~~ Taxes for the year _____, and thereafter. (See 13.14.5.12 NMAC)

(8) ~~[RESERVED]~~ Defects, liens, encumbrances, adverse claims or other matters, if any, created first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this commitment.

(9) ~~[Taxes for the year _____, and thereafter. (See 13.14.5.12 NMAC)]~~

(10) ~~[Defects, liens, encumbrances, adverse claims or other matters, if any, created first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this commitment.]~~

B. Additionally, each commitment may contain the following statement when said commitment is used to commit for both an owner's policy and a loan policy or a loan policy only: "Exceptions numbered _____ will not appear in the loan policy but will appear in the owner's policy, if any." If the commitment is for a construction policy or a loan policy containing a two-year (2) claims made limitation, the following statement must be added: "The construction loan policy or a loan policy containing a two-year (2) claims made limitation will contain an exception limiting its coverage to two (2) years duration pursuant to 13.14.7.18 NMAC."

C. Each commitment shall contain the following statement: Standard exceptions 1, 2, 3, and or 4, may be deleted from any policy upon compliance with all provisions of the applicable rules, upon payment of all additional premiums required by the applicable rules, upon receipt of the required documents and upon compliance with the company's underwriting standards for each such deletion. Standard exception 5 may be deleted from the policy if the named insured in the case of an owner's policy, or the vestee, in the case of a leasehold or loan policy, is a corporation, a partnership, or other artificial entity, or a person holding title as trustee. Except for the issuance of a U.S. policy form (NM form 7 or NM form 34), any policy to be issued pursuant to this commitment will be endorsed or modified in [s]Schedule B by the company to waive its right to demand arbitration pursuant to the conditions and stipulations of the policy at no cost or charge to the insured. The endorsement or the language added to [s]Schedule B of the policy shall read: "In compliance with Subsection D of 13.14.18.10 NMAC, the company hereby waives its right to demand arbitration pursuant to the title insurance arbitration rules of the American land title association. Nothing herein prohibits the arbitration of all arbitrable matters when agreed to by both the company and the insured."

[6-16-86, 3-1-90, 6-1-97, 6-1-98; 13.14.5.9 NMAC - Rn, 13 NMAC 14.5.9, 5-15-00; A, 8-29-03; A, 7-1-05; A, 8-17-09; A, 9-15-09; A, 09-15-10; A, 10-1-12; A, 7-31-14; A, _-_-_]

13.14.5.10 ADDITIONAL TAX EXCEPTION: In those areas of New Mexico where there are taxes or assessments which may be a lien by law but are not filed for record with the [C]county [C]clerk's [O]office by local custom or practice, and upon approval of the Insurer, the following additional tax exception may be added to policies, binders or commitments: "Any possible taxes or assessments which may be a lien by law but have not been filed for record in the [O]office of the [C]county [C]clerk of _____ [C]county."

[6-16-86; 13.14.5.10 NMAC - Rn, 13 NMAC 14.5.10, 5-15-00; A, _-_-_]

13.14.5.11 DURATION OF COMMITMENT: A commitment shall be valid for a period of six (6) months but may be extended or renewed by endorsement for up to three (3) additional six (6) month periods when the pending order for title insurance remains bona fide and the additional premiums specified in [s]Subsection A of 13.14.9.19 NMAC are paid. Whenever a commitment is requested by an Insured under a mortgagee policy on property it has taken by foreclosure or deed in lieu of foreclosure, or by a state or federal agency or insurer who has insured or guaranteed a loan on said property, the commitment may be initially endorsed to be valid for no more than two (2) years upon payment of the required premiums for both issuance and extensions.
[2-5-87; 13.14.5.11 NMAC - Rn, 13 NMAC 14.5.11, 5-15-00]

13.14.5.12 TAXES - STANDARD EXCEPTION [9] 7: Allowable modifications of standard exception [9] 7. No change is required in the printed policy forms. These amendments to standard exception [9] 7 may be made by substituting the authorized changes as appropriate. Each insurer, in the exercise of this option, shall provide its agent(s) written authority to so amend standard exception [9] 7.

A. Standard exception [9] 7 in 13.14.5.9 NMAC may be modified in commitments and policies so as to except to taxes for the second half of an ad valorem tax year. Such amendment shall not be made unless all taxes assessed or assessable through and including the first half of the ad valorem tax year have been paid or are being paid out of funds which are under the control of the issuing agent or underwriter in an escrow account established for a closing occurring concurrently with such issuance.

B. Standard exception [9] 7 may also be amended in policies, at the option of the insurer, to read: "Taxes for the year _____, and thereafter, not yet due or payable."

C. If the ad valorem taxes for the first half of a year have been paid, and taxes for the second half are not yet delinquent, standard exception [9] 7 may be amended, at the option of the insurer, by changing the period to a comma, and adding the phrase: "not yet delinquent."
[4-1-96; 13.14.5.12 NMAC - Rn, 13 NMAC 14.5.12, 5-15-00; A, _-_-_]

13.14.5.13 PRO FORMA POLICIES: For purposes of this rule, a "Pro Forma Policy" is a sample of an Owner or Loan Policy prepared prior to payment for issuance and delivery of the policy, with completed Schedules A and B and endorsements, showing the proposed insured, the exceptions that are proposed to be placed in the final policy to be issued, and the name of the title insurance company and title insurance agent. A Pro Forma Policy may be issued only if (a) the land is not one to four family residential property; (b) the proposed amount of insurance is $500,000.00 or more; (c) each page of the completed Schedules A and B and all endorsements conspicuously state "This is a Pro Forma Policy furnished to or on behalf of the party proposed to be insured for discussion only. It does not reflect the present status of title and is not a commitment to insure the estate or interest as shown herein, nor does it evidence the willingness of the company to provide any coverage shown herein. Any such commitment must be an express written undertaking issued on the appropriate forms of the company."; and (d) the title agent receives a written request for the Pro Forma Policy from a proposed insured. A Pro Forma Policy shall not be issued or used in lieu of a title insurance commitment.
[13.14.5.13 NMAC – N, _-_-_]

HISTORY OF 13.14.5 NMAC:

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

History of Repealed Material. [Reserved]

Other History.
Re-promulgated a portion of SCC-86-1, Insurance Department Regulation 30 - Title Insurance and renumbered, reformatted and replaced as 13 NMAC 14.5, Commitments or Binders, effective 11-01-1996.
13 NMAC 14.5, Commitments or Binders, (filed 10-2-96) was renumbered, reformatted, amended and replaced as 13.14.5 NMAC, Commitments or Binders, effective 5-15-2000, amended effective 7-31-14.
13.14.5 NMAC, Commitments or Binders, effective 7-13-14, amended effective _-_-_.

TITLE 13 INSURANCE
CHAPTER 14 TITLE INSURANCE
PART 6 OWNER'S, LEASEHOLD OWNER'S, AND CONTRACT PURCHASER'S POLICIES

13.14.6.1 **ISSUING AGENCY:** Office of Superintendent of Insurance, Title Insurance Bureau.
[4-1-96; 13.14.6.1 NMAC - Rn & A, 13 NMAC 14.6.1, 5-15-00; A, 7-31-14]

13.14.6.2 **SCOPE:** This rule applies to all title insurers and title insurance agents conducting title insurance business in New Mexico.
[4-1-96, 11-1-96; 13.14.6.2 NMAC - Rn, 13 NMAC 14.6.2, 5-15-00]

13.14.6.3 **STATUTORY AUTHORITY:** NMSA 1978, Section[s] 59A-30-4.
[6-16-96, 4-1-96; 13.14.6.3 NMAC - Rn, 13 NMAC 14.6.3, 5-15-00; A, _-_-_]

13.14.6.4 **DURATION:** Permanent.
[4-1-96; 13.14.6.4 NMAC - Rn, 13 NMAC 14.6.4, 5-15-00]

13.14.6.5 **EFFECTIVE DATE:** March 1, 2016. [~~June 16, 1986, unless a later date is cited at the end of a section.~~]
[6-16-86, 11-1-96; 13.14.6.5 NMAC - Rn & A, 13 NMAC 14.6.5, 5-15-00; A, _-_-_]

13.14.6.6 **OBJECTIVE:** The purpose of this rule is to establish requirements for title insurance policy provisions.
[11-1-96; 13.14.6.6 NMAC - Rn & A, 13 NMAC 14.6.6, 5-15-00]

13.14.6.7 **DEFINITIONS:** See 13.14.1 NMAC.
[11-1-96; 13.14.6.7 NMAC - Rn, 13 NMAC 14.6.7, 5-15-00]

13.14.6.8 **OWNER'S POLICIES:**

A. Owner's policies shall be written to protect the estate or interest in land held by the Insured (e.g., fee simple, easement, etc.). Except as otherwise provided herein, all owner's policies shall be issued for the amount of the current sales price of the land and any existing improvements appurtenant thereto, plus, at the option of the insured, the cost of improvements immediately contemplated to be erected thereupon.

B. If no sale is being made, at time of issuance of policy, all owners' policies shall be issued for an amount equal to the value of the land and any existing improvements appurtenant thereto, with the same option concerning immediately contemplated improvements.

C. In either instance, an owner's policy insuring such contemplated improvements shall contain a pending improvements clause or endorsement. In the event the owner's policy is issued at the time of payoff of a real estate contract and recording of a warranty deed, the owner's policy shall be issued for the amount of the contract price, except if the purchaser requests, and provides evidence of value, then it may be issued for the amount equal to the value of the land and any existing improvements appurtenant thereto.

D. An owner's policy may be endorsed to reflect the current value of the estate insured (upon payment of the current basic premium according to the schedule less the amount previously paid for said policy) if the insurer's underwriting standards are met; provided, however, that the effective date of the policy shall remain unchanged and no affirmative coverages or down dates shall be added to the policy. Owner's policies may insure multiple tracts acquired from different parties at the same or different times.

E. NM form 55, named insured endorsement, shall be provided to all insureds requesting the endorsement on owner's policies [~~or leasehold owner's policies~~] previously issued prior to August 1, 2008 without the endorsement.

[6-16-86...3-1-91; 13.14.6.8 NMAC - Rn, 13 NMAC 14.6.8, 5-15-00; 13.14.6.8 NMAC - A, 8-1-01; A, 3-1-02; A, 8-17-09; A, _-_-_]

13.14.6.9 **LEASEHOLD OWNER'S POLICIES:**

A. Leasehold owner's policies shall be issued to insure leasehold estates and in the amount, at the option of the Insured, of [~~either~~] (1) the total amount of the rentals payable under the lease contract, or (2) the value of the land and any existing improvements, or (3) the value of the land and any existing improvements and the cost

of the improvements immediately contemplated to be erected thereupon. In the latter case, the leasehold policy must contain a pending improvements clause or endorsement.

B. Unless otherwise specifically stated, a leasehold owner's policy shall contain the same standard exceptions, be subject to the same premium rates and be subject to deletion of the same standard exceptions in the same manner as an owner's policy.

C. A leasehold owner's [p]endorsement shall be attached to an owner's policy to create a leasehold owner's policy. A leasehold owner's policy may be converted to a standard owner's policy by the issuance of an owner's leasehold conversion endorsement NM form 31. [~~if the owner of the leasehold interest acquires the fee title interest within three (3) years of the effective date of the leasehold owner's policy.~~]

D. [~~In addition to the owner's leasehold conversion endorsement NM form, the issuing Insurer or title insurance agent shall issue a multipurpose endorsement, NM form 11, reflecting the change of the estate insured and adding or deleting exceptions, and otherwise modifying the policy to accurately reflect the condition of title of the estate insured.~~] The premium for such conversion shall be as prescribed by 13.14.9.38 NMAC, and no additional premium shall be charged for [~~either endorsement~~] the owner's leasehold conversion and endorsement, NM form 31.

E. NM [F]form 55, named insured endorsement, [~~shall be attached to all leasehold owner's policies issued after August 15, 2001 and~~] shall be provided to all insureds requesting the endorsement on leasehold owner's policies previously issued prior to August 1, 2008 without the endorsement.

[6-16-86, 3-1-89; 13.14.6.9 NMAC - Rn, 13 NMAC 14.6.9, 5-15-00; 13.14.6.8 NMAC - A, 8-1-01; A, 3-1-02; A, _-_-_]

13.14.6.10 CONTRACT PURCHASER'S POLICIES:

A. Contract purchaser's policies, utilizing NM form 1, owner's policy, shall be written to insure the estate or interest in land upon which the insured holds a contractual interest by virtue of a recorded real estate contract or agreement, or a sufficient recorded memorandum thereof. Unless otherwise specifically provided, contract purchaser's policies shall be subject to all rules and regulations applicable to owner's policies, and in the same manner. [~~Each insurer shall establish written instructions and specific underwriting standards concerning the issuance of contract purchaser's policies.~~]

B. The estate or interest in the land insured in Schedule A under a contract purchaser's policy shall be automatically converted to "fee simple" without the requirement for a policy endorsement, if the contract purchaser acquires the fee title interest by the filing of the deed from the contract seller under the recorded real estate contract or agreement, or a sufficient memorandum recorded in lieu thereof , which transaction was previously insured. The date of policy will not be changed or down dated. No additional premium shall be charged for this conversion.

C. Upon request of the insured under a contract purchaser's policy, a contract purchaser's policy may be converted and down dated to a standard owner's policy by the issuance of a contract purchaser's conversion endorsement, NM form 91. The premium for such endorsement shall be as prescribed by 13.14.10.63 NMAC, and no additional premium shall be charged for the contract purchaser's conversion endorsement, NM form 91.

D. Each insurer shall establish written instructions and specific underwriting standards concerning the issuance of contract purchaser's policies and the contract purchaser's conversion endorsement, NM form 91.

[3-1-89; 13.14.6.10 NMAC - Rn, 13 NMAC 14.6.10, 5-15-00; A, _-_-_]

13.14.6.11 STANDARD EXCEPTIONS: All owners' policies insuring New Mexico property shall contain in Schedule B the standard exceptions numbered 1 through [~~9~~] 8 in [~~13 NMAC 14.5.9~~] 13.14.5.9. NMAC except as otherwise provided by these rules. Said standard exceptions may be preprinted in Schedule B and, when specifically authorized, may be deleted by crossing out the words as specifically indicated in the rules immediately following, or by notation in Schedule B or endorsement stating, "[~~Exception~~] exceptions numbered _____ are hereby deleted" [~~and/~~]or "[~~Exception~~] exception numbered 3 is hereby amended to read, 'shortages in area'". Standard exception number 5 shall refer to "spouse of the vestee" in all [~~leasehold~~] owners' policies and in all situations where the vestee and insured are not the same.

[6-16-86, 2-6-87; 13.14.6.11 NMAC - Rn, 13 NMAC 14.6.11, 5-15-00; A, _-_-_]

13.14.6.12 PARTIES IN POSSESSION - STANDARD EXCEPTION 1: The standard exception numbered 1 in 13.14.5.9 NMAC may be deleted from an owner's policy when the company or agent has been furnished satisfactory proof that there are no parties in possession of the property being insured other than those claiming rights or possession in the property through matters of public record. Each insurer shall establish underwriting standards concerning the necessary proof to be furnished to it or its agents.

[6-16-86; 13.14.6.12 NMAC - Rn, 13 NMAC 14.6.12, 5-15-00]

13.14.6.13 UNRECORDED EASEMENTS - STANDARD EXCEPTION 2: The standard exception numbered 2 in 13.14.5.9 NMAC may be deleted in its entirety from an owner's policy when the insurer or its agent has been furnished a survey of the property being insured which it determines to be satisfactory to determine that there are no easements or claims of easements affecting the insured property other than those shown by the public records. In addition to the survey, the insurer may require as a part of its underwriting standards an inspection of the property or other documentation that it may determine is necessary.
[6-16-86; 13.14.6.13 NMAC - Rn, 13 NMAC 14.6.13, 5-15-00]

13.14.6.14 SURVEY COVERAGE - STANDARD EXCEPTION 3:

A. The standard exception numbered 3 in 13.14.5.9 NMAC may be deleted from an owner's policy in either of two ways. In both instances, the additional premium required by 13.14.10.10 NMAC must be paid and the insurer or its agent must be furnished with a recent survey of the insured property meeting the insurer's underwriting standards prior to the deletion being made.

B. If the insurer considers the additional risk acceptable, the entire language of this standard exception may be deleted from the policy, thereby insuring the surveyor's computation of area.

C. If the insurer does not consider the shortage-in-area risk acceptable but considers the remaining additional hazard insurable, the words "Encroachments, overlaps, conflicts in boundary lines" and the words "or other matters which would be disclosed by an accurate survey and inspection of the premises" may be deleted, leaving the exception to read "shortages in area."

D. There are no other circumstances under which this standard exception may be deleted from the policy or otherwise modified.
[6-16-86; 13.14.6.14 NMAC - Rn, 13 NMAC 14.6.14, 5-15-00]

13.14.6.15 MECHANICS' AND MATERIALMEN'S LIEN COVERAGE - STANDARD EXCEPTION 4:

A. The standard exception numbered 4 in 13.14.5.9 NMAC may be deleted in its entirety from an owner's policy under two circumstances. In both instances the construction of all improvements on the insured property must have been fully completed and accepted by the insured owner and the appropriate additional premiums required by 13.14.10.9 NMAC must be paid prior to the exception being deleted.

B. In one instance the statutory period for filing mechanics' or materialmen's liens will have expired prior to the date of the policy and [s]Subsection A of 13.14.10.9 NMAC will apply; in the other instance, some or all of the improvements will be "new construction" (or recently completed), the statutory period for the filing of said liens will not have expired as of the date of the policy and [s]Subsection B of 13.14.10.9 NMAC will apply. There are no other circumstances under which this standard exception may be deleted from the policy or otherwise modified.
[6-16-86; 13.14.6.15 NMAC - Rn, 13 NMAC 14.6.15, 5-15-00; A, _-_-_]

13.14.6.16 SPOUSAL RIGHTS - STANDARD EXCEPTION 5: The standard exception numbered 5 in 13.14.5.9 NMAC may be deleted in its entirety from an Owner's Policy if the vestee named in such policy is a corporation, partnership or other artificial entity, or a person holding title as trustee.
[6-16-86; 13.14.6.16 NMAC - Rn, 13 NMAC 14.6.16, 5-15-00]

13.14.6.17 [RESERVED]
[4-3-95; 13.14.6.17 NMAC - Rn, 13 NMAC 14.6.17, 5-15-00; Repealed, 9-15-09]

13.14.6.18 REISSUED OWNER'S POLICIES:

A. Owner's policies shall qualify for the reissue rates of 13.14.9.35 NMAC only when insuring either of the following:

(1) A purchaser or lessee of the same real estate from one whose title thereto as owner has been insured by any company in a previous policy issued prior to the application for a new policy; or

(2) A purchaser or lessee of the same real estate from an insured under a loan policy of any company which has acquired title to the same property described in said loan policy by foreclosure or by voluntary conveyance in extinguishment of the debt.

B. In either case the company issuing the reissue rate policy shall maintain proof of the previous policy in its files for at least two years. In order for the reissue rate to apply, proof of the previous policy shall be in

the possession of the company issuing the reissue rate policy prior to the commencement of the title search for said policy. Proof, as used in this context, shall mean a copy of the previous policy, which shall include the following information: issuing company/underwriter, policy number, date of Issue, policy amount, legal description of insured property, name of insured, as well as complete copies of Schedules A and B (and C, if applicable), and any attached endorsements.
[6-16-86...3-1-92; 13.14.6.18 NMAC - Rn, 13 NMAC 14.6.18, 5-15-00; A, _-_-_]

13.14.6.19 U.S. POLICIES:

A. NM form 34 shall contain standard exceptions as provided in 13.14.6.11 NMAC and subject to their deletion as provided in 13.14.6.12 NMAC through 13.14.6.16 NMAC.

B. NM form 34 does not act as an interim binder but requires the use of a standard commitment. NM form 34 is prescribed by the department of justice. Each insurer shall establish written instructions and specific underwriting standards concerning the issuance of NM form 34 policies.
[6-16-86;[;] 4-1-93; 13.14.6.19 NMAC - Rn, 13 NMAC 14.6.19, 5-15-00; A, 7-31-14]

13.14.6.20 SUBDIVIDERS OR CONSTRUCTION BULK RATE QUALIFICATIONS:

A. For the purpose of 13.14.9.23 NMAC, an insured owner will qualify for the discount provided therein only when said insured owner acquires title directly from a person who meets either of the following conditions: (1) either (a) owns of record at the same time two or more lots in the same [~~C~~]county [~~R~~]recorded [~~S~~]subdivision holding the same for immediate sale upon completion of building improvements thereon, or (b) owns two or more unsold vacant lots or acreage tracts at the same time in the same county recorded subdivision and has contracted with the insurer to purchase an owner's policy on each and every lot or tract as the same is sold; or (2) when the person owning of record two or more lots or tracts in the same county recorded subdivision (a) is a subdivider or builder who subdivides property for 1 to 4 family residential use or (b) builds 1 to 4 family residences or residential condominium units for immediate resale upon completion of improvements and said lots or tracts are restricted to or zoned for 1 to 4 family residential use or residential condominium use or actually improved by 1 to 4 family or condominium use at the time the policy is issued.

B. The words "county recorded subdivision" as used in the section mean a map or plat or condominium plans filed for record in the office of the [~~C~~]county [~~C~~]clerk and showing the location and dimensions of lots, blocks, tracts, units or other such similarly designated parcels.
[6-16-86;[;] 3-1-91; 13.14.6.20 NMAC - Rn, 13 NMAC 14.6.20, 5-15-0; A, _-_-_]

13.14.6.21 U.S. POSTAL SERVICE AS INSURED: Whenever the United States Postal Service acquires title to property being insured, it is permissible to (1) amend the New Mexico U.S. Policy (NM form 7) by striking therefrom in all places the name "United States of America" and substituting in lieu thereof the name "United States Postal Service" and (2) to insert the following paragraph to the conditions and stipulations: "9. In the event that the interests of the United States Postal Service with respect to the land referred to in this policy are not represented by the [~~A~~]attorney [~~G~~]general of the United States at the time any election, notice, request, permission, cooperation, assistance, or statement is required or permitted by these conditions and stipulations, then such election, notice, request, permission, cooperation, assistance, or statement, as so required or permitted, and otherwise conforming hereto, should be given or furnished by or to the United States Postal Service."
[2-6-87; 13.14.6.21 NMAC - Rn, 13 NMAC 14.6.21, 5-15-00; A, _-_-_]

13.14.6.22 ISSUANCE OF REPLACEMENT OWNER'S POLICY:

A. When an authorized insurer is placed in permanent or temporary receivership for purpose of liquidation with a finding of insolvency by a court of competent jurisdiction, (insolvent insurer), a replacement policy of title insurance can be purchased by an insured covered under an owner's policy issued pursuant to 13.14.6 NMAC.

B. The insured shall surrender the existing policies of said insolvent insurer to the company when placing the order for a replacement policy. A copy of the existing policies obtained from the issuing agent can be surrendered in lieu of the existing original policy. If a copy of the existing policies is obtained from the original [~~agency~~] agent that issued it, an additional charge can be made to the insured in an amount that is reasonable considering the nature and extent of the services rendered. The date of policy for the replacement policy shall be the same date of policy as the existing policy.

C. No replacement policy shall be issued without exceptions to coverage for defects, liens, encumbrances, adverse claims or for other matters known to exist by the insured on the date of issuance of the

replacement policy, including but not limited to claims known by any owner or other insured and claims reported under existing policies or claims that have been made against the receiver for the insolvent insurer or agent who represented the insolvent insurer. All replacement policies shall contain the following exception on [s]Schedule B: Defects, liens, encumbrances, adverse claims or other matters not known to the issuing agent and/or insurer at the issue date of this replacement policy, but known to any owner or other insured claimant and not disclosed in writing to the agent and/or insurer by the insured claimant prior to the date the insured claimant became insured under this policy.

D. The replacement owner's policy shall be issued in the amount of insurance shown on the existing owner's policy. Agents and/or insurers must issue a replacement policy when request therefore is made by an insured who has satisfied the requirements of this regulation and those of 13.14.9.26 NMAC. No search or examination of title or evidence thereof is required of the agent or insurer issuing a replacement policy pursuant to this regulation. However, agents and insurers may conduct a search and examination at no additional expense to the insured other than as set forth in 13.14.9.26 NMAC.

E. All replacement policies shall be marked as such by adding the words "replacement policy; NO SEARCH REQUIRED," prior to the policy number on the cover page of the policy and on the top center of all other pages not considered a policy cover or jacket. Subsequent to the words "replacement policy; NO SEARCH REQUIRED," the date the replacement policy was issued shall be indicated after the word "issued" is typed.

F. When an insured submits as evidence either a replacement owner's policy or an owner's policy of an insolvent insurer or a copy of the same, they will qualify for credit afforded in 13.14.9.12.1 NMAC, reissue owner's or leasehold rates and also 13.14.9.36 NMAC, substitution loans, second mortgages and subsequent issues. No other regulations affording credits, discounts, reduction in premium shall apply to replacement policies other than as stated herein and in 13.14.9.26 NMAC.

[6-15-91; 13.14.6.22 NMAC - Rn, 13 NMAC 14.6.22, 5-15-00; A, _-_-_]

13.14.6.23 [RESERVED]

[6-1-97; 13.14.6.23 NMAC - Rn, 13 NMAC 14.6.23, 5-15-00; Repealed, 9-15-09]

13.14.6.24 [RESERVED]

[13.14.6.24 NMAC - N, 7-1-05; Repealed, 9-15-09]

HISTORY OF 13.14.6 NMAC:

Pre-NMAC History.

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

NMAC History.

Re-promulgated a portion of SCC-86-1, Insurance Department Regulation 30 - Title Insurance, as 13 NMAC 14.6, Owner's, Leasehold Owner's, and Contract Purchaser's Policies, filed 10-2-96.
Recompiled 13 NMAC 14.6, Owner's, Leasehold Owner's, and Contract Purchaser's Policies, as 13.14.6 NMAC, Owner's, Leasehold Owner's, and Contract Purchaser's Policies, filed 4-28-00, amended effective 7-31-14.
Owner's Leasehold Owner's and Contract Purchaser's Policies, filed 7-31-14, amended effective _-_-_

History of Repealed Material.

ID 74-1, Article 10, Chapter 58, Rule 2, Regulations for Filing Title Insurance Forms and Rates - Superseded 9-6-85.
SCC-85-6, Insurance Department Regulation 30 - Title Insurance- Superseded 5-9-86.

TITLE 13 INSURANCE
CHAPTER 14 TITLE INSURANCE
PART 7 LOAN, LEASEHOLD LOAN, AND CONSTRUCTION LOAN POLICIES

13.14.7.1 ISSUING AGENCY: Office of Superintendent of Insurance, Title Insurance Bureau.
[4-1-96; 13.14.7.1 NMAC - Rn & A, 13 NMAC 14.7.1, 5-15-00; A, 7-31-14]

13.14.7.2 SCOPE: This rule applies to all title insurers and all title insurance agents conducting title insurance business in New Mexico.
[4-1-96, 11-1-96; 13.14.7.2 NMAC - Rn, 13 NMAC 14.7.2, 5-15-00]

13.14.7.3 STATUTORY AUTHORITY: NMSA 1978, Section[s] 59A-30-4.
[6-16-86, 4-1-96; 13.14.7.3 NMAC - Rn, 13 NMAC 14.7.3, 5-15-00; A, _-_-_]

13.14.7.4 DURATION: Permanent.
[4-1-96; 13.14.7.4 NMAC - Rn, 13 NMAC 14.7.4, 5-15-00]

13.14.7.5 EFFECTIVE DATE: March 1, 2016. [~~June 16, 1986, unless a later date is cited at the end of a section.~~]
[6-16-86...11-1-96; 13.14.7.5 NMAC - Rn & A, 13 NMAC 14.7.5, 5-15-00; A, _-_-_]

13.14.7.6 OBJECTIVE: The purpose of this rule is to establish requirements for title insurance policy provisions.
[11-1-96; 13.14.7.6 NMAC - Rn & A, 13 NMAC 14.7.6, 5-15-00]

13.14.7.7 DEFINITIONS: See 13.14.1 NMAC.
[11-1-96; 13.14.7.7 NMAC - Rn, 13 NMAC 14.7.7, 5-15-00]

13.14.7.8 LOAN POLICIES:

A. All loan policies shall be issued for the face amount of the loan or loans insured. When the land covered in the policy represents only part of the security of the loan or loans, the policy shall be written in the amount of the value of such land or the amount of the loan or loans insured, whichever is the lesser. When requested by the insured, a loan policy may be issued in an amount equal to the original principal amount of the indebtedness plus legal interest (capitalized or otherwise) not to exceed twenty percent (20%) of the said principal amount.

B. All loan policies may insure liens on multiple tracts in the same manner as owner's policies. Whenever any agent or insurer is issuing any policy of title insurance in conjunction with a closing of a transfer of title to property to a new owner or owners, the agent or insurer shall furnish the new owner or owners with a NM form 9, notice of availability of owner's title insurance, containing all of the required information available at that time and shall request said owner or owners to sign said form and indicate whether or not they desire an owner's policy. Said agent or insurer shall maintain copies of said forms with copies of the loan policy for at least two (2) years whenever an owner's policy is declined by the owner(s).

C. A short form residential loan policy, NM form 63, shall be considered a loan policy and shall be subject to the applicable rules and rates relating to loan policies, except as expressly provided in the short form residential loan policy, or in rules expressly referring to the short form residential loan policy. An insurer may, in its discretion, issue the short form residential loan policy upon request of the proposed insured if the real property encumbered by the lien of the insured mortgage is one to four family residential property. An insurer may not issue the short form residential loan policy if the loan secured by the lien of the insured mortgage is a construction loan or on a leasehold interest. All standard exceptions that are included in a standard loan policy, are deemed omitted in [s]Schedule B of the short form residential loan policy and premiums for deletion of the standard exceptions applicable to a standard loan policy shall apply. Any standard exceptions that are included in a standard loan policy may be added as exceptions in the [s]Schedule B addendum to the short form residential loan policy if required by these rules or if the insurer does not consider the risk acceptable to provide coverages for such omitted standard exceptions. Any of the [s]Schedule B affirmative insurance provisions may be removed from or modified in [s]Schedule B if the insurer does not consider the risk acceptable by including an exception on the [s]Schedule B

addendum to the short form residential loan policy. Each insurer shall establish written instructions and underwriting standards for the issuance of the short form residential loan policy.
[6-16-86; 13.14.7.8 NMAC - Rn, 13 NMAC 14.7.8, 5-15-00; A, 7-1-04; A, 09-15-10; A, 10-1-12; A, _-_-_]

13.14.7.9 LEASEHOLD LOAN POLICIES: Unless otherwise specifically stated, a Leasehold Loan Policy shall contain the same standard exceptions, be subject to the same premium rates and be subject to deletion of the same standard exceptions in the same manner as a standard Loan Policy. A Leasehold Loan Endorsement shall be attached to a Loan Policy to create a Leasehold Loan Policy.
[6-16-86; 13.14.7.9 NMAC - Rn, 13 NMAC 14.7.9, 5-15-00; A, 3-1-02]

13.14.7.10 STANDARD EXCEPTIONS: All loan policies insuring New Mexico property shall contain in Schedule B the standard exceptions listed in 13.14.5.9 NMAC and numbered 1 through [~~9~~] 8 inclusively except as otherwise provided by these regulations. Said standard exceptions may be preprinted in Schedule B and, when specifically authorized, may be deleted by crossing out the words as specifically indicated in the regulations immediately following, or by notation in Schedule B or endorsement stating, "exceptions numbered ____ are hereby deleted" or "exception numbered 3 is hereby amended to read, 'shortages in area.'" Standard exception numbered 5 shall refer to "spouse of the vestee" in all loan policies.
[6-16-86, 2-6-87; 13.14.7.10 NMAC - Rn, 13 NMAC 14.7.10, 5-15-00; A, 10-1-12; A, _-_-_]

13.14.7.11 PARTIES IN POSSESSION - STANDARD EXCEPTION 1: The standard exception numbered 1 in 13.14.5.9 NMAC may be deleted from a loan policy when the company or agent has been furnished satisfactory proof that there are no parties in possession of the property being insured other than those claiming rights or possession in the property through matters of public record. Each insurer shall establish underwriting standards concerning the necessary proof to be furnished to it or its agents.
[6-16-86; 13.14.7.11 NMAC - Rn, 13 NMAC 14.7.11, 5-15-00; A, 10-1-12]

13.14.7.12 UNRECORDED EASEMENTS - STANDARD EXCEPTION 2: The standard exception numbered 2 in 13.14.5.9 NMAC may be deleted in its entirety from a loan policy when the insurer or its agent has been furnished a survey of the property being insured which it determines to be satisfactory to determine that there are not easements or claims of easements affecting the insured property other than those shown by the public records. In addition to the survey, the insurer may require as part of its underwriting standards an inspection of the property or other documentation that it may determine is necessary.
[6-16-86; 13.14.7.12 NMAC - Rn, 13 NMAC 14.7.12, 5-15-00; A, 10-1-12]

13.14.7.13 SURVEY COVERAGE - STANDARD EXCEPTION 3: The standard exception numbered 3 in 13.14.5.9 NMAC may be deleted from a loan policy in either of two ways. In both instances, the insurer or its agent must be furnished with a recent survey of the insured property meeting the insurer's underwriting standards prior to the deletion being made. If the insurer considers the additional risk acceptable, the entire language of this standard exception may be deleted from the policy, thereby insuring the surveyor's computation of area. If the insurer does not consider the shortage-in-area risk acceptable but considers the remaining additional hazard insurable, the words "encroachments, overlaps, conflicts in boundary lines" and the words "or other matters which would be disclosed by an accurate survey and inspection of the premises" may be deleted, leaving the exception to read, "shortages in area." There are no other circumstances under which this standard exception may be deleted from the policy or otherwise modified.
[6-16-86, 3-1-88; 13.14.7.13 NMAC - Rn, 13 NMAC 14.7.13, 5-15-00; A, 10-1-12]

13.14.7.14 MECHANICS' AND MATERIALMEN'S LIEN COVERAGE - STANDARD EXCEPTION 4:

A. The standard exception numbered 4 in 13.14.5.9 NMAC may be deleted in its entirety from a loan policy under the two circumstances described in Subsections B and C below.

B. If the insurer's underwriting requirements for evidence of priority have been met, the exception may be deleted from [~~a~~] any loan policy upon payment of the additional premium required in Subsection E of 13.14.9.40 NMAC. If the mortgage or deed of trust being insured secures a loan being made for construction purposes, [~~an~~] a NM form 83[~~.~~]construction loan endorsement, [~~an~~] a NM form 83.1[~~.~~] construction loan direct payment endorsement, or [~~an~~] a NM form 83.2 construction loan insured's direct payment endorsement may be issued with the loan policy and a NM form 84 disbursement endorsement may be issued thereafter.

C. If the insurer's underwriting requirements for evidence of priority have not been met but the insurer's underwriting requirements of the risk incurred by reason of the lack of priority have been met, the exception may be deleted from [~~a~~] any loan policy upon receipt of the additional extra-hazard risk premium specified in Subsection E of 13.14.9.40 NMAC. If the mortgage or deed of trust being insured secures a loan being made for construction purposes [~~an~~] a NM form 83 [~~____~~] construction loan endorsement, [~~an~~] a NM form 83.1 [~~____~~] construction loan direct payment endorsement, or [~~an~~] a NM form 83.2 construction loan insured's direct payment endorsement may be issued with the loan policy and a NM form 84 disbursement endorsement may be issued thereafter.

D. Each insurer shall establish written underwriting requirements concerning minimum evidence of priority and requirements of the risk incurred by reason of the lack of priority.

[6-16-86, 2-6-87; 13.14.7.14 NMAC - Rn, 13 NMAC 14.7.14, 5-15-00; A, 10-1-12; A, 7-31-14; A, _-_-_]

13.14.7.15 SPOUSAL RIGHTS - STANDARD EXCEPTION 5: The standard exception numbered 5 in 13.14.5.9 NMAC may be deleted in its entirety from a loan policy if the vestee named in such policy is a corporation, partnership or other artificial entity, or a person holding title as trustee. The exception may be deleted under other circumstances when the insurer or its agent has complied with the written underwriting standards established by the insurer for such deletion.

[6-16-86; 13.14.7.15 NMAC - Rn, 13 NMAC 14.7.15, 5-15-00; A, 10-1-12]

13.14.7.16 [RESERVED]

[4-3-95; 13.14.7.16 NMAC - Rn, 13 NMAC 14.7.16, 5-15-00; Repealed, 9-15-09]

13.14.7.17 ADDITIONAL "A" ENDORSEMENTS TO CONSTRUCTION LOAN POLICY: When a construction loan policy has been issued and an "A" endorsement has been attached thereto at the time of its issue, upon a date down of the title having been made to the date thereof and upon a subsequent disbursement of the loan insured, an additional endorsement "A" may be issued by the insuring company changing the effective date of the construction loan policy to the date of the most recent disbursement and down date upon payment of the additional charge as provided in Subsection D of 13.14.9.40 NMAC. In no event shall any endorsement "A" be used to extend the term of the construction loan policy beyond its expiration date. If the date down of the title made in connection with the issuance of such additional endorsement "A" reveals any change in the condition of title or if the insured requires that the amount of the aggregate disbursements to the date of the endorsement "A" be shown, such matters must be shown by separate endorsement issued contemporaneously with such additional endorsement "A". No endorsement "A" may be issued after August 14, 2018.

[6-16-86; 13.14.7.17 NMAC - Rn, 13 NMAC 14.7.17, 5-15-00; A, 10-1-12; A, 7-31-14; A, _-_-_]

13.14.7.18 LOAN POLICIES INSURING CONSTRUCTION LOAN [~~POLICIES~~]:

A. Construction loan policies (NM form 3) may not be issued after August 14, 2014 [~~the effective date of this rule _____.~~]

B. Upon written request of the insured, acceptance of the risk by the title insurer and receipt of the additional premium required by Subsection B of 13.14.9.40 NMAC, a construction loan policy issued prior to August 15, 2014 or a standard loan policy [~~containing~~] with a two-year [~~(2)~~] claims made limitation may be extended by issuance of no more than four [~~(4)~~] extension endorsements of six [~~(6)~~] months each. In no event may the coverage provided by a construction loan policy or a standard loan policy with a two-year claims made limitation, if extended to its maximum, exceed four years from the date of issue unless it is converted to a loan policy by payment of the full premium due for said loan policy without credit for any premium paid for the construction loan policy or a standard loan policy with a two-year claims made limitation.

[6-16-86, 2-16-87; 13.14.7.18 NMAC - Rn, 13 NMAC 14.7.18, 5-15-00; A, 10-1-12; A, 7-31-14; A, _-_-_]

13.14.7.19 [~~RESERVED~~] CONSTRUCTION LOAN MORTGAGE - PENDING DISBURSEMENT CLAUSE

A. When a lender is issued a loan policy insuring the lien of a construction loan mortgage, the insurer may require a specific pending disbursement clause. Such clause may be in the form directed by the insurer or it may be in the following form: "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 face amount of the policy. Prior to each disbursement of the proceeds of the loan,

the title must be continued down to such time for possible liens or objections intervening between the date hereof and the date of such disbursement."

B. At the time of each disbursement, with respect to an insured construction loan, a NM form 22, pending disbursement down date endorsement, may be issued by the insuring company, showing any changes in title to the security property and stating the total amount of the proceeds of the construction loan advanced by the lender at the date the endorsement is issued. The insurer or its agent shall collect the endorsement premium required by 13.14.10.18 NMAC within fifteen days of issuing the endorsement.

[6-16-86, 3-1-88; 13.14.7.19 NMAC - Rn, 13 NMAC 14.7.19, 5-15-00; A, 10-1-12; A, 7-31-14; A, _-_-_]

13.14.7.20 ISSUANCE OF REPLACEMENT MORTGAGEE'S POLICY:

A. When an authorized insurer is placed in permanent or temporary receivership for purpose of liquidation with a finding of insolvency by a court of competent jurisdiction (insolvent insurer), a replacement policy of title insurance can be purchased by an insured covered by a mortgagee's policy issued pursuant to 13.14.7.20 NMAC.

B. The insured shall surrender the existing policy of said insolvent insurer to the company when placing the order for a replacement policy. A copy of the existing policy obtained from the issuing agent can be surrendered in lieu of the existing original policy. If a copy of the existing policy is obtained from the original agency that issued it, an additional charge can be made to the insured in an amount that is reasonable considering the nature and extent of the services rendered. The [D]date of [P]policy for the replacement policy shall be the same [D]date of [P]policy as the existing [P]policy.

C. No replacement policy shall be issued without exceptions to coverage for defects, liens, encumbrances, adverse claims or for other matters known to exist by the insured on the date of issuance of the replacement policy, including but not limited to claims known by any owner or other insured and claims reported under existing policies or claims that have been made against the receiver for the insolvent insurer or agent(s) who represented the insolvent insurer. All replacement policies shall contain the following exception on [s]Schedule B: Defects, liens, encumbrances, adverse claims or other matters not known to the issuing agent and/or insurer at the issue date of this replacement policy, but known to any owner or other insured claimant and not disclosed in writing to the agent and/or insurer by the insured claimant prior to the date the insured claimant became insured under this policy.

D. A replacement policy may be issued on a lien covered by an existing mortgage policy but not on a lien to take up, renew, or extend or satisfy the existing lien. The replacement policy amount for a mortgagee policy shall be the amount of the current unpaid balance of the indebtedness. Agents and/or insurers must issue a replacement policy when request therefor is made by an insured that has satisfied the requirements of this regulation, [~~and those of 13 NMAC 14.9.10.7.~~]

E. No search or examination of title or evidence thereof is required of the agent or insurer issuing a replacement policy pursuant to this regulation. However, agents and insurers may conduct a search and examination at no additional expense to the insured other than as set forth in 13.14.9.26 NMAC.

F. All replacement policies shall be marked as such by adding the words "Replacement Policy; NO SEARCH REQUIRED," prior to the policy number on the cover page of the policy and on the top center of all other pages not considered a policy cover or jacket. Subsequent to the words "Replacement Policy; NO SEARCH REQUIRED," the date the replacement policy was issued shall be indicated after the word "Issued" is typed. No other regulations affording credits, discounts, reduction in premium shall apply to replacement policies other than stated herein and in 13.14.9.10.7 NMAC.

[6-15-91; 13.14.7.20 NMAC - Rn, 13 NMAC 14.7.20, 5-15-00; A, _-_-_]

13.14.7.21 [RESERVED]

[4-1-93; 13.14.7.21 NMAC - Rn, 13 NMAC 14.7.21, 5-15-00; Repealed, 7-1-05]

13.14.7.22 FORECLOSURE TITLE INSURANCE POLICY: A foreclosure title insurance policy (NM form 41) and, if desired, a down date endorsement (NM form 42) may be issued upon receipt of a bona fide order from an attorney, trustee, mortgagee or their agent in anticipation of the filing of an action to judicially foreclose a mortgage, deed of trust or other lien or security instrument encumbering title to real property in New Mexico, or to non-judicially foreclose a deed of trust. No binder shall be issued in connection with said policy. The amount of coverage shall be equal to the amount of the unpaid principal indebtedness due under the lien or note secured by the security instrument to be foreclosed. The policy shall be furnished solely for the purpose of facilitating the filing of

the action referred to in [s]Schedule A of the policy. The promulgation of this form shall not preclude, nor affect, the issuance of a title search and report by an agent.
[4-3-95; 13.14.7.22 NMAC - Rn, 13 NMAC 14.7.22, 5-15-00; A, 7-1-04; A, 09-15-10;A, _-_-_]

13.14.7.23 ALTA RESIDENTIAL LIMITED COVERAGE JUNIOR LOAN POLICY: Upon request, a title agent or insurer may issue an ALTA Residential Limited Coverage Junior Loan Policy (NM [F] form 45) if all of the conditions required by this section exist. Use of the limited search policy is optional and no agency and/or insurer need issue this form even if requested and the transaction meets all the requirements of these rules.

A. The real property to be insured under the policy is one to four family residential as defined in [s]Subsection A of 13.14.1.21 NMAC;

B. The real property is located within a [C]county [R]recorded [S]subdivision as defined in [s]Subsection B of 13.14.6.20 NMAC;

C. The agent or insurer has a complete copy of all schedules of an owner's policy issued in favor of the person(s) shown as vestee(s) in the proposed policy;

D. The loan to be made by lender is less than or equal to $75,000.00 and is a junior equity line of credit or second mortgage; and

E. The policy is issued in conformance with the underwriting standards issued by the title insurance company.
[6-1-97; 13.14.7.23 NMAC - Rn, 13 NMAC 14.7.23, 5-15-00; A, _-_-_]

13.14.7.24 [RESERVED]
[13.14.7.24 NMAC - N, 7-1-04; Repealed, 9-15-09]

13.14.7.25 [RESERVED]
[13.14.7.25 NMAC - N, 7-1-04; A, 7-1-05; Repealed, 9-15-09]

13.14.7.26 CLOSING PROTECTION LETTERS: The closing protection letter - single transaction (NM form 81)[;] and the closing protection letter [- limitations] multiple transactions (NM form 81.1) [; and closing protection letter - single transaction limited liability (NM form 81.2)] may be issued with the approval of the underwriter, in addition to issuance of any policy. Unless specifically requested by a party and approved by the underwriter, the closing protection letter- single transaction (NM form 81) shall be issued. Each insurer shall establish written instructions and underwriting standards preceding the use of these forms.
[13.14.7.26 NMAC - N, 09-15-10; A, 10-1-12; A, _-_-_]

13.14.7.27 RESIDENTIAL LIMITED COVERAGE MORTGAGE MODIFICATION POLICY:

A. Upon payment of the premium provided for in 13.14.9.42 NMAC, a residential limited coverage mortgage modification policy as described in NM form 90 may be issued.

B. This policy shall only be issued on properties that are defined as "one to four family residential property."

C. In order to issue a residential limited coverage modification policy, proof of the previous policy shall be in the possession of the company issuing the policy prior to the commencement of the title search for said policy. Proof, as used in this context, shall mean a copy of the previous policy, which shall include the following information: issuing company/underwriter, policy number, date of issue, policy amount, legal description of insured property, name of insured, as well as complete copies of Schedules A and B (and C, if applicable), and any attached endorsements.
[13.14.7.27 NMAC - N, _-_-_]

HISTORY OF 13.14.7 NMAC:

Pre-NMAC History.

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

History of Repealed Material. [Reserved]

Other History.

Re-promulgated a portion of SCC-86-1, Insurance Department Regulation 30 - Title Insurance (filed 5-9-86) and renumbered, reformatted and replaced as 13 NMAC 14.7, Loan, Leasehold Loan, and Construction Loan Policies, effective 11-01-1996.
13 NMAC 14.7, Loan, Leasehold Loan, and Construction Loan Policies (filed 10-2-96), was renumbered reformatted, amended and replaced by 13.14.7 NMAC, Loan, Leasehold Loan, and Construction Loan Policies, effective 5-15-2000, amended effective 7-31-14.
13 NMAC 14.7, Loan, Leasehold Loan, and Construction Loan Policies effective 7-31-14, amended effective _-_-_.

TITLE 13 INSURANCE
CHAPTER 14 TITLE INSURANCE
PART 8 ENDORSEMENTS

13.14.8.1 ISSUING AGENCY: Office of Superintendent of Insurance, Title Insurance Bureau.
[4-1-96; 13.14.8.1 NMAC - Rn & A, 13 NMAC 14.8.1, 5-15-00; A, 7-31-14]

13.14.8.2 SCOPE: This rule applies to all title insurers and all title insurance agents conducting title insurance business in New Mexico.
[4-1-96, 11-1-96; 13.14.8.2 NMAC - Rn, 13 NMAC 14.8.2, 5-15-00]

13.14.8.3 STATUTORY AUTHORITY: NMSA 1978, Section[s] 59A-30-4.
[6-16-96, 11-1-96; 13.14.8.3 NMAC - Rn, 13 NMAC 14.8.3, 5-15-00; A, _-_-_]

13.14.8.4 DURATION: Permanent.
[4-1-96; 13.14.8.4 NMAC - Rn, 13 NMAC 14.8.4, 5-15-00]

13.14.8.5 EFFECTIVE DATE: March 1, 2016. [~~June 16, 1986, unless a later date is cited at the end of a section.~~]
[6-16-86...11-1-96; 13.14.8.5 NMAC - Rn & A, 13 NMAC 14.8.5, 5-15-00; A, _-_-_]

13.14.8.6 OBJECTIVE: The purpose of this rule is to establish requirements for endorsements to title insurance policies.
[11-1-96; 13.14.8.6 NMAC - Rn & A, 13 NMAC 14.8.6, 5-15-00]

13.14.8.7 DEFINITIONS: See 13.14.1 NMAC.
[11-1-96; 13.14.8.7 NMAC - Rn, 13 NMAC 14.8.7, 5-15-00]

13.14.8.8 USE OF CORRECTION/MULTIPURPOSE ENDORSEMENT: The New Mexico correction/multipurpose endorsement may be used as follows:

A. As any of the other endorsement forms promulgated by the superintendent and specifically listed in 13.14.18.13 NMAC. In such case the exact language contained in the said promulgated endorsement form shall be typed or otherwise printed on the correction/multipurpose endorsement form; all language (if any) not contained in the said promulgated endorsement form but preprinted on the correction/multipurpose form shall be deleted by striking out or lining through; and, the appropriate form designation required by 13.14.18.12 NMAC shall be typed or otherwise printed on the correction/multipurpose endorsement in order that its use as another form is clearly evident. This regulation grants the option to each insurer to print specific promulgated endorsement forms or to use the correction/multipurpose endorsement form for any or all of the other promulgated endorsement forms and also grants the option to an agent to use this form for this purpose either upon instructions from the insurer or if the preprinted promulgated form is not available.

B. To insert, delete or add to a commitment, binder, policy or endorsement, language required or authorized by any of these regulations when appropriate to do so.

C. To correct errors in the information inserted in the appropriate spaces of any preprinted commitment, binder, policy or endorsement (but not to change, alter or waive the promulgated terms) in the manner following: "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 such as, 'the name of the insured is John Smith rather than James Smith.' or 'the lot number in the legal description is '3' rather than '30.' or 'item 3' of Schedule A is ABC corporation rather than ABC, inc.') No other amendments are made by this endorsement."

D. To endorse a loan policy by issuing the NM form 80, the mortgage modification endorsement~~,~~ or the NM form 80.1, the mortgage modification with subordination endorsement, or the NM form 80.2, the mortgage modification endorsement with additional amount of insurance. Each insurer shall establish written instructions and underwriting standards concerning the use of [~~this endorsement~~] these endorsements.

E. To endorse a loan policy in the manner following: "As to the above numbered loan policy, the company will not claim that its liability for the payment of any loss or damage, under the terms and provisions of the policy, has been waived or surrendered by the insured, or has been reduced by the company, solely by reason of the

execution of: ([~~Her~~] Here state whether renewal, extension, reinstatement, or partial release, release of additional collateral or release from personal liability, and then fully describe giving recording information.) The assurance given by this endorsement is subject to the following (None unless specifically set out here.)"
[6-16-86, 3-1-89; 13.14.8.8 NMAC - Rn, 13 NMAC 14.8.8, 5-15-00; A, 9-15-10; A, 10-1-12; A, _-_-_]

13.14.8.9 USE OF LEASEHOLD ENDORSEMENTS: The leasehold owner's and leasehold loan endorsements shall be attached to owner's policies and loan policies to insure leasehold estates and shall provide the same options to the Insurer and agent as are provided in 13.14.8.8 NMAC.
[6-16-86; 13.14.8.9 NMAC - Rn, 13 NMAC 14.8.9, 5-15-00; A, 3-1-02]

13.14.8.10 USE OF OTHER PROMULGATED ENDORSEMENTS: Each insurer shall establish written instructions and underwriting standards concerning the use of the other promulgated endorsement forms to insure the specific estate or lien or provide mechanics' and materialmen's lien coverages or to reflect the current status of improvements, advances, assignments or coverages as specifically provided by these regulations and the promulgated forms.
[6-16-86, 5-1-88; 13.14.8.10 NMAC - Rn, 13 NMAC 14.8.10, 5-15-00]

13.14.8.11 NON-IMPUTATION ENDORSEMENTS: The NM form 28, non-imputation endorsement - full equity transfer, NM form 28.1, non-imputation endorsement - additional insured, and the NM form 28.2, non-imputation endorsement - partial equity transfer, may be issued on an existing or currently issued owner's policy or loan policy insuring title to property held by a corporation, limited liability company, or partnership as an insured even when there has been no conveyance of title of such property, but there has been (1) a transfer/issuance of all or a portion of the stock of the insured corporation, (2) a transfer/substitution of all or a portion of the interests of the insured partnership, or (3) a transfer/sale of all or a portion of the membership interests of the insured limited liability company. This endorsement may be issued only upon the written authorization of the underwriter. The issuing agent shall retain such written authorization of the underwriter for a period of two years following the issuance of the endorsement.
[2-6-87; 13.14.8.11 NMAC - Rn, 13 NMAC 14.8.11, 5-15-00; A, 7-1-06; A, 8-17-09]

13.14.8.12 IDENTIFIED RISK COVERAGE ENDORSEMENT:

A. An identified risk coverage endorsement NM form 85 may be attached to an owner's policy, leasehold owner's policy, loan policy, construction loan policy or leasehold loan policy for the purpose of insuring around an adverse matter or document excepted to in Schedule B. This endorsement shall be issued only when there exists an adverse matter or document which has a generalized affect as to the insurability of title to a number of properties which are similarly situated, and only following the issuance by the superintendent of insurance of a bulletin distributed to the title insurance underwriters and agents licensed to issue title policies in New Mexico specifically identifying the adverse matter or document and authorizing use of the identified risk coverage endorsement with regard to such adverse matter or document.

B. When issuing the identified risk coverage endorsement, the adverse matter or document must appear as an exception in Schedule B of any policy to which the endorsement is attached. It shall not be permissible to insure around any adverse matter or document by intentionally omitting it from any commitment or policy.

C. This endorsement shall be issued only if the underwriter considers the risk acceptable, and only with written approval by the underwriter.
[4-1-93; 13.14.8.12 NMAC - Rn, 13 NMAC 14.8.12, 5-15-00; Repealed, 7-1-05; 13.14.8.12 NMAC - N, 10-1-12]

13.14.8.13 INSURING AROUND ENDORSEMENT:

A. An insuring around endorsement NM form 43 may be attached to an owner's policy, leasehold owner's policy, loan policy or leasehold loan policy for the purpose of insuring around a lien or other adverse matter excepted to in Schedule B. This endorsement shall only be issued where one or more of the following circumstances exists at the time the policy is issued:

(1) where liens securing obligations which, though not released of record, have been discharged to the satisfaction of the underwriter, and the underwriter or agent has evidence in this file that the lien has been paid in full; provided that the underwriter or agent has the duty to obtain a release within a reasonable time after closing if it is possible to do so;

(2) where an insurer has previously issued a policy, through error or mistake, or pursuant to an indemnity agreement or agreement to defend as provided under Paragraph (3) below, without taking exception to

a specific lien or other adverse, and is called upon to issue a new policy and is already obligated under such prior policy;

(3) where an insurer has erred as in (2) above, or has accepted an indemnity or agreement to defend pursuant to this paragraph and another insurer discovers the error in preparing to issue a subsequent policy, the second insurer may rely upon an indemnity agreement or an agreement to defend by the first insurer, and attach the endorsement.

B. In utilizing this insuring-around provision, the lien must appear as an exception in Schedule B of any policy and the endorsement shall be attached thereto. It shall not be permissible to insure around any lien or other adverse matter by intentionally omitting it from any commitment or policy. This endorsement shall only be issued where the underwriter considers the risk acceptable.

[4-3-95, 4-1-96; 13.14.8.13 NMAC - Rn, 13 NMAC 14.8.13, 5-15-00; A, 10-1-12; A, _-_-_]

13.14.8.14 CO-INSURANCE: A policy or policies may be written to provide co-ordinate and proportionate coverage by two or more underwriters. Such coverage may be provided either by endorsement attached to a single policy and executed by or on behalf of the co-insuring underwriters, or by the issuance of separate policies by or on behalf of each of the co-insuring underwriters. In either case, the premium charged for the policy shall be the same as would be charged for the single policy, with the split of the premium between the issuing agents or underwriters to be in accord with the percentage or proportion of loss or cost for which each underwriter or issuing agent's underwriter is liable under the policy or policies. All policies providing co-ordinate and proportionate coverage shall set out the following information:

A. If only one policy is being used, NM form 77 shall be used.

B. If multiple policies are being used, [s]Schedule B shall include the following: "This policy is issued contemporaneously with Policies No._____ of (insert name of other underwriting company or companies) for $_____. The liability of the [C]company hereunder is hereby limited to _____ (insert percentage or proportion) of any loss, but said liability shall not exceed the face amount of this policy."

[4-3-95; 13.14.8.14 NMAC - Rn, 13 NMAC 14.8.14, 5-15-00; A, 09-15-10; A, _-_-_]

13.14.8.15 TRUTH IN LENDING ENDORSEMENT: A truth-in-lending endorsement, NM form 48, may be attached to a New Mexico loan policy or leasehold loan policy in those circumstances where the underwriter has determined that the loan to be insured is exempt from the provisions of Regulation Z (12 CFR 226), and the premium provided for in 13.14.10.31 NMAC is paid.

[6-1-97; 13.14.8.15 NMAC - Rn, 13 NMAC 14.8.15, 5-15-00; A, 10-1-12]

13.14.8.16 RESTRICTIONS, ENCROACHMENTS, AND MINERALS ENDORSEMENTS:

A. Upon being furnished with a satisfactory survey, and where the underwriter determines the risk to be acceptable:

(1) NM form 50, restrictions, encroachments and minerals endorsement, and the NM form 50.1, restrictions, encroachments and minerals endorsement - lender improved land may be attached only to a loan policy but shall not be issued where the intended use of the property is 1-4 family residential;

(2) NM form 56, restrictions, encroachments and minerals endorsement - unimproved land, and the NM form 56.1 restrictions, encroachments and minerals endorsement - unimproved land may be attached only to an owner's policy covering unimproved land; and

(3) NM form 57, restrictions, encroachments and minerals endorsement - improved land, and the NM form 57.1, restrictions, encroachments and minerals endorsement - improved land may be attached only to an owner's policy covering improved land.

B. Each endorsement is to be issued only in conjunction with the issuance of survey coverage, as authorized by 13.14.6.14 NMAC or 13.14.7.13 NMAC.

C. The coverage relating to minerals provided under [p]Paragraph (3)(b) of NM form 50, [p]Paragraph (4) of NM form 50.1, [p]Paragraph (2) of NM form 56 and NM form 56.1, [p]Paragraph (2)(b) of NM form 57, or [p]Paragraph (3) of NM form 57.1, as appropriate shall not be issued where minerals have been severed, unless there has been a waiver of the right of entry or surface usage of the mineral reservation.

D. The coverage provided by any part of each endorsement may be deleted but may not be increased by:

(1) crossing out the part on the form of endorsement;

(2) retyping the form leaving out the part; or

(3) special endorsement.

E. Each endorsement may be issued only upon the written authorization of the underwriter. The issuing agent shall retain such written authorization of the underwriter for a period of not less than two years following issuance of the endorsement.

[6-1-98; 13.14.8.16 NMAC - Rn, 13 NMAC 14.8.16, 5-15-00; A, 3-1-02; A, 8-17-09; A, 7-31-14; A, _-_-_]

13.14.8.17 LAND ABUTS STREET ENDORSEMENT: The "land abuts street" endorsement, NM form 51, may be attached to owner's policies and loan policies provided the premium in 13.14.10.36 NMAC is paid. This endorsement may not be attached to policies insuring residential property containing four or fewer dwelling units. Each insurer shall establish written instructions and underwriting standards concerning the use of this endorsement.

[13.14.8.17 NMAC - N, 5-15-00; A, _-_-_]

13.14.8.18 LOCATION ENDORSEMENT: The "location" endorsement, NM form 52, may be attached to owner's policies and loan policies provided a recent survey is furnished and the premium in 13.14.10.37 NMAC is paid. This endorsement may not be attached to policies insuring residential property containing four or fewer dwelling units. Each insurer shall establish written instructions and underwriting standards concerning the use of this endorsement.

[13.14.8.18 NMAC - N, 5-15-00; A, 5-31-00; A, 9-15-09; A, _-_-_]

13.14.8.19 SAME AS SURVEY AND SAME AS PORTION OF SURVEY ENDORSEMENTS: The "same as survey" endorsement, NM form 78, and the "same as portion of survey" endorsement, NM form 79, may be attached to owner's policies and loan policies provided the policy is furnishing survey coverage pursuant to 13.14.6.14 NMAC and the premium in 13.14.10.38 NMAC is paid. This endorsement may not be attached to policies insuring residential property containing four or fewer dwelling units. Each insurer shall establish written instructions and underwriting standards concerning the use of this endorsement.

[13.14.8.19 NMAC - N, 5-15-00; A, 5-31-00; A, 09-15-10]

13.14.8.20 CONTIGUITY OF PARCELS ENDORSEMENTS: Upon being furnished with a satisfactory survey and the payment of the premium provided in 13.14.10.39 NMAC, the contiguity of single parcel endorsement, NM form 54, or the contiguity of multiple parcel endorsement, NM form 66 may be attached to an owners or leasehold owners policy, or to a loan or leasehold loan policy which insures any property that is not one to four family residential, subject to Subsections A and B below.

A. For owner's or leasehold owner's policies, the insured must already or at the time the policy is issued 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 loan or leasehold loan policies, the insured lender must already or at the time the policy is issued have a mortgage lien upon 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.

[13.14.8.20 NMAC - N, 5-15-00; A, 7-1-06; A, 10-1-12]

13.14.8.21 FIRST LOSS ENDORSEMENT: The first loss endorsement, NM [~~F~~] form 58, may be attached to Loan Policies, provided the premium in 13.14.10.41 NMAC is paid and provided other property not described in the mortgagee policy is encumbered to secure payment of the indebtedness secured by the insured mortgage. This endorsement may not be attached to policies insuring residential property containing four or fewer dwelling units. Each insurer shall establish written instructions and underwriting standards concerning the use of this endorsement.

[13.14.8.21 NMAC - N, 7-1-03]

13.14.8.22 [RESERVED]

[13.14.8.22 NMAC - N, 7-1-03; Repealed, 09-15-10]

13.14.8.23 LOAN POLICY AGGREGATION ENDORSEMENT: The loan policy aggregation endorsement, NM form 60 or NM form 60.1, may be attached to loan policies, provided the premium in 13.14.10.43 NMAC is paid and provided multiple policies are simultaneously issued covering separate mortgages securing the same indebtedness or loan. This endorsement may not be attached to policies insuring residential property containing four or fewer dwelling units. Each insurer shall establish written instructions and underwriting standards concerning the use of this endorsement.

[13.14.8.23 NMAC - N, 7-1-03; A, 7-31-14]

13.14.8.24 FOUNDATION ENDORSEMENT: The foundation endorsement, NM form 61, may be attached to loan policies and/or construction loan policies provided the premium in 13.14.10.44 NMAC is paid and a satisfactory survey is furnished showing that the location of the foundation is within the land described in the policy. With respect to [~~p~~]Paragraphs (2) and (3) of the endorsement, if there is a violation of the covenants, conditions, or restrictions, or there is an encroachment into any easement shown by the survey, describe it; otherwise insert "none." If the lender requests affirmative coverage, the affirmative coverage language set forth in Subsection D of 13.14.18.11 NMAC may be added to the respective paragraph. Each insurer shall establish written instructions and underwriting standards concerning the use of this endorsement.
[13.14.8.24 NMAC - N, 7-1-04]

13.14.8.25 ASSIGNMENT OF RENTS[~~/~~] OR LEASES ENDORSEMENT: The assignment of rents[~~/~~] or leases endorsement, NM form 62, may be attached to a New Mexico loan policy or leasehold loan policy, provided the premium in 13.14.10.45 NMAC is paid. This endorsement may not be attached to policies insuring residential property containing four or fewer dwelling units. Each insurer shall establish written instructions and underwriting standards concerning the use of this endorsement.
[13.14.8.25 NMAC - N, 7-1-04; A, _-_-_]

13.14.8.26 ZONING [~~ENDORSEMENT~~], UNIMPROVED LAND ENDORSEMENTS: Upon payment of the premium provided for in 13.14.10.47 NMAC, and where the underwriter determines the risk to be acceptable, the[~~"~~]zoning [~~endorsement~~], - unimproved land endorsement [~~"~~], NM form 64, or zoning - unimproved land - no applicable zoning ordinances endorsement, NM form 64.1, may be attached to a loan policy or owner's policy. This endorsement shall not be issued on properties that are defined as "one-to-four family residential." Each endorsement may be issued only upon the written authorization of the underwriter. The issuing agent shall retain such written authorization of the underwriter for a period of not less than two [~~(2)~~] years following issuance of the endorsement.
[13.14.8.26 NMAC - N, 7-1-05; A, _-_-_]

13.14.8.27 ZONING [~~ENDORSEMENT,~~] - COMPLETED STRUCTURE ENDORSEMENT, ZONING - LAND UNDER DEVELOPMENT ENDORSEMENT, AND ZONING -COMPLETED STRUCTURE - NO APPLICABLE ZONING ORDINANCES ENDORSEMENT: Upon being furnished with a satisfactory survey, payment of the premium provided for in 13.14.10.48 NMAC, and where the underwriter determines the risk to be acceptable[~~,~~] :

A. NM form 65[~~,~~] the [~~"~~]zoning [~~endorsement,~~] - completed structure[~~"~~] endorsement;" NM form 65.1 the "zoning - land under development endorsement; " and NM form 65.2 the "zoning - completed structure - no applicable zoning ordinances endorsement" may be attached to a loan policy or owner's policy. [~~This~~] These endorsements shall not be issued on properties that are defined as "one-to-four family residential."

B. The coverage provided by any part of each endorsement may not be increased but may be deleted by:

(1) crossing out the part on the form of endorsement;

(2) retyping the form leaving out the part; or

(3) special endorsement.

C. Each endorsement may be issued only upon the written authorization of the underwriter. The issuing agent shall retain such written authorization of the underwriter for a period of not less than two (2) years following issuance of the endorsement
[13.14.8.27 NMAC - N, 7-1-05; A, _-_-_]

13.14.8.28 ACCESS AND ENTRY ENDORSEMENT: The access and entry endorsement, NM form 67, may be attached to all owner's policies and loan policies, for all properties except one to four family residential properties, provided the premium in 13.14.10.49 NMAC is paid and a satisfactory survey is furnished showing that there is vehicular and pedestrian access to the abutting existing public street, road or highway. A separate endorsement is to be issued for each public street, road or highway for which the insured wants access and entry coverage and a separate premium as provided for in 13.14.10.49 NMAC is to be paid for each endorsement issued. Each insurer shall establish written instructions and underwriting standards concerning the use of this endorsement.
[13.14.8.28 NMAC - N, 7-1-06; A, 7-31-06; A, 10-1-12]

13.14.8.29 INDIRECT ACCESS AND ENTRY ENDORSEMENT: The "indirect access and entry" endorsement, NM form 68, may be attached to owner's policies and loan policies provided the premium in 13.14.10.50 NMAC is paid. This endorsement may not be attached to policies insuring residential property containing four or fewer dwelling units. Each insurer shall establish written instructions and underwriting standards concerning the use of this endorsement.
[13.14.8.29 NMAC - N, 09-15-10]

13.14.8.30 UTILITY ACCESS ENDORSEMENT: The "utility access" endorsement, NM form 69, may be attached to owner's policies and loan policies provided the premium in 13.14.10.51 NMAC is paid. This endorsement may not be attached to policies insuring residential property containing four or fewer dwelling units. Each insurer shall establish written instructions and underwriting standards concerning the use of this endorsement.
[13.14.8.30 NMAC - N, 09-15-10]

13.14.8.31 COMMERCIAL ENVIRONMENTAL PROTECTION LIEN ENDORSEMENT: The "commercial environmental protection lien" endorsement, NM form 70, may be attached to owner's policies and loan policies provided the premium in 13.14.10.52 NMAC is paid. This endorsement may not be attached to policies insuring residential property containing four or fewer dwelling units. Each insurer shall establish written instructions and underwriting standards concerning the use of this endorsement.
[13.14.8.31 NMAC - N, 09-15-10]

13.14.8.32 REVERSE MORTGAGE ENDORSEMENT: The "reverse mortgage" endorsement, NM form 71, may be attached to a loan policy (NM form 2) provided the premium in 13.14.10.53 NMAC is paid and provided that (1) the mortgage being insured is a reverse annuity mortgage ("reverse mortgage") securing future advances under the HUD HECM (home equity conversion mortgage) program, Fannie Mae home keeper® program or other similar or private lender program approved by the insurer, (2) proof that each mortgagor is at least 62 years of age and, (3) proof that the mortgagor(s) are residing on the insured property as their principal residence or homestead. This endorsement shall only be issued on properties that are defined as "one-to-four family residential". The loan policy (NM form 2) issued on a "reverse mortgage" may be issued in either the total amount of advances or 150% of the total amount of advances as requested by the lender. Schedule B of the loan policy (NM form 2) 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 [s]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. The two mortgages or deeds of trust filed on a HUD HECM reverse mortgage loan may be insured on one loan policy if the priority of the mortgages or deeds of trust are disclosed when describing the mortgages or deeds of trust being insured in [s]Schedule A. The bracketed language in [p]Paragraph (4)(f) of NM form 71 may be deleted from the endorsement with the approval of the underwriter if: (1) the risk is deemed acceptable; and, (2) standard exception No. 4 from [s]Schedule B of the underlying loan policy has been deleted, at no extra premium. Otherwise, the brackets themselves shall be removed and the language of [p]Paragraph (4)(f) of NM form 71 shall be included in the endorsement. Each insurer shall establish written instructions and underwriting standards concerning the use of this endorsement.
[13.14.8.32 NMAC - N, 09-15-10; A, _-_-_]

13.14.8.33 SINGLE TAX PARCEL ENDORSEMENT: The "single tax parcel" endorsement, NM form 72, may be attached to owner's policies and loan policies provided the premium in 13.14.10.54 NMAC is paid. This endorsement may not be attached to policies insuring residential property containing four or fewer dwelling units. Each insurer shall establish written instructions and underwriting standards concerning the use of this endorsement.
[13.14.8.33 NMAC - N, 09-15-10]

13.14.8.34 MULTIPLE TAX PARCEL ENDORSEMENT: The "multiple tax parcel" endorsement, NM form 73, may be attached to owner's policies and loan policies provided the premium in 13.14.10.55 NMAC is paid. This endorsement may not be attached to policies insuring residential property containing four or fewer dwelling units. Each insurer shall establish written instructions and underwriting standards concerning the use of this endorsement.
[13.14.8.34 NMAC - N, 09-15-10]

13.14.8.35 DOING BUSINESS ENDORSEMENT: The "doing business" endorsement, NM form 74, may be attached to loan policies provided the premium in 13.14.10.56 NMAC is paid. This endorsement may not be attached to policies insuring residential property containing four or fewer dwelling units. Each insurer shall establish written instructions and underwriting standards concerning the use of this endorsement.
[13.14.8.35 NMAC - N, 09-15-10]

13.14.8.36 SUBDIVISION ENDORSEMENT: The "subdivision" endorsement, NM form 75, may be attached to owner's policies and loan policies provided the premium in 13.14.10.57 NMAC is paid. This endorsement may not be attached to policies insuring residential property containing four or fewer dwelling units. Each insurer shall establish written instructions and underwriting standards concerning the use of this endorsement.
[13.14.8.36 NMAC - N, 09-15-10]

13.14.8.37 EASEMENT - DAMAGE OR ENFORCED REMOVAL ENDORSEMENT: The "easement-damage or forced removal" endorsement, NM form 76, may be attached to owner's policies and loan policies provided the premium in 13.14.10.58 NMAC is paid. This endorsement may not be attached to policies insuring residential property containing four or fewer dwelling units. Each insurer shall establish written instructions and underwriting standards concerning the use of this endorsement.
[13.14.8.37 NMAC - N, 09-15-10]

13.14.8.38 CO-INSURANCE - SINGLE POLICY ENDORSEMENT: The "co-insurance single policy" endorsement, NM form 77, may be attached to owner's policies and loan policies provided the premium in 13.14.10.59 NMAC is paid. This endorsement may not be attached to policies insuring residential property containing four or fewer dwelling units. Each insurer shall establish written instructions and underwriting standards concerning the use of this endorsement.
[13.14.8.38 NMAC - N, 09-15-10]

13.14.8.39 ENERGY PROJECT ENDORSEMENTS: Upon payment of the premium provided for in 13.14.10.60 NMAC, and where the underwriter determines the risk to be acceptable, an "energy project endorsement" may be attached to a loan policy or owner's policy, as applicable. These endorsements shall not be issued on properties that are defined as "one-to-four family residential." Each endorsement may be issued only upon the written authorization of the underwriter. The issuing agent shall retain such written authorization of the underwriter for a period of not less than two years following issuance of the endorsement.
[13.14.8.39 NMAC - N, _-_-_]

13.14.8.40 MEZZANINE FINANCING ENDORSEMENT: Upon payment of the premium provided for in 13.14.10.62 NMAC, a "mezzanine financing endorsement" may be attached to an owner's policy. This endorsement shall not be issued on properties that are one to four family residential property. This endorsement shall only be issued where the underwriter considers the risk acceptable.
[13.14.8.40 NMAC - N, _-_-_]

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 3-7-74.
SCC-85-6, Insurance Department Regulation 30 - Title Insurance, filed 9-6-85.
SCC-86-1, Insurance Department Regulation 30 - Title Insurance, filed 5-9-86.

History of Repealed Material. [Reserved]

Other History.

Re-promulgated a portion of SCC-86-1, Insurance Department Regulation 30 - Title Insurance (filed 5-9-86) and renumbered, reformatted and replaced as 13 NMAC 14.8, Endorsements, effective 11-01-1996.
13 NMAC 14.8, Endorsements (filed 10-2-96), was renumbered reformatted, amended and replaced by 13.14.8 NMAC, Endorsements, effective 5-15-2000, amended effective 7-31-14.
NMAC Endorsements, effective 7-31-14, amended effective _-_-_

TITLE 13 INSURANCE
CHAPTER 14 TITLE INSURANCE
PART 9 GENERAL RATE PROVISIONS

13.14.9.1 ISSUING AGENCY: Office of Superintendent of Insurance, Title Insurance Bureau.
[4-1-96; 13.14.9.1 NMAC - Rn & A, 13 NMAC 14.9.1, 5-15-00; A, 8-15-14]

13.14.9.2 SCOPE: This rule applies to all title insurers and all title insurance agents conducting title insurance business in New Mexico.
[3-1-74...11-1-96; 13.14.9.2 NMAC - Rn, 13 NMAC 14.9.2, 5-15-00]

13.14.9.3 STATUTORY AUTHORITY: NMSA 1978, Sections 59A-30-4 and 59A-30-6.
[3-1-74...11-1-96; 13.14.9.3 NMAC - Rn, 13 NMAC 14.9.3, 5-15-00; A, _-_-_]

13.14.9.4 DURATION: Permanent.
[4-1-96; 13.14.9.4 NMAC - Rn, 13 NMAC 14.9.4, 5-15-00]

13.14.9.5 EFFECTIVE DATE: March 1, 2016. [~~June 16, 1986, unless a later date is cited at the end of a section.~~]
[3-1-74, 11-1-96; 13.14.9.5 NMAC - Rn & A, 13 NMAC 14.9.5, 5-15-00; A, _-_-_]

13.14.9.6 OBJECTIVE: The purpose of this rule is to establish rates for title insurance policies.
[11-1-96; 13.14.9.6 NMAC - Rn & A, 13 NMAC 14.9.6, 5-15-00]

13.14.9.7 DEFINITIONS: See 13.14.1 NMAC.
[3-1-74...11-1-96; 13.14.9.7 NMAC - Rn, 13 NMAC 14.9.7, 5-15-00]

13.14.9.8 SCHEDULE OF PREMIUM RATES: The [~~S~~]superintendent of [~~I~~]insurance shall establish a Schedule of Premium Rates for Original Owner's Policies of Title Insurance. Said premium rates, sometimes called the Schedule of Basic Premium Rates, shall apply to all policies of title insurance issued on New Mexico properties unless the same be specified or modified in other applicable Rate Regulations.
[6-16-86; 13.14.9.8 NMAC - Rn, 13 NMAC 14.9.8.1, 5-15-00; A, _-_-_]

13.14.9.9 COMBINATIONS OF CREDITS OR DISCOUNTS: In no event shall two or more Rate Regulations (or separately lettered or numbered paragraphs thereof) granting credits, reductions or discounts in premiums be combined in the calculation of the premium or premiums for a single transaction, unless one Original Owner Policy premium in the largest amount is charged; provided, however, that a simultaneous issue rate regulation may be combined with any appropriate single issue rate regulation.
[6-16-86; 13.14.9.9 NMAC - Rn, 13 NMAC 14.9.8.2, 5-15-00]

13.14.9.10 PREMIUM RATES INCLUSIVE: The premium rates established by these rules include all premiums for title insurance, examination of the title or titles to be insured, determining that each insured estate has been created, conveyed or modified as shown in the policy, and determining what exceptions, if any, to insert in or delete from the policies to be issued as provided in these rules.
[6-16-86; 13.14.9.10 NMAC - Rn, 13 NMAC 14.9.8.3, 5-15-00]

13.14.9.11 PAYMENTS OF PREMIUM TO OTHERS: No portion, split or percentage of any premium shall be paid either directly or indirectly to any person, firm or organization for title insurance, title examination, or determining status of title as set forth above, except a division of premium between an insurer admitted to do title insurance business in New Mexico and its licensed New Mexico agent pursuant to their agency agreement, or between licensed New Mexico agents (or companies admitted or licensed in New Mexico who do not have agency agreements in a county where some of the property is located) who are cooperating to close a transaction involving New Mexico property situated in more than one county to be insured in a single policy when each licensed agent or admitted company is rendering part of the services included in the premiums as set forth in 13.14.9.10 NMAC. Any agent which has cancelled its agency [~~contract~~] agreement or had its agency [~~contract~~] agreement cancelled by an underwriter may prepare endorsements to existing policies then in force at the time of cancellation upon request by

the insured and approval by the underwriter. Said endorsements shall be signed by an officer of the underwriter. The premium for such endorsement shall be collected by the cancelled agent and divided according to the controlling promulgated rates at the time of issuance of said endorsement(s). The payment or receipt of referral fees by or between licensed agents and/or admitted companies is prohibited.
[6-16-86; 13.14.9.11 NMAC - Rn, 13 NMAC 14.9.10, 5-15-00; A, 09-15-10; A, _-_-_]

13.14.9.12 REBATES AND UNAUTHORIZED DISCOUNTS: No person or company shall charge for a policy, binder or commitment in one transaction and withhold issuance of said policy, binder or commitment, nor shall any person or company charge a premium for a policy, binder or commitment in one transaction and apply the charged premium in a subsequent transaction unless the same be specifically authorized by these rules. No person or company shall issue a binder or commitment for which a premium is prescribed, without making a full charge therefor nor shall such premium, or any part thereof, be applied toward the premium for any policy. No person or company shall issue a policy, for which a premium is prescribed, without making full charge therefor.
[6-16-86; 13.14.9.12 NMAC - Rn, 13 NMAC 14.9.8.5, 5-15-00]

13.14.9.13 ROUNDING TO THE NEAREST DOLLAR: All premiums charged for title insurance policies, endorsements, binders or commitments shall be rounded to the nearest dollar after all computations necessary have been performed. Fifty cents or more shall be rounded up; forty-nine cents or less shall be rounded down.
[6-16-86; 13.14.9.13 NMAC - Rn, 13 NMAC 14.9.8.6, 5-15-00; A, _-_-_]

13.14.9.14 FRACTIONAL THOUSAND DOLLARS OF LIABILITY: To compute any charge on a fractional thousand dollars of liability, consider any fraction of one thousand dollars ($1,000.00) as a full one thousand dollars ($1,000.00).
[6-16-86; 13.14.9.14 NMAC - Rn, 13 NMAC 14.9.8.7, 5-15-00]

13.14.9.15 NON-DISCRIMINATION IN AUTHORIZED DISCOUNTS: The discounts authorized in these rules are the only discounts allowed and shall be offered on a non-discriminatory basis for like risks and like insureds.
[6-16-86; 13.14.9.15 NMAC - Rn, 13 NMAC 14.9.8.8, 5-15-00]

13.14.9.16 ADDITIONAL CHARGES: In addition to the other premiums specified in these Rate Regulations, the following shall be charged whenever the search or examination conducted for the issuance of the policy involves either an extra chain of title or other unusual complexity (as those terms are defined in [s]Subsection A of 13.14.1.11 NMAC and [s]Subsection A of 13.14.1.27 NMAC): (1) for each additional chain of title, the sum of fifty dollars ($50.00); and, (2) for each unplatted tract of unusual complexity fifteen percent (15%) of the full Basic Premium Rate on each such tract. If the separate values for each tract are not apportioned in the policy, their values for the purposes of this regulation shall be in the same proportions as their areas bear to the entire area insured.
[6-16-86, 3-1-92; 13.14.9.16 NMAC - Rn, 13 NMAC 14.9.8.9, 5-15-00; A, _-_-_]

13.14.9.17 CANCELLATION FOR NON-PAYMENT OF PREMIUM: In the event that all premium due is not paid in full within fifteen (15) banking days of the issuance of any policy or endorsement, the underwriter shall cancel the said policy or endorsement; said cancellations shall be made upon written notice to the Insured by certified mail, return receipt requested, to the last known address, and shall be effective not less than ten (10) days after mailing said notice to the Insured. Agents shall promptly notify their underwriter(s) of the non-receipt of premiums within the period specified herein.
[6-16-86; 13.14.9.17 NMAC - Rn, 13 NMAC 14.9.8.10, 5-15-00]

13.14.9.18 PREMIUM RATES FOR ORIGINAL OWNER'S POLICIES: The following schedule of premium rates for original owner's policies shall be in effect from the effective date of this rate rule until modified by the superintendent:

Liability Charge Up to:	Total Charge:	Liability Charge Up to:	Total Charge:	Liability Charge Up to:	Total Charge:

10,000	195	24,000	320	38,000	429
11,000	203	25,000	327	39,000	436
12,000	213	26,000	336	40,000	444
13,000	222	27,000	344	41,000	450
14,000	232	28,000	354	42,000	457
15,000	241	29,000	361	43,000	465
16,000	251	30,000	369	44,000	473
17,000	260	31,000	378	45,000	480
18,000	270	32,000	384	46,000	486
19,000	278	33,000	393	47,000	494
20,000	287	34,000	399	48,000	502
21,000	293	35,000	407	49,000	508
22,000	302	36,000	415	50,000	517
23,000	311	37,000	421		

For amounts of insurance (in thousands)	Portion of rate (per thousand) subject to agent commission, add	Agent retention percentage	Additional rate per $1000 to be collected on policy amounts in excess of $10 million (solely for underwriter)	Total Charged to Consumer
over $50 to $100	$6.28	80%		$6.28
over $100 to $500	$4.94	80%		$4.94
over $500 to $2,000	$3.87	80%		$3.87
over $2,000 to $5,000	$3.12	75%		$3.12
over $5,000 to $10,000	$2.59	70%		$2.59
over $10,000 to $25,000	$2.22	65%	$0.25	$2.47
over $25,000 to $50,000	$1.94	60%	$0.25	$2.19
over $50,000	$1.55	50%	$0.25	$1.80

[6-16-86...4-3-95; A, 5-1-99; 13.14.9.18 NMAC - Rn, 13 NMAC 14.9.8.11 & A, 5-15-00; A, 5-31-00; A, 8-1-00; A, 3-1-02; A, 7-1-03; A, 7-1-04; A, 7-1-05; A, 7-1-06; A, 9-1-07; A, 7-1-08; A, 8-1-09; A, 10-1-12; A, 8-15-14]

13.14.9.19 NON-POLICY RATES:

A. Commitments to insure. The premium for any commitment to insure (or an interim title insurance binder) is one hundred dollars ($100.00) for the initial six [(6)] months, and an additional one hundred dollars ($100.00) for each additional six month (or portion thereof) renewal or extension.

B. Cancellation fee. If the transaction fails to close and no policy is issued by the company issuing its commitment (or binder), the company may charge a cancellation fee that it determines reasonable and appropriate considering the nature and extent of the services rendered by it.

C. Pro Forma Policies. The premium for the issuance of any form of owner's or loan Pro Forma Policy is one hundred dollars ($100.00) for each Pro Forma Policy, including all revisions thereto, issued pursuant to 13.14.5.13 NMAC.

[6-16-86...3-1-89; 6-1-97, 6-1-98; 13.14.9.19 NMAC - Rn, 13 NMAC 14.9.9, 5-15-00; A, 10-1-12; A, _-_-_]

13.14.9.20 ORIGINAL OWNER'S POLICY SINGLE ISSUE RATES: Original Owner's Policies issued not simultaneously with another policy or policies and not as a reissue of an Owner's Policy, shall be at the full Basic Premium Rate according to the [~~S~~]schedule in effect as of the date of the policy.

[6-16-86; 13.14.9.20 NMAC - Rn, 13 NMAC 14.9.10.1, 5-15-00]

13.14.9.21 ORIGINAL LEASEHOLD POLICY SINGLE ISSUE RATES: Original Leasehold Policies issued not simultaneously with another policy or policies and not as a reissue of a Leasehold Policy, shall be at the full Basic Premium Rate according to the [~~S~~]schedule in effect as of the date of the policy. Original Leasehold Policies which are reissues of Original Owner's Policies (i.e. a sale and leaseback) shall qualify for the reissue rates specified in 13.14.6.18 NMAC.
[6-16-86; 13.14.9.21 NMAC - Rn, 13 NMAC 14.9.10.2, 5-15-00]

13.14.9.22 ORIGINAL FIRST MORTGAGE SINGLE ISSUE RATES: Premiums for an Original First Mortgage Policy (Loan Policy) shall be ninety percent (90%) of the full Basic Premium Rate according to the [~~S~~]schedule in effect as of the date of the policy.
[6-16-86; 13.14.9.22 NMAC - Rn, 13 NMAC 14.9.10.3, 5-15-00]

13.14.9.23 SUBDIVIDERS OR NEW CONSTRUCTION BULK SINGLE ISSUE RATES: Any person, firm or organization qualified pursuant to 13.14.6.20 NMAC shall receive a twenty-five percent (25%) discount from the full Basic Premium Rates according to the [~~S~~]schedule in effect as of the date of each policy on all Owner's Policies issued by the same company on the lots or tracts which qualify pursuant to 13.14.6.20 NMAC; provided, however, that notwithstanding the discount, no Owner's Policy shall be issued under this regulation for a premium less than ninety percent (90%) of the minimum Basic Premium according to the [~~S~~]schedule in effect as of the date of the policy.
[6-16-86; 13.14.9.23 NMAC - Rn, 13 NMAC 14.9.10.4, 5-15-00]

13.14.9.24 ABSTRACT RETIREMENT CREDIT: When the applicant for an Owner's Policy transfers, at the time of application for the policy, to the agent or insurer ownership of the abstract of title covering all or part of the premises to be insured, a credit of twenty-five percent (25%) of the appropriate premium for said Owner's Policy, up to a maximum credit of one hundred dollars ($100.00), will be allowed.
[6-16-86; 13.14.9.24 NMAC - Rn, 13 NMAC 14.9.10.5, 5-15-00]

13.14.9.25 SINGLE ISSUE GOVERNMENT CERTIFICATES AND POLICIES: Certificates of Title or U.S. Policies will be issued to the United States Government (or one of its branches such as the U.S. Postal Service) at the Basic Premium Rates according to the Schedule in effect as of the date of issuance.
[6-16-86; 13.14.9.25 NMAC - Rn, 13 NMAC 14.9.10.6, 5-15-00]

13.14.9.26 REPLACEMENT POLICY RATE: When an authorized insurer is placed in permanent or temporary receivership for purpose of liquidation with a finding of insolvency by a court of competent jurisdiction (insolvent insurer), and a replacement owner's or mortgagee's title insurance policy is issued pursuant to 13.14.6.22 NMAC or 13.14.7.20 NMAC, the premium shall be thirty-five percent (35%) of the full basic premium rate according to the rate schedule in effect as of the date of issuance of the replacement policy. The replacement policy may be issued through either a licensed title agent or through an authorized insurer directly. If a licensed title insurance agent issues the title insurance policy, the agent's division of premium shall be computed in accordance with 13.14.3.11 NMAC. If an authorized insurer issues the policy directly, said insurer shall retain the full premium..
[6-15-91; 13.14.9.26 NMAC - Rn, 13 NMAC 14.9.10.7, 5-15-00]

13.14.9.27 [RESERVED]
[4-1-93; 13.14.9.27 NMAC - Rn, 13 NMAC 14.9.10.8, 5-15-00; Repealed, 7-1-05]

13.14.9.28 SINGLE ISSUE FORECLOSURE TITLE INSURANCE POLICY: The premium for a foreclosure title insurance policy shall be fifty-five percent (55%) of the full basic premium rate according to the schedule in effect as of the date of the policy. If an owner's policy is issued following completion of the foreclosure, the owner's policy shall qualify for a re-issue rate of fifty-five percent (55%) of the full basic premium rate. All liability insured above this amount of the foreclosure title insurance policy for a new owner's policy must be computed at the basic premium rates in the applicable bracket. If the litigation or non-judicial foreclosure is terminated by the security instrument being reinstated, and a new owner's policy is issued to a new purchaser within one year of the date of the foreclosure title insurance policy, fifty percent (50%) of the premium paid for the foreclosure title insurance policy shall be credited toward the new owner's policy premium.
[4-3-95; 13.14.9.28 NMAC - Rn, 13 NMAC 14.9.10.9, 5-15-00; A, 7-1-04; A, 09-15-10]

13.14.9.29 SINGLE ISSUE RESIDENTIAL LIMITED COVERAGE JUNIOR LOAN POLICY: The premium for a Residential Limited Coverage Junior Loan Policy shall be forty (40%) percent of the full Basic Premium Rate according to the schedule in effect as of the date of the policy, but shall not be less than a minimum of $65.00.
[6-1-97; 13.14.9.29 NMAC - Rn, 13 NMAC 14.9.10.10, 5-15-00]

13.14.9.30 SIMULTANEOUS ISSUE OWNER'S AND MORTGAGEE POLICIES:

A. When issuing an Owner's and Mortgagee (Loan) Policy or Policies (or Leasehold Owner's and Leasehold Mortgagee Policies) wherein the Mortgagee Policy or Policies insure part or all of the land insured in the Owner's Policy the rate for the Owner's Policy bearing the same date as and specifically excepting to the liens insured in each Mortgagee Policy issued pursuant to this regulation shall be the applicable owner's rate determined by 13.14.9.20, 13.14.9.21, 13.14.9.23, 13.14.9.24, or 13.14.9.35 NMAC.

B. The rates for each Loan Policy so simultaneously issued and naming as vestee the same insured owner will be thirty dollars ($30.00) for the aggregate amount of insurance not in excess of the Owner's Policy. The rate on the amount of each Mortgagee Policy exceeding the Owner's Policy in the aggregate is the difference between the original First Mortgage Rate for the Owner's Policy amount and the original First Mortgage Rate for the Owner's Policy plus the amount of liability by which the Mortgagee Policy exceeds the Owner's Policy according to the Schedule in effect as of the date of the policies.
[6-16-86, 2-16-87; 13.14.9.30 NMAC - Rn, 13 NMAC 14.9.11.1, 5-15-00]

13.14.9.31 SIMULTANEOUS ISSUE OWNER'S AND LEASEHOLD POLICIES:

A. When an Owner's and Leasehold Policy or Policies wherein the Leasehold Policy or Policies issued insure part or all of the land insured in the Owner's Policy bearing the same date as and specifically excepting to the leases creating the estates insured in each Leasehold Policy issued pursuant to this regulation, the rate for the Owner's Policy shall be determined by 13.14.9.20, 13.14.9.21, 13.14.9.23, 13.14.9.24, or 13.14.9.35 NMAC.

B. The rate for each leasehold policy so simultaneously issued will be thirty percent (30%) of the rate for the Owner's Policy up to the amount of the Owner's Policy. The rate on the aggregate amount of any leasehold policy exceeding the Owner's Policy is the difference between the Basic Premium Rates according to the Schedule in effect as of the date of the policies in the same manner as excess is computed in 13.14.9.30 NMAC.
[6-16-86; 13.14.9.31 NMAC - Rn, 13 NMAC 14.9.11.2, 5-15-00]

13.14.9.32 SIMULTANEOUS ISSUE MULTIPLE OWNER'S POLICIES ON SAME LAND: When two or more Owner's Policies (including Leasehold Owner's Policies) covering the same land are:

A. issued simultaneously by the same title insurer and title agent to different insureds (i.e., a buyer and a seller who was not furnished an Owner's Policy when he purchased or a fee estate and easement on the fee), the applicable owner's rate shall apply to the policy in the largest amount and the rate on the other policies shall be thirty percent (30%) of the Basic Premium Rate according to the Schedule in effect as of the date of the policies; or

B. issued to different insureds where a policy is issued in one transaction and one or more policies are issued within 30 days in a subsequent transaction or transactions, provided, (a) each transaction covers identical land; (b) all conveyances relating to the land to be insured in the subsequent transaction(s) are recorded no more than 30 days after the conveyances of the first transaction are recorded and all [P]policies are issued by the same title insurer and title agent and no later than 30 days after the first transaction; and (c) an owner's policy is issued insuring the interest of each and every owner created by the subsequent transaction(s), the premium for the first policy shall be the applicable owner's rate in effect as of the date of the first policy and the premium for each subsequently issued policy shall be thirty percent (30%) of the full Basic Premium Rate according to the schedule in effect as of the date of the subsequently issued policy or policies. If any subsequently issued policy exceeds the amount of insurance written in the first policy, the premium for the difference must be computed at the Basic Premium Rates by brackets.
[4-1-96; 13.14.9.32 NMAC - Rn, 13 NMAC 14.9.11.3, 5-15-00; A, _-_-_]

13.14.9.33 SIMULTANEOUS ISSUE DUPLICATE ORIGINAL POLICIES: When an insured requests the issuance of a Duplicate Original Policy, the premium therefore shall be twenty-five dollars ($25.00) if such Duplicate Original Policy is issued simultaneously with the original policy. If issued at any time other than simultaneously, the premium for such Duplicate Original Policy shall be sixty-five dollars ($65.00). Each insurer

shall establish its written underwriting standards governing the issuance of Duplicate Original Policies and establishing the language to be placed on such policy to clearly identify the policy as a Duplicate Original.
[3-1-89; 13.14.9.33 NMAC - Rn, 13 NMAC 14.9.11.4, 5-15-00]

13.14.9.34 [RESERVED]
[4-3-95; 13.14.9.34 NMAC - Rn, 13 NMAC 14.9.11.5, 5-15-00; Repealed, 7-1-05]

13.14.9.35 REISSUE OWNER'S OR LEASEHOLD RATES: The applicable discount to be used when computing a Reissue Owner's, Leasehold, or Contract Purchaser's Policy shall be determined using the schedule below. If more insurance is desired or required under the reissue policy than was written in the original policy, the difference must be computed at the Basic Premium Rates in the applicable bracket or brackets in the same manner as excess liability is computed in 13.14.9.30 NMAC. See 13.14.6.18 NMAC for qualifications for reissue rates on Owner's and Leasehold Policies. If two or more previous policies insuring different properties are presented to the title agent or insurer for a reissue discount on the purchase of a policy containing the same properties as shown in said previous policies the discount will be computed as follows: Title agent or insurer shall base the discount on the date of issue of the oldest previous policy and upon a liability amount equal to the sum of the liability amounts of the previous policies. If the previous policies contain more or less property than is insured under the previous policies, 13.14.9.37 NMAC applies. In no event shall the premium collected be less than the regular minimum promulgated rate for an Owner's Policy.

AGE IN YEARS OF PREVIOUS OWNER'S POLICY	PERCENTAGE OF BASIC PREMIUM RATES
3 years or more	90
2 years or more but less than 3 years	85
more than 1 year but less than 2 years	80
1 year or less	75

[6-16-86...4-3-95; 6-1-98; 13.14.9.35 NMAC - Rn, 13 NMAC 14.9.12.1, 5-15-00; A, 3-1-02]

13.14.9.36 SECOND MORTGAGES OR SUBSEQUENT ISSUES: A loan policy insuring any mortgage granted by the owner of property subsequent to the original date of his Owner's Policy insuring said property, shall be issued at sixty percent (60%) of the full Basic Premium Rates according to the Schedule as of the date of the subsequent loan policy, up to the face amount of the Owner's Policy less the face amount of all liens of record not released upon issuance of the subsequent loan policy. All liability insured above that amount shall be at ninety percent (90%) of the current Basic Premium Rates by brackets. In no event shall the premium collected be less than the regular minimum promulgated rate for an Owner's Policy.
[6-16-86, 4-3-95, 6-1-98; 13.14.9.36 NMAC - Rn, 13 NMAC 14.9.12.2, 5-15-00]

13.14.9.37 COMPUTATION OF RATES WHEN INSURED PROPERTY IS NOT IDENTICAL: When only a portion of the land previously insured is being insured by a Reissue Owner's or Reissue Leasehold Owner's Policy or by a Subsequent Issue Loan Policy, or when the land previously insured is only a portion of the land being insured by a Reissue Owner's or Reissue Leasehold Owner's Policy or by a Subsequent Issue Loan Policy, the rates provided in 13.14.9.35 NMAC and 13.14.9.36 NMAC shall be adjusted in proportion to the areas insured in the original policy and the current policy. For example, if the original policy insured one acre and the current policy insures three acres, the reissue rates will apply to one-third (1/3) of the current value up to the face amount of the original policy; but, if the situation is reversed, the reissue rates will only apply up to one-third (1/3) of the face amount of the original policy. In no event shall the reissue rates be applied to allow more than one hundred percent (100%) of the face amount of the original policy to be used cumulatively in the computation of reissue rates.
[6-16-86; 13.14.9.37 NMAC - Rn, 13 NMAC 14.9.12.3, 5-15-00]

13.14.9.38 COMPUTATION OF RATES UPON CONVERSION OF LEASEHOLD OWNER'S POLICY TO STANDARD OWNER'S POLICY: When a Leasehold Owner's policy is converted to a Standard Owner's Policy pursuant to 13.14.6.9 NMAC, the premium for such conversion shall be fifty percent (50%) of the Basic Premium Rate in effect at the time of such conversion, up to the face amount of the Leasehold Owner's Policy. If more insurance is desired or required under the Standard Owner's Policy than was written in the Leasehold

Owner's Policy, the difference must be computed at the Basic Premium Rates in the applicable bracket or brackets in the same manner as excess liability is computed in 13.14.9.30 NMAC.
[3-1-89; 13.14.9.38 NMAC - Rn, 13 NMAC 14.9.12.4, 5-15-00]

13.14.9.39 SUBSTITUTION RATE ON LOANS TO TAKE UP, RENEW, EXTEND OR SATISFY AN EXISTING INSURED LOAN:

A. On a mortgagee policy issued on a first mortgage loan to fully take up, renew, extend or satisfy an outstanding loan with a remaining balance already covered by a mortgagee policy, the new policy being in the amount of the new mortgage showing title vested in the same borrower and covering the same property, the premium for the new policy shall be as follows:

(1) 40% of the current basic premium rate for the new policy amount but not to exceed the initial principal amount of any original indebtedness as shown on the recorded prior mortgage if renewed within three (3) years from the date of the original indebtedness;

(2) 50% of the current basic premium rate for the new policy amount but not to exceed the initial principal amount of any original indebtedness as shown on the recorded prior mortgage if renewed more than three (3) years but less than five (5) years from the date of the original indebtedness;

(3) 60% of the current basic premium rate for the new policy amount but not to exceed the initial principal amount of any original indebtedness as shown on the recorded prior mortgage if renewed more than five (5) years but less than ten (10) years from the date of the original indebtedness;

(4) 80% of the current basic premium rate for the new policy amount not to exceed the initial principal amount of any original indebtedness as shown on the recorded prior mortgage if renewed more than ten (10) years but less than twenty (20) years from the date of the original indebtedness; and

(5) After the lapse of twenty (20) years from the date of original indebtedness, the applicable rate for original first mortgages shall apply.

B. The reduction in rate as herein prescribed shall not apply in any case where any additional property not covered by the original policy is included in the policy to be issued.

C. The premium for all liability above the initial principal amount of any original indebtedness as shown on the recorded prior mortgage shall be ninety percent (90%) of the current basic premium rates by brackets. In no event shall the premium collected be less than the regular minimum promulgated rate for a mortgagee policy.

D. This rule may not be applied in connection with the issuance of a series of mortgagee policies issued by reason of notes being apportioned to individual units in connection with a master policy covering the aggregate indebtedness, including improvements. Individual mortgagee policies must be issued at the original first mortgage rate.
[4-3-95; 13.14.9.39 NMAC - Rn, 13 NMAC 14.9.12.5, 5-15-00; A, 7-1-05; A, 8-15-14]

13.14.9.40 INSURING CONSTRUCTION LOANS AND DELETING STANDARD EXCEPTION 4 IN [~~STANDARD~~] LOAN POLICIES:

A. Loan policy with two-year [~~(2)~~] claims made limitation. A loan policy may be issued to insure a construction loan mortgage [~~or deed of trust~~] for a premium of thirty dollars ($30.00) plus one [~~($1)~~] dollar ($1.00) [~~dollar~~] per thousand calculated upon the face amount of the construction mortgage if the loan policy contains the following two-year [~~(2)~~] claims made limitation: "Notwithstanding any other provision of this policy, the company shall be liable only for such loss or damage insured against by this policy which is actually sustained by the insured and reported to the company as provided in the conditions and stipulations on or before two [~~(2)~~] years after the recording of the mortgage described in [s]Schedule A. (Upon payment to the company of the required full loan policy premium prior to the expiration of said policy, the term limitation may be deleted from this policy)."

B. Extension endorsement rates. A construction loan policy or a loan policy containing the two-year [~~(2)~~] claims made limitations pursuant to Subsection A of 13.14.9.40 NMAC may be extended beyond its initial two [~~(2)~~] year term pursuant to 13.14.7.18 NMAC for an additional premium of twenty-five dollars ($25.00) per six [~~(6)~~] month endorsement.

C. No subsequent credit on substitution loan. [~~The issuance of a construction loan policy may not be used as a basis for claiming a credit or discount on a statutory refinanced property premium pursuant to Section 59A-30-6.1 NMSA 1978, subsequent issue loan pursuant to 13.14.9.36 NMAC or substitution issue loan pursuant to 13.14.9.39 NMAC.~~] The issuance of a construction loan policy, or a standard loan policy with a two-year claims made limitation, may not be used as the basis for claiming a credit or discount on a refinanced property premium pursuant to NMSA 1978, Section 59A-30-6.1; a subsequent issue loan pursuant to 13.14.9.36 NMAC; or a substitution issue loan pursuant to 13.14.9.39 NMAC.

D. Endorsement "A" rates. An "A" endorsement may be issued at the same time and attached to a construction loan policy pursuant to 13.14.7.14 NMAC for an additional extra hazard risk premium of five dollars ($5.00) per thousand of the face amount of the policy. At the time of each subsequent disbursement and upon a date down of the title having been made to the date thereof, an additional endorsement "A" may be issued pursuant to 13.14.7.17 NMAC at an additional premium of twenty-five dollars ($25.00) per endorsement.

E. Mechanics' and materialmen's lien coverage in [~~standard~~] a loan policy. The standard exception numbered 4 in 13.14.5.9 NMAC may be deleted from [a] any loan policy pursuant to 13.14.7.14 NMAC. The premium for deletion of the exception shall be twenty-five dollars ($25.00) when the insurer's underwriting requirements for evidence of priority have been met or five dollars ($5.00) per thousand of the face amount of the policy if said requirements have not been met as provided in 13.14.7.14 NMAC.

[6-16-86...4-1-94; 6-1-97; 6-1-98; 13.14.9.40 NMAC - Rn, 13 NMAC 14.9.13, 5-15-00; A, 3-1-02; A, 9-1-07; A, 10-1-12; A, 8-15-14; A, _-_-_]

13.14.9.41 SINGLE POLICY MULTIPLE COUNTIES: In the event a proposed insured requests that a single policy be issued insuring multiple New Mexico properties that may be located in more than one county, the amount of insurance shall be allocated to each county based upon a supported amount as provided in writing by the proposed insured. The premium shall be calculated as if a policy was being issued separately in each county and the aggregated gross premiums shall be combined to determine the gross premium for the single policy. A New Mexico licensed agent ("agent") or admitted company that maintains an [~~agency~~] agent or direct operation in one of the counties in which the property is located ("direct operation") (collectively "issuing company") must issue the policy and disburse, or direct the payee to disburse, the gross premium attributable to each county to the agent or direct operation in such county for such policy to be remitted to the insurer in accordance with the division of premium rule in affect at the time of issuance. The policy schedules applicable to the land located in each county shall be countersigned by the agent or direct operation and provided to the issuing company. The issuing company shall provide each agent or direct operation with a complete copy of the final policy which shall be maintained in accordance with underwriter and regulations requirements. Each [~~agency~~] agent or direct operation shall report the policy utilizing the combined policy number but only the gross premium it received attributable to the property within its county shall be reported. Issuance of a single policy shall not be used when the transaction involves property outside of New Mexico. This rule shall not be interpreted to allow title insurance underwriters to issue what is commonly referred to as home office issued policies.

[13.14.9.41 NMAC - N, 10-1-12; A, _-_-_]

13.14.9.42 RESIDENTIAL LIMITED COVERAGE MORTGAGE MODIFICATION POLICY: When a residential limited coverage mortgage modification policy (NM form 90) is issued, the premium shall be one-hundred twenty-five dollars ($125.00) for each policy issued in an amount of $0-$1,000,000.00 and an additional one hundred twenty-five dollars ($125.00) for each $500,000.00 of policy amount above $1,000,000.00 or part thereof up to $20,000,000.00.

[13.14.9.42 NMAC – N, _-_-_]

HISTORY OF 13.14.9 NMAC:

Pre-NMAC History.

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

History of Repealed Material. [RESERVED]

Other History.

Re-promulgated a portion of SCC-86-1, Insurance Department Regulation 30 - Title Insurance (filed 5-9-86) and renumbered, reformatted and replaced as 13 NMAC 14.9, General Rate Provisions, effective 11-01-1996.
13 NMAC 14.9, General Rate Provisions (filed 10-2-96), was renumbered, reformatted, amended and replaced by 13.14.9 NMAC, General Rate Provisions, effective 5-15-2000, amended effective 8-15-14.
13.14.9 NMAC General Rate Provisions, effective 8-15-14, amended effective _-_-_.

TITLE 13 INSURANCE
CHAPTER 14 TITLE INSURANCE
PART 10 ENDORSEMENT RATES

13.14.10.1 ISSUING AGENCY: Office of Superintendent of Insurance, Title Insurance Bureau.
[4-1-96; 13.14.10.1 NMAC - Rn & A, NMAC 14.10.1, 5-15-00; A, 7-31-14]

13.14.10.2 SCOPE: This rule applies to all title insurers and all title insurance agents conducting title insurance business in New Mexico.
[3-1-74...11-1-96; 13.14.10.2 NMAC - Rn, 13 NMAC 14.10.2, 5-15-00]

13.14.10.3 STATUTORY AUTHORITY: NMSA 1978, Sections 59A-30-4 and 59A-30-6.
[3-1-74...4-1-96; 13.14.10.3 NMAC - Rn, 13 NMAC 14.10.3, 5-15-00; A, _-_-_]

13.14.10.4 DURATION: Permanent.
[4-1-96; 13.14.10.4 NMAC - Rn, 13 NMAC 14.10.4, 5-15-00]

13.14.10.5 EFFECTIVE DATE: March 1, 2016. ~~[June 16, 1986, unless a later date is cited at the end of a section.]~~
[6-16-86, 11-1-96; 13.14.10.5 NMAC - Rn & A, 13 NMAC 14.10.5, 5-15-00; A, _-_-_]

13.14.10.6 OBJECTIVE: The purpose of this rule is to establish rates for endorsements to title insurance policies.
[3-1-74...11-1-96; 13.14.10.6 NMAC - Rn & A, 13 NMAC 14.10.6, 5-15-00]

13.14.10.7 DEFINITIONS: See 13.14.1 NMAC.
[11-1-96; 13.14.10.7 NMAC - Rn, 13 NMAC 14.10.7, 5-15-00]

13.14.10.8 ASSIGNMENTS OF MORTGAGES: When a mortgage upon which a loan policy has been issued is assigned, each successive assignee may obtain an assignment endorsement, NM form 24, or an assignment and date down endorsement, NM form 24.1 from the insuring company certifying the title to include the date of recording the assignment, for a premium of twenty-five dollars ($25.00) if issued within six [~~(6)~~] months of the date of the policy or date of the last endorsement reflecting an earlier assignment, or a premium of sixty-five dollars ($65.00) if issued more than six [~~(6)~~] months from the date of the policy or last endorsement reflecting an earlier assignment, if any, whichever is later.
[6-16-86, 2-16-87, 6-1-98; 13.14.10.8 NMAC - Rn, 13 NMAC 14.10.8, 5-15-00; A, 5-31-00; A, 8-17-09; A, 10-1-12; A, 7-31-14; A, 8-15-14; A, _-_-_]

13.14.10.9 MECHANICS' LIEN COVERAGE IN OWNER'S POLICY (PERIOD NOT EXPIRED): Owner's policies may be issued with no exception to possible unfiled mechanics' or materialmen's liens upon compliance with 13.14.6.15 NMAC and payment of the following additional premium:

A. When all improvements have been fully completed and the statutory period for filing mechanics' or materialmen's liens has expired, this endorsement shall be issued for a premium of twenty-five dollars ($25.00) and,

B. When new construction is involved, construction of the improvements has been fully completed and accepted by the insured owner and the period for filing mechanics' or materialmen's liens has not expired, this endorsement shall be issued for an extra hazard premium of three dollars ($3.00) per thousand calculated on the face amount of the owner's policy.
[6-16-86...4-1-94; 6-1-98; 13.14.10.9 NMAC - Rn, 13 NMAC 14.10.9, 5-15-00; A, 5-31-00; A, 7-31-14; A, 8-15-14]

13.14.10.10 SURVEY COVERAGE IN AN OWNER'S POLICY: An Owner's Policy may be endorsed pursuant to 13.14.6.14 NMAC to provide survey coverage upon the payment of an additional premium equal to fifteen percent (15%) of the full basic premium rate for the said policy according to the [S]schedule in effect as of the date of the endorsement.
[6-16-86; 13.14.10.10 NMAC - Rn, 13 NMAC 14.10.10, 5-15-00; A, _-_-_]

13.14.10.11 ADDITIONAL ADVANCES UNDER OPEN END MORTGAGES: A loan policy may be endorsed to insure the validity and priority of the lien of the additional advance upon payment of an endorsement premium of twenty-five dollars ($25.00) plus an additional premium calculated by determining the difference between the charge for a loan policy in the amount of the unpaid principal balance due to the lender before the advance is made and the charge for a loan policy in the amount of the principal balance due after the advance has been made utilizing the appropriate brackets in the schedule of basic premium rates in effect as of the date of the endorsement. The minimum combined charge for this endorsement is fifty dollars ($50.00).
[6-16-86, 2-16-87, 6-1-98; 13.14.10.11 NMAC - Rn, 13 NMAC 14.10.11, 5-15-00; A, 5-31-00; A, 7-31-14; A, 8-15-14]

13.14.10.12 VARIABLE RATE, NEGATIVE AMORTIZATION AND REVOLVING CREDIT LOAN ENDORSEMENTS: The premium for the issuance of either a variable rate mortgage endorsement, negative amortization endorsement or a revolving credit loan endorsement, when such endorsement is issued at the same time as and attached to its loan policy, the charge shall be twenty-five dollars ($25.00) for each such endorsement issued. Should any such endorsement be issued at the request of the insured subsequent to the issuance of the loan policy, the premium for each endorsement issued is fifty dollars ($50.00).
[6-16-86, 2-16-87, 6-1-98; 13.14.10.12 NMAC - Rn, 13 NMAC 14.10.12, 5-15-00; A, 5-31-00; A, 7-31-14; A, 8-15-14]

13.14.10.13 MANUFACTURED HOUSING ENDORSEMENT: When a manufactured housing endorsement, NM form 16, a manufactured housing unit[~~(-conversion)~~] - conversion (loan), NM form 16.1, or a manufactured housing unit [~~(-conversion)~~] - conversion owner's) NM form 16.2 is issued the premium for each endorsement shall be seventy-five dollars ($75.00) in addition to the premium charged for the policy whether the endorsement is attached at issuance of the policy or thereafter.
[6-16-86, 2-16-87, 6-1-98; 13.14.10.13 NMAC - Rn, 13 NMAC 14.10.13, 5-15-00; A, 5-31-00; A, 7-1-04; A, 7-1-06; A, 8-17-09;A, _-_-_]

13.14.10.14 CONDOMINIUM ENDORSEMENT: A condominium endorsement unpaid assessments, NM form 30, may be issued at the same time as and attached to an owner's or a loan policy for a premium of twenty-five dollars ($25.00). Paragraph (3) of unpaid assessments NM form 30 may be deleted at the option of the insurer. Each insurer shall establish its written underwriting requirements for such deletion and shall furnish its agent(s) written instructions relating thereto.
[6-16-86, 2-16-87, 6-1-98; 13.14.10.14 NMAC - Rn, 13 NMAC 14.10.14, 5-15-00; A, 5-31-00; A, 8-17-09; A, 7-31-14; A, 8-15-14; A, _-_-_]

13.14.10.15 PLANNED UNIT DEVELOPMENT (PUD) ENDORSEMENT: A planned unit development endorsement, all assessments NM form 13, and the planned unit development endorsement [~~(unpaid assessments)~~] unpaid assessments, NM form 13.1 may be issued at the same time and attached to a policy for a premium of twenty-five dollars ($25.00).
[6-16-86, 2-16-87, 6-1-98; 13.14.10.15 NMAC - Rn, 13 NMAC 14.10.15, 5-15-00; A, 5-31-00; A, 8-17-09; A, 7-31-14; A, 8-15-14; A, _-_-_]

13.14.10.16 [RESERVED]
[6-16-86...4-1-93; 6-1-98; 13.14.10.16 NMAC - Rn, 13 NMAC 14.10.16, 5-15-00; A, 5-31-00; A, 7-31-14]

13.14.10.17 CORRECTION ENDORSEMENT: There is no charge for the issuance of an endorsement correcting a commitment, binder or policy containing an error or omission not caused by the insured. If the correction results in additional liability for which the correct premium has not already been charged, the premium for the endorsement shall be the premium due and payable for the additional liability. Likewise, if the correction results in the application of a different or additional rate regulation(s) than was applied to the policy or its endorsements, the premium due and payable for this endorsement shall be the balance of premium unpaid after application of the appropriate rate regulation(s) following the correction. In addition, if the correction is caused by the insured (i.e., inaccurate loan closing instructions), an additional premium of twenty-five dollars ($25.00) shall be collected for this endorsement.

[6-16-86, 2-16-87, 6-1-98; 13.14.10.17 NMAC - Rn, 13 NMAC 14.10.17, 5-15-00; A, 5-31-00; A, 7-31-14; A, 8-15-14]

13.14.10.18 DOWN DATE ENDORSEMENT: Any down date (or date down) endorsement, including the NM form 22 pending disbursement down date endorsement, and the NM form 84 disbursement endorsement, to a [~~standard~~] loan policy containing a two-year [~~(2)~~] claims made limitation or to a construction loan policy, [~~or to a foreclosure title insurance policy including the NM 84 disbursement endorsement,~~] shall be issued for a premium of twenty-five dollars ($25.00).
[6-16-86...4-3-95; 6-1-98; 13.14.10.18 NMAC - Rn, 13 NMAC 14.10.18, 5-15-00; A, 5-31-00; A, 09-15-10; A, 7-31-14; A, 8-15-14; A, _-_-_]

13.14.10.19 LEASEHOLD ENDORSEMENTS TO OWNER'S OR LOAN POLICIES: A leasehold owner's endorsement or leasehold loan endorsement shall be attached to a standard owner's policy or loan policy insuring a leasehold interest for no additional premium.
[6-16-86; 13.14.10.19 NMAC - Rn, 13 NMAC 14.10.19, 5-15-00]

13.14.10.20 RENEWAL, EXTENSION AND PARTIAL RELEASE ENDORSEMENT: Upon request of the named insured and the proper recording of all necessary documents at the expense of the insured, the insuring company or its agent may endorse its loan policy to reflect the renewal, extension, reinstatement, modification, partial release, release of additional collateral or release from personal liability of an insured lien in the manner prescribed by Subsection [~~D~~] E of 13.14.8.8 NMAC for a premium of twenty-five dollars ($25.00) if issued within six [~~(6)~~] months from the date of the policy or date of the last endorsement reflecting an earlier assignment, renewal, etc., or a premium of sixty-five dollars ($65.00) if issued more than six [~~(6)~~] months from the date of the policy or last such endorsement, if any, whichever is later.
[6-16-86, 2-16-87, 6-1-98; 13.14.10.20 NMAC - Rn, 13 NMAC 14.10.20, 5-15-00; A, 5-31-00; A. 10-1-12; A, 7-31-14; A, 8-15-1; A, _-_-_]

13.14.10.21 NON-IMPUTATION ENDORSEMENT: When a non-imputation endorsement - full equity transfer (NM form 28), a non-imputation endorsement - additional insured (NM form 28.1), or a non-imputation endorsement - partial equity transfer, (NM form 28.2) is issued pursuant to 13.14.8.11 NMAC - the premium therefore shall be one dollar ($1.00) per thousand for each thousand dollars of insurance set forth in [s]Schedule A.
[2-6-87, 4-1-94; 13.14.10.21 NMAC - Rn, 13 NMAC 14.10.21, 5-15-00; A, 8-17-09; A, _-_-_]

13.14.10.22 ENVIRONMENTAL PROTECTION LIEN ENDORSEMENT: Upon request of an insured lender or its assignee, the company may issue an environmental protection lien endorsement (NM form 29) for a premium of twenty-five dollars ($25.00).
[5-1-88...4-3-95; 6-1-98; 13.14.10.22 NMAC - Rn, 13 NMAC 14.10.22, 5-15-00; A, 5-31-00; A, 7-31-14; A, 8-15-14]

13.14.10.23 PENDING IMPROVEMENTS ENDORSEMENT: When a pending improvements endorsement (NM form 23) is issued pursuant to 13.14.6.8 NMAC, [-] the premium for the endorsement shall be twenty-five dollars ($25.00) in addition to the premium charged for the policy.
[3-1-89, 6-1-98; 13.14.10.23 NMAC - Rn, 13 NMAC 14.10.23, 5-15-00; A, 5-31-00; A, 7-31-14; A, 8-15-14; A, _-_-_]

13.14.10.24 CONDOMINIUM ENDORSEMENT TO OWNER'S POLICY: Upon request, the insuring company or its agent may issue a condominium endorsement unpaid assessments to owner's policy, NM form 30 for a premium of twenty-five dollars ($25.00). Paragraph (3) of NM form 30 may be deleted at the option of the insurer. Each insurer shall establish its written underwriting requirements for such deletion and shall furnish its agent(s) written instructions relating thereto.
[3-1-89, 6-1-98; 13.14.10.24 NMAC - Rn, 13 NMAC 14.10.24, 5-15-00; A, 5-31-00; A, 7-31-14; A, 8-15-14; A, _-_-_]

13.14.10.25 [RESERVED]
[4-1-93, 6-1-98; 13.14.10.25 NMAC - Rn, 13 NMAC 14.10.25, 5-15-00; A, 5-31-00; Repealed, 7-1-05]

13.14.10.26 [RESERVED]
[4-1-93, 6-1-98; 13.14.10.26 NMAC - Rn, 13 NMAC 14.10.26, 5-15-00; A, 5-31-00; Repealed, 7-1-05]

13.14.10.27 [RESERVED]
[4-1-93, 4-3-95, 6-1-98; 13.14.10.27 NMAC - Rn, 13 NMAC 14.10.27, 5-15-00; A, 5-31-00; Repealed, 7-1-05]

13.14.10.28 [RESERVED]
[4-1-93, 6-1-98; 13.14.10.28 NMAC - Rn, 13 NMAC 14.10.28, 5-15-00; A, 5-31-00; Repealed, 7-1-05]

13.14.10.29 [RESERVED]
4-3-95; 13.14.10.29 NMAC - Rn &A, 13 NMAC 14.10.29, 5-15-00; A, 5-31-00; Repealed, 9-15-09]

13.14.10.30 REVOLVING CREDIT - INCREASED CREDIT LIMIT ENDORSEMENT: A loan policy insuring a revolving loan may be endorsed to increase the amount of insurance (provided the original mortgage complies with NMSA 1978, Section 48-7-9 [~~NMSA 1978~~], and a modification of mortgage - modification agreement is properly executed and recorded) upon payment of an endorsement premium of twenty-five dollars ($25.00) plus an additional premium calculated by determining the difference between the charge for a loan policy in the amount of the current amount of insurance before the credit limit is increased, and the charge for a loan policy in the amount of the increased credit limit utilizing the appropriate brackets in the schedule of basic premium rates in effect as of the date of the endorsement. The minimum combined charge for this endorsement is fifty dollars ($50.00).
[4-1-96, 6-1-98; 13.14.10.30 NMAC - Rn, 13 NMAC 14.10.30, 5-15-00; A, 5-31-00; A, 7-31-14; A, 8-15-14; A, _-_-_]

13.14.10.31 TRUTH IN LENDING ENDORSEMENT: A truth in lending endorsement to a loan policy may be issued upon payment of a premium of nine percent (9%) of the full basic premium rate in effect as of the date of the loan policy.
[6-1-97; 13.14.10.31 NMAC - Rn, 13 NMAC 14.10.31, 5-15-00]

13.14.10.32 DOWN DATE ENDORSEMENT TO RESIDENTIAL LIMITED COVERAGE JUNIOR LOAN POLICY:

A. The down date endorsement to residential limited coverage junior loan policy JR1, NM form 46, may be issued one or more times after issuance of an ALTA residential limited coverage junior loan policy (NM form 45). The premium for the issuance of each NM form 46 endorsement is twenty-five dollars ($25.00). NM form 46 may not be issued more than one year after the date of policy stated in the ALTA residential limited coverage junior loan policy (NM form 45).

B. Paragraph B of NM form 46 shall describe the insured mortgage setting forth the date of recording of the insured's mortgage. This endorsement may also be issued solely for update purposes, prior to recordation of the insured mortgage by inserting the word "None" at the end of Paragraph B and by deleting the phrase "date of endorsement is the date shown above or the date of recording of the insured's mortgage, whichever is later" (if it appears on the NM form 46 endorsement after "date of endorsement").

C. Upon request of the named insured and the proper recording of all necessary documents meeting insurer's underwriting standards, the amount of the loan secured by the insured's mortgage insurance previously stated in the ALTA residential limited coverage junior loan policy (NM form 45) may be increased by adding a Paragraph D. It 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. The additional premium (in addition to the premium for the NM form 46) hall be the difference between the premium from the amount of insurance stated in the ALTA residential limited coverage junior loan policy (NM form 45) and the amount of insurance stated in Paragraph D of NM form 46, calculated pursuant to 13.14.9.29 NMAC.
[6-1-98; 13.14.10.32 NMAC - Rn, 13 NMAC 14.10.32, 5-15-00; A, 5-31-00; A, 7-31-14; A, 8-15-14; A, _-_-_]

13.14.10.33 REVOLVING CREDIT/VARIABLE RATE ENDORSEMENT TO RESIDENTIAL LIMITED COVERAGE JUNIOR LOAN POLICY: The revolving credit/variable rate endorsement to residential limited coverage junior loan policy JR2 (future advance), NM form 47, may be issued when NM form 46 is issued. It may also be issued when it is incorporated in NM form 46 by describing the insured's mortgage in [~~p~~]

Paragraph B and checking the appropriate box in [~~B~~] Paragraph C. The premium for the issuance of NM form 47, or its incorporation into NM form 46, is twenty-five dollars ($25.00).
6-1-98; 13.14.10.33 NMAC - Rn, 13 NMAC 14.10.33, 5-15-00; A, 5-31-00; A, 7-31-14; A, 8-15-14; A, _-_-_]

13.14.10.34 RESTRICTIONS, ENCROACHMENTS, AND MINERALS ENDORSEMENTS: NM forms 50, 50.1, 56, 56.1, 57, and 57.1 shall not be issued on residential properties with four or fewer units. The premium charge for issuance of these endorsements shall be 10% of the full basic premium rate. Agents shall receive commissions for liabilities up to $27,000,000.00; agents' retention shall be zero for liabilities greater than $27,000,000.00 In no case shall the premium charge for the issuance of NM forms 50, 50.1, 56, 56.1, 57, or 57.1 be less than $250.00.
[6-1-98; 13.14.10.34 NMAC - Rn, 13 NMAC 14.10.34, 5-15-00; A, 7-15-02; A, 8-17-09; A, _-_-_]

13.14.10.35 [RESERVED]
[5-1-99; 13.14.10.35 NMAC - Rn, 13 NMAC 14.10.35, 5-15-00; A, 5-31-00; Repealed, 9-15-09]

13.14.10.36 LAND ABUTS STREET ENDORSEMENT: When a "land abuts street" endorsement, NM form 51, is issued pursuant to 13.14.8.17 NMAC on either owner's policies or loan policies, the premium for each endorsement shall be twenty-five dollars ($25.00) in addition to the premium charged for the policy.
[13.14.10.36 NMAC - N, 5-15-00; A, 5-31-00; A, 7-31-14; A, 8-15-14]

13.14.10.37 LOCATION ENDORSEMENT: When a "location" endorsement, NM form 52, is issued pursuant to 13.14.8.18 NMAC, the premium for each endorsement shall be twenty-five dollars ($25.00) in addition to the premium charged for the policy.
[13.14.10.37 NMAC - N, 5-15-00; A, 5-31-00; A, 9-15-09; A, 7-31-14; A, 8-15-14]

13.14.10.38 SAME AS SURVEY ENDORSEMENT: When a "same as survey" endorsement, NM form 78, or a "same as portion of survey" endorsement, NM form 79, is issued pursuant to 13.14.8.19 NMAC, the premium for each endorsement shall be twenty-five dollars ($25.00) in addition to the premium charged for the policy.
[13.14.10.38 NMAC - N, 5-15-00; A, 5-31-00; A, 09-15-10; A, 7-31-14; A, 8-15-14]

13.14.10.39 CONTIGUITY OF PARCELS ENDORSEMENTS: When a contiguity of single parcel endorsement, NM form 54, or a contiguity of multiple parcels endorsement, NM form 66, is issued pursuant to 13.14.8.20, the premium for each endorsement shall be one hundred dollars ($100.00) in addition to the premium charged for the policy.
[13.14.10.39 NMAC - N, 5-15-00; A, 7-1-06]

13.14.10.40 NAMED INSURED ENDORSEMENT: When a named insured endorsement, NM form 55, is requested for an owner's policy or leasehold owner's policy issued on or after August 15, 2001, there shall be no charge for the endorsement. When a named insured endorsement, NM form 55, is issued or requested for an owner's policy or leasehold owner's policy issued prior to August 15, 2001, the premium charge for issuance of the endorsement shall be twenty-five dollars ($25.00).
[13.14.10.40 NMAC - N, 8-1-01; A, 3-1-02; A, 8-17-09; A, 7-31-14; A, 8-15-14]

13.14.10.41 FIRST LOSS -MULTIPLE PARCEL TRANSACTIONS ENDORSEMENT: When a first loss - multiple parcel transactions endorsement, NM form 58, is issued pursuant to 13.14.8.21 NMAC, the premium for each endorsement shall be twenty-five dollars ($25.00) in addition to the premium charged for the policy.
[13.14.10.41 NMAC - N, 7-1-03; A, 10-1-12; A, 7-31-14; A, 8-15-14]

13.14.10.42 [RESERVED]
[13.14.10.42 NMAC - N, 7-1-03; Repealed, 09-15-10]

13.14.10.43 AGGREGATION ENDORSEMENT: When an aggregation endorsement, NM form 60 or NM form 60.1, is issued pursuant to 13.14.8.23 NMAC, the premium for each endorsement shall be twenty-five dollars ($25.00) in addition to the premium charged for the policy.
[13.14.10.43 NMAC - N, 7-1-03; A, 10-1-12; A, 7-31-14; A, 8-15-14]

13.14.10.44 FOUNDATION ENDORSEMENT: When a foundation endorsement, NM form 61, is issued pursuant to 13.14.8.24 NMAC, the premium for each endorsement shall be twenty-five dollars ($25.00) for one-to-four family residential policies and fifty dollars ($50.00) for commercial policies in addition to the premium charged for the policy.
[13.14.10.44 NMAC - N, 7-1-04; A, 7-31-14; A, 8-15-14]

13.14.10.45 ASSIGNMENT OF RENTS[/] OR LEASES ENDORSEMENT: When an assignment of rents[/] or leases endorsement, NM form 62, is issued pursuant to 13.14.8.25 NMAC, the premium for each endorsement shall be one hundred dollars ($100.00) in addition to the premium charged for the policy.
[13.14.10.45 NMAC - N, 7-1-04; A, _-_-_]

13.14.10.46 [RESERVED]
[13.14.10.46 NMAC - N, 7-1-04; A, 7-1-05; Repealed, 9-15-09]

13.14.10.47 ZONING [~~ENDORSEMENT~~], UNIMPROVED LAND ENDORSEMENT: When a zoning [~~endorsement,~~]- unimproved land endorsement (NM form 64)[~~,~~] or a zoning – unimproved land – no applicable zoning ordinances endorsement (NM form 64.1) is issued pursuant to 13.14.8.26 NMAC, the premium shall be 15% of the full basic premium rate. Agents shall receive commissions pursuant to 13.14.3.11 NMAC for liabilities up to $27,000,000.00; agents' retention shall be zero for liabilities greater than $27,000,000.00. In no case shall the premium charge for the issuance of NM form 64 or NM form 64.1 be less than $250.00. When issuing multiple zoning endorsements simultaneously on an owner's policy and a loan policy or loan policies in a single transaction, only one premium shall be charged calculated on the policy with the highest amount of insurance.
[13.14.10.47 NMAC - N, 7-1-05, A, _-_-_]

13.14.10.48 [~~ZONING ENDORSEMENT, COMPLETED STRUCTURE/ZONING ENDORSEMENT-LAND UNDER DEVELOPMENT~~] ZONING-COMPLETED STRUCTURE ENDORSEMENT, ZONING – LAND UNDER DEVELOPMENT ENDORSEMENT, AND ZONING COMPLETED STRUCTURE- NO APPLICABLE ZONING ORDINANCES ENDORSEMENT: When a zoning [~~endorsement,~~] - completed structure endorsement (NM form 65)[~~, or~~], a zoning [~~endorsement,~~] - land under development endorsement (NM form 65.1)) or a zoning - completed structure - no applicable zoning ordinances endorsement (NM form 65.2)is issued pursuant to 13.14.8.27 NMAC, the premium shall be 23% of the full basic premium rate. Agents shall receive commissions pursuant to 13.14.3.11 NMAC for liabilities up to $27,000,000.00; agents' retention shall be zero for liabilities greater than $27,000,000.00. In no case shall the premium charge for the issuance of NM form 65, NM form 65.1 or NM form 65.2 be less than $250.00. When issuing multiple zoning endorsements simultaneously on an owner's policy and a loan policy in a single transaction, only one premium shall be charged calculated on the policy with the highest amount of insurance.
[13.14.10.48 NMAC - N, 7-1-05; A, 7-31-14; A, _-_-_]

13.14.10.49 ACCESS AND ENTRY ENDORSEMENT: When an access and entry endorsement, NM form 67, is issued pursuant to 13.14.8.28 NMAC, the premium for the endorsement for each street, road, or highway shall be twenty-five dollars ($25.00).
[13.14.10.49 NMAC - N, 7-1-06; A, 7-31-14; A, 8-15-14]

13.14.10.50 INDIRECT ACCESS AND ENTRY ENDORSEMENT: When an "indirect access and entry" endorsement, NM form 68, is issued pursuant to 13.14.8.29 NMAC on either owner's policies or loan policies, the premium for each endorsement shall be twenty-five dollars ($25.00) in addition to the premium charged for the policy.
[13.14.10.50 NMAC - N, 09-15-10; A, 7-31-14; A, 8-15-14]

13.14.10.51 UTILITY ACCESS ENDORSEMENT: When a "utility access" endorsement, NM form 69, is issued pursuant to 13.14.8.30 NMAC on either owner's policies or loan policies, the premium for each endorsement shall be twenty-five dollars ($25.00) in addition to the premium charged for the policy.
[13.14.10.51 NMAC - N, 09-15-10; A, 7-31-14; A, 8-15-14]

13.14.10.52 COMMERCIAL ENVIRONMENTAL PROTECTION LIEN ENDORSEMENT: When a "commercial environmental protection lien" endorsement, NM form 70, is issued pursuant to 13.14.8.31 NMAC on

either owner's policies or loan policies, the premium for each endorsement shall be twenty-five dollars ($25.00) in addition to the premium charged for the policy.
[13.14.10.52 NMAC - N, 09-15-10; A, 7-31-14; A, 8-15-14]

13.14.10.53 REVERSE MORTGAGE ENDORSEMENT: When a reverse mortgage endorsement (NM form 71) is issued pursuant to 13.14.8.32 NMAC, the premium for the endorsement shall be twenty-five dollars ($25.00) in addition to the premium charged for the policy.
[13.14.10.53 NMAC - N, 09-15-10; A, 7-31-14; A, 8-15-14]

13.14.10.54 SINGLE TAX PARCEL ENDORSEMENT: When a "single tax parcel" endorsement, NM form 72, is issued pursuant to 13.14.8.33 NMAC on either owner's policies or loan policies, the premium for each endorsement shall be twenty-five dollars ($25.00) in addition to the premium charged for the policy.
[13.14.10.54 NMAC - N, 09-15-10; A, 7-31-14; A, 8-15-14]

13.14.10.55 MULTIPLE TAX PARCEL ENDORSEMENT: When a "multiple tax parcel" endorsement, NM form 73, is issued pursuant to 13.14.8.34 NMAC on either owner's policies or loan policies, the premium for each endorsement shall be twenty-five dollars ($25.00) in addition to the premium charged for the policy.
[13.14.10.55 NMAC - N, 09-15-10; A, 7-31-14; A, 8-15-14]

13.14.10.56 DOING BUSINESS ENDORSEMENT: When a "doing business" endorsement, NM form 74, is issued pursuant to 13.14.8.35 NMAC on loan policies, the premium for each endorsement shall be twenty-five dollars ($25.00) in addition to the premium charged for the policy.
[13.14.10.56 NMAC - N, 09-15-10; A, 7-31-14; A, 8-15-14]

13.14.10.57 SUBDIVISION ENDORSEMENT: When a "subdivision" endorsement, NM form 75, is issued pursuant to 13.14.8.36 NMAC on either owner's policies or loan policies, the premium for each endorsement shall be twenty-five dollars ($25.00) in addition to the premium charged for the policy.
[13.14.10.57 NMAC - N, 09-15-10; A, 7-31-14; A, 8-15-14]

13.14.10.58 EASEMENT - DAMAGE OR ENFORCED REMOVAL ENDORSEMENT: When a "easement-damage or forced removal" endorsement, NM form 76, is issued pursuant to 13.14.8.37 NMAC on either owner's policies or loan policies, the premium for each endorsement shall be twenty-five dollars ($25.00) in addition to the premium charged for the policy.
[13.14.10.58 NMAC - N, 09-15-10; A, 7-31-14; A, 8-15-14]

13.14.10.59 CO-INSURANCE - SINGLE POLICY ENDORSEMENT: When a "co-insurance single policy" endorsement, NM form 77, is issued pursuant to 13.14.8.38 NMAC on either owner's policies or loan policies, the premium for each endorsement shall be twenty-five dollars ($25.00) in addition to the premium charged for the policy.
[13.14.10.59 NMAC - N, 09-15-10; A, 7-31-14; A, 8-15-14]

13.14.10.60 ENERGY PROJECT ENDORSEMENTS: When any one or more of the energy project endorsements (NM forms 88 through 88.8) is issued, the premium shall be 10% of the full basic premium rate for all endorsements issued with respect to each owner's policy and 10% of the full basic premium rate for all endorsements issued with respect to each loan policy issued in a single transaction. Agents shall receive commissions for liabilities up to $27,000,000.00; agents' retention shall be zero for liabilities greater than $27,000,000.00. In no case shall the premium charge for the issuance of any one of the NM forms 88 through 88.8 be less than $250.00.
[13.14.10.60 NMAC - N, _-_-_]

13.14.10.61 MORTGAGE MODIFICATION ENDORSEMENTS:

A. When a mortgage modification endorsement (NM form 80) or a modification with subordination endorsement (NM form 80.1) is issued, the premium shall be sixty-five dollars ($65.00) for each endorsement issued.

B. When a mortgage with additional amount of insurance endorsement (NM form 80.2) is issued, the premium shall be sixty-five dollars ($65.00) plus an additional premium calculated by determining the difference

between the charge for a loan policy in the amount of the current amount of insurance before the amount of insurance is increased, and the charge for a loan policy in the amount of the increased insurance utilizing the appropriate brackets in the schedule of basic premium rates in effect as of the date of the endorsement. The minimum combined charge for the NM form 80.2 endorsement is ninety dollars ($90.00) for each endorsement issued.
[13.14.10.61 NMAC - N, _-_-_]

13.14.10.62 MEZZANINE FINANCING ENDORSEMENT: When a mezzanine financing endorsement (NM form 89) is issued, the premium shall be one hundred dollars ($100.00) for each endorsement issued.
[13.14.10.62 NMAC - N, _-_-_]

13.14.10.63 OWNER'S CONTRACT PURCHASER'S CONVERSION ENDORSEMENT
When a contract purchaser's policy is converted to a fee simple owner's policy by use of the contract purchaser's conversion endorsement, NM form 91, pursuant to 13.14.6.10 NMAC, the premium for such endorsement shall be fifty percent (50%) of the Basic Premium Rate in effect at the time of issuance of such endorsement, up to the face amount of the contract purchaser's policy. If more insurance is desired or required under the endorsement than was written in the contract purchaser's policy, the difference must be computed at the Basic Premium Rates in the applicable bracket or brackets in the same manner as excess liability is computed in 13.14.9.30 NMAC.
[13.14.10.63 NMAC - N, _-_-_]

HISTORY OF 13.14.10 NMAC:
Pre-NMAC History.
ID 74-1, Article 10, Chapter 58, Rule 2, Regulations for Filing Title Insurance Forms and Rates, filed 3-7-74.
SCC-85-6, Insurance Department Regulation 30 - Title Insurance, filed 9-6-85.
SCC-86-1, Insurance Department Regulation 30 - Title Insurance, filed 5-9-86.

History of Repealed Material. [Reserved]

Other History.
Re-promulgated a portion of SCC-86-1, Insurance Department Regulation 30 - Title Insurance (filed 5-9-86) and renumbered, reformatted and replaced as 13 NMAC 14.10, Endorsement Rates, effective 11-01-1996.
13 NMAC 14.10, Endorsement Rates (filed 10-2-96), was renumbered, reformatted, amended and replaced by 13.14.10 NMAC, Endorsement Rates, effective 5-15-2000, amended effective 7-31-14; amended effective 8-15-14.
13.14.10 NMAC, Endorsement Rates, effective 8-15-14, amended effective _-_-_.

TITLE 13 INSURANCE
CHAPTER 14 TITLE INSURANCE
PART 16 AGENT'S STATISTICAL REPORT

13.14.16.1 ISSUING AGENCY: [~~New Mexico Public Regulation Commission, Insurance Division~~] Office of Superintendent of Insurance, Title Insurance Bureau.
[13.14.16.1 NMAC - Rp, 13.14.16.1 NMAC, 7-1-06; A, _-_-_]

13.14.16.2 SCOPE: This rule applies to all title insurers and title insurance agents conducting title insurance business in New Mexico.
[13.14.16.2 NMAC - Rp, 13.14.16.2 NMAC, 7-1-06]

13.14.16.3 STATUTORY AUTHORITY: NMSA 1978, Sections 59A-30-4, 59A-30-7, and 59A-30-12.
[13.14.16.3 NMAC - Rp, 13.14.16.3 NMAC, 7-1-06; A, _-_-_]

13.14.16.4 DURATION: Permanent.
[13.14.16.4 NMAC - Rp, 13.14.16.4 NMAC, 7-1-06]

13.14.16.5 EFFECTIVE DATE: March 1, 2016, [~~July 1, 2006, unless a later date is cited at the end of a section.~~]
[13.14.16.5 NMAC - Rp, 13.14.16.5 NMAC, 7-1-06; A, _-_-_]

13.14.16.6 OBJECTIVE: The purpose of this rule is to provide forms for preparing the required agent's statistical report.
[13.14.16.6 NMAC - Rp, 13.14.16.6 NMAC, 7-1-06]

13.14.16.7 DEFINITIONS: See 13.14.1 NMAC.
[13.14.16.7 NMAC - Rp, 13.14.16.7 NMAC, 7-1-06]

13.14.16.8 ANNUAL STATISTICAL REPORT REQUIRED: All agencies, whether independent, affiliated, or direct operations, must complete all parts of this statistical report in accordance with the instructions issued annually by the title insurance bureau for the next year's reporting (e.g., instructions issued in 2005 shall be used for reporting 2006 calendar year data; the report of 2006 data shall be filed in 2007).
[13.14.16.8 NMAC - Rp, 13.14.16.8 NMAC, 7-1-06]

13.14.16.9 SCHEDULE A - STATEMENT OF INCOME AND EXPENSES:

NEW MEXICO TITLE INSURANCE AGENT'S STATISTICAL REPORT SCHEDULE A - STATEMENT OF INCOME AND EXPENSES For the Calendar Year Ending December 31, 20___.		
[~~AGENCY~~] AGENT NAME		
FEDERAL I.D. NUMBER		
ADDRESS		
CONTACT NAME		
Check one:		
	INDEPENDENT (NON-AFFILIATED)	Title insurance [~~agencies~~] agents that are independently owned and write title insurance business for one or more title insurance underwriters.
	AFFILIATED	Title insurance [~~agencies~~] agents with 10% or greater ownership by a title insurance underwriter, including wholly-owned agencies.
	DIRECT	Agency-type operations performed by the home or branch office of a title insurance underwriter. This does NOT include wholly-owned [~~agencies~~] agents.

Part A: Revenue		
1.	Title insurance written premiums (from Schedule B)	0
2.	Less: Remitted title insurance premiums (from Schedule B)	0
3.	Retained title insurance premiums (from Schedule B)	0
4.	Other income (from Schedule C)	0
5.	Total Revenue	0
Part B: Expenses		
1.	Employees' salaries and wages	
2.	Owners' and partners' salaries and wages	
3.	Employee benefits	
4.	Rent	
5.	Insurance	
6.	Legal expense	
7.	Licenses, taxes and fees	
8.	Title plant expense and maintenance	
9.	Office supplies	
10.	Depreciation	
11.	Automobile expense	
12.	Communication expense	
13.	Education expense	
14.	Bad debts	
15.	Interest expense	
16.	Employee travel and lodging	
17.	Loss and loss adjustment expense (from Schedule D)	0
18.	Accounting and auditing expense	
19.	Public relations expense	
20.	Other expenses (from Schedule E)	0
21.	Total Expenses	0
Part C: Net Income for Ratemaking Purposes		
1.	Income (Loss) from Operations	0
Part D: Excluded Expenses		
1.	NMLTA lobbying expense	
2.	Direct lobbying expense	
3.	Political contributions	
4.	State and federal income tax expense	
5.	½ of meals and entertainment expense	
6.	Penalties	
7.	Country club dues	
8.	Salaries in excess of salary cap	
9.	Other excluded expenses (from Schedule E)	0
10.	Total Excluded Expenses	0
Part E: Net Income		
1.	Net income as reported on the books of the ~~[agency]~~ agent	0
Part F: Equity		
1.	Total equity as reported on balance sheet of the ~~[agency]~~ agent	
	Part G: Number of Employees	
1.	Total number of employees	

[13.14.16.9 NMAC - Rp, 13.14.16.9 NMAC, 7-1-06; A, 09-15-10; A, _-_-_]

13.14.16.10 SCHEDULE B - PREMIUMS BY UNDERWRITER:

NEW MEXICO TITLE INSURANCE AGENT'S STATISTICAL REPORT **SCHEDULE B - PREMIUMS BY UNDERWRITER**

For the Calendar Year Ending December 31, 20___.			
Name of each underwriting company for which this agency charged premiums	**Title premiums written by this ~~[agency]~~ agent**	**Title premiums remitted or owed by this ~~[agency]~~ agent to underwriters**	**Title premiums retained by this ~~[agency]~~ agent**
Total			
	(Carry total forward to Schedule A, line A-1)	(Carry total forward to Schedule A, line A-2)	(Carry total forward to Schedule A, line A-3)
Percentage of premiums remitted: 0.0%			

[13.14.16.10 NMAC - Rp, 13.14.16.10 NMAC, 7-1-06; A, 09-15-10; A, _-_-_]

13.14.16.11 SCHEDULE C - IDENTIFICATION OF OTHER INCOME

NEW MEXICO TITLE INSURANCE AGENT'S STATISTICAL REPORT **SCHEDULE C - IDENTIFICATION OF OTHER INCOME** For the Calendar Year Ending December 31, 20___.		
Description of Income Item		
A.	Closing fees	
B.	Abstracting and title report income	
C.	Recording fees	
D.	Copy fees	
E.	Inspection fees	
F.	Interest income	
Itemization of All Other Income		
G.		
H.		
I.		
J.		
K.		
L.		
M.		
N.		
O.		
P.		
Q.		
R.		

S.		
	Total Other Income (Carry forward to Schedule A, line A-4)	0

[13.14.16.11 NMAC - Rp, 13.14.16.11 NMAC, 7-1-06]

13.14.16.12 SCHEDULE D - LOSSES AND LOSS ADJUSTMENT EXPENSES:

NEW MEXICO TITLE INSURANCE AGENT'S STATISTICAL REPORT SCHEDULE D - LOSSES AND LOSS ADJUSTMENT EXPENSES For the Calendar Year Ending December 31, 20___.		
Description of Expense Item		
1.	Closing Losses	
2.	Agent Errors	
3.	Unfair Trade Practices	
4.	Loss Adjustment Expenses	
5.	E&O or Fidelity Insurance	
	Total (Carry forward to Schedule A, line B-17)	

[13.14.16.12 NMAC - Rp, 13.14.16.12 NMAC, 7-1-06]

13.14.16.13 SCHEDULE E - IDENTIFICATION OF OTHER EXPENSES:

NEW MEXICO TITLE INSURANCE AGENT'S STATISTICAL REPORT SCHEDULE E - IDENTIFICATION OF OTHER EXPENSES For the Calendar Year Ending December 31, 20___.		
Part A - Deductible Expenses		
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
16.		
17.		
18.		
19.		
20.		
	Total (Carry forward to Schedule A, line B-20)	0
Part B - Excluded Expenses		
1.		
2.		
3.		
4.		

5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
16.		
17.		
18.		
19.		
20.		
	Total (Carry forward to Schedule A, line D-9)	0

[13.14.16.13 NMAC - Rp, 13.14.16.13 NMAC, 7-1-06; A-09-15-10]

13.14.16.14 [RESERVED]

[13.14.16.14 NMAC - Rp, 13.14.16.14 NMAC, 7-1-06; Repealed, 09-15-10]

13.14.16.15 SCHEDULE F - INCOME OR EXPENSE ALLOCATION FROM OTHER AFFILIATED ENTITIES:

NEW MEXICO TITLE INSURANCE AGENT'S STATISTICAL REPORT
SCHEDULE F - INCOME OR EXPENSE ALLOCATION FROM OTHER AFFILIATED ENTITIES
For the Calendar Year Ending December 31, 20___.

1	2	3	4	5
Name and Address of Affiliated ~~[Agency]~~ Agent	**Relation to Your ~~[Agency]~~ agent**	**Amount**	**Description Code**	**Reported Elsewhere in this Report?**
	Total	0		

Description	Code
Income	I
Expense Allocation	E

[13.14.16.15 NMAC - Rp, 13.14.16.14 NMAC, 7-1-06; A, 09-15-10; A, _-_-_]

13.14.16.16 SCHEDULE G - PREMIUMS BY COUNTY:

NEW MEXICO TITLE INSURANCE AGENT'S STATISTICAL REPORT
SCHEDULE G - PREMIUMS BY COUNTY
For the Calendar Year Ending December 31, 20___.

COUNTY	TITLE PREMIUMS WRITTEN
Bernalillo	
Catron	
Chaves	
Cibola	
Colfax	
Curry	
De Baca	
Eddy	
Grant	
Guadalupe	
Harding	
Hidalgo	
Lea	
Lincoln	
Los Alamos	
Luna	
McKinley	
Mora	
Otero	
Quay	
Rio Arriba	
Roosevelt	
San Juan	
San Miguel	
Sandoval	
Santa Fe	
Sierra	
Socorro	
Taos	
Torrance	
Union	
Valencia	
TOTAL	

Crosscheck with Schedule B	0
Difference	0

Explanation for Difference (if any)

[13.14.16.16 NMAC - Rp, 13.14.16.15 NMAC, 7-1-06; A, 09-15-10]

13.14.16.17 SCHEDULE H - IDENTIFICATION OF OWNERS:

NEW MEXICO TITLE INSURANCE AGENT'S STATISTICAL REPORT
SCHEDULE H - IDENTIFICATION OF OWNERS
For the Calendar Year Ending December 31, 20___.

1 Name of Each Individual or Entity	2 Percentage of [~~Agency~~] agent Owned	3 Description Code (see below)
TOTAL		

Description	Code
Attorney	A
Real Estate Agent	REA
Real Estate Developer	RED
Lending institution	L
Underwriter	UW
None of the above	NA

[13.14.16.17 NMAC - Rp, 13.14.16.16 NMAC, 7-1-06; A, 09-15-10]

HISTORY OF 13.14.16 NMAC:

Pre-NMAC History.

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

History of Repealed Material.

13.14.16 NMAC, Agent's Experience Report (filed 4-28-00) repealed 7-1-05.
13.14.16 NMAC, Agent's Experience Report (filed 6-01-05) repealed 7-1-06.

Other History.

That applicable portion of SCC-86-1, Insurance Department Regulation 30 - Title Insurance (filed 5-9-86) was replaced by 13 NMAC 14.3 Subpart C, Agent's Experience Report, effective 11-01-1996.
13 NMAC 14.3 Subpart C, Agent's Experience Report (filed 10-2-96) was renumbered and replaced by 13.14.16 NMAC, Agent's Experience Report, effective 5-15-2000.
13.14.16 NMAC, Agent's Experience Report (filed 4-28-00); replaced by 13.14.16 NMAC, Agent's Statistical Report, effective 7-1-2005.
13.14.16 NMAC, Agent's Experience Report (filed 6-01-05); replaced by 13.14.16 NMAC, Agent's Statistical Report, effective 7-1-2006.
13.14.16 NMAC, Agent's Experience Report, effective 7-1-2006, amended effective, _-_-_.

TITLE 13 INSURANCE
CHAPTER 14 TITLE INSURANCE
PART 17 UNDERWRITER'S STATISTICAL REPORT

13.14.17.1 ISSUING AGENCY: Office of Superintendent of Insurance, Title Insurance Bureau.
[13.14.17.1 NMAC - Rp, 13.14.17.1 NMAC, 7-1-06; A, 7-31-14]

13.14.17.2 SCOPE: This rule applies to all title insurers conducting title insurance business in New Mexico.
[13.14.17.2 NMAC - Rp, 13.14.17.2 NMAC, 7-1-06]

13.14.17.3 STATUTORY AUTHORITY: NMSA 1978, Sections 59A-30-4, 59A-30-7, 59A-30-12.
[13.14.17.3 NMAC - Rp, 13.14.17.3 NMAC, 7-1-06; A, _-_-_]

13.14.17.4 DURATION: Permanent.
[13.14.17.4 NMAC - Rp, 13.14.17.4 NMAC, 7-1-06]

13.14.17.5 EFFECTIVE DATE: March 1, 2016. [~~July 1, 2006, unless a later date is cited at the end of a section.~~]
[13.14.17.5 NMAC - Rp, 13.14.17.5 NMAC, 7-1-06; A, _-_-_]

13.14.17.6 OBJECTIVE: The purpose of this rule is to provide a form for preparing the required underwriter's statistical report.
[13.14.17.6 NMAC - Rp, 13.14.17.6 NMAC, 7-1-06]

13.14.17.7 DEFINITIONS: See 13.14.1 NMAC.
[13.14.17.7 NMAC - Rp, 13.14.17.7 NMAC, 7-1-06]

13.14.17.8 ANNUAL STATISTICAL REPORT REQUIRED: All licensed title insurers must complete all parts of this statistical report in accordance with the instructions issued annually by the title insurance bureau for the next year's reporting (e.g., instructions issued in 2005 shall be used for reporting 2006 calendar year data; the report of 2006 data shall be filed in 2007).
[13.14.17.8 NMAC - Rp, 13.14.17.8 NMAC, 7-1-06]

13.14.17.9 FORM 1 - STATEMENT OF INCOME AND EXPENSES:

NEW MEXICO TITLE INSURANCE UNDERWRITERS STATISTICAL REPORT
FORM 1 - STATEMENT OF INCOME AND EXPENSES
For the Calendar Year Ending December 31, 20___
NEW MEXICO EXPERIENCE ONLY

Insurance Company							
NAIC Code							
		Direct Operations	Non-Affiliated [~~Agency~~] agent Operations	Affiliated [~~Agency~~] agent Operations	Total	NAIC Annual Statement Schedule T	Difference
Part A - Revenue							
1	Direct written premiums				0		0
2	Direct written premiums retained by agent				0		
3	Direct written premiums remitted to underwriter	0	0	0	0		
4	Escrow and settlement service charges				0		

5	Other title fees and service charges				0		
6	Total other income	0	0	0	0		0
7	**Total revenue**	0	0	0	0		
For underwriters that charge rates below the promulgated rates:						From Form 3	Difference
8	Direct premiums as if they had been written at promulgated rates				0	0	0
Part B - Corporate Expenses Line 1 as defined per NAIC annual statement, STATEMENT OF INCOME exhibit. Lines 2 through 22 as defined per NAIC annual statement, EXPENSES exhibit. All entries should show NEW MEXICO expenses only and should NOT include direct charges from direct operations.							
1	Losses and loss adjustment expenses incurred				0		
2	Total personnel costs				0		
3	Total production services purchased outside				0		
4	Advertising				0		
5	Boards, bureaus, and associations				0		
6	Title plant rent and maintenance				0		
7	Claim adjustment services				0		
8	Amounts charged off, net of recoveries				0		
9	Marketing and promotional expenses				0		
10	Insurance				0		
11	Directors' fees				0		
12	Travel and travel items				0		
13	Rent and rent items				0		
14	Equipment				0		
15	Cost or depreciation of EDP equipment and software				0		
16	Printing, stationery, books, and periodicals				0		
17	Postage, telephone, messenger, and express				0		
18	Legal and auditing				0		
19	Total taxes, licenses, and fees				0		
20	Real estate expenses				0		
21	Real estate taxes				0		
22	Aggregate write-ins for miscellaneous expenses				0		
23	Total Corporate Expenses	0	0	0	0		
Part C- -Net Income							
1	Income (Loss)	0	0	0	0		

[13.14.17.9 NMAC - Rp, 13.14.17.9 NMAC, 7-1-06; A, 09-15-10; A, _-_-_]

13.14.17.10 [RESERVED]

[13.14.17.10 NMAC - Rp, 13.14.17.10 NMAC, 7-1-06; Repealed, 09-15-10]

13.14.17.11 FORM 2 - RESERVES, INVESTMENT GAIN, AND SURPLUS:

NEW MEXICO TITLE INSURANCE UNDERWRITERS STATISTICAL REPORT
FORM 2 - RESERVES, INVESTMENT GAIN, AND SURPLUS
For the Calendar Year Ending December 31, 20___
COUNTRYWIDE EXPERIENCE

Insurance Company		
		Countrywide
1	Known claims reserve	
2	Statutory premium reserve	
3	Aggregate of other reserves required by law	
4	Supplemental reserve	
5	Total reserves	0
6	Net investment income earned	
7	Net realized capital gains (losses)	
8	Total net investment gain	0
9	Federal and foreign income taxes incurred	
10	Surplus as regards policyholders	

[13.14.17.11 NMAC - Rp, 13.14.17.11 NMAC, 7-1-06; A, 09-15-10]

13.14.17.12 FORM 3 - TRANSACTION REPORT:

NEW MEXICO TITLE INSURERS STATISTICAL REPORT
FORM 3 - TRANSACTION REPORT
For the Calendar Year Ending December 31, 20__
NEW MEXICO EXPERIENCE ONLY

Insurance Company							
							For Underwriters That Charge Rates Below the Promulgated Rates
NM Form No.	Trans-action Code	Transaction Type	NMAC Rate Provision	No. of Trans-actions	Direct Premiums Written	Dependent on Basic Premium Rate?	Direct Premiums As If They Had Been Written at Promulgated Rates
none	0001	Charge for Additional Chain of Title	13.14.9.16			No	
none	0002	Charge for Unplatted Tract of Unusual Complexity	13.14.9.16			Yes	
none	0003	Abstract Retirement Credit	13.14.9.24			Yes	

none	0004	Loan Policy - Mechanic's Lien Coverage With Evidence of Priority	13.14.9.40 E			No	
none	0005	Loan Policy - Mechanic's Lien Coverage Without Evidence of Priority	13.14.9.40 E			Yes	
none	0006	Owner's Policy - Mechanic's Lien Coverage - Filing Period Expired	13.14.10.9A			No	
none	0007	Owner's Policy - Mechanic's Lien Coverage - Filing Period Not Expired	13.14.10.9B			Yes	
none	0008	Survey Coverage Endorsement	13.14.10.10			Yes	
none	0009	Duplicate Original Policy	13.14.9.33			No	
none	0013	Cancellation Fee	13.14.9.19B			No	
1	0101	Owner's Policy	13.14.9.20			Yes	
1	0102	Owner's Policy - With Bulk Rate	13.14.9.23			Yes	
1	0103	Multiple Owners on Same Land - Simultaneous Issue	13.14.9.32			Yes	
1	0104	Replacement Owner's Policy	13.14.9.26			Yes	
1	0105	Owner's Policy After Foreclosure -Completed Foreclosure	13.14.9.28			Yes	
1	0106	Owner's Policy After Foreclosure -Terminated Foreclosure	13.14.9.28			Yes	
1	0110	Owner's Policy - Reissue (10% Discount)	13.14.9.35			Yes	
1	0115	Owner's Policy - Reissue (15% Discount)	13.14.9.35			Yes	
1	0120	Owner's Policy - Reissue (20% Discount)	13.14.9.35			Yes	
1	0125	Owner's Policy - Reissue (25% Discount)	13.14.9.35			Yes	
2	0201	Loan Policy - Single Issue	13.14.9.22			Yes	
2	0202	Loan Policy - Simultaneous Issue with Owner's Policy	13.14.9.30			No	
2	0203	Loan Policy - Second Mortgage or Subsequent Issue	13.14.9.36			Yes	
2	0204	Replacement Loan Policy	13.14.9.26			Yes	
2	0205	Loan Policy Insuring Construction Loan	13.14.9.40A			No	
2	0206	Loan Policy Insuring Construction Loan Extension	13.14.9.40B			No	
2	0240	Loan Policy - Substitution Rate [~~(less than 2 years - 40%)~~] (within 3 years - 40%)	13.14.9.39			Yes	
[~~2~~]	[~~0245~~]	~~Loan Policy - Substitution~~	~~13.14.9.39~~			~~Yes~~	

		~~Rate (more than 2 years, less than 3 - 45%)~~					
2	0250	Loan Policy - Substitution Rate (more than 3 years, [~~less than 4~~] less than 5 years - 50%)	13.14.9.39			Yes	
[~~2~~]	[~~0255~~]	[~~Loan Policy - Substitution Rate (more than 4 years, less than 5 - 55%)~~]	[~~13.14.9.39~~]			[~~Yes~~]	
2	0260	Loan Policy - Substitution Rate (more than 5 years, [~~less than 6~~] less than 10 years - 60%)	13.14.9.39			Yes	
[~~2~~]	[~~0265~~]	[~~Loan Policy - Substitution Rate (more than 6 years, less than 7 - 65%)~~]	[~~13.14.9.39~~]			[~~Yes~~]	
[~~2~~]	[~~0270~~]	[~~Loan Policy - Substitution Rate (more than 7 years, less than 8 - 70%)~~]	[~~13.14.9.39~~]			[~~Yes~~]	
[~~2~~]	[~~0275~~]	[~~Loan Policy - Substitution Rate (more than 8 years, less than 9 - 75%)~~]	[~~13.14.9.39~~]			[~~Yes~~]	
2	0280	Loan Policy - Substitution Rate (more than [~~9~~] 10 years, [~~less than 10~~] less than 20 years - 80%)	13.14.9.39			Yes	
6	0600	Commitment for Title Insurance	13.14.9.19A			No	
6.1	0601	Plain Language Commitment for Title Insurance	13.14.9.19A			No	
9	0900	Notice of Availability of Owner's Title Insurance	None			No	
10	1000	Facultative Reinsurance Agreement	None			No	
11	1104	Correction/Multipurpose Endorsement	13.14.8.8			No	
11	1105	Renewal, Extension & Partial Release Endorsement	13.14.10.20			No	
11	1106	Extension of Commitment for [~~t~~] Title Insurance	13.14.9.19A			No	
11	1108	Increase in Coverage	13.14.6.8D			Yes	
12	1200	Condominium Endorsement – All Assessments (ALTA 4-06)	13.14.10.14			No	
13	1300	Planned Unit Development Endorsement – All Assessments (ALTA 5-06)	13.14.10.15			No	
13.1	1301	Planned Unit Development Endorsement – Unpaid Assessments (ALTA 5.1-06)	13.14.10.15			No	
14	1400	Variable Rate Mortgage Endorsement (ALTA 6-06)	13.14.10.12			No	

15	1500	Variable Rate Mortgage Endorsement - Negative Amortization (ALTA 6.2-06)	13.14.10.12			No	
16	1600	Manufactured Housing Unit Endorsement (ALTA 7-06)	13.14.10.13			No	
16.1	1601	Manufactured Housing Unit (Conversion Loan) Endorsement (ALTA 7.1-06)	13.14.10.13			No	
16.2	1602	Manufactured Housing Unit (Conversion Owner's) Endorsement (ALTA 7.2-06)	13.14.10.13			No	
17	1700	Revolving Credit Endorsement	13.14.10.12			No	
18	1800	Construction Loan Policy Endorsement A	13.14.9.40D			Yes	
20	2000	Leasehold - Owner's Endorsement [~~(to create policy)~~] (ALTA 13-06)[~~, 04-02-12~~)]	13.14.10.19			No	
20	2003	Leasehold Owners Policy - Simultaneous Issue with Owner's Policy	13.14.9.31			Yes	
20	2010	Leasehold Owner's Policy - Reissue (10% Discount)	13.14.9.35			Yes	
20	2015	Leasehold Owner's Policy - Reissue (15% Discount)	13.14.9.35			Yes	
20	2020	Leasehold Owner's Policy - Reissue (20% Discount)	13.14.9.35			Yes	
20	2025	Leasehold Owner's Policy - Reissue (25% Discount)	13.14.9.35			Yes	
21	2100	Leasehold - Loan Endorsement [~~(to create policy)~~] (ALTA 13.1-06) [~~, 04-02-12~~)]	13.14.10.19			No	
21.1	2101	Leasehold Loan Policy – Simultaneous Issue with Leasehold Owner's Policy	13.14.9.30			No	
22	2200	Pending Disbursement Down Date Endorsement	13.14.10.18			No	
23	2300	Pending Improvements Endorsement	13.14.10.23			No	
24	2400	Assignment Endorsement (ALTA 10-06)	13.14.10.8			No	
24.1	2401	Assignment and Downdate Endorsement (ALTA 10.1-06)	13.14.10.8			No	
25	2500	Additional Advance Endorsement	13.14.10.11			No	
26	2600	Partial Coverage Endorsement	None			No	

28	2800	Non-Imputation - Full Equity Transfer Endorsement (ALTA 15-06)	13.14.10.21			Yes	
28.1	2801	Non-Imputation – Additional Interest Endorsement (ALTA 15.1-06)	13.14.10.21			Yes	
28.2	2802	Non-Imputation – Partial Equity Transfer Endorsement (ALTA 15.2-06)	13.14.10.21			Yes	
29	2900	Environmental Protection Lien Endorsement (ALTA 8.1-06)	13.14.10.22			No	
30	3000	Condominium Endorsement Unpaid Assessments (ALTA 4.1-06)	13.14.10.24			No	
31	3100	Owner's Leasehold Conversion Endorsement [~~(to create policy)~~]	13.14.9.38			Yes	
33	3300	Change of Name Endorsement	None			No	
34	3400	U.S. Policy[~~, ALTA~~] (ALTA 12-03-12)	13.14.9.25			Yes	
41	4100	Limited Pre-Foreclosure Title Insurance Policy [~~ALTA~~] (ALTA 12-03-12)	13.14.9.28			Yes	
42	4200	Limited Pre-Foreclosure Title Insurance Policy Down Date Endorsement [~~ALTA~~] (ALTA 12-03-12)	13.14.10.18			No	
43	4300	Insuring Around Endorsement	[~~13.14.8.13~~] None			No	
44	4400	Revolving Credit[~~,~~] - Increased Credit Limit Endorsement	13.14.10.30			No	
45	4500	Residential Limited Coverage Junior Loan Policy ALTA (Rev. 08-01-12)	13.14.9.29			No	
46	4600	Down Date Endorsement to Residential Limited Coverage Junior Loan Policy [~~ALTA~~] JR1 (ALTA 08-01-12)	13.14.10.32			No	
47	4700	Endorsement to Residential Limited Coverage Junior Loan Policy [~~ALTA~~] JR2 [~~Future Advances~~] (ALTA 08-01-12)	13.14.10.33			No	
48	4800	Truth-in-Lending Endorsement (ALTA 2-06)	13.14.10.31			Yes	
50	5000	Restrictions,	13.14.10.34			Yes	

		Encroachments and Minerals Endorsement - Loan Policy (ALTA 9-06)					
50.1	5001	Restrictions Encroachments, Minerals – Loan Policy Endorsement (ALTA 9.3-06)	13.14.10.34			Yes	
51	5100	Land Abuts Street Endorsement	13.14.10.36			No	
52	5200	Location Endorsement (ALTA 22-06)	13.14.10.37			No	
54	5400	Contiguity Single Parcel Endorsement (ALTA 19.1-06)	13.14.10.39			No	
55	5500	Named Insured Endorsement	13.14.10.40			No	
56	5600	Restrictions, Encroachments, Minerals– Owner's Policy (Unimproved Land) Endorsement (ALTA 9.1-06)	13.14.10.34			Yes	
56.1	5601	Restrictions, Encroachments, Minerals – Owner's Policy – (Unimproved Land) Endorsement (ALTA 9.4-06)	13.14.10.34			Yes	
57	5700	Restrictions, Encroachments, Minerals – Owner's Policy (Improved Land) Endorsement (ALTA 9.2-06)	13.14.10.34			Yes	
57.1	5701	Restrictions, Encroachments, and Minerals (Owner's Policy – [(]Improved Land) Endorsement (ALTA 9.5-06)	13.14.10.34			Yes	
58	5800	First Loss - Multiple Parcel Transactions Endorsement (ALTA 20-06)	13.14.10.41			No	
60	6000	Aggregation Endorsement (ALTA 12-06)	13.14.10.43			No	
60.1	6001	Aggregation Endorsement (ALTA 12.1-06)	13.14.10.43			No	
61	6100	Foundation Endorsement	13.14.10.44			No	
62	6200	Assignment of Rents[/] or Leases Endorsement (ALTA 37-06)	13.14.10.45			No	
63	6300	Short Form Residential Loan Policy [~~(ALTA form revised 12-03-12)~~]	13.14.9.22			Yes	
64	6400	Zoning - Unimproved Land Endorsement (ALTA	13.14.10.47			Yes	

		3-06)					
64.1	6401	Zoning – Unimproved Land - No Applicable Zoning Ordinances Endorsement	13.14.10.47			Yes	
65	6500	Zoning - Completed Structure Endorsement (ALTA 3.1-06)	13.14.10.48			Yes	
65.1	6501	Zoning – Land Under Development Endorsement (ALTA 3.2-06)	13.14.10.48			Yes	
65.2	6502	Zoning- Completed Structure - No Applicable Zoning Ordinances Endorsement	13.14.10.48			Yes	
66	6600	Contiguity - Multiple Parcels Endorsement (ALTA 19-06)	13.14.10.39			No	
67	6700	Access and Entry Endorsement (ALTA 17 - 06)	13.14.10.49			No	
68	6800	Indirect Access and Entry Endorsement (ALTA 17.1-06)	13.14.10.50			No	
69	6900	Utility Access Endorsement (ALTA 17.2-06)	13.14.10.51			No	
70	7000	Commercial Environmental Protection Lien Endorsement (ALTA 8.2-06)	13.14.10.52			No	
71	7100	Reverse Mortgage Endorsement (ALTA 14.3-06)	13.14.10.53			No	
72	7200	Single Tax Parcel Endorsement (ALTA 18-06)	13.14.10.54			No	
73	7300	Multiple Tax Parcel Endorsement (ALTA 18.1-06)	13.14.10.55			No	
74	7400	Doing Business Endorsement (ALTA 24-06)	13.14.10.56			No	
75	7500	Subdivision Endorsement (ALTA 26-06)	13.14.10.57			No	
76	7600	Easement - Damage or Enforced Removal Endorsement (ALTA 28-06)	13.14.10.58			No	
77	7700	Co-Insurance - Single Policy Endorsement (ALTA 23-06)	13.14.10.59			No	
78	7800	Same as Survey Endorsement (ALTA 25-06)	13.14.10.38			No	

79	7900	Same as Portion of Survey Endorsement (ALTA 25.1-06)	13.14.10.38			No	
80	8000	Mortgage Modification Endorsement (ALTA 11-06)	13.14.10.20			No	
80.1	8001	Mortgage Modification With Subordination Endorsement (ALTA 11.1-06)	13.14.10.61			No	
80.2	8002	Mortgage Modification With Additional Amount of Title Insurance Endorsement (ALTA 11.2-06)	13.14.10.61			Yes	
83	8300	Construction Loan – Endorsement (ALTA 32.0-06[~~, 2-3-11~~])	None			[~~Yes~~] No	
83.1	8301	Construction Loan – Direct Payment Endorsement (ALTA 32.1-06 [~~, 4-2-13~~])	None			No	
83.2	8302	Construction Loan – Insured's Direct Payment Endorsement (ALTA 32.2-06, [~~4-2-13~~])	None			No	
84	8400	Disbursement Endorsement (ALTA 33-06[~~, 2-3-11~~])	13.14.10.18			No	
85	8500	Identified Risk Coverage Endorsement	None			No	
86	8600	Policy Authentication Endorsement (ALTA 39-06[~~, 04-02-12~~])	13.14.18.11 1			No	
[~~87~~]	[~~8700~~]	[~~Zoning – Land Under Development Endorsement (ALTA 3.2-06)~~]	[~~13.14.10.48~~]			[~~Yes~~]	
88	8800	Energy Project Leasehold/Easement - Owner's Endorsement (ALTA 36-06)	13.14.10.60			Yes	
88.1	8801	Energy Project Leasehold/Easement - Loan Endorsement (ALTA 36.1-06)	13.14.10.60			Yes	
88.2	8802	Energy Project - Leasehold - Owner's Endorsement (ALTA 36.2-06)	13.14.10.60			Yes	
88.3	8803	Energy Project - Leasehold - Loan Endorsement (ALTA 36.3-06)	13.14.10.60			Yes	
88.4	8804	Energy Project Covenants, Conditions & Restrictions - Land under Development - Owner's Endorsement (ALTA 36.4-06)	13.14.10.60			Yes	

88.5	8805	Energy Project Covenants, Conditions & Restrictions - Land Under Development - Loan Endorsement (ALTA 36.5-06)	13.14.10.60			Yes	
88.6	8806	Energy Project - Encroachments Endorsement (ALTA 36.6-06)	13.14.10.60			Yes	
88.7	8807	Energy Project - Fee Estate - Owner's Policy Endorsement (ALTA 36.7-06)	13.14.10.60			Yes	
88.8	8808	Energy Project - Fee Estate - Loan Policy Endorsement (ALTA 36.8-06)	13.14.10.60			Yes	
89	8900	Mezzanine Financing Endorsement (ALTA 16-06)	13.14.10.62			No	
90	9000	Residential Limited Coverage Modification of Mortgage Policy	13.14.9.42			Yes	
91	9100	Contract Purchaser Conversion Endorsement	13.14.6.10			Yes	
2	9240	Loan Policy - Statutory Rate ([~~less than 3 years~~] within 3 years - 40%)	59A-30-6.1 NMSA 1978			Yes	
2	9250	Loan Policy - Statutory Rate (more than 3 years, [~~less than 5~~] less than 5 years - 50%)	59A-30-6.1 NMSA 1978			Yes	
2	9260	Loan Policy - Statutory Rate (more than 5 years, [~~less than 10~~] less than 10 years - 60%)	59A-30-6.1 NMSA 1978			Yes	
2	9280	Loan Policy - Statutory Rate (more than 10 years, [~~less than 20~~] less than 20 years - 80%)	59A-30-6.1 NMSA 1978			Yes	

TOTAL:				

Crosscheck with Form 1:	
Difference:	

Explanation for Difference (if any):

[13.14.17.12 NMAC - Rp, 13.14.17.12 NMAC, 7-1-06; A, 8-17-09; A, 09-15-10; A, 10-1-12; A, 7-31-14; A, _-_-_]

13.14.17.13 FORM 4 - PREMIUM DISTRIBUTION BY LIABILITY RANGE:

NEW MEXICO TITLE INSURANCE UNDERWRITERS STATISTICAL REPORT
FORM 4 - PREMIUM DISTRIBUTION BY LIABILITY RANGE

For the Calendar Year Ending December 31, 20___
NEW MEXICO EXPERIENCE ONLY
TRANSACTIONS THAT ARE DEPENDENT ON THE BASIC PREMIUM RATE
Note: Include all transactions listed as "Yes" in the "Dependent on Basic Premium Rate?" column of Form 3

Insurance Company			
Liability Range ($000)		Number of transactions	Direct written premium
More than	But no more than		
0	5		
5	10		
10	20		
20	30		
30	40		
40	50		
50	60		
60	70		
70	80		
80	90		
90	100		
100	200		
200	300		
300	400		
400	500		
500	1,000		
1,000	2,000		
2,000	3,000		
3,000	4,000		
4,000	5,000		
5,000	10,000		
10,000	15,000		
15,000	25,000		
25,000	50,000		
50,000	75,000		
75,000	100,000		
Over 100,000			
ALL		0	0

Crosscheck with Form 3:	
Difference	

Explanation for Difference (if any)

[13.14.17.13 NMAC - Rp, 13.14.17.13 NMAC, 7-1-06; A, 09-15-10]

13.14.17.14 FORM 5 - DIRECT PAID LOSS DEVELOPMENT:

NEW MEXICO TITLE INSURANCE UNDERWRITERS STATISTICAL REPORT
FORM 5 - DIRECT PAID LOSS DEVELOPMENT
For the Calendar Year Ending December 31, 20___
NEW MEXICO EXPERIENCE ONLY

Insurance Company												
Years in which policies were written	**CUMULATIVE PAID LOSSES AND ALLOCATED LOSS ADJUSTMENT EXPENSES AT YEAR END (000 OMITTED)**										**Number of claims closed with loss payment**	**Number of claims closed without loss payment**
	Latest PY-9	Latest PY-8	Latest PY-7	Latest PY-6	Latest PY-5	Latest PY-4	Latest PY-3	Latest PY-2	Latest PY-1	Latest PY		
Prior												
Latest PY-19												
Latest PY-18												
Latest PY-17												
Latest PY-16												
Latest PY-15												
Latest PY-14												
Latest PY-13												
Latest PY-12												
Latest PY-11												
Latest PY-10												
Latest PY-9												
Latest PY-8												
Latest PY-7												
Latest PY-6												
Latest PY-5												
Latest PY-4												
Latest PY-3												
Latest PY-2												
Latest PY-1												
Latest PY												

Note: Use the same reporting instructions as for [s]Schedule P, part 2A of the NAIC annual statement, except that loss and ALAE should be **direct of reinsurance** and should be **New Mexico** claims only.

	Latest PY-1	Latest PY
Total	0	0
Total payments during Latest PY		0

New Mexico direct losses paid as shown on NAIC Annual Statement Schedule T	
Difference	0

Explanation for Difference (if any)

[13.14.17.14 NMAC - Rp, 13.14.17.14 NMAC, 7-1-06; A, 09-15-10; A, _-_-_]

13.14.17.15 FORM 6 - DIRECT CASE BASIS RESERVES:

NEW MEXICO TITLE INSURANCE UNDERWRITERS STATISTICAL REPORT
FORM 6 - DIRECT CASE BASIS RESERVES
For the Calendar Year Ending December 31, 20___
NEW MEXICO EXPERIENCE ONLY

Insurance Company

Years in which policies were written	Direct Written Premium ($000s)	Amount of insurance written in millions	CASE BASIS LOSS AND ALLOCATED LOSS ADJUSTMENT EXPENSE RESERVES AT YEAR END (000 OMITTED)									
			Latest PY-9	Latest PY-8	Latest PY-7	Latest PY-6	Latest PY-5	Latest PY-4	Latest PY-3	Latest PY-2	Latest PY-1	Latest PY
Prior												
Latest PY-19												
Latest PY-18												
Latest PY-17												
Latest PY-16												
Latest PY-15												
Latest PY-14												
Latest PY-13												
Latest PY-12												
Latest PY-11												
Latest PY-10												
Latest PY-9												
Latest PY-8												
Latest PY-7												
Latest												

PY-6												
Latest PY-5												
Latest PY-4												
Latest PY-3												
Latest PY-2												
Latest PY-1												
Latest PY												

Note: Use the same reporting instructions as for [s]Schedule P, part 2B of the NAIC annual statement, except that loss and ALAE should be **direct of reinsurance** and should be **New Mexico** claims only.

	Latest PY-1	Latest PY
Total	0	0
Increase in reserves during Latest PY		0
Total payments during Latest PY		0
Case incurred loss during Latest PY		0
New Mexico direct losses incurred as shown on NAIC Annual Statement Schedule T		
Difference		0

Explanation for Difference (if any)

[13.14.17.15 NMAC - Rp, 13.14.17.15 NMAC, 7-1-06; A, 09-15-10; A, _-_-_]

HISTORY OF 13.14.17 NMAC:
Pre-NMAC History. None.

History of Repealed Material.
13.14.17 NMAC, Underwriter's Experience Report (filed 4-28-00) repealed 7-1-05.
13.14.17 NMAC, Underwriter's Experience Report (filed 6-1-05) repealed 7-1-06.

NMAC History.
13 NMAC 14.3 Subpart D, Underwriter's Experience Report, effective 7-1-1997.
13 NMAC 14.3 Subpart D, Underwriter's Experience Report (filed 05-30-97) was renumbered, reformatted and replaced by 13.14.17 NMAC, Underwriter's Experience Report, effective 5-15-2000.
13.14.17 NMAC, Underwriter's Experience Report (filed 4-28-00) was replaced by 13.14.17 NMAC, Underwriter's Statistical Report, effective 7-1-2005.
13.14.17 NMAC, Underwriter's Experience Report (filed 6-1-05) was replaced by 13.14.17 NMAC, Underwriter's Statistical Report, effective 7-1-2006.
13.14.17 NMAC, Underwriter's Statistical Report amended effective 7-31-14.
13.14.17 NMAC, Underwriter's Statistical Report amended effective _-_-_.

TITLE 13 INSURANCE
CHAPTER 14 TITLE INSURANCE
PART 18 FORMS

13.14.18.1 ISSUING AGENCY: Office of Superintendent of Insurance, Title Insurance Bureau.
[13.14.18.1 NMAC - Rn, 13 NMAC 14.2.1 & A, 5-15-00; A, 7-31-14]

13.14.18.2 SCOPE: This rule applies to all title insurers and all title insurance agents conducting title insurance business in New Mexico.
[13.14.18.2 NMAC - Rn, 13 NMAC 14.2.2, 5-15-00]

13.14.18.3 STATUTORY AUTHORITY: NMSA 1978, Sections 59A-30-4 and 59A-30-5.
[13.14.18.3 NMAC - Rn, 13 NMAC 14.2.3, 5-15-00; A, 7-31-14; A, _-_-_]

13.14.18.4 DURATION: Permanent.
[13.14.18.4 NMAC - Rn, 13 NMAC 14.2.4, 5-15-00]

13.14.18.5 EFFECTIVE DATE: March 1, 2016.
[13.14.18.5 NMAC - Rn, 13 NMAC 14.2.5 & A, 5-15-00; A, _-_-_]

13.14.18.6 OBJECTIVE: The purpose of this rule is to provide title insurance forms and restrictions regarding their use.
[13.14.18.6 NMAC - Rn, 13 NMAC 14.2.6 & A, 5-15-00]

13.14.18.7 DEFINITIONS: See 13.14.1 NMAC.
[13.14.18.7 NMAC - Rn, 13 NMAC 14.2.7, 5-15-00]

13.14.18.8 PROMULGATED FORMS: Policies, endorsements, binders, commitments, certificates, closing protection letters, notice of availability of owners title insurance and facultative reinsurance agreements are not to be filed with the Superintendent for approval as the responsibility rests upon the title underwriting companies to see that only standard promulgated forms are used by themselves and their authorized agents to insure interests in New Mexico property.
[6-16-86, 4-1-96; 13.14.18.8 NMAC - Rn, 13 NMAC 14.2.8, 5-15-00]

13.14.18.9 ALTERATION OR SUBSTITUTION OF FORMS 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 or rider, except (1) upon public hearing called for such purpose and upon a determination by the superintendent that the same be proper, or (2) in a manner specifically authorized by these regulations as amended from time to time.

B. Nothing in this regulation shall prevent a title insurer from (1) adding blanks, spaces, labels or brief instructions to the promulgated forms for the purpose of collecting statistical data 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 in each form printed or used by each title insurance underwriter or agent verbatim, 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 regulations.

C. Nothing herein shall prohibit the use of the forms in any 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."

D. 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 NMSA 1978, Section 59A-30-4 [~~NMSA, 1978~~], control and supervision by superintendent and title insurance regulation 13.14.18.10 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."
[6-16-86, 4-3-95; 13.14.18.9 NMAC - Rn, 13 NMAC 14.2.10, 5-15-00; A, 10-1-12; A, 7-31-14; A, _-_-_]

13.14.18.10 DELETION OF PREPRINTED TERMS, ADDITION OF UNAUTHORIZED TERMS, AND LETTERS OF INTERPRETATION OR WAIVER THAT CHANGE THE TERMS, PROHIBITED:

A. None of the preprinted terms (or the terms required to be printed) in a promulgated title insurance form may be deleted from such form except in the manner specifically authorized by these rules.

B. Nothing may be added to, inserted in or typed upon a promulgated title insurance form except as specifically authorized by these rules; provided, however, that the 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 or binder, any matter constituting a requirement prior to issuance of a policy, may be inserted in the proper places in the various forms and that other information necessary to complete each form (such as the year in the tax exception clause and any required signature or countersignature) must be inserted in the form prior to its issuance.

C. Additional specific exceptions may be added to Schedule B to except from coverage the effect of encroachments, overlaps, and physical evidence of easement or boundary line disputes, as revealed by a survey or inspection of the property. Additionally, a specific exception as to lack of access to the property may be taken when the search performed fails to reveal that insurable rights of access to the property exist.

D. No person, firm or organization may 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 may any person, firm or organization 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; except that insurers shall waive, at no cost or charge to the insured, either by endorsement or language added to Schedule B of the policy, the right to demand arbitration pursuant to the conditions and stipulations of title insurance policies issued in New Mexico. The endorsement or the language added to Schedule B of the policy shall read: "In compliance with Subsection D of 13.14.18.10 NMAC, the company hereby waives its right to demand arbitration pursuant to the title insurance arbitration rules of the American land title association. Nothing herein prohibits the arbitration of all arbitrable matters when agreed to by both the company and the insured."

E. In no event may any policy, endorsement, binder, commitment, letter, contract, memorandum or other writing or form issued by a title insurance underwriter or agent concerning an interest in New Mexico property contain coverages not expressly authorized by these rules or the superintendent pursuant to the New Mexico title insurance law.
[6-16-86...3-1-92; A, 2-15-99; 13.14.18.10 NMAC - Rn, 13 NMAC 14.2.11, 5-15-00; A, 8-29-03; A, 10-1-12]

13.14.18.11 ADDITIONAL AFFIRMATIVE COVERAGES:

A. When issuing a commitment for an owner's or loan policy, or issuing an owner's or loan policy, exceptions as to easements, rights-of-way, and restrictions must detail any matters of violation, protrusion, encroachment or overlap on to easement, right-of-way, adjacent property, building set back lines or other violated restriction, which are revealed by an inspection or survey of the property.

B. In the case of commitments issued for loan policies (construction and permanent), and in the issuance of said loan policies, but not in the case of commitments for owner's policies, leasehold owner's policies and contract purchaser's policies, or the issuance of said policies, when there are no violations of restrictions the following language may be added to each such restriction exception: "These (or this) restriction(s) have (has) not been violated, and a 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 these (or this) restriction(s) 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."

C. Alternatively, and only in commitments for or the issuance of loan policies, when there are violations revealed, the following language may be added to each such restriction exception: "These (or this) restrictions(s) have (has) been violated in that (insert language stating what violation(s) exist(s)). This (or these) violation(s) will 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 these (or this) restriction(s) 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."

D. Additionally, and again only in commitments for or the issuance of loan policies, 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 the insured 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 be inserted into the foundation endorsement, NM form 61, in accordance with 13.14.10.44 NMAC.

E. Each insurer shall establish its written underwriting requirements necessary to offer these additional affirmative coverages or determine that it does not desire to offer said coverages under any circumstances. No company may provide affirmative coverage by the intentional omission of an exception to any adverse matter disclosed by inspection, or unrecorded survey or other evidence, or by a search and examination of the public records, or by any adverse matter arising by operation of law except as specifically authorized by these rules.
[6-16-86...4-3-95; 13.14.18.11 NMAC - Rn, 13 NMAC 14.2.12, 5-15-00]

13.14.18.12 PRINTING OF FORMS: On and after May 1, 1988, all promulgated title insurance forms shall contain the headings and form designations used on the forms prescribed in this rule.
[6-16-86...11-1-96; 6-1-98; 13.14.18.12 NMAC - Rn, 13 NMAC 14.2.13, 5-15-00]

13.14.18.13 APPROVED FORMS: The following forms are hereby promulgated for use in New Mexico and the text of each referenced ALTA form and their dates of adoption are hereby incorporated by reference. The forms that are not ALTA forms are hereby promulgated in the form set forth at the effective date of this rule in the NMAC. All of the forms herein adopted shall be set forth in their entirety in a repository on a secure website to be created and maintained by the office of superintendent of insurance, which shall be responsible for maintaining the repository. The forms as reproduced in that secure repository shall constitute the exclusive promulgated forms for use in New Mexico, and none of those forms may be altered except to correct non-substantive errors or by proper amendment to this rule approved by the office of superintendent of insurance. To the extent, if any, that there is any discrepancy between any form described herein and any form reproduced in the repository, the form described herein shall control and be deemed the promulgated form. For promulgated title insurance forms, visit www.osi.state.nm.us.

NM FORM NO.	ALTA FORM NO. & DATE	NAME OF FORM
1	6-17-06	Owner's Policy
2	6-17-06	Loan Policy
		[Reserved]
6	6-17-06	Commitment for Title Insurance
6.1	6-17-06	Plain Language Commitment for Title Insurance
		[Reserved]
9		Notice of Availability of Owner's Title Insurance
10	9-24-94	Facultative Reinsurance Agreement
11		Multipurpose Endorsement
12	4-06, 10-16-08	Condominium Endorsement - All Assessments

13	5-06, 10-16-08	Planned Unit Development Endorsement All Assessments
13.1	5.1-06 10-16-08	Planned Unit Development Endorsement Unpaid Assessments
14	6-06, 6-17-06	Variable Rate, Mortgage Endorsement
15	6.2-06, 6-17-06	Variable Rate Mortgage Negative Amortization Endorsement
16	7-06, 6-17-06	Manufactured Housing Unit Endorsement
16.1	7.1-06, 6-17-06	Manufactured Housing - Conversion (Loan) Endorsement
16.2	7.2-06, 6-17-06	Manufactured Housing - Conversion (Owner's) Endorsement
17		Revolving Credit Endorsement
18	A, 6-1-87	Construction Loan Policy Endorsement A
		[Reserved]
20	13-06, 4-02-12	Leasehold Owner's Endorsement
21	13.1-06, 4-02-12	Leasehold Loan Endorsement
22		Pending Disbursement Down Date Endorsement
23		Pending Improvements Endorsement
24	10-06, 6-17-06	Assignment Endorsement
24.1	10.1-06, 10-16-08	Assignment and Down Date Endorsement
25		Additional Advance Endorsement
26		Partial Coverage Endorsement
		[Reserved]
28	15-06, 6-17-06	Non-Imputation - Full Equity Transfer Endorsement
28.1	15.1-06, 6-17-06	Non-Imputation - Additional Interest Endorsement
28.2	15.2-06, 6-17-06	Non-Imputation - Partial Equity Transfer Endorsement
29	8.1-06, 6-17-06	Environmental Protection Lien Endorsement
30	4.1-06, 6-17-06	Condominium Endorsement Unpaid Assessments
31		Owner's Leasehold Conversion Endorsement
		[Reserved]
33		Change of Name Endorsement
34	12-3-12	U.S. Policy
35		Notice to Purchaser Insured
41	12-3-12	Limited Pre-Foreclosure Title Insurance Policy
42	12-3-12	Limited Pre-Foreclosure Title Insurance Policy Down Date Endorsement
43		Insuring Around Endorsement
44		Revolving Credit - Increased Credit Limit Endorsement
45	8-1-12	Residential Limited Coverage Junior Loan Policy
46	8-1-12	Down Date Endorsement to Residential Limited Coverage Junior Loan Policy JR1
47	8-1-12	Endorsement to Residential Limited Coverage Junior Loan Policy JR 2 (Future Advance)
48	2-06, 6-17-06	Truth-in-Lending Endorsement
49		Notice of Availability of Future Increase in Coverage and Potential Premium Discounts for Future Policies
50	9-06, 6-17-06	Restrictions, Encroachments, Minerals - Loan Policy Endorsement
50.1	9.3-06, 6-17-06	Restrictions, Encroachments, Minerals - Loan Policy Endorsement
51		Land Abuts Street Endorsement
52	22-06	Location Endorsement
		[Reserved]
54	19.1-06, 6-17-06	Contiguity Single Parcel Endorsement
55		Named Insured Endorsement

56	9.1-06, 6-17-06	Restrictions, Encroachments, Minerals - Owner's Policy (Unimproved Land) Endorsement
56.1	9.4-06, 6-17-06	Restrictions, Encroachments, Minerals Endorsement (Owner's Policy - Unimproved Land)
57	9.2-06, 6-17-06	Restrictions, Encroachments, Minerals - Owner's Policy (Improved Land) Endorsement
57.1	9.5-06, 6-17-06	Restrictions, Encroachments, Minerals (Owner's Policy - Improved Land) Endorsement
58	20-06, 6-17-06	First Loss - Multiple Parcel Transactions Endorsement
		[Reserved]
60	12-06, 6-17-06	Aggregation Endorsement
60.1	12.1-06	Aggregation Endorsement
61		Foundation Endorsement
62	37-06, 11-3-12	Assignment of Rents or Leases Endorsement
63	12-3-12	Short Form Residential Loan Policy
64	3-06, 6-17-06	Zoning - Unimproved Land Endorsement
64.1		Zoning- Unimproved Land - No Applicable Zoning Ordinances Endorsement
65	3.1-06, 10-22-09	Zoning - Completed Structure Endorsement
65.1	3.2-06, 4-2-12	Zoning - Land Under Development Endorsement
65.2		Zoning - Completed Structure - No Applicable Zoning Ordinances Endorsement
66	19-06, 6-17-06	Contiguity - Multiple Parcels Endorsement
67	17-06, 6-17-06	Access and Entry Endorsement
68	17.1-06, 6-17-06	Indirect Access and Entry Endorsement
69	17.2-06, 6-17-06	Utility Access Endorsement
70	8.2-06, 6-17-06	Commercial Environmental Protection Lien Endorsement
71	14.3-06, 10-22-09	Reverse Mortgage Endorsement
72	18-06, 6-17-06	Single Tax Parcel Endorsement
73	18.1-06, 6-17-06	Multiple Tax Parcel Endorsement
74	24-06, 10-16-08	Doing Business Endorsement
75	26-06, 6-17-06	Subdivision Endorsement
76	28-06, 10-16-08	Easement - Damage or Enforced Removal Endorsement
77	23-06, 6-17-06	Co-Insurance - Single Policy Endorsement
78	25-06, 6-17-06	Same as Survey Endorsement
79	25.1-06, 6-17-06	Same as Portion of Survey Endorsement
80	11-06, 6-17-06	Mortgage Modification Endorsement
80.1	11.1-06, 10-22-09	Mortgage Modification With Subordination Endorsement
80.2	11.2-06, 12-2-13	Mortgage Modification With Additional Amount of Title Insurance Endorsement
81	4-2-14*	Closing Protection Letter - Single Transaction
81.1	4-2-14*	Closing Protection Letter - Multiple Transactions
		[Reserved]
82		Inter-Underwriter Indemnification Agreement
83	32.0-06, 2-3-11	Construction Loan - Endorsement
83.1	32.1-06, 4-2-13	Construction Loan - Direct Payment Endorsement
83.2	32.2-06, 4-2-13	Construction Loan - Insured's Direct Payment Endorsement
84	33-06, 2-3-11	Disbursement Endorsement
85		Identified Risk Coverage Endorsement
86	39-06, 4-2-13	Policy Authentication Endorsement
88	36-06, 4-2-12	Energy Project Leasehold/Easement - Owner's Endorsement
88.1	36.1-06, 4-2-12	Energy Project Leasehold/Easement - Loan Endorsement

88.2	36.2-06, 4-2-12	Energy Project - Leasehold - Owner's Endorsement
88.3	36.3-06, 4-2-12	Energy Project - Leasehold - Loan Endorsement
88.4	36.4-06, 4-2-12	Energy Project Covenants, Conditions & Restrictions - Land Under Development - Owner's Endorsement
88.5	36.5-06, 4-2-12	Energy Project Covenants, Conditions & Restrictions - Land Under Development - Loan Endorsement
88.6	36.6-06, 4-2-12	Energy Project - Encroachments Endorsement
88.7	36.7-06, 4-2-12	Energy Project - Fee Estate - Owner's Policy Endorsement
88.8	36.8-064-2-12	Energy Project - Fee Estate - Loan Policy Endorsement
89	16-06, 6-17-06	Mezzanine Financing Endorsement
90	12-1-14	Residential Limited Coverage Mortgage Modification Policy
91		Contract Purchaser Conversion Endorsement

* omitting Paragraph 14

[6-16-86...4-1-96; 6-1-97, 6-1-98; 13.14.18.13 NMAC - Rn, 13 NMAC 14.2.9 & A, 5-15-00; 13.14.18.13 NMAC - A, 8-1-01; A, 3-1-02; A, 7-1-03; A, 7-1-04; A, 7-1-05; A, 7-1-06; A, 8-1-08; A, 8-17-09; A, 09-15-10; A, 10-1-12; A, 7-31-14; A, _-_-_]

13.14.18 NMAC, Title Insurance forms (filed 7-31-14) is repealed and replaced by 13.14.18 NMAC, Title Insurance Forms, effective 03-01-16.

TITLE 13 INSURANCE
CHAPTER 14 TITLE INSURANCE
PART 19 TITLE INSURER RATE FILINGS

13.14.19.1 ISSUING AGENCY: [~~Public Regulation Commission, Insurance Division~~] Office of Superintendent of Insurance, Title Insurance Bureau.
[13.14.19.1 NMAC - N, 12-30-10; A, _-_-_]

13.14.19.2 SCOPE: This rule applies to all title insurers and title insurance agents conducting title insurance business in New Mexico.
[13.14.19.2 NMAC - N, 12-30-10]

13.14.19.3 STATUTORY AUTHORITY: NMSA 1978, Sections 59A-30-4 and 59A-30-6.
[13.14.19.3 NMAC - N, 12-30-10; A, _-_-_]

13.14.19.4 DURATION: Permanent.
[13.14.19.4 NMAC - N, 12-30-10]

13.14.19.5 EFFECTIVE DATE: March 1, 2016. [~~December 30, 2010, unless a later date is cited at the end of a section.~~]
[13.14.19.5 NMAC - N, 12-30-10; A, _-_-_]

13.14.19.6 OBJECTIVE: The purpose of this rule is to establish standards and procedures by which a title insurance rate lower than the promulgated rate shall be filed and may be approved.
[13.14.19.6 NMAC - N, 12-30-10]

13.14.19.7 DEFINITIONS: [RESERVED]
[See 13.14.7 NMAC for definitions.]

13.14.19.8 STANDARDS FOR RATES THAT ARE LOWER THAN THE PROMULGATED RATES: Rates that are lower than the promulgated rates must meet the standards set forth in NMSA 1978, Section 59A-30-6(C) [~~NMSA 1978~~] and the superintendent shall also consider the interests and protection of consumers and independent title insurance agents and the potential impact on competition within the title insurance industry.
[13.14.19.8 NMAC - N, 12-30-10; A, _-_-_]

13.14.19.9 FILING OF RATES THAT ARE LOWER THAN THE PROMULGATED RATE: A title insurer that proposes to charge rates that are lower than the promulgated rates shall file with the superintendent its proposed rates, supplementary rate information and supporting information at least ninety days before the proposed effective date. Such filing shall specify the county or counties in which these proposed rates would apply and shall be submitted electronically via the national association of insurance commissioners' system for electronic rate and form filing ("SERFF").
[13.14.19.9 NMAC - N, 12-30-10]

13.14.19.10 NOTICE OF RATE FILING: Within ten days of receipt of a filing submitted under 13.14.19.9 NMAC, the superintendent shall provide notice of the filed title insurance rates to the attorney general and to all title insurance agents and title insurers doing business in the county or counties in which the filed rates would apply. The superintendent shall promptly provide a complete copy of the filing, including supplementary rate information and supporting information, to any party that, upon receiving the superintendent's notification of the filing, requests such information.
[13.14.19.10 NMAC - N, 12-30-10]

13.14.19.11 OPPORTUNITY TO OPINE ON RATE FILING: Within thirty days after the superintendent's issuance of notification of the filed rates under 13.14.19.10 NMAC, a party receiving such notification may submit to the superintendent in writing its comments on the propriety of the proposed rates or may request a hearing pursuant to NMSA 1978, Section 59A-30-8 [~~NMSA 1978~~] to argue the propriety of the proposed rates.

[13.14.19.11 NMAC - N, 12-30-10; A, _-_-_]

13.14.19.12 APPROVAL OF FILED RATES: In determining whether to approve a filing submitted under 13.14.19.9 NMAC, the superintendent shall consider the provisions of 13.14.19.8 NMAC as well as any comments or testimony provided under 13.14.19.11 NMAC The superintendent shall issue a final order approving or disapproving a filing submitted under 13.14.19.9 NMAC within 60 days after receipt of the filing or, if a hearing regarding the filing is held pursuant to 13.14.19.11 NMAC, within 60 days after the conclusion of such a hearing.
[13.14.19.12 NMAC - N, 12-30-10]

13.14.19.13 MAINTENANCE OF DOUBLE-RATING RECORD SYSTEM: A title insurer that uses filed and approved rates that are lower than the promulgated rates shall maintain a record of both the charged rate and the promulgated rate for each policy and endorsement issued.
[13.14.19.13 NMAC - N, 12-30-10]

13.14.19.14 EFFECT OF RATE PROMULGATIONS UPON FILED AND APPROVED RATES: If a rate promulgation by the superintendent produces rates that are lower than those contained in a previously approved rate filing, those rates in the previously approved rate filing that are in excess of the promulgated rates shall expire upon the effective date of the rate promulgation.
[13.14.19.14 NMAC - N, 12-30-10]

13.14.19.15 CANCELLATION OF FILED AND APPROVED RATES: A title insurer using filed and approved rates that wishes to revert to the use of promulgated rates shall file with the superintendent the effective date of cancellation of its filed and approved rates. Such filing shall be submitted at least 30 days prior to the insurer's reversion to promulgated rates, shall specify the county or counties in which the reversion will apply and shall be submitted electronically via the national association of insurance commissioners' system for electronic rate and form filing ("SERFF"). Such filing shall not be subject to the prior approval of the superintendent. The title insurer shall provide notice of the reversion, at least 30 days prior to the effective date of the reversion, to its appointed agents in the county or counties where the reversion will apply.
[13.14.19.15 NMAC - N, 12-30-10]

13.14.19.16 REVIEW OF THE SUPERINTENDENT'S ACTIONS: Any person aggrieved by the superintendent's refusal to hold a hearing requested under 13.14.19.11 NMAC or by a final order issued by the superintendent under 13.14.19.12 NMAC shall have the rights to review and appeal provided in NMSA 1978, Section 59A-30-9 [~~NMSA 1978~~].
[13.14.19.16 NMAC - N, 12-30-10;A, _-_-_]

HISTORY OF 13.14.19 NMAC: [~~RESERVED~~]
13.14.19.16 NMAC, Title Insurer Rate Filings, A, _-_-_.

NOTES

NOTES

When Did Practicing Law Become a 24/7 Profession?

Sandra Morgan Little, Esq.
Little, Gilman-Tepper & Batley P.A.

"In all professional functions, a lawyer should be competent, prompt & diligent. A lawyer should maintain communication with a client concerning representation. A lawyer should keep in confidence the information relating to representation except so far as disclosure is required or permitted by the rules of Professional Conduct or other law."

- NM Rules of Professional Conduct: Preamble – A Lawyer's Responsibilities

"In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living."

- NM Rules of Professional Conduct: Preamble – A Lawyer's Responsibilities

"The Rules of Professional Conduct often prescribe terms for resolving such conflicts within the framework of these rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment."

- NM Rules of Professional Conduct: Preamble – A Lawyer's Responsibilities

"The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purpose of legal representation and of the law itself."

- NM Rules of Professional Conduct: Preamble – A Lawyer's Responsibilities

"'Writing' or 'written' denotes a tangible or electronic record of communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or video recordings, and electronic communications."

- Rule 16-100: Terminology

"A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation necessary for the representation."

- Rule 116-101: Competence

"To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology…"

- Committee commentary adopted by Supreme Court Order No. 08-8300-029 effective November 3, 2008, as amended by Supreme Court Order No. 13-8300.038 effective December 31, 2013

"A lawyer shall act with reasonable diligence and promptness in representing a client."

- 16-103: Diligence

"A lawyer's workload must be controlled so that each matter can be handled competently."

- 16-103: Committee Commentary

"A lawyer shall: … keep the client reasonably informed about the status of the matter."

- 16-104(A)(2): Communication – Status of Matters

"A lawyer shall not reveal information relating to the representation of a client unless the client give informed consent…"

- 16-106(A): Confidentiality of Information – Disclosure of Information Generally

"A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosures of, or unauthorized access to, information relating to the representation of a client."

- 16-106(C) Confidentiality of Information – Inadvertent or Unauthorized Disclosure of Information

"In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court."

- 16-402: Communications with Person Represented by Counsel

Manage client's expectations of you through the Fee Agreement or other writings that the client signs. Be sure to include:

- How often you will return phone calls.
- How often you will read and/or return e-mails.
- When you will check e-mails that come in during non-business hours (e.g. weekends, over-night).
- How often you will listen to voicemail.

- Whether or not you will accept text messages.
- How you will communicate with clients.
- If the client is required to provide an e-mail address where you can reach them.
- How often client should check their e-mail.
- If the client is required to provide a telephone number where you can reach them.
- Whether or not you will provide the client your cell phone number.

Be cautious when sending and receiving documents.

Selected Rules of Professional Conduct/ Rules Governing Discipline

Preamble — A Lawyer's Responsibilities

A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these rules apply directly to lawyers who are or have served as third-party neutrals. *See, e.g.*, Rules 16-112 and 16-204 NMRA of the Rules of Professional Conduct. In addition, there are rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. *See* Rule 16-804 NMRA of the Rules of Professional Conduct.

In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.

A lawyer's responsibilities as a representative of clients, an officer of the legal system and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer

can be a zealous advocate on behalf of a client and at the same time assume that justice is being done. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the rules. These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.

The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest that it serves.

Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.

16-100. Terminology.

For purposes of these rules:

A. "Belief" or "Believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

B. "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See Paragraph E of Terminology for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

C. "Firm" or "Law firm" denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization.

D. "Fraud" or "Fraudulent" denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.

E. "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

F. "Knowingly," "Known" or "Knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

G. "Partner" denotes a member of a partnership, a shareholder in a law firm organized as a professional corporation or a member of an association authorized to practice law.

H. "Reasonable" or "Reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

I. "Reasonable belief" or "Reasonably believes" when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

J. "Reasonably should know" when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

K. "Screened" denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these rules or other law.

L. "Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.

M. "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

N. "Writing" or "Written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or video recording and electronic communications. A signed writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

[Adopted by Supreme Court Order No. 08-8300-029, effective November 3, 2008; as amended by Supreme Court Order No. 13-8300-038, effective December 31, 2013.]

Committee commentary. —

[1] The Terminology section was previously placed with the Preamble and Scope but has been moved here as Rule 16-100 NMRA to make it more accessible and convenient for the user.

Confirmed in Writing

[2] If it is not feasible to obtain or transmit a written confirmation at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. If a lawyer has obtained a client's informed consent, the lawyer may act in reliance on that consent so long as it is confirmed in writing within a reasonable time thereafter.

Firm

[3] Whether two or more lawyers constitute a firm can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way that suggests that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the rule that is involved. A group of lawyers could be regarded as a firm for purposes of the rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the rule that information acquired by one lawyer is attributed to another.

[4] With respect to the law department of an organization, including the government, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. There can be uncertainty, however, as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.

[5] Similar questions can also arise with respect to lawyers in legal aid and legal services organizations. Depending upon the structure of the organization, the entire organization or different components of it may constitute a firm or firms for purposes of these rules.

Fraud

[6] When used in these rules, the terms "fraud" or "fraudulent" refer to conduct that is characterized as such under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive. This does not include merely negligent misrepresentation or negligent failure to apprise another of relevant information. For purposes of these rules, it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform.

Informed Consent

[7] Many of the Rules of Professional Conduct require the lawyer to obtain the informed consent of a client or other person (e.g., a former client or, under certain circumstances, a prospective client) before accepting or continuing representation or pursuing a course of conduct. *See, e.g.*, Paragraph C of Rule 16-102 NMRA, Paragraph A of Rule 16-106 NMRA and Paragraph B of Rule 16-107 NMRA of the Rules of Professional Conduct. The communication necessary to obtain such consent will vary according to the rule involved and the circumstances giving rise to the need to obtain informed consent. The lawyer must make reasonable efforts to ensure that the client or other person possesses information reasonably adequate to make an informed decision. Ordinarily, this will require communication that includes a disclosure of the facts and circumstances giving rise to the situation, any explanation reasonably necessary to inform the client or other person of the material advantages and disadvantages of the proposed course of conduct and a discussion of the client's or other person's options and alternatives. In some circumstances it may be appropriate for a lawyer to advise a client or other person to seek the advice of other counsel. A lawyer need not inform a client or other person of facts or implications already known to the client or other person; nevertheless, a lawyer who does not personally inform the client or other person assumes the risk that the client or other person is inadequately informed and the consent is invalid. In determining whether the information and explanation provided are reasonably adequate, relevant factors include whether the client or other person is experienced in legal matters generally and in making decisions of the type involved, and

whether the client or other person is independently represented by other counsel in giving the consent. Normally, such persons need less information and explanation than others, and generally a client or other person who is independently represented by other counsel in giving the consent should be assumed to have given informed consent.

[8] Obtaining informed consent will usually require an affirmative response by the client or other person. In general, a lawyer may not assume consent from a client's or other person's silence. Consent may be inferred, however, from the conduct of a client or other person who has reasonably adequate information about the matter. A number of rules require that a person's consent be confirmed in writing. *See* Paragraph B of Rule 16-107 NMRA and Paragraph A of Rule 16-109 NMRA of the Rules of Professional Conduct. Other rules require that a client's consent be obtained in a writing signed by the client. *See, e.g.*, Paragraphs A and G of Rule 16-108 NMRA of the Rules of Professional Conduct.

Screened

[9] This definition applies to situations where screening of a personally disqualified lawyer is permitted to remove imputation of a conflict of interest under Rules 16-110, 16-111, 16-112 or 16-118 NMRA of the Rules of Professional Conduct.

[10] The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified lawyer remains protected. The personally disqualified lawyer should acknowledge the obligation not to communicate with any of the other lawyers in the firm with respect to the matter. Similarly, other lawyers in the firm who are working on the matter should be informed that the screening is in place and that they may not communicate with the personally disqualified lawyer with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce and remind all affected lawyers of the presence of the screening, it may be appropriate for the firm to undertake such procedures as a written undertaking by the screened lawyer to avoid any communication with other firm personnel and any contact with any firm files or other information, including information in electronic form, relating to the matter, written notice and instructions to all other firm personnel forbidding any communication with the screened lawyer relating to the matter, denial of access by the screened lawyer to firm files or other information, including information in electronic form, relating to the matter and periodic reminders of the screen to the screened lawyer and all other firm personnel.

[11] In order to be effective, screening measures must be implemented as soon as practical after a lawyer or law firm knows or reasonably should know that there is a need for screening.

[Adopted by Supreme Court Order No. 08-8300-029, effective November 3, 2008; as amended by Supreme Court Order No. 13-8300-038, effective December 31, 2013.]

16-101. Competence.

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

Committee commentary. —
Legal Knowledge and Skill

[1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter, and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

[2] A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

[3] In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill-considered action under emergency conditions can jeopardize the client's interest.

[4] A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. *See also* Rule 16-602 NMRA of the Rules of Professional Conduct.

Thoroughness and Preparation

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. *See* Paragraph C of Rule 16-102 NMRA of the Rules of Professional Conduct.

Maintaining Competence

[6] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject. If a system of peer review has been established, the lawyer should consider making use of it in appropriate circumstances.

[Adopted by Supreme Court Order No. 08-8300-029, effective November 3, 2008: as amended by Supreme Court Order No. 13-8300-038, effective December 31, 2013.]

16-103. Diligence.

A lawyer shall act with reasonable diligence and promptness in representing a client.

Compiler's notes. — The old ABA Comment has been replaced by the new 2008 Committee Commentary.

Committee Commentary. —

[1] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued. *See* Rule 16-102 NMRA of the Rules of Professional Conduct. The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.

[2] A lawyer's workload must be controlled so that each matter can be handled competently.

[3] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. A lawyer's duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client.

[4] Unless the relationship is terminated as provided in Rule 16-116 NMRA of the Rules of Professional Conduct, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client and the lawyer and the client have not agreed that the lawyer will handle the matter on appeal, the lawyer must consult with the client about the possibility of appeal before relinquishing responsibility for the matter. *See* Subparagraph (2) of Paragraph A of Rule 16-104 NMRA of the Rules of Professional Conduct. Whether the lawyer is obligated to prosecute the appeal for the client depends on the scope of the representation the lawyer has agreed to provide to the client. *See* Rule 16-102 NMRA of the Rules of Professional Conduct.

[Adopted by Supreme Court Order No. 08-8300-29, effective November 3, 2008.]

16-104. Communication.

A. **Status of matters.** A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Paragraph E of Terminology of the Rules of Professional Conduct, is required by these rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

B. **Client's informed decision-making.** A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

C. **Disclosure of professional liability insurance.**

(1) If, at the time of the client's formal engagement of a lawyer, the lawyer does not have a professional liability insurance policy with limits of at least one-hundred thousand dollars ($100,000) per claim and three-hundred thousand dollars ($300,000) in the aggregate, the lawyer shall inform the client in writing using the form of notice prescribed by this rule. If during the course of representation, an insurance policy in effect at the time of the client's engagement of the lawyer lapses, or is terminated, the lawyer shall provide notice to the client using the form prescribed by this rule.

(2) The form of notice and acknowledgment required under this Paragraph shall be:

NOTICE TO CLIENT

Pursuant to Rule 16-104(C) NMRA of the New Mexico Rules of Professional Conduct, I am required to notify you that ["I" or "this Firm"] [do not][does not][no longer] maintain[s] professional liability malpractice insurance of at least one-hundred thousand dollars ($100,000) per occurrence and three-hundred thousand dollars ($300,000) in the aggregate.

_____

Attorney's signature

CLIENT ACKNOWLEDGMENT

I acknowledge receipt of the notice required by Rule 16-104(C) NMRA of the New Mexico Rules of Professional Conduct that [insert attorney or firm's name] does not maintain professional liability malpractice insurance of at least one-hundred thousand dollars ($100,000) per occurrence and three-hundred thousand dollars ($300,000) in the aggregate.

_____

Client's signature

(3) As used in this Paragraph, "lawyer" includes a lawyer provisionally admitted under Rule 24-106 NMRA and Rules 26-101 through 26-106 NMRA; however it does not include a lawyer who is a full-time judge, in-house corporate counsel for a single corporate entity, or a lawyer who practices exclusively as an employee of a governmental agency.

(4) A lawyer shall maintain a record of the disclosures made pursuant to this rule for six (6)

years after termination of the representation of the client by the lawyer.

(5) The minimum limits of insurance specified by this rule include any deductible or self-insured retention, which must be paid as a precondition to the payment of the coverage available under the professional liability insurance policy.

(6) A lawyer is in violation of this rule if the lawyer or the firm employing the lawyer maintain a professional liability policy with a deductible or self-insured retention that the lawyer knows or has reason to know cannot be paid by the lawyer or the lawyer's firm in the event of a loss.

[Amended by Supreme Court Order No. 08-8300-029, effective November 3, 2008; by Supreme Court Order No. 09-8300-029, effective November 2, 2009.]

Committee commentary. —

[1] Reasonable communication between the lawyer and the client is necessary for the client effectively to participate in the representation.

Communicating with Client

[2] If these rules require that a particular decision about the representation be made by the client, Subparagraph (1) of Paragraph A of this rule requires that the lawyer promptly consult with and secure the client's consent prior to taking action unless prior discussions with the client have resolved what action the client wants the lawyer to take. For example, a lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case must promptly inform the client of its substance unless the client has previously indicated that the proposal will be acceptable or unacceptable or has authorized the lawyer to accept or to reject the offer. *See* Paragraph A of Rule 16-102 NMRA of the Rules of Professional Conduct.

[3] Subparagraph (2) of Paragraph A requires the lawyer to reasonably consult with the client about the means to be used to accomplish the client's objectives. In some situations–depending on both the importance of the action under consideration and the feasibility of consulting with the client–this duty will require consultation prior to taking action. In other circumstances, such as during a trial when an immediate decision must be made, the exigency of the situation may require the lawyer to act without prior consultation. In such cases the lawyer must nonetheless act reasonably to inform the client of actions the lawyer has taken on the client's behalf. Additionally, Paragraph A(3) requires that the lawyer keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation.

[4] A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, Paragraph A(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected. A lawyer should promptly respond to or acknowledge client communications.

Explaining Matters

[5] The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. Adequacy of communication depends in part on the kind of advice or assistance that is involved. For example, when there is time to explain a proposal made in a negotiation, the lawyer should review all important provisions with the client before proceeding to an agreement. In litigation a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that are likely to result in significant expense or to injure or coerce others. On the other hand, a lawyer ordinarily will not be expected to describe trial or negotiation strategy in detail. The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation. In certain circumstances, such as when a lawyer asks a client to consent to a representation affected by a conflict of interest, the client must give informed consent, as defined in Paragraph E of Terminology of the Rules of Professional Conduct.

[6] Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for

example, where the client is a child or suffers from diminished capacity. *See* Rule 16-114 NMRA of the Rules of Professional Conduct. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. *See* Rule 16-113 NMRA of the Rules of Professional Conduct. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client.

Withholding Information

[7] In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience or the interests or convenience of another person. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. Paragraph C of Rule 16-304 NMRA of the Rules of Professional Conduct directs compliance with such rules or orders. Disclosure of Professional Liability Insurance

[8] Paragraph C of this rule requires a lawyer to disclose to the clients whether the lawyer has professional liability insurance satisfying the minimum limits of coverage set forth in the rule. Subparagraph (3) of Paragraph C defines "lawyer" to include lawyers provisionally admitted under Rule 24-106 NMRA and Rules 26-101 to 26-106 NMRA. Rule 24-106 NMRA applies to out-of-state lawyers who petition to be allowed to appear before the New Mexico courts. Rules 26-101 to 26-106 NMRA apply to foreign legal consultants. Subparagraph (4) of Paragraph C requires a lawyer to maintain a record of disclosures made under this rule for six (6) years after termination of the representation of the client by the lawyer. In this regard, the lawyer should note that trust account records must be kept for five (5) years but the statute of limitations for a breach of contract claim is six (6) years. Subparagraph (5) of Paragraph C provides that the minimum limits of insurance specified by the rule includes any deductible or self-insured retention. In this regard, the use of the term "deductible" includes a claims expense deductible. The professional liability insurance carrier must agree to pay, subject to exclusions set forth in the policy, all amounts that an insured becomes legally obligated to pay in excess of the deductible or self-insured retention shown on the declarations page of the policy.

[Adopted by Supreme Court Order 08-8300-026, effective November 3, 2008; amended by Supreme Court Order 09-8300-029, effective November 2, 2009; as amended by Supreme Court Order No. 13-8300-038, effective December 31, 2013.]

16-106. Confidentiality of information.

A. **Disclosure of information generally.** A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by Paragraph B of this rule.

B. **Disclosure of information; specific circumstances.** A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;

(3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

(4) to secure legal advice about the lawyer's compliance with these rules;

(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(6) to comply with other law or a court order; or

(7) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

C. **Inadvertent or unauthorized disclosure of information.** A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

[As amended by Supreme Court Order No. 08-8300-029, effective November 3, 2008; as amended by Supreme Court Order No. 13-8300-038, effective December 31, 2013.]

Committee commentary. —

[1] The New Mexico Supreme Court Code of Professional Conduct Committee considered the circumstances where an insurer, having retained a defense lawyer to represent an insured, imposes a requirement that the lawyer's bills be submitted to a third-party auditor for review, approval and payment. Billing statements may contain information that is covered by the work product doctrine and attorney-client privilege. The committee believes that a lawyer can legitimately disclose billing information but when the information involves work product or attorney-client privileged information, such information should not be disclosed to a third-party auditor unless informed consent is first obtained from the insured or unless the lawyer is otherwise ordered by a court to produce the billing information.

[2] As of November 7, 1999, this opinion is in accord with the ethics committee opinions of Alabama, Alaska, District of Columbia, Florida, Hawaii, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Mississippi, Missouri, New York, North Carolina, Oregon, Pennsylvania, South Carolina, Tennessee, Utah, Vermont, Virginia and Washington. Only Nebraska's Ethics Advisory Committee has taken a contrary view but nevertheless recommends that lawyers should prepare bills carefully to protect against undue disclosures.

[3] This rule governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer's representation of the client. *See* Rule 16-118 NMRA of the Rules of Professional Conduct for the lawyer's duties with respect to information provided to the lawyer by a prospective client, Subparagraph (2) of Paragraph C of Rule 16-109 NMRA of the Rules of Professional Conduct for the lawyer's duty not to reveal information relating to the lawyer's prior representation of a former client and Paragraph B of Rule 16-108

NMRA and Subparagraph (1) of Paragraph C of Rule 16-109 NMRA of the Rules of Professional Conduct for the lawyer's duties with respect to the use of such information to the disadvantage of clients and former clients.

[4] A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation. *See* Paragraph E of Terminology of the Rules of Professional Conduct for the definition of "informed consent." This contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

[5] The principle of client-lawyer confidentiality is given effect by related bodies of law: the attorney-client privilege, the work product doctrine and the rule of confidentiality established in professional ethics. The attorney-client privilege and work-product doctrine apply in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law. *See also* Scope of the Rules of Professional Conduct.

[6] Paragraph A prohibits a lawyer from revealing information relating to the representation of a client. This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person. A lawyer's use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved.

Authorized Disclosure

[7] Except to the extent that the client's instructions or special circumstances limit that authority, a lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation. In some situations, for example, a lawyer may be impliedly authorized to admit a fact that cannot properly be disputed or to make a disclosure that facilitates a satisfactory conclusion to a matter. Lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

Disclosure Adverse to Client

[8] Although the public interest is usually best served by a strict rule requiring lawyers to preserve the confidentiality of information relating to the representation of their clients, the confidentiality rule is subject to limited exceptions. Subparagraph (1) of Paragraph B recognizes the overriding value of life and physical integrity and permits disclosure reasonably necessary to prevent reasonably certain death or substantial bodily harm. Such harm is reasonably certain to occur if it will be suffered imminently or if there is a present and substantial threat that a person will suffer such harm at a later date if the lawyer fails to take action necessary to eliminate the threat. Thus, a lawyer who knows that a client has accidentally discharged toxic waste into a town's water supply may reveal this information to the authorities if there is a present and substantial risk that a person who drinks the water will contract a life-threatening or debilitating disease and the lawyer's disclosure is necessary to eliminate the threat or reduce the number of victims.

[9] Subparagraph (2) of Paragraph B is a limited exception to the rule of confidentiality that permits the lawyer to reveal information to the extent necessary to enable affected persons or appropriate authorities to prevent the client from committing a crime or fraud, as defined in Paragraph D of Terminology of the Rules of Professional Conduct, that is reasonably certain to result in substantial injury to the financial or property interests of another and in furtherance of which the client has used or is using the lawyer's services. Such a serious abuse of the client-lawyer relationship by the client forfeits the protection of this rule. The client can, of course, prevent such disclosure by refraining from the wrongful conduct. Although Subparagraph (2) of Paragraph B does not require the lawyer to reveal the client's misconduct, the lawyer may not counsel or assist the client in conduct the lawyer knows is criminal or fraudulent. *See* Paragraph B of Rule 16-102 NMRA of the Rules of Professional Conduct. *See also* Rule 16-116 NMRA of the Rules of Professional Conduct with respect to the lawyer's obligation or right to withdraw from the representation of the client in such circumstances, and Paragraph C of Rule 16-113 NMRA of the Rules of Professional Conduct, which permits the lawyer, where the client is an organization, to reveal information relating to the representation in limited circumstances.

[10] Subparagraph (3) of Paragraph B addresses the situation in which the lawyer does not learn of the client's crime or fraud until after it has been consummated. Although the client no longer has the option of preventing disclosure by refraining from the wrongful conduct, there will be situations in which the loss suffered by the affected person can be prevented, rectified or mitigated. In such situations, the lawyer may disclose information relating to the representation to the extent necessary to enable the affected persons to prevent or mitigate reasonably certain losses or to attempt to recoup their losses. Subparagraph (3) of Paragraph B does not apply when a person who has committed a crime or fraud thereafter employs a lawyer for representation concerning that offense.

[11] A lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer's personal responsibility to comply with these rules. In most situations, disclosing information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure is not impliedly authorized, Subparagraph (4) of Paragraph B permits such disclosure because of the importance of a lawyer's compliance with the Rules of Professional Conduct.

[12] Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. Such a charge can arise in a civil, criminal, disciplinary or other proceeding and can be based on a wrong allegedly committed by the lawyer against the client or on a wrong alleged by a third person, for example, a person claiming to have been defrauded by the lawyer and client acting together. The lawyer's right to respond arises when an assertion of such complicity has been made. Subparagraph (5) of Paragraph B does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend also applies, of course, where a proceeding has been commenced.

[13] A lawyer entitled to a fee is permitted by Subparagraph (5) of Paragraph B to prove the services rendered in an action to collect it. This aspect of the rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary.

[14] Other law may require that a lawyer disclose information about a client. Whether such a law supersedes Rule 16-106 NMRA of the Rules of Professional Conduct is a question of law beyond the scope of these rules. When disclosure of information relating to the representation appears to be required by other law, the lawyer must discuss the matter with the client to the extent required by Rule 16-104 NMRA of the Rules of Professional Conduct. If, however, the other law supersedes this rule and requires disclosure, Subparagraph (6) of Paragraph B permits the lawyer to make such disclosures as are necessary to comply with the law.

Detection of Conflicts of Interest

[15] Paragraph B(7) recognizes that lawyers in different firms may need to disclose limited information to each other to detect and resolve conflicts of interest, such as when a lawyer is considering an association with another firm, two or more firms are considering a merger, or a lawyer is considering the purchase of a law practice. *See* Rule 16-117 NMRA, Comment [7]. Under these circumstances, lawyers and law firms are permitted to disclose limited information, but only once substantive discussions regarding the new relationship have occurred. Any such disclosure should ordinarily include no more than the identity of the persons and entities involved in a matter, a brief summary of the general issues involved, and information about whether the matter has terminated. Even this limited information, however, should be disclosed only to the extent reasonably necessary to detect and resolve conflicts of interest that might arise from the possible new relationship. Moreover, the disclosure of any information is prohibited if it would compromise the attorney-client privilege or otherwise prejudice the client (e.g., the fact that a corporate client is seeking advice on a corporate takeover that has not been publicly announced; that a person has consulted a lawyer about the possibility of divorce before the person's intentions are known to the person's spouse; or that a person has consulted a lawyer about a criminal investigation that has not led to a public charge). Under those circumstances, Paragraph A prohibits disclosure unless the client or former client gives informed consent. A lawyer's fiduciary duty to the lawyer's firm may also govern a lawyer's conduct when exploring an association with another firm and is beyond the scope of these rules.

[16] Any information disclosed pursuant to Paragraph B(7) may be used or further disclosed only to the extent necessary to detect and resolve conflicts of interest. Paragraph B(7) does not restrict the use of information acquired by means independent of any disclosure pursuant to Paragraph B(7). Paragraph B(7) also does not affect the disclosure of information within a law firm when the disclosure is otherwise authorized, *see* Comment [7], such as when a lawyer in a firm discloses information to another lawyer in the same firm to detect and resolve conflicts of interest that could arise in connection with undertaking a new representation.

[17] A lawyer may be ordered to reveal information relating to the representation of a client by a court or by another tribunal or governmental entity claiming authority pursuant to other law to compel the disclosure. Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all non-frivolous claims that the order is not authorized by other law or that the information sought is protected against

disclosure by the attorney-client privilege or other applicable law. In the event of an adverse ruling, the lawyer must consult with the client about the possibility of appeal to the extent required by Rule 16-104 NMRA of the Rules of Professional Conduct. Unless review is sought, however, Subparagraph (6) of Paragraph B permits the lawyer to comply with the court's order.

[18] Paragraph B permits disclosure only to the extent the lawyer reasonably believes the disclosure is necessary to accomplish one of the purposes specified. Where practicable, the lawyer should first seek to persuade the client to take suitable action to obviate the need for disclosure. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to accomplish the purpose. If the disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

[19] Paragraph B permits but does not require the disclosure of information relating to a client's representation to accomplish the purposes specified in Subparagraphs (1) through (6) of Paragraph B. In exercising the discretion conferred by this rule, the lawyer may consider such factors as the nature of the lawyer's relationship with the client and with those who might be injured by the client, the lawyer's own involvement in the transaction and factors that may extenuate the conduct in question. A lawyer's decision not to disclose as permitted by Paragraph B does not violate this rule. Disclosure may be required, however, by other rules. Some rules require disclosure only if such disclosure would be permitted by Paragraph B. *See* Paragraph D of Rule 16-102 NMRA, Paragraph B of Rule 16-401 NMRA, Rule 16-801 NMRA and Rule 16-803 NMRA of the Rules of Professional Conduct, Rule 16-303 NMRA of the Rules of Professional Conduct, on the other hand, requires disclosure in some circumstances regardless of whether such disclosure is permitted by this rule. *See* Paragraph C of Rule 16-303 NMRA of the Rules of Professional Conduct.

Acting Competently to Preserve Confidentiality

[20] Paragraph C requires a lawyer to act competently to safeguard information relating to the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. *See* Rules 16-101, 16-501 and 16-503 NMRA of the Rules of Professional Conduct. The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of Paragraph C if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use). A client may require the lawyer to implement special security measures not required by this rule or may give informed consent to forgo security measures that would otherwise be required by this rule. Whether a lawyer may be required to take additional steps to safeguard a client's information in order to comply with other law, such as state and federal laws that govern data privacy or that impose notification requirements upon the loss of, or unauthorized access to, electronic information, is beyond the scope of these rules.

[21] When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this rule. Whether a lawyer may be required to take additional steps in order to comply with other law, such as state and federal laws that govern data privacy, is beyond the scope of these rules.

Former Client

[22] The duty of confidentiality continues after the client-lawyer relationship has terminated. *See* Subparagraph (2) of Paragraph C of Rule 16-109 NMRA of the Rules of Professional Conduct. *See* Subparagraph (1) of Paragraph C of Rule 16-109 NMRA of the Rules of Professional Conduct for the prohibition against using such information to the disadvantage of the former client.

[Adopted by Supreme Court Order No. 08-8300-029, effective November 3, 2008; as amended by Supreme Court Order No. 13-8300-038, effective December 31, 2013.]

16-402. Communications with person represented by counsel.

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order. Except for persons having a managerial responsibility on behalf of the organization, an attorney is not prohibited from communicating directly with employees of a corporation, partnership or other entity about the subject matter of the representation even though the corporation, partnership or entity itself is represented by counsel.

[As amended by Supreme Court Order No. 08-8300-29, effective November 3, 2008.]

Compiler's notes. — The old ABA Comment has been replaced by the new 2008 Committee Commentary.

Committee Commentary. —

[1] This rule contributes to the proper functioning of the legal system by protecting a person who has chosen to be represented by a lawyer in a matter against possible overreaching by other lawyers who are participating in the matter, interference by those lawyers with the client-lawyer relationship and the un-counseled disclosure of information relating to the representation.

[2] This rule applies to communications with any person who is represented by counsel concerning the matter to which the communication relates.

[3] The rule applies even though the represented person initiates or consents to the communication. A lawyer must immediately terminate communication with a person if, after commencing communication, the lawyer learns that the person is one with whom communication is not permitted by this rule.

[4] This rule does not prohibit communication with a represented person, or an employee or agent of such a person, concerning matters outside the representation. For example, the existence of a controversy between a government agency and a private party, or between two organizations, does not prohibit a lawyer for either from communicating with non-lawyer representatives of the other regarding a separate matter. Nor does this rule preclude communication with a represented person who is seeking advice from a lawyer who is not otherwise representing a client in the matter. A lawyer may not make a communication prohibited by this rule through the acts of another. *See* Paragraph A of Rule 16-804 NMRA of the Rules of Professional Conduct. Parties to a matter may communicate directly with each other, and a lawyer is not prohibited from advising a client concerning a communication that the client is legally entitled to make. Also, a lawyer having independent justification or legal authorization for communicating with a represented person is permitted to do so.

[5] Communications authorized by law may include communications by a lawyer on behalf of a client who is exercising a constitutional or other legal right to communicate with the government. Communications authorized by law may also include investigative activities of lawyers representing governmental entities, directly or through investigative agents, prior to the commencement of criminal or civil enforcement proceedings. When communicating with the accused in a criminal matter, a government lawyer must comply with this rule in addition to honoring the constitutional rights of the accused. The fact that a communication does not violate a state or federal constitutional right is insufficient to establish that the communication is permissible under this rule.

[6] A lawyer who is uncertain whether a communication with a represented person is permissible may seek a court order. A lawyer may also seek a court order in exceptional circumstances to authorize a communication that would otherwise be prohibited by this rule, for example, where communication with a person represented by counsel is necessary to avoid reasonably certain injury.

[7] In the case of a represented organization, this rule prohibits communications with a constituent of the organization who supervises, directs or regularly consults with the organization's lawyer concerning the matter or has authority to obligate the organization with respect to the matter or whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability. Consent of the organization's lawyer is not required for communication with a former constituent. If a constituent of the organization is represented in the matter by his or her own counsel, the consent by that counsel to a communication will be sufficient for purposes of this rule. *Compare* Paragraph F of Rule 16-304 NMRA of the

Rules of Professional Conduct. In communicating with a current or former constituent of an organization, a lawyer must not use methods of obtaining evidence that violate the legal rights of the organization. *See* Rule 16-404 NMRA of the Rules of Professional Conduct.

[8] The prohibition on communications with a represented person only applies in circumstances where the lawyer knows that the person is in fact represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation, but such actual knowledge may be inferred from the circumstances. *See* Paragraph F of Terminology of the Rules of Professional Conduct. Thus, the lawyer cannot evade the requirement of obtaining the consent of counsel by closing eyes to the obvious.

[9] In the event the person with whom the lawyer communicates is not known to be represented by counsel in the matter, the lawyer's communications are subject to Rule 16-403 NMRA of the Rules of Professional Conduct.

[Adopted by Supreme Court Order No. 08-8300-29, effective November 3, 2008.]

AUTHORIZATION TO RECEIVE EBILLS, DOCUMENTS AND OTHER CORRESPONDENCE VIA EMAIL AND ACKNOWLEDGMENT REGARDING TEXT MESSAGES WITH THE FIRM, ATTORNEYS OR STAFF

I, *, authorize Little, Gilman-Tepper & Batley, P.A.("The Firm") to send my monthly billing statements to me via email. I further authorize the Firm to send documents and other correspondence to me via email. I acknowledge that it is my responsibility to maintain a current email address with the Firm and to password protect my account to maintain the confidentiality of everything I receive from the Firm. **I further acknowledge it is my responsibility not to forward email I send or receive from the Firm to any other person outside the Firm and to only reply to the Firm when responding to an email received from the Firm.**

I authorize the Firm to send ebills, documents and other correspondence to the following email address.

I agree to check my email account at least once every twenty-four (24) hours. I further agree to promptly contact the Firm if I do not receive a billing statement by the end of each month to avoid incurring interest charges on any unpaid account balance.

Should the Firm need to contact me via U.S. mail or by telephone, I can be reached at the following address and phone number:

Address: _____

_____

Phone No. _____

Should my email address, mailing address or telephone number change, I will immediately notify the Firm of my new contact information. I understand that the Firm recommends that I use a separate email account dedicated to correspondence from the Firm only and I will not hold the Firm responsible should I elect to use the email account I have provided above for other purposes or fail to password protect my account.

I acknowledge that text messaging with the Firm, Attorneys or Staff is not an acceptable method of communication and, in the event of text messaging, no action or response will occur by the Firm, Attorneys or Staff.

DATED this _____ day of _____, 20____.

_____

November 13, 2015

Name
Address

Re: Retention and Communication with the Firm

Dear *:

Thank you for retaining our firm to represent you in your domestic relations matter. This letter is to introduce myself as the primary paralegal assisting *atty* on your case and to acquaint you with some of the Firm's procedures regarding communications during the course of your case.

Your calls to *atty* may be taken or returned by me or one of our staff if she is not immediately available. Our Firm practices a team approach toward the management of your case. As a result, our staff is familiar with your case and you may be assured that your messages will be given to *atty* and any questions she must answer will be communicated back to you in a timely manner.

Our office will be maintaining a file on your behalf and will be sending you copies of correspondence, documents and pleadings pertaining to your case. Copies will be sent via mail to (email or physical address), the address you provided the Firm. The email may include a link to access documents being sent to you securely by our Firm. The email will include instructions to click on the link and enter your email address and name to download and view the documents. The documents may be downloaded up to 2 times but the link will expire in 30 days. Therefore, please download and view documents timely.

We may request you to send documents, such as bank statements and tax returns, which will contain account numbers, social security numbers or other sensitive information. As a safeguard, please blacken all but the last 4 numbers of any personal account number or social security number printed on the documents you send us. Otherwise, we will need to redact these documents for you at our regular billing rate.

Email correspondence will be provided to you at the discretion of the Firm. It is your responsibility to open and read all email and mail and to download all documents that you receive from the Firm, as some correspondence may contain court dates and/or requests for further documents needed to proceed with your case. Please be sure to

keep all copies you receive for your personal file so that you are not billed for additional copies.

Please contact me if you want to send documents securely to our Firm via email. I will then send you an email including a link and instructions for your use to upload documents securely.

You will be receiving a bill for our services near the end of each month. If you have any questions regarding your bill please contact Andree Peek, our Office Manager and Financial Specialist. Payments may be made by check, money order, debit/credit card or cash. For more information, please refer to the Billing Rights document which you and your attorney signed during your initial retention of the Firm.

Our website, www.lgtfamilylaw.com, provides another important tool for your use. The library section on our website provides summaries of books that could be helpful to you through this time. Many of these books are available in our office for you to borrow, so please let us know if you are interested. Additionally, you may use the "pay bill" tab on our website to make payments on your account.

We know this is a difficult time in your life and we appreciate that you put your trust in Little, Gilman-Tepper & Batley, P.A. to make this process as streamlined as possible. Please feel free to contact us with any questions you have regarding your case or our procedures at the Firm.

Very Truly,

Paralegal

PROFESSIONALISM - LAWYERS AS PUBLIC CITIZENS

ROBERT M. ST. JOHN
December 3, 2015

> A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.
>
> . . . . A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel.

Rules of Professional Conduct, Preamble - A Lawyer's Responsibilities

> The legal profession has a responsibility to provide legal services to those unable to pay.

Rule 16-601. Voluntary pro bono service

Recognizing that not everyone in need of legal assistance can afford to engage a lawyer, the organized Bar has become increasingly concerned with the need to provide assistance to those not only at a poverty level, but also those members of our community with income insufficient to afford the legal assistance that they need. In the area of criminal law, the need has been provided - though not always in the best way - by judicial requirements that criminal defendants be provided representation. On the civil side, one of the earlier approaches was the creation of legal aid offices staffed by salaried attorneys who provided advice and services to persons falling within established income guidelines. This was supplemented by volunteer programs: a State Bar Lawyer Referral Program and

in the Albuquerque Bar a referral program that provided for limited consultation without charge, but was also a means to provide paying clients to attorneys participating in the program.

It was apparent from the outset that legal aid offices with limited staffs and limited funding together with some pro bono assistance from lawyers in the private bar fell far short in providing the assistance needed. In order better to address the need to provide legal services to those not adequately served, a number of task forces and committees were formed both to consider new approaches to address the needs and to seek additional funding for legal services. At the State level, Justice Pamela Minzner was a leading force in pressing and encouraging the Bar to address the problem. At a national level, my late partner John D. Robb became an activist, testifying before Congress to urge funding and support for legal services organizations. While there has been much improvement in the past twenty years or so in expanding the scope of legal services available to all, there continues to be a serious shortage of volunteer lawyers to assist in providing services and in the funding for the legal services organizations that have been established.

Recognizing that New Mexico is a large state geographically with few large cities and many remote communities, legal service programs are now using telephone and computer technology that can at least provide advice and consultation. The State Bar through the Legal Services and Programs Committee schedules Law-La-Palooza weekends in different parts of the state to allow consultation in person where possible and by telephone conference for those with legal questions and needs. The Young Lawyers Division conducts similar projects. And the State Bar Volunteer Attorney Program works to expand and support an active statewide network of volunteer lawyers, paralegals and

law students.

We are all aware that New Mexico is not a wealthy state, usually falling at or near the bottom in the listings of advantages or lack of advantages of our communities. Data on poverty levels provide a picture of the problem and the serious need to make legal services available. A 1998 Legal Services Corporation State Plan prepared by the State Bar Legal Services and Programs Committee cited 1990 census data that the number of low income households in the state at 125% of poverty was about 132,000; which, using an American Bar Association estimate of needs, placed the needs in New Mexico at 145,000. These needs were primarily in the areas of family and domestic relations, housing and real property and finances and consumer law.

Looking at 2013 census data, New Mexico's poverty rate is 20.4%, making New Mexico the second poorest state in the nation. Poverty rate for children in New Mexico is 28.9%. Most of New Mexico's poor live in rural areas, with 35% of the population of McKinley County shown as living in poverty. Free and low cost legal service providers are not able to fill this need, with Legal Aid and other agencies estimating that they have to turn away about half of those seeking assistance. Adding to the problem, both the state and the federal governments have decreased funding for legal services programs.

The area with the greatest need for legal assistance continues to be in family law, representing about 40% of the cases. The second biggest area is housing and real estate. The need in these areas has remained constant from 1998 to the present. And the absence of attorneys in the smaller communities makes the problem of providing these services even more acute. Efforts to fill this gap are being made through the use of technology such as Skype clinics that enable an Albuquerque attorney to confer with a

person in one of our more remote counties. Projects of the Legal Services and Programs Committee were able to serve 800 people in the month of October; and the November clinic was filled up and had to turn people away.

The expectation for New Mexico lawyers is 50 hours of pro bono legal services a year. Providing pro bono services is expected both by our Code of Professional Conduct and by our rules. There are many opportunities to satisfy this requirement - and to feel the satisfaction of helping other members of our community - by signing up with the State Bar Volunteer Attorney Program or by providing services to one of the other legal services programs in our area.

ATTACHMENTS

1. Op-Ed Letter, John D. Robb, February 9, 2014
2. Preamble to Rules of Professional Conduct
3. Rule 16-601, NMRA
4. Legal Services and Programs Committee, Legal Services Corporation State Plan, -1998, (portion only)
5. New Mexico Commission on Access to Justice, Report of the Self Represented Working Group, May 1, 2007 (portion only)
6. Voluntary Attorney Program, Pro Bono Opportunities in New Mexico
7. Volunteer Attorney Program, Pro Bono Volunteer Form

Lack of funding depriving NM's poor of much-needed legal aid

BY JOHN D. ROBB
Albuquerque attorney

As a longtime participant in legal aid, I believe that we need urgently to address the current adverse legal plight of poor New Mexicans caused by a New Mexico legal aid services crisis.

This corrective action can start now during the 2014 New Mexico Legislature and the 2014 U.S. congressional sessions, and by important steps of sources of additional funding by others.

This crisis has also seriously impaired fundamental values of our democracy. A recent review provided by New Mexico Legal Aid shows that the funds available to New Mexico's legal aid organizations from all sources, federal, state and private combined, have decreased 27.3 percent since 2009. In 2013, this resulted in an estimated 10,000 New Mexicans either being turned away or being deprived of needed more complete relief from legal aid services.

Let us ... preserve long-standing basic values of equal justice and compassion for all.

This is an extraordinary situation that requires extraordinary new efforts. These huge problems are occurring during the very period that the needs and number of the poor are escalating.

This crisis needs, I believe, the restoring of legislative funding to at least 2009 levels and obtaining a massive increase in New Mexico state and local bar association-sponsored volunteer legal aid pro bono services.

These legal aid shortfalls are especially a direct threat to the fundamental pillars of equal justice for all contained in both the U.S. and the New Mexico constitutions, and permanently engraved on the façade of the U.S. Supreme Court building in Washington, D.C.

The New Mexico judiciary, which establishes justice in the courts, is also suffering from financial reductions. The judiciary also deserves broad support for restoring legislative funds to 2009 levels.

Martin Luther King Jr. has said that, if any group is denied equal rights, it diminishes the rights of all of us. Let us all therefore together take advantage of our respective opportunities and duties to help the poor, and preserve long-standing basic values of equal justice and compassion for all.

tabbies 1

Preamble — A Lawyer's Responsibilities

A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these rules apply directly to lawyers who are or have served as third-party neutrals. *See, e.g.,* Rules 16-112 and 16-204 NMRA of the Rules of Professional Conduct. In addition, there are rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. *See* Rule 16-804 NMRA of the Rules of Professional Conduct.

In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of

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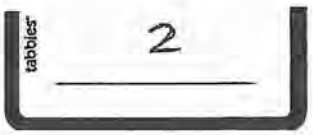

justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.

A lawyer's responsibilities as a representative of clients, an officer of the legal system and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the rules. These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.

The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities

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compromises the independence of the profession and the public interest that it serves.

Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.

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16-601. Voluntary pro bono publico service.

The legal profession has a responsibility to provide legal services to those unable to pay. In fulfilling this responsibility, a lawyer should aspire to:

A. provide legal services without fee or expectation of fee to:

(1) persons of limited means; or

(2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; or

B. provide legal services at:

(1) a substantially reduced fee to persons of limited means; or

(2) no fee or a substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate; or

C. participate in activities for improving the law, the legal system or the legal profession; or

D. contribute financial support to organizations that provide legal services to persons of limited means or promote improvement of the law, the legal system or the legal profession.

[As amended, effective January 1, 1997; as amended by Supreme Court Order 08-8300-05, effective March 15, 2008.]

1998

State Bar of New Mexico

Legal Services and Programs Committee

Legal Services Corporation State Plan

This report is submitted by the State Bar of New Mexico Legal Services and Programs Committee and has been approved by the State Board of Bar Commissioners. The committee and its predecessor, the Task Force on Legal Services, has been responsible for the continued development of civil legal assistance for the poor in New Mexico since mid-1995.

The committee consists of the "full committee" and four subcommittees: planning, pro bono, pro se, and funding. The full committee consists of the co-chairs of the committee and the chairs of the 4 sub-committees.

The sub-committees are composed of members of the state bar with an interest in civil legal services; executive directors of the five LSC funded programs that provide services in New Mexico; executive directors and staff of other providers of civil legal assistance; faculty from the University of New Mexico School of Law; representatives of key state agencies; and other interested persons. Sub-committee members also serve on the boards of directors of several legal services programs (LSC and non-LSC funded).

The full committee is co-chaired by Sarah Singleton and Judge Peggy J. Nelson. Ms. Singleton is an attorney in private practice in Santa Fe and an active pro bono attorney. As president-elect of the State Bar she played a key role in the formation of the Task Force on Legal Services for the Poor in 1995. Since then, she has led the effort to create an effective legal services system in New Mexico. She is currently a member of the ABA's Standing Committee on Legal Aid and Indigent Defendants (SCLAID).

Judge Nelson is a district judge in north central New Mexico. She was a staff attorney in, and Executive Director of Northern New Mexico Legal Services for several years, has been a member of the DNA-People's Legal Services Board of Directors, and was co-chair of the Task Force Long Range Planning Committee before becoming co-chair of the Legal Services and Programs Committee.

On two occasions (in 1995 and 1997—see below), the State Bar has convened "seminars" that brought a much larger group into the planning process: LSC funded program staff, judges from all levels of the judiciary, representatives of community groups, and others with an interest in legal services.

tabbies 4

Planning Activities

First Seminar

The state planning effort in New Mexico began with a seminar titled "Dollars and Sense: Strategies for Expanding Access to Justice," on July 29, 1995[1]. The seminar was sponsored by the State Bar of New Mexico Legal Services Committee, chaired by a member of the New Mexico legislature, Rep. Gary King.

The seminar was attended by approximately 50 people: judges (from the New Mexico Supreme Court, Court of Appeals, and several district courts); the current and in-coming state bar presidents; members of the three state bar committees with jurisdiction over civil legal services—legal services, pro bono, and the Lawyer Referral Program for the Elderly (LREP); faculty from the University of New Mexico School of Law; executive directors and staff from all five LSC funded programs; and key staff from the major non-LSC funded civil legal assistance providers: LREP (statewide), the Senior Citizen's Law Office (Albuquerque), Protection and Advocacy (statewide), and the Volunteer Lawyers Office (Albuquerque).

The seminar began with overviews of key issues facing legal services in New Mexico: fund raising (presented by Shelley Sherdaly from the Fundraising Project); expanding the pool of pro bono attorneys (John Arango, a member of the LREP committee); increasing access for pro se litigants (John Greacen, then clerk at the Bankruptcy Court, and a member of the advisory committee to the Self-Help Model Court in Maricopa County, AZ[2]); and systemic change (presented by Maureen Saunders, a faculty member at the UNM Law School).

The plenary session was followed by small group discussion of each of the four topics. The recommendations emerging from the small groups were:

- Form four state bar committees to continue work on the key issues: fundraising, pro bono, pro se, and systemic change.
- Fundraising: set a goal of $2 million in new funds for civil legal services, from three sources: a) a filing fee, to be sought from the state legislature during its next session

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[1]. For further details on the seminar, see the announcement for the seminar in Appendix A. The seminar is also discussed in the "Final Report of the Task Force on Legal Services to the Poor", Appendix B.
[2]. John Greacen is now the state court administrator.

beginning in January, 1996; b) a general fund appropriation from the legislature; and c) a "buy-out[3]" for attorneys unable to perform pro bono service.

- For pro bono: in the face of potential cuts in the LSC appropriation, and further restrictions on the activities that could be performed by LSC recipients, "tell us the cases that need to be done, and we'll do them." The group recommended that the State Bar immediately hire a staff member to coordinate the statewide pro bono effort. In the longer run, the group recommended a series of initiatives similar to those recently put in place in Florida which included mandatory reporting of pro bono activity by all practicing attorneys; creation of pro bono committees in each judicial district, chaired by the presiding judge, to oversee pro bono activities in the district; and development of a "buy out" program.
- Pro se: "reduce demand for lawyers" by expanding support for pro se litigants; look to the self-help court in Maricopa county as model for what could be accomplished in New Mexico; and consider seeking funding for an demonstration "self-help" court in Albuquerque[4].
- Systemic change: improve administration of New Mexico's welfare and Medicaid programs, thereby reducing demand for representation; develop uniform forms for all courts in New Mexico, making it easier to train pro se litigants; and expand alternative dispute resolution (ADR) programs.

Task Force: 1995-96

After some discussion of the recommendation to create four state bar committees, the Board of Bar Commissioners decided to instead create a single task force. The resolution creating the Task Force on Legal Services for the Poor stated:

1. It is a high priority of the State Bar to assure that those in need of legal services but unable to afford an attorney are able to obtain access to legal services and the courts.
2. Other groups affiliated with the legal profession should join in a cooperative effort to meet this priority.
3. A pro bono referral program be established by December 1, 1995.

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[3]. A fee paid in place of performing a voluntary service, such as representing a poor person. At the time of the seminar, Florida had recently agreed to a $300 fee (per attorney, per year).

[4]. After the group presented its report, a key judge responded by offering to help raise funds for a demonstration self-help court from the legislature.

4. Specific steps be taken to address the anticipated growth in the use of existing programs and facilities by pro se litigants.
5. Plans be made to stabilize existing funding, and that efforts to increase funding should be coordinated among organizations competing for funding.

The Task Force was composed of all of the members of the then existing bar committees with an interest in legal services, augmented by judges and others with special expertise in fund raising, pro bono, pro se, and systemic reform. The Task Force was co-chaired by Stanley Sager, a prominent Albuquerque attorney, and the Hon. Pamela Minzner, a member of the New Mexico Supreme Court. Because the Task Force had many members, all of its work (except formally approving reports) was conducted by four committees: long range planning, funding, pro se, and pro bono. The committees were empowered to act within their areas of expertise.

Task Force Long Range Planning Committee

The task for the Long Range Planning Committee was to develop a plan for provision of civil legal assistance to the poor in NM. Early in its deliberations, the Committee agreed that any legitimate plan had to address the entire need. That is, the plan had to envision a system that provided an appropriate service to *all* eligible persons with a legal need.

Over the course of several months, the Committee, with the assistance of John Arango, developed a plan using information from the American Bar Association's Legal Needs Study[5]. The plan showed: the number of legal needs occurring in low income households in New Mexico; the actions taken by low income persons when they have a legal need; the services to be provided; the numbers of households to be served; and an estimate of the cost of providing those services. In presenting the plan to the Board of Bar Commissioners, Sarah Singleton and Stanley Sager stressed four concepts that are central to the plan:

- *Full access*: any effective system must aim to provide an appropriate service to every low income person with a legal need.
- *More than federal funding*: much of the cost of legal services will have to be borne by the state.

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[5]. The ABA Legal Needs Study was conducted by the Consortium on Legal Services and the Public from 1992-96. The Study produced several reports. Those most used by planners in New Mexico were *Report on the Legal Needs of the Low- and Moderate-Income Public*, January 18, 1994, and *Agenda for Access: The American People and Civil Justice*, May, 1996.

- *More than LSC providers*: in particular, the private bar will have to continue to represent most low income people with legal needs.
- *More than "one need, one lawyer"*: there will never be enough money (or enough lawyers) to provide representation for every legal need; self-help will be an essential part of any legal services system.

The plan was adopted by the full Task Force in December, 1996, and by the Board of Bar Commissioners during its first meeting in 1997. Because the report of the Long Range Planning Committee is, by action of the Board of Bar Commissioners, *the plan* for legal services in New Mexico, it may be useful to briefly summarize the contents of the report[6]:

- Using 1990 census data, the number of low income households in New Mexico (at 125% of poverty) is about 132,000. Using prevalence[7] rates from the ABA Study, these households have a total of approximately 145,000 legal needs.
- Taking into account the fact that many family/domestic relations legal situations generate two clients, the number of potential clients is shown below:

Category	Prevalence[8]
Family/Domestic Relations	28,000
Housing/Real Property	23,000
Finances/Consumer	23,000
Community and Regional	18,000
Employment	11,000
Personal Injury	10,000
Health	8,000
Wills, Estates	7,000
Public Benefits	5,000
Business, Farms	3,000
Schooling	3,000
Civil Liberties	1,000
Vocational Training	1,000
Special Groups	4,000

- The most common action taken by low income households with legal needs is—no action at all. In New Mexico, no action is taken for 52,000 legal needs.

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[6]. The figures shown below differ slightly from those in the document approved by the Board of Bar Commissioners. The model first used in New Mexico was refined for use by Washington (state). The refined model is used here.

[7]. "Prevalence" is the total number of needs, regardless of when the need occurred. "Incidence", used later in this document, is the number of needs occurring in one year.

[8]. The numbers in the column do not add to 145,000 legal needs because of rounding errors.

- When action is taken, the most common actions taken are:

Action Taken	Number of Legal Needs
Enter the legal/judicial system[9]	44,000
Take "on own" action	33,000
Consult a non-legal third party	14,000

- Of the needs taken into the legal judicial system, about 30,000 are taken to an attorney: about 23,000 to a private attorney[10], and about 8,000 to a legal services attorney.
- Unmet legal needs:
  - If "unmet legal need" is defined as legal needs for which a) no action is taken, or b) the most effective action is taken outside the legal system and the client is dissatisfied with the result, or c) the client enters the legal system but is unlikely to receive an appropriate service, then 60% of legal needs in New Mexico, or 87,000 legal needs, are "unmet needs".
  - If "unmet legal need" is defined as legal needs that a) are not brought into the legal system, or b) are in the legal system but unlikely to receive an appropriate service, then 75% of legal needs in New Mexico, or 109,000 legal needs, are "unmet needs".

The plan approved by the Board of Bar Commissioners envisions a system in which low income households are as successful as moderate income households in dealing with their legal needs. The system has six basic strategies:

- To reduce the number of low income legal needs for which no action is taken (36%) to the same level found in moderate income households (26%), by using *outreach* to encourage households with legal needs to do something, and by *building a network* of community leaders organizations and others ("non-legal third parties") *able to refer poor people with legal needs to an appropriate source of assistance.*

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[9]. Only about 75% of those in the legal system have an attorney. Most of the rest are "in the system" only to the extent that they may ask a court clerk to explain what they received in the mail. Virtually all of this group are unserved by the system, although a few—whose number cannot be calculated using ABA Legal Needs Study date—proceed pro se.

[10]. The ABA Legal Needs Study shows that poor people and moderate income people use lawyers in the same way: for family/domestic relations matters, for personal injuries, and for wills and estates. Considering that legal services programs cannot handle personal injuries, and because of limited resources, are unable to provide assistance for most domestic relations issues (except those involving abuse or domestic violence), it is not surprising that poor people receive most of their representation from private attorneys.

- To build on what low income households already do when they have a legal needs, by using *community legal education* to increase the number of poor people able to effectively deal with their legal needs outside the legal system.
- To use a *legal helpline* to provide advice, brief service and referrals to all poor persons seeking assistance from the legal system. Conservative rates of "client satisfaction" are used to ensure that a sufficiently large pool of attorneys is available to serve households that need more than advice.
- Providing *group representation* for some legal needs (especially, community and regional needs).
- *Maintaining the level of participation of private attorneys* (both pro bono and on a negotiated fee basis).
- *Expanding the number of legal services staff attorneys* to ensure that all households that require more than advice or brief service, and are not served by private attorneys, are represented by an attorney.

NEW MEXICO COMMISSION ON ACCESS TO JUSTICE

REPORT OF THE

SELF REPRESENTED WORKING GROUP

TO THE SUPREME COURT OF NEW MEXICO

Access to New Mexico Courts
Must be Meaningful Access

SUBMITTED: May 1, 2007

G. PRO BONO SERVICES

Coordination between the courts, the private bar, legal aid providers and other interested parties to provide pro bono services to low income people programs is essential for the effective administration of justice.

1. Introduction

This State Plan recognizes the important role that pro bono plays in the state system. In March 2006, the New Mexico Supreme Court received and accepted the recommendations contained in the Ten Step Plan for Improving Access to Justice (the Pro Bono Plan) , which was submitted by the ATJ and approved by the State Bar's Board of Bar Commissioners. Ten steps were developed to improve pro bono services in New Mexico and the steps were divided into three central elements: 1.) involvement of the judiciary; 2.) changing the rules of Professional Conduct and Minimum Continuing Legal Education; and, 3.) expanding pro bono participation. A summary of the 10 Step plan follows:

2. The New Mexico Ten Step Plan for Improving Access to Justice

Involvement of the Judiciary

Step One: The Commission recommended the Supreme Court assume general oversight of the Pro Bono Plan and appoint the Access to Justice Commission to receive and evaluate reports and requests on its behalf and report its finding back to the Court.

Step Two: Establishing district court pro bono committees in each judicial district and charging the Chief Judge in each judicial district with the responsibility of convening the first meeting and appointing the local committee. Each committee is required to submit a plan to the Supreme Court, through the Access to Justice Commission, on how best to address the legal needs of its district by employing a range of opportunities to involve the private bar and address

the division of responsibility among the courts, the local bar association, the private bar, legal aid providers and the public.

Step Three: Involvement of the court to support efforts taken through the Access to Justice Commission to identify and obtain funding to support the pro bono plan implementation, including the establishment of the first ever, statewide pro bono coordinator housed with the New Mexico State Bar Foundation. The statewide coordinator will be responsible for the implementation of the Pro Bono Plan.

Step Four: The issue of self-represented litigants' services was incorporated into a separate working group of the Access to Justice Commission, which issued a separate report regarding self-represented litigants. The recommendations from that report are contained in the Self-Represented Litigant section of this State Plan.

Changing the Rules of Professional Conduct and Minimum Continuing Legal Education

Step Five: This is a proposed revision of Rule 16-601 NMRA of the Rules of Professional Conduct which requires annual reporting of pro bono hours by New Mexico attorneys. The Committee on the Rules of Professional Conduct and the ATJ Commission have submitted to the Supreme Court revisions to Rule 16-601 and a new Rule 24-108 to accomplish these steps.

Step Six: Requesting a rule change to Rule 16-601 NMRA of the Rules of Professional Conduct to increase the amount of the suggested contribution to legal services as an alternative to providing pro bono assistance to the poor and introducing a graduated contribution based on the actual amount of pro bono services completed by the attorney. The Committee on the Rules of Professional Conduct and the ATJ Commission have submitted to the Supreme Court revisions to Rule 16-601 and a new Rule 24-108 to accomplish these steps.

Step Seven: Proposing a rule change to the MCLE Rule 18-201 NMRA seeking to create an incentive for attorneys who provide pro bono services to low-income citizens. The rule change would provide CLE credit for pro bono hours contributed by attorneys as an additional way to fulfill self study credits. The ATJ Commission and the MCLE Board have discussed this proposal but have been unable to reach an agreement. The ATJ Commission will continue to work on a modified proposal that meets some, if not all, of the MCLE Board's objections.

Expanding Pro Bono Participation

Step Eight: Coordinating the recruitment of pro bono attorneys among the judicial district committees, legal aid providers and the New Mexico State Bar Foundation.

Step Nine: Assisting in the establishment of an Internet-based pro bono case recruitment program via a Website or e-mail. This will be a coordinated effort among the Bar Foundation, district committees and service providers. This recruitment program will permit attorneys to provide limited legal assistance to a large number of clients throughout the state, particularly in rural areas.

NOTES

NOTES

CFPB and the New Mortgage Disclosure Forms

State Bar of New Mexico
Real Property Institute

December 3, 2015

DISCLAIMER: This presentation is for informational purposes only and is not an may not be considered as legal advice. No third party may rely upon anything contained herein when making legal and/or other determinations, regarding lending, real estate or mortgage brokerage, escrow or related practices. You should consult with an attorney prior to embarking upon any specific course of action.

The CFPB – Mortgage Loan Disclosures

CFPB Final Rule on Mortgage Disclosures

- CFPB published the Rule on November 21, 2013
- Over 1,800 pages long
- Mortgage Disclosure Forms and Implementing Rules Described
- Two New Forms for Mortgage Disclosures must be used on loans originated on and after **October 3, 2015**:
  - **Loan Estimate**
    - A new form to combine and replace the contents of the Good Faith Estimate (GFE) and the initial Truth In Lending Act (TILA) disclosure
    - Adds new disclosure items required by Dodd-Frank
  - **Closing Disclosure**
    - A new form to combine and replace the HUD-1 Settlement Statement and the final TILA disclosure
    - Adds new disclosure items required by Dodd-Frank

Loan Estimate – Page 1

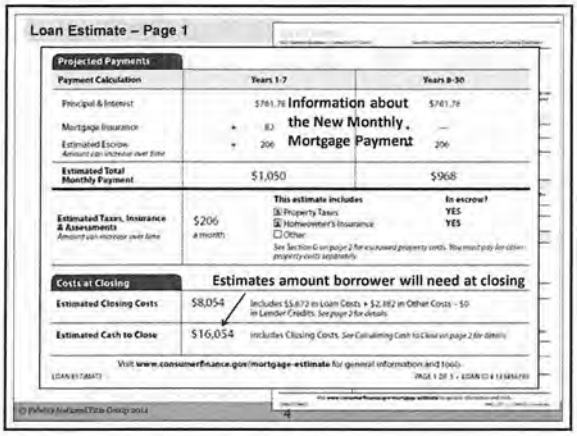
Loan Estimate

DATE ISSUED	2/15/2013	LOAN TERM	30 years
APPLICANTS	Michael Jones and Mary Stone 123 Anywhere Street Anytown, ST 12345	PURPOSE	Purchase
		PRODUCT	Fixed Rate
		LOAN TYPE	☒ Conventional ☐ FHA ☐ VA ☐ _____
		LOAN ID #	123456789
PROPERTY	456 Somewhere Avenue Anytown, ST 12345	RATE LOCK	☐ NO ☒ YES, until 4/16/2013 at 5:00 p.m. EDT *Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on* **3/4/2013** *at 5:00 p.m. EDT*
SALE PRICE	$180,000		

Basic Transaction Information

Loan Terms		Can this amount increase after closing?	
Loan Amount	$162,000	NO	
Interest Rate	3.875%	NO	
Monthly Principal & Interest *See Projected Payments below for your Estimated Total Monthly Payment*	$761.78	NO	
		Does the loan have these features?	
Prepayment Penalty		YES	• As high as $3,240 if you pay off the loan during the first 2 years
Balloon Payment		NO	

Basic Loan Terms


Loan Estimate – Page 1
Projected Payments
Payment Calculation
Years 1-7
Years 8-30
Principal & Interest
$761.78
$761.78
Mortgage Insurance
+ 83
—
Estimated Escrow
Amount can increase over time
+ 206
206
Estimated Total Monthly Payment
$1,050
$968
Information about the New Monthly Mortgage Payment
Estimated Taxes, Insurance & Assessments
Amount can increase over time
$206
a month
This estimate includes
Property Taxes
Homeowner's Insurance
Other
In escrow?
YES
YES
See Section G on page 2 for escrowed property costs. You must pay for other property costs separately.
Costs at Closing
Estimates amount borrower will need at closing
Estimated Closing Costs
$8,054
Includes $5,872 in Loan Costs + $2,182 in Other Costs – $0 in Lender Credits. See page 2 for details.
Estimated Cash to Close
$16,054
Includes Closing Costs. See Calculating Cash to Close on page 2 for details.
Visit www.consumerfinance.gov/mortgage-estimate for general information and tools.
LOAN ESTIMATE
PAGE 1 OF 5 • LOAN ID # 123456789
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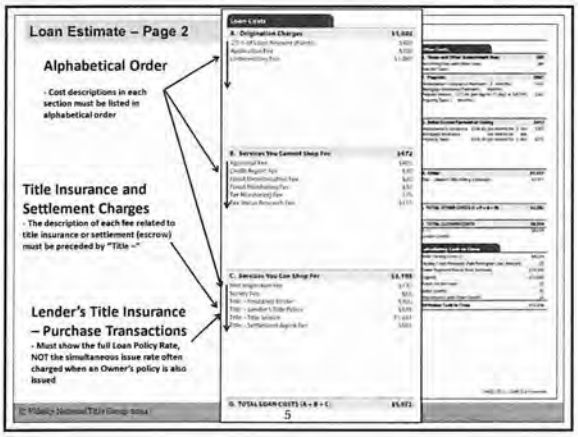
Loan Estimate – Page 2
Alphabetical Order
- Cost descriptions in each section must be listed in alphabetical order
Title Insurance and Settlement Charges
- The description of each fee related to title insurance or settlement (escrow) must be preceded by "Title –"
Lender's Title Insurance – Purchase Transactions
- Must show the full Loan Policy Rate, NOT the simultaneous issue rate often charged when an Owner's policy is also issued
Loan Costs
A. Origination Charges
B. Services You Cannot Shop For
C. Services You Can Shop For
G. TOTAL LOAN COSTS (A + B + C)
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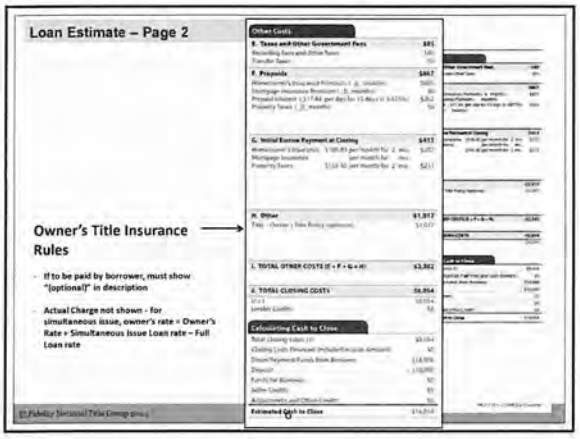
Loan Estimate – Page 2
Owner's Title Insurance Rules
- If to be paid by borrower, must show "(optional)" in description
- Actual Charge not shown - for simultaneous issue, owner's rate = Owner's Rate + Simultaneous Issue Loan rate – Full Loan rate
Other Costs
E. Taxes and Other Government Fees
F. Prepaids
G. Initial Escrow Payment at Closing
H. Other
I. TOTAL OTHER COSTS (E + F + G + H)
J. TOTAL CLOSING COSTS
Calculating Cash to Close
Estimated Cash to Close
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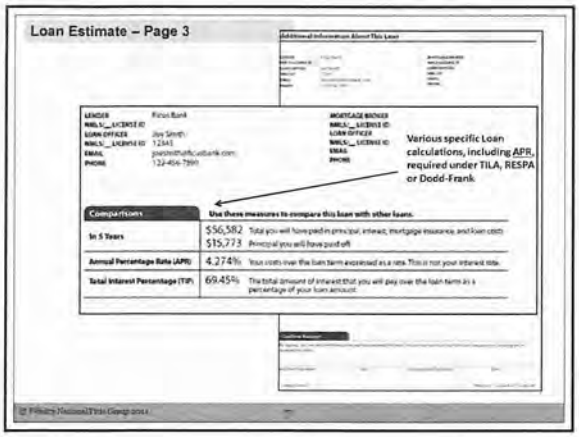
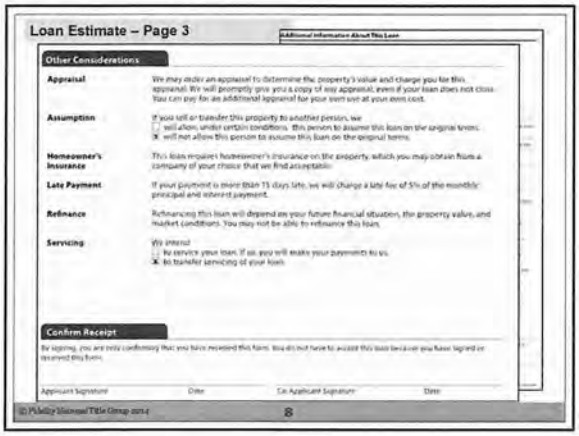




The CFPB Disclosures – The Loan Estimate

Receiving the Loan Estimate

- Lender must deliver within three business days of the lender's receipt of an "application"
  - Application – automatically occurs when lender receives six pieces of information:
    - Borrower(s) Name(s)
    - Income
    - Social Security Number(s)
    - Property Address
    - Estimated Value of Property
    - Mortgage Loan Amount
- Except for credit report, no fees chargeable until after Loan Estimate is provided
- Lender must attach separate Provider List similar to that currently used with the GFE
  - Must include all services which the borrower may need for the transaction (not just items for loan)

The Provider List - Sample

The Closing Disclosure

The New Closing Disclosure Form

- Combination of the Final TIL Form and the HUD-1 Settlement Statement
- Includes new disclosures required under Dodd-Frank

Closing Disclosure – Page 1

Basic Transaction Information

Closing Information		Transaction Information		Loan Information	
Date Issued	4/15/2013	Borrower	Michael Jones and Mary Stone	Loan Term	30 years
Closing Date	4/15/2013		123 Anywhere Street	Purpose	Purchase
Disbursement Date	4/15/2013		Anytown, ST 12345	Product	Fixed Rate
Settlement Agent	Epsilon Title Co.	Seller	Steve Cols and Amy Doe		
File #	12-3456		321 Somewhere Drive	Loan Type	☒ Conventional ☐ FHA ☐ VA ☐
Property	456 Somewhere Ave		Anytown, ST 12345	Loan ID #	123456789
	Anytown, ST 12345	Lender	First Bank	MIC #	000654321
Sale Price	$180,000				

Closing Disclosure – Page 1

Description of Basic Loan Terms

Loan Terms		Can this amount increase after closing?
Loan Amount	$162,000	NO
Interest Rate	3.875%	NO
Monthly Principal & Interest *See Projected Payments below for your Estimated Total Monthly Payment*	$761.78	NO
		Does the loan have these features?
Prepayment Penalty		YES • As high as $3,240 if you pay off the loan during the first 2 years
Balloon Payment		NO

Closing Disclosure – Page 1

Information about the New Monthly Mortgage Payment

Projected Payments Payment Calculation	Years 1-7	Years 8-30
Principal & Interest	$761.78	$761.78
Mortgage Insurance	+ 82.35	+ —
Estimated Escrow *Amount can increase over time*	+ 206.13	+ 206.13
Estimated Total Monthly Payment	$1,050.26	$967.91

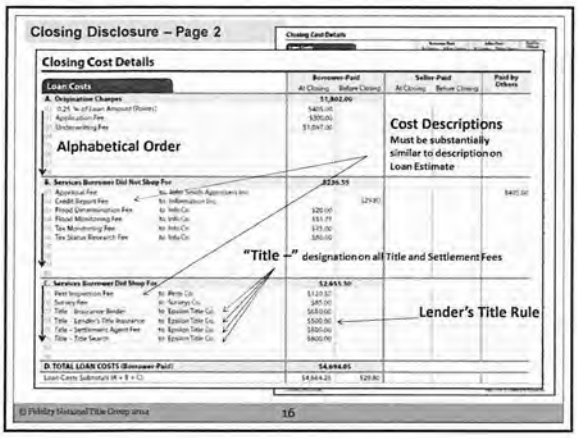
Estimated Taxes, Insurance & Assessments *Amount can increase over time* *See page 4 for details*	$356.13 a month	This estimate includes ☒ Property Taxes ☒ Homeowner's Insurance ☒ Other: Homeowner's Association Dues *See Escrow Account on page 4 for details. You must pay for other property costs separately.*	In escrow? YES YES NO

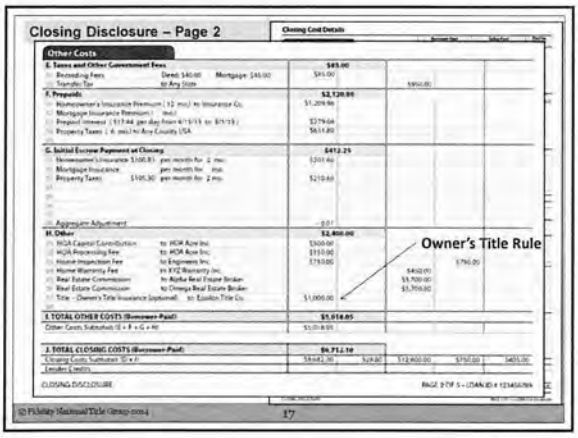
Amount includes monthly obligations on property even if not included in impound amount

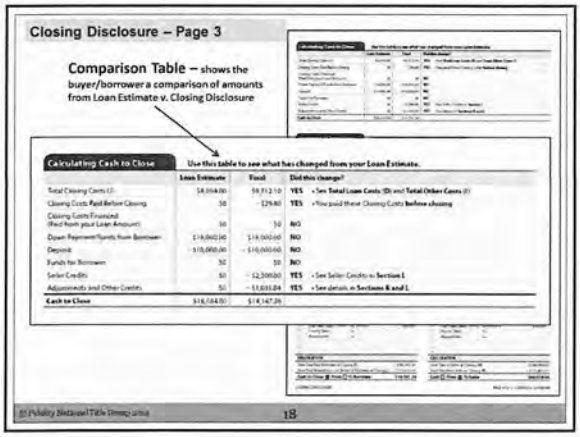
Closing Disclosure – Page 1

Cash to Close – shows the buyer/borrower the amount necessary for closing

Costs at Closing		
Closing Costs	$9,712.10	Includes $4,694.05 in Loan Costs + $5,018.05 in Other Costs – $0 in Lender Credits. *See page 2 for details.*
Cash to Close	$14,147.26	Includes Closing Costs. *See Calculating Cash to Close on page 3 for details.*


Closing Disclosure – Page 2
Closing Cost Details
Loan Costs
Alphabetical Order
Cost Descriptions
Must be substantially similar to description on Loan Estimate
"Title –" designation on all Title and Settlement Fees
Lender's Title Rule
16


Closing Disclosure – Page 2
Closing Cost Details
Other Costs
Owner's Title Rule
17


Closing Disclosure – Page 3
Comparison Table – shows the buyer/borrower a comparison of amounts from Loan Estimate v. Closing Disclosure
Calculating Cash to Close
Use this table to see what has changed from your Loan Estimate.
18

Closing Disclosure – Page 3

Balance of Page 3 – a summary of the transaction similar to page 1 of the HUD-1 Settlement form

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Closing Disclosure – Page 4

Page 4 – contains various lender disclosures required under TILA, RESPA or Dodd-Frank

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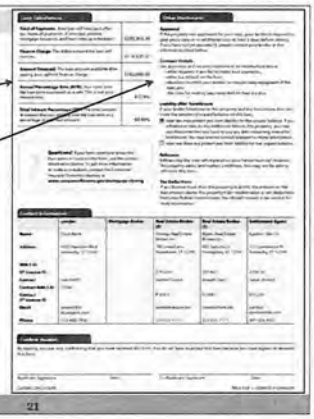
Closing Disclosure – Page 5



Various specific Loan calculations, including Finance Charge and APR, required under TILA, RESPA or Dodd-Frank

Various lender disclosures required under TILA, RESPA or Dodd-Frank

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The Closing Disclosure

Who Prepares the New Closing Disclosure Form ?

- The Lender is primarily responsible for the preparation and delivery of the Closing Disclosure
  - The Lender may permit the Settlement agent some portions or all of the form and/or deliver the form
    - Settlement Agent liability – for those portions prepared or delivered
    - Lender remains responsible for all portions of the Closing Disclosure to "ensure the disclosures are provided" in accordance with the rule

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Closing Disclosure – Timing.....

Three Different Three-day Periods Now in Play at Closing

- The 3-day right of rescission ("3-day rescission") under TILA
  - Presently applicable to most refinance transactions
  - Not impacted by the Final Rule
- The 3-day waiting period ("3-day waiting") after delivery of the Closing Disclosure, the Borrower has 3 days to review before a closing may occur
- The 3-day delivery period for delivery of the Closing Disclosure ("3-day delivery") –
  - Unless the Closing Disclosure is delivered personally, the Rule "deems" it delivered three business days later
  - Period may be shortened by actual confirmation of receipt

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Closing Disclosure Timing Examples

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2 Non-Hand Delivery of Closing Disc. (i.e., mail)	3	4	5 "Delivery" of Closing Disc. Occurs	6	7
		3-day delivery			3-day waiting	
8	9 First Date Signing/Closing May Occur	10	11	12	13 First Date Disbursement May Occur	14
3-day waiting (Sunday not counted)		3-day right of rescission (if applicable)				
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

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Closing Disclosure – Seller

Closing Disclosure to the Seller

- Settlement Agent is responsible for providing the Closing Disclosure to the Seller
  - Closing Disclosure format for the seller may be either
    - The same format as for Borrower, but items related solely to borrower (i.e., loan disclosures) and using only seller data; or
    - Use the separate CFPB seller's disclosure form
  - Disclosure must be delivered to the Seller on or before "consummation"; no 3-day waiting period
    - But 3-business day delivery period applies, except for personal delivery.

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The Seller's Closing Disclosure

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The Seller's Closing Disclosure

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Additional Information
on CFPB Website

www.consumerfinance.gov/knowbeforeyouowe

- Final Rule
- TILA/RESPA Integrated Disclosure Rule – Small Entity Compliance Guide
- Guide to the Loan Estimate and Closing Disclosure Forms

Thank You

Questions?

DISCLAIMER: This presentation is for informational purposes only and is not an may not be considered as legal advice. No third party may rely upon anything contained herein when making legal and/or other determinations, regarding lending, real estate or mortgage brokerage, escrow or related practices. You should consult with an attorney prior to embarking upon any specific course of action.

Closing Disclosure

This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.

Closing Information		Transaction Information		Loan Information	
Date Issued	4/15/2013	**Borrower**	Michael Jones and Mary Stone 123 Anywhere Street Anytown, ST 12345	**Loan Term**	30 years
Closing Date	4/15/2013			**Purpose**	Purchase
Disbursement Date	4/15/2013			**Product**	Fixed Rate
Settlement Agent	Epsilon Title Co.	**Seller**	Steve Cole and Amy Doe 321 Somewhere Drive Anytown, ST 12345	**Loan Type**	☒ Conventional ☐ FHA ☐ VA ☐ _____
File #	12-3456			**Loan ID #**	123456789
Property	456 Somewhere Ave Anytown, ST 12345	**Lender**	Ficus Bank	**MIC #**	000654321
Sale Price	$180,000				

Loan Terms

		Can this amount increase after closing?
Loan Amount	$162,000	**NO**
Interest Rate	3.875%	**NO**
Monthly Principal & Interest *See Projected Payments below for your Estimated Total Monthly Payment*	$761.78	**NO**
		Does the loan have these features?
Prepayment Penalty		**YES** • **As high as $3,240** if you pay off the loan during the first 2 years
Balloon Payment		**NO**

Projected Payments

Payment Calculation	Years 1-7	Years 8-30
Principal & Interest	$761.78	$761.78
Mortgage Insurance	+ 82.35	+ —
Estimated Escrow *Amount can increase over time*	+ 206.13	+ 206.13
Estimated Total Monthly Payment	$1,050.26	$967.91

		This estimate includes	In escrow?
Estimated Taxes, Insurance & Assessments *Amount can increase over time* *See page 4 for details*	$356.13 a month	☒ Property Taxes	**YES**
		☒ Homeowner's Insurance	**YES**
		☒ Other: Homeowner's Association Dues	**NO**
		See Escrow Account on page 4 for details. You must pay for other property costs separately.	

Costs at Closing

Closing Costs	$9,712.10	Includes $4,694.05 in Loan Costs + $5,018.05 in Other Costs – $0 in Lender Credits. *See page 2 for details.*
Cash to Close	$14,147.26	Includes Closing Costs. *See Calculating Cash to Close on page 3 for details.*

Closing Cost Details

Loan Costs	Borrower-Paid At Closing	Borrower-Paid Before Closing	Seller-Paid At Closing	Seller-Paid Before Closing	Paid by Others
A. Origination Charges	**$1,802.00**				
01 0.25 % of Loan Amount (Points)	$405.00				
02 Application Fee	$300.00				
03 Underwriting Fee	$1,097.00				
04					
05					
06					
07					
08					
B. Services Borrower Did Not Shop For	**$236.55**				
01 Appraisal Fee to John Smith Appraisers Inc.					$405.00
02 Credit Report Fee to Information Inc.		$29.80			
03 Flood Determination Fee to Info Co.	$20.00				
04 Flood Monitoring Fee to Info Co.	$31.75				
05 Tax Monitoring Fee to Info Co.	$75.00				
06 Tax Status Research Fee to Info Co.	$80.00				
07					
08					
09					
10					
C. Services Borrower Did Shop For	**$2,655.50**				
01 Pest Inspection Fee to Pests Co.	$120.50				
02 Survey Fee to Surveys Co.	$85.00				
03 Title – Insurance Binder to Epsilon Title Co.	$650.00				
04 Title – Lender's Title Insurance to Epsilon Title Co.	$500.00				
05 Title – Settlement Agent Fee to Epsilon Title Co.	$500.00				
06 Title – Title Search to Epsilon Title Co.	$800.00				
07					
08					
D. TOTAL LOAN COSTS (Borrower-Paid)	**$4,694.05**				
Loan Costs Subtotals (A + B + C)	$4,664.25	$29.80			

Other Costs					
E. Taxes and Other Government Fees	**$85.00**				
01 Recording Fees Deed: $40.00 Mortgage: $45.00	$85.00				
02 Transfer Tax to Any State			$950.00		
F. Prepaids	**$2,120.80**				
01 Homeowner's Insurance Premium (12 mo.) to Insurance Co.	$1,209.96				
02 Mortgage Insurance Premium (mo.)					
03 Prepaid Interest ($17.44 per day from 4/15/13 to 5/1/13)	$279.04				
04 Property Taxes (6 mo.) to Any County USA	$631.80				
05					
G. Initial Escrow Payment at Closing	**$412.25**				
01 Homeowner's Insurance $100.83 per month for 2 mo.	$201.66				
02 Mortgage Insurance per month for mo.					
03 Property Taxes $105.30 per month for 2 mo.	$210.60				
04					
05					
06					
07					
08 Aggregate Adjustment	– 0.01				
H. Other	**$2,400.00**				
01 HOA Capital Contribution to HOA Acre Inc.	$500.00				
02 HOA Processing Fee to HOA Acre Inc.	$150.00				
03 Home Inspection Fee to Engineers Inc.	$750.00			$750.00	
04 Home Warranty Fee to XYZ Warranty Inc.			$450.00		
05 Real Estate Commission to Alpha Real Estate Broker			$5,700.00		
06 Real Estate Commission to Omega Real Estate Broker			$5,700.00		
07 Title – Owner's Title Insurance (optional) to Epsilon Title Co.	$1,000.00				
08					
I. TOTAL OTHER COSTS (Borrower-Paid)	**$5,018.05**				
Other Costs Subtotals (E + F + G + H)	$5,018.05				

J. TOTAL CLOSING COSTS (Borrower-Paid)	**$9,712.10**				
Closing Costs Subtotals (D + I)	$9,682.30	$29.80	$12,800.00	$750.00	$405.00
Lender Credits					

Calculating Cash to Close

Use this table to see what has changed from your Loan Estimate.

	Loan Estimate	Final	Did this change?
Total Closing Costs (J)	$8,054.00	$9,712.10	**YES** • See **Total Loan Costs (D)** and **Total Other Costs (I)**
Closing Costs Paid Before Closing	$0	− $29.80	**YES** • You paid these Closing Costs **before closing**
Closing Costs Financed (Paid from your Loan Amount)	$0	$0	**NO**
Down Payment/Funds from Borrower	$18,000.00	$18,000.00	**NO**
Deposit	− $10,000.00	− $10,000.00	**NO**
Funds for Borrower	$0	$0	**NO**
Seller Credits	$0	− $2,500.00	**YES** • See Seller Credits in **Section L**
Adjustments and Other Credits	$0	− $1,035.04	**YES** • See details in **Sections K and L**
Cash to Close	$16,054.00	$14,147.26	

Summaries of Transactions

Use this table to see a summary of your transaction.

BORROWER'S TRANSACTION

K. Due from Borrower at Closing				**$189,762.30**
01	Sale Price of Property			$180,000.00
02	Sale Price of Any Personal Property Included in Sale			
03	Closing Costs Paid at Closing (J)			$9,682.30
04				
Adjustments				
05				
06				
07				
Adjustments for Items Paid by Seller in Advance				
08	City/Town Taxes		to	
09	County Taxes		to	
10	Assessments		to	
11	HOA Dues	4/15/13	to 4/30/13	$80.00
12				
13				
14				
15				
L. Paid Already by or on Behalf of Borrower at Closing				**$175,615.04**
01	Deposit			$10,000.00
02	Loan Amount			$162,000.00
03	Existing Loan(s) Assumed or Taken Subject to			
04				
05	Seller Credit			$2,500.00
Other Credits				
06	Rebate from Epsilon Title Co.			$750.00
07				
Adjustments				
08				
09				
10				
11				
Adjustments for Items Unpaid by Seller				
12	City/Town Taxes	1/1/13	to 4/14/13	$365.04
13	County Taxes		to	
14	Assessments		to	
15				
16				
17				

CALCULATION	
Total Due from Borrower at Closing (K)	$189,762.30
Total Paid Already by or on Behalf of Borrower at Closing (L)	− $175,615.04
Cash to Close ☒ From ☐ To Borrower	**$14,147.26**

SELLER'S TRANSACTION

M. Due to Seller at Closing				**$180,080.00**
01	Sale Price of Property			$180,000.00
02	Sale Price of Any Personal Property Included in Sale			
03				
04				
05				
06				
07				
08				
Adjustments for Items Paid by Seller in Advance				
09	City/Town Taxes		to	
10	County Taxes		to	
11	Assessments		to	
12	HOA Dues	4/15/13	to 4/30/13	$80.00
13				
14				
15				
16				
N. Due from Seller at Closing				**$115,665.04**
01	Excess Deposit			
02	Closing Costs Paid at Closing (J)			$12,800.00
03	Existing Loan(s) Assumed or Taken Subject to			
04	Payoff of First Mortgage Loan			$100,000.00
05	Payoff of Second Mortgage Loan			
06				
07				
08	Seller Credit			$2,500.00
09				
10				
11				
12				
13				
Adjustments for Items Unpaid by Seller				
14	City/Town Taxes	1/1/13	to 4/14/13	$365.04
15	County Taxes		to	
16	Assessments		to	
17				
18				
19				

CALCULATION	
Total Due to Seller at Closing (M)	$180,080.00
Total Due from Seller at Closing (N)	− $115,665.04
Cash ☐ From ☒ To Seller	**$64,414.96**

Additional Information About This Loan

Loan Disclosures

Assumption
If you sell or transfer this property to another person, your lender
☐ will allow, under certain conditions, this person to assume this loan on the original terms.
☒ will not allow assumption of this loan on the original terms.

Demand Feature
Your loan
☐ has a demand feature, which permits your lender to require early repayment of the loan. You should review your note for details.
☒ does not have a demand feature.

Late Payment
If your payment is more than *15* days late, your lender will charge a late fee of *5% of the monthly principal and interest payment.*

Negative Amortization (Increase in Loan Amount)
Under your loan terms, you
☐ are scheduled to make monthly payments that do not pay all of the interest due that month. As a result, your loan amount will increase (negatively amortize), and your loan amount will likely become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
☐ may have monthly payments that do not pay all of the interest due that month. If you do, your loan amount will increase (negatively amortize), and, as a result, your loan amount may become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property.
☒ do not have a negative amortization feature.

Partial Payments
Your lender
☒ may accept payments that are less than the full amount due (partial payments) and apply them to your loan.
☐ may hold them in a separate account until you pay the rest of the payment, and then apply the full payment to your loan.
☐ does not accept any partial payments.
If this loan is sold, your new lender may have a different policy.

Security Interest
You are granting a security interest in
456 Somewhere Ave., Anytown, ST 12345

You may lose this property if you do not make your payments or satisfy other obligations for this loan.

Escrow Account
For now, your loan
☒ will have an escrow account (also called an "impound" or "trust" account) to pay the property costs listed below. Without an escrow account, you would pay them directly, possibly in one or two large payments a year. Your lender may be liable for penalties and interest for failing to make a payment.

Escrow		
Escrowed Property Costs over Year 1	$2,473.56	Estimated total amount over year 1 for your escrowed property costs: *Homeowner's Insurance* *Property Taxes*
Non-Escrowed Property Costs over Year 1	$1,800.00	Estimated total amount over year 1 for your non-escrowed property costs: *Homeowner's Association Dues* You may have other property costs.
Initial Escrow Payment	$412.25	A cushion for the escrow account you pay at closing. See Section G on page 2.
Monthly Escrow Payment	$206.13	The amount included in your total monthly payment.

☐ will not have an escrow account because ☐ you declined it ☐ your lender does not offer one. You must directly pay your property costs, such as taxes and homeowner's insurance. Contact your lender to ask if your loan can have an escrow account.

No Escrow		
Estimated Property Costs over Year 1		Estimated total amount over year 1. You must pay these costs directly, possibly in one or two large payments a year.
Escrow Waiver Fee		

In the future,
Your property costs may change and, as a result, your escrow payment may change. You may be able to cancel your escrow account, but if you do, you must pay your property costs directly. If you fail to pay your property taxes, your state or local government may (1) impose fines and penalties or (2) place a tax lien on this property. If you fail to pay any of your property costs, your lender may (1) add the amounts to your loan balance, (2) add an escrow account to your loan, or (3) require you to pay for property insurance that the lender buys on your behalf, which likely would cost more and provide fewer benefits than what you could buy on your own.

Loan Calculations

Total of Payments. Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.	$285,803.36
Finance Charge. The dollar amount the loan will cost you.	$118,830.27
Amount Financed. The loan amount available after paying your upfront finance charge.	$162,000.00
Annual Percentage Rate (APR). Your costs over the loan term expressed as a rate. This is not your interest rate.	4.174%
Total Interest Percentage (TIP). The total amount of interest that you will pay over the loan term as a percentage of your loan amount.	69.46%

Questions? If you have questions about the loan terms or costs on this form, use the contact information below. To get more information or make a complaint, contact the Consumer Financial Protection Bureau at **www.consumerfinance.gov/mortgage-closing**

Other Disclosures

Appraisal
If the property was appraised for your loan, your lender is required to give you a copy at no additional cost at least 3 days before closing. If you have not yet received it, please contact your lender at the information listed below.

Contract Details
See your note and security instrument for information about
- what happens if you fail to make your payments,
- what is a default on the loan,
- situations in which your lender can require early repayment of the loan, and
- the rules for making payments before they are due.

Liability after Foreclosure
If your lender forecloses on this property and the foreclosure does not cover the amount of unpaid balance on this loan,

☒ state law may protect you from liability for the unpaid balance. If you refinance or take on any additional debt on this property, you may lose this protection and have to pay any debt remaining even after foreclosure. You may want to consult a lawyer for more information.

☐ state law does not protect you from liability for the unpaid balance.

Refinance
Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan.

Tax Deductions
If you borrow more than this property is worth, the interest on the loan amount above this property's fair market value is not deductible from your federal income taxes. You should consult a tax advisor for more information.

Contact Information

	Lender	Mortgage Broker	Real Estate Broker (B)	Real Estate Broker (S)	Settlement Agent
Name	Ficus Bank		Omega Real Estate Broker Inc.	Alpha Real Estate Broker Co.	Epsilon Title Co.
Address	4321 Random Blvd. Somecity, ST 12340		789 Local Lane Sometown, ST 12345	987 Suburb Ct. Someplace, ST 12340	123 Commerce Pl. Somecity, ST 12344
NMLS ID					
ST License ID			Z765416	Z61456	Z61616
Contact	Joe Smith		Samuel Green	Joseph Cain	Sarah Arnold
Contact NMLS ID	12345				
Contact ST License ID			P16415	P51461	PT1234
Email	joesmith@ ficusbank.com		sam@omegare.biz	joe@alphare.biz	sarah@ epsilontitle.com
Phone	123-456-7890		123-555-1717	321-555-7171	987-555-4321

Confirm Receipt

By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form.

Applicant Signature Date

Co-Applicant Signature Date

FICUS BANK

4321 Random Boulevard • Somecity, ST 12340

Save this Loan Estimate to compare with your Closing Disclosure.

Loan Estimate

DATE ISSUED 2/15/2013
APPLICANTS Michael Jones and Mary Stone
123 Anywhere Street
Anytown, ST 12345
PROPERTY 456 Somewhere Avenue
Anytown, ST 12345
SALE PRICE $180,000

LOAN TERM 30 years
PURPOSE Purchase
PRODUCT Fixed Rate
LOAN TYPE ☒ Conventional ☐ FHA ☐ VA ☐ _____
LOAN ID # 123456789
RATE LOCK ☐ NO ☒ YES, until 4/16/2013 at 5:00 p.m. EDT
Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on **3/4/2013** *at 5:00 p.m. EDT*

Loan Terms

		Can this amount increase after closing?
Loan Amount	$162,000	**NO**
Interest Rate	3.875%	**NO**
Monthly Principal & Interest *See Projected Payments below for your Estimated Total Monthly Payment*	$761.78	**NO**
		Does the loan have these features?
Prepayment Penalty		**YES** • **As high as $3,240** if you pay off the loan during the first 2 years
Balloon Payment		**NO**

Projected Payments

Payment Calculation	Years 1-7	Years 8-30
Principal & Interest	$761.78	$761.78
Mortgage Insurance	+ 82	+ —
Estimated Escrow *Amount can increase over time*	+ 206	+ 206
Estimated Total Monthly Payment	$1,050	$968

Estimated Taxes, Insurance & Assessments
Amount can increase over time

$206 a month

This estimate includes	In escrow?
☒ Property Taxes	YES
☒ Homeowner's Insurance	YES
☐ Other:	

See Section G on page 2 for escrowed property costs. You must pay for other property costs separately.

Costs at Closing

Estimated Closing Costs	$8,054	Includes $5,672 in Loan Costs + $2,382 in Other Costs – $0 in Lender Credits. *See page 2 for details.*
Estimated Cash to Close	$16,054	Includes Closing Costs. *See Calculating Cash to Close on page 2 for details.*

Visit **www.consumerfinance.gov/mortgage-estimate** for general information and tools.

Closing Cost Details

Loan Costs

A. Origination Charges	$1,802
.25 % of Loan Amount (Points)	$405
Application Fee	$300
Underwriting Fee	$1,097

B. Services You Cannot Shop For	$672
Appraisal Fee	$405
Credit Report Fee	$30
Flood Determination Fee	$20
Flood Monitoring Fee	$32
Tax Monitoring Fee	$75
Tax Status Research Fee	$110

C. Services You Can Shop For	$3,198
Pest Inspection Fee	$135
Survey Fee	$65
Title – Insurance Binder	$700
Title – Lender's Title Policy	$535
Title – Settlement Agent Fee	$502
Title – Title Search	$1,261

D. TOTAL LOAN COSTS (A + B + C)	$5,672

Other Costs

E. Taxes and Other Government Fees	$85
Recording Fees and Other Taxes	$85
Transfer Taxes	

F. Prepaids	$867
Homeowner's Insurance Premium (6 months)	$605
Mortgage Insurance Premium (months)	
Prepaid Interest ($17.44 per day for 15 days @ 3.875%)	$262
Property Taxes (months)	

G. Initial Escrow Payment at Closing		$413
Homeowner's Insurance	$100.83 per month for 2 mo.	$202
Mortgage Insurance	per month for mo.	
Property Taxes	$105.30 per month for 2 mo.	$211

H. Other	$1,017
Title – Owner's Title Policy (optional)	$1,017

I. TOTAL OTHER COSTS (E + F + G + H)	$2,382

J. TOTAL CLOSING COSTS	$8,054
D + I	$8,054
Lender Credits	

Calculating Cash to Close

Total Closing Costs (J)	$8,054
Closing Costs Financed (Paid from your Loan Amount)	$0
Down Payment/Funds from Borrower	$18,000
Deposit	– $10,000
Funds for Borrower	$0
Seller Credits	$0
Adjustments and Other Credits	$0
Estimated Cash to Close	$16,054

Additional Information About This Loan

LENDER	Ficus Bank	**MORTGAGE BROKER**	
NMLS/__ LICENSE ID		**NMLS/__ LICENSE ID**	
LOAN OFFICER	Joe Smith	**LOAN OFFICER**	
NMLS/__ LICENSE ID	12345	**NMLS/__ LICENSE ID**	
EMAIL	joesmith@ficusbank.com	**EMAIL**	
PHONE	123-456-7890	**PHONE**	

Comparisons

Use these measures to compare this loan with other loans.

In 5 Years	$56,582	Total you will have paid in principal, interest, mortgage insurance, and loan costs.
	$15,773	Principal you will have paid off.
Annual Percentage Rate (APR)	4.274%	Your costs over the loan term expressed as a rate. This is not your interest rate.
Total Interest Percentage (TIP)	69.45%	The total amount of interest that you will pay over the loan term as a percentage of your loan amount.

Other Considerations

Appraisal

We may order an appraisal to determine the property's value and charge you for this appraisal. We will promptly give you a copy of any appraisal, even if your loan does not close. You can pay for an additional appraisal for your own use at your own cost.

Assumption

If you sell or transfer this property to another person, we
☐ will allow, under certain conditions, this person to assume this loan on the original terms.
☒ will not allow assumption of this loan on the original terms.

Homeowner's Insurance

This loan requires homeowner's insurance on the property, which you may obtain from a company of your choice that we find acceptable.

Late Payment

If your payment is more than *15* days late, we will charge a late fee of *5% of the monthly principal and interest payment.*

Refinance

Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan.

Servicing

We intend
☐ to service your loan. If so, you will make your payments to us.
☒ to transfer servicing of your loan.

Confirm Receipt

By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form.

Applicant Signature	Date	Co-Applicant Signature	Date

NOTES

NOTES

Real Property Institute
December 3, 2015

Spencer Reid
Land Grants

TAB 1

Features Page

Call to Action!
Do you own Land?
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Historical Outline
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Benefits of Team Law
Become a Beneficiary
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The Way of Kings™
RMHelpingHearts.com
The Miracle Molecule
Open Forum

Steps to secure a Land Patent:

We present the following in the hope that you will educate yourself with the truth and prepare yourself to stand as Electors; as our forefathers and the founding fathers of this nation did, with your Land, Liberty and Rights intact. Though there are many purveyors of information about land patents on the internet most of those purveyors mix fact with fiction regarding the use of the same implying nefarious purposes for the use of land patents. The simple fact remains through it all: "The Land Patent is the Title to the land." Respectively, given that, in the terms of said founding fathers, an "Elector" is by definition "a landowner". This article is about Team Law's Land Patent Sandwich service; which service we provide for the sole purpose of discovering who the electors are; so, we can help the people restore our original jurisdiction government back into their vacant seats to save the nation.

The Land Patent is the Title to land (***and*** initially to the property appurtenant to the land). By definition a Land Patent is the only form of proof of absolute title to land in the United States of America. "A patent is the highest evidence of title and is conclusive as against the government and all claiming under junior patents or titles" *U.S. v. Stone 2 US 525*. The patented "grant of land is a public law standing on the statute books of the State, and is notice to every subsequent purchaser under any conflicting sale made afterward." *Wineman v. Gastrell 2 U.S. App. 581*. "Congress has the sole power to declare the dignity and effect of titles emanating from the United States; and the whole legislation of the Federal Government, in reference to the public lands, declares the patent the superior and conclusive evidence of legal title;" *Langdon v. Sherwood, 124 U.S. 74, 84*. Land patents are granted to the named party ***and*** to their heirs ***and*** assigns forever. Therefore, to secure ownership of land you must have a proper "Chain of Title" that secures your landownership to a properly assigned underlying land patent; or you could lose what you thought was your land in a land contest. The following steps are the steps we follow to secure documents to accomplish this. We use our copyrighted forms; which we cannot publish here because there are so many unscrupulous and/or ignorant people that would use these forms incorrectly; and, thus, possibly jeopardize the process. Therefore, our forms are only available from Team Law directly. The following steps are the steps we would follow to perfect our Title to land:

- First, as a landowner we **must have** evidence of our right to the land (that is to say: a Warranty Deed, a well supported Quitclaim Deed, a legally and lawfully documented Assignment, Inheritance, etc.). In any land rights battle, the complete chain of title is necessary to a sound win; so, for our own records, we always secure the entire chain of documents from the patent (the Title itself) to the present; such a "Chain of Title" perfects the Title.

Though the only way you can be sure you own the Land is

Free Conference Calling

Utilities

Link to Team Law
Site Terms of Use
mirror: TeamLaw.net

to have a complete Chain of Title in your own records, if you are sending documents to Team Law to use Team Law's Land Patent Sandwich service documentation we do ***not*** *need the complete Chain of Title (abstract, etc.), we only need to see the land patent and certified proof of the most recent Deeds that grant the Land to you; ie. we need to see a certified copy of your Warranty Deed (if your right to the land was acquired by a Quitclaim Deed we need to see a certified copy of it and of every other transfer document back to a Warranty Deed).*

- Second, find the land description on your right to the land (your deed) and get it into land patent format.

In the original 13 states, land descriptions are usually made by describing landmarks with 'meets and bounds', which is where a description starts at a known point then describes how far to go in each direction until the body of the land is described. That method is difficult to deal with over time, because landmarks can change, move and or disappear. Therefore, in those 13 states, and in Texas, we need to see certified instruments that show your land is physically located within the boundry of the land patent's land description.

Since the Constitutional Republic has been formed virtually the rest of the country was mapped in Section, Township, and Range format (hereafter "STRf"). If the legal description of your land on your right to the land documents (hereafter "Warranty Deed") is not in STRf, then you need to get it into that format to find the proper Land Patent for your Land. To do that you need to trace the legal description on your Warranty Deed back to STRf. For example, if your Deed says, "Lot 3 of the Bryerton Subdivision as recorded in the Dexter County Land Records", then you go to the Dexter County Clerk and Recorder's office and find the original copy of the Subdivision's plat map. Find your lot and locate the Section, Township, and Range that includes your lot. Get a certified copy of the County plat map of the subdivision your land is located in (we always get two certified copies of everything, then we keep the documents in two separate places for security's sake); you'll especially need the part that legally describes the land. That part is called: "the legal", and it almost always lists the Land description in STRf. While you're there it won't hurt to get a couple certified copies of your Warranty Deed from their records (if you don't already have them). If your land records describe your land in 'meets and bounds', you'll need to be able to prove the land described on your Deed is within the land described on the respective land patent—that can be done with certified official Plat Map(s) or you can contact a Certified Surveyor familiar with creating official plat maps. If you have difficulty with this you may contact us directly by logging onto Team Law's Forum and send a Private

Message to Admin requesting assistance. If you have, a Trust Deed and no Warranty Deed, you will also want to contact Team Law for additional help through our Online Forum.

- Third, with the description of your Land in STRf, you're ready to go acquire a copy of the appropriate Land Patent for your Land. This is done by taking the legal description of your Land, in STRf, to the Bureau of Land Management (BLM) and asking them (in their Land Patent records office) for a Certified copy of the Land Patent for the land represented by your Land description including, Section, Township, and Range. It's a good idea to get at least two certified copies of the appropriate Patent and a copy of the "Patent Plat map" for the particular Township your land is in.

- Fourth, now that you have certified copies of your Land Patent and certified copies and or originals of your Warranty Deed you're ready to send your documents to Team Law for their completion. We will compile your documents into a Land Patent Sandwich. The Land Patent sandwich is a single document compiled of several documents listed top to bottom as follows:

- Fifth, when you get the sample Land Patent Sandwich forms back from Team Law, they are designed to be used for your educational purposes to inspire you to generate any final documents you may need. The package that returns to you all of your documents contains a cover letter that shares with you how we would sue such forms. When you are ready to record you will need a Notary Public to date and sign your

documents as needed. The Land Patent Sandwich service comes with no legal or educational support; as noted above, we provide the service in order to find landowners; so, we can help the people reseat our original jurisdiction government.

- Sixth, you need not publicly file any records of your Land Patent; it is what it is and cannot be changed, updated or negated. However, most people prefer to protect their land interests with public filing of at least a properly executed instrument like the sample Copyrighted Quitclaim Deed provided in the Land Patent Sandwich's documents. Such a public record of your ownership interest can resolve allegations from anyone alleging they have an ownership interest; and can resolve statutory "race to the court" issues. If you wish to make a public recording, there are several methods you may use. They are as follows:

    1. File it in the Clerk and Recorder's office with the land records of the county.
    2. Make public notice that you accepted the assignment of the patent in the legal notices in a local newspaper.
    3. Post the Land Patent Sandwich on the County's public notice bulletin board (usually found at either the County (district) Courthouse or at the Sheriff's office). Post Office bulletin boards may also provide sufficient notice.

    Understanding how the sandwich works: On the bottom of the sandwich, you have the highest authority of land title—the certified copy of your Land Patent (the Title itself). Its own words prove the land belongs (fee simple) to the party named on the patent **and** to their heirs **and** assigns **forever.** Respectively, if you have land patent secured rights to the land through the Chain of Title, you are the landowner. The patent proves your right of assignment or inheritance; so, the next document is your copyrighted Declaration of acceptance of the Land Patent. Your right to claim the land is your assignment on the land, which assignment is found within your Warranty Deed (where the deed says "grants" and/or "assigns"). Therefore, a certified copy of your Warranty Deed is the third document on the pile. The top document is your copyrighted Quitclaim Deed, which moves your land out of equity (fairness to the contract where it had likely been held by the Social Security cardholder) and into law (fact in fee simple) now owned by the physical man or woman in question.

    Keeping two copies is best, keeping each in separate secure locations.

With a land patent as the operating authority on the land, the Land cannot thereafter lawfully be taken for debt or taxes, except by the willing grant of the Landowner. This fact does not limit the landowner from the ability to willingly enter contracts that may subsequently mandate the payment of either

taxes or debts secured by the property appurtenant to the land. Such contracts may contain the landowner's full authority to convey lawful access to the land as well. Team Law can help its beneficiaries learn how to learn the law that lets them understand and resolve related matters; however, for those that have fallen prey to predatory marketers that have ignorantly imagined that land patents negate their right to contract they will eventually need to learn the truth. Of course, they will need to become Team Law beneficiaries before we will be able to help them begin to learn how to learn the law if a remedy exists to help them now. For further information, contact us by logging onto Team Law's Forum and send a Private Message to Admin requesting assistance.

Again, it is important to realize having a Land Patent does not limit you from willingly going into debt or from forming contracts. The fact is, property taxes are the result of a private contract between you and the state of 'X'. Nothing impedes your right to enter, or be bound by, such contracts. Respectively, if you desire to so contract the property appurtenant to your Land, you obligate yourself to follow the terms and conditions of your contract in spite of any respective land patent.

Other than the open access to Team Law's Success Network and our private copyrighted internet websites (a page of which this instant page is), the Land Patent Sandwich service is the only service Team Law provides that people can acquire access to without becoming a Team Law Beneficiary. Again, the sole reason we provide this service both to Team Law beneficiaries (at no cost) and to others (processing fee $200.00) is because we are supporting the people as they work to reseat the original jurisdiction Constitutional Republic government (see: Governor's Corner). To accomplish that task the people need to reseat the Electoral College with Electors; and, because landownership rights qualify people as "Electors", we need to know who the Electors are; so, we provide the Land Patent Sandwich service to discover Electors and to, respectively, help them save the nation.

Well, that's about it for now. Please watch for our forthcoming book on Land Patents and taking back America. A more in-depth review of the Land Patent process is available in our Do it Yourself Land Patents album which you can get from our Order Form. There are also good articles on Land Patents in our **WARN** newsletter on page 13 and in our Land 101 mini course presented on our Open Forum.

Sincerely, let's get together and take our nation back.

(top)

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Real Property Institute
December 3, 2015

Spencer Reid
Land Grants

TAB 2

Truth - What Is A Land Patent - Allodial Titles

www.freedomforallseasons.org/**AllodialLandPatent**Reports/**Truth**%20-%... ▾

WHAT IS A **LAND PATENT**?? Essentially, a **Land Patent** is the first conveyance of**title** ownership to land which the U.S. Government grants a citizen who applies ...

You visited this page on 10/7/15.

Real Property Institute
December 3, 2015

Spencer Reid
Land Grants

TAB 3

TAB

3

PATENT. OJO CALIENTE GRANT.

The United States of America.

To all to whom these presents shall come, Greeting:

Whereas, under the provisions of the act of Congress approved on the third day of March, one thousand eight Hundred and ninety one entitled " An Act to establish a court of private land claims, and to provide for the settlement of private land claims in certain States and Territories", the private land claim of Sergeant Luis Duran, et al, known as the "Ojo Caliente" grant, situated in the counties of Taos and Rio Arriba, in the Territory of New Mexico, was presented by petition on the seventeenth day of February, one thousand eight hundred and ninety three, by Antonio Joseph and others, heirs, successors, assigns and legal representatives of the original claimants, to the said court of Private Lands Claims, for confirmation: And whereas, the title in said grant was on the twenty fifth day of April one thousand eight hundred and ninety four, approved and confirmed by the court of Private Land claim, the decree of approval and confirmation being in words and figures as follows, to-wit: United States of America

Territory of New Mexico,

In The United States court of Private Land Claims; Santa Fe, New Mexico District, April, 1894 Term.

Antonio Joseph, et als, Plaintiffs.

No. 94 vs.

The United States, Defendants,

This cause having come on to be heard upon the petition of the Plaintiff for himself as an owner, as well as for and in behalf of all the others., the heirs, successors, assigns and legal representatives of Sergeant Luis Duran; District Lieutenant Gregorio Martin, Jose Antonio Madrill, Juan de Jesus Abila, Salvador Vachicha, Salvador Maes, Francisco Gallegos, Cristoval Maes, Miguel Trujillo, Jose Antonio Espinosa, Miguel Sena, Jose Olguin, Luis Chaves, Ramon Salas, Juan Domingo Sandoval, Antonio Jose Espinosa, Juan Olguin, Francisco Valverde, Juan Cristoval Gonsales, Juan Crisostomo de Urivals, Juan Bautista Glabes, Lorenzo Romero, Manuel Trujillo, Inez Cordova, Jose M. Aguilar, Salvador Galbes, Jacinto Ganora, Pedro Sisneros, Cristoval Lucero, Juan Ganora, Jose Maria Naranje, Jose Martin, Merejildo Martin, Manuel Martin, Juan Vigil, Pablo Lucero, Jose Antonio de Lian, Jabriel Duran, Clemente Galbes, Pedro Lucero, Juan Bautista Masarenas, Jose Joaquin Mestas, Jose Manuel Maes, Jabriel Trujillo, Pedro Romero, Antonio Martin, Blas Galbes, Pascual Mestas, Ignacio Trujillo, Manuel Rodrigues, Antonio Archuleta, Antonio Martin, Antonio Mars, the original grantees, deceased, in and to that certain tract of land known as the Ojo Caliente grant, Private Land claim, Report No. 77, in the office of the Surveyor General (United States Surveyor General) For New Mexico, herein, and the answer of the Defendants, the United States; and the Plaintiffs having produced their testimony, both documentary and oral and the Attorney for the defendants, the United States, having made his objections and exceptions thereto, and the cause being

and the court having heard argument by N.B. Laughlin, Esq. and T. B. Catron.

EXHIBIT

1

Attorney's for the Plaintiffs, and by Matt G. Reynolds, Esq., Attorney for Defendants, and the same Having been submited to the Court for its consideration, and the court being fullyadvised in the premises, doth find;

1st. That the said Grant was made to Sergeant, Luis Duran, District Lieutenant Gregorio Martin, Jose Antonio Madril, Jose Antonio Espinosa, Juan de Jesus Abila, Miguel Sena, Salvador Vachicha, Jose Olguin, Salvador Maes, Luis Chaves, Francisco Gallego, Ramon Salas, Cristoval Maes, Juan Domingo Sandoval, Miguel Trujillo, Antonio Jose Espinosa, Juan Olguin, Francisco Valverde, Juan Cristoval Gonsales, Juan Crisostomo de Urivalo, Juan Bautista Galbes, Lorenzo Romero, Manuel Trujillo, Inez Cordova, Jose R. Aguilar, Salvador Galbes, Jacinto Samora, Pedro Sisneros, Cristoval Lucero, Juan Samora, Jose Maria Naranje, Jose Martin, Merejilde Martin, Manuel Martin, Juan Vigil, Pablo Lucero, Jose Antonio de Lion, Jabriel Duran, Clemente Galbes, Pedro Lucero, Juan Bautista Mascarenas, Jose Joaquin Montes, Jose Manuel Maes, Jabriel Trujillo, Pedro Romero, Antonio Martin, Blas Galbes, Pasqual Montes, Ignacio Trujillo, Manuel Rodrigues, Antonio Archuleta, Antonio Martin, Antonio Maes, the original grantees, on the eleventh day of September, One thousand seven hundred and ninety three, by Don Fernando de la Concha, the then Governor and Captain General of the province of New Mexico; that the title to the same was so lawfully and regularly dirived from the Spanish Government, in accordance with the royal laws ordinances, usages, and customs then in force for the disposition of the public unoccupied lands of the Crown of Spain.

2nd. That the form and nature of the title to the said lands so made and donated, was a Royal Spanish Grant for agricultural and pastorial purposes.

3rd. That the title to the said Grant became and was complete and perfect in the said original grantees, from and after the date of the making thereof, and so remained complete and perfect in the said original grantees, their heirs, successors, assigns and legal representatives, up to and at the time of the making of the treaty between the United States of America, and the United Mexican States at the City of Guadalupe Hidalgo, on the second day of February in the year of our Lord, one Thousand eight hundred and forty eight.

4th. That all the material allegations in the petition of the Plaintiffs are sustained by the testimony so offered; and that the expedient offered in evidence by the Plaintiffs is genuine and valid. It is therefore ordered, adjudged, and decreed by the Court that the title to the said Grant, the Ojo Caliente be and the same hereby is approved and confirmed;

that the title to the same be, and it hereby is fixed, and established and forever quieted, in the heirs, successors, assigns and legal representativesof the said Sergeant, Luis Duran, District Lieutenant Gregorio Marti, Jose Antonio Madril, Jose Antonio Espinosa, Juan de Jesus Abila, Miguel Sena, Salvador Vachicha, Jose Olguin, Salvador Maes, Luis Chaves, Francisco Gallego, Ramon Salas, Cristoval Maes, Juan Domingo Sandoval, Miguel Trujillo, Antonio Jose Espinosa, Juan Olguin, Francisco Valverde, Juan Cristoval Gonsales, Juan Crisostomo Galbes, Lorenzo Romero, Manuel Trujillo, Inez Cordova, Jose R. Aguilar, Salvador Galbes, Jacinto Samora, Pedro Sisneros, Cristoval Lucero, Juan Samora, Jose Maria Naranje, Jose Martin, Merejilde Martin, Manuel Martin, Juan Vigil, Pablo Lucero, Jose Antonio de Leon, Jabriel Duran, Clemente Galbes, Pedro Lucero, Juan Bautista Mascarenas, Jose Joaquin Montes, Jose manuel Maes, Jabriel Trujillo, Pedro Romero, Antonio Martin, Blas Galbes, Pasqual Montes, Ignacio Trujillo, Manuel Rodrigues,

Antonio Archuleta, Antonio Martin, Antonio Maes, deceased, the original grantee, as against the

United States of America.

It is further ordered, adjudged, and decreed, by the court that the exterior boundaries of the said grant be and they are hereby fixed and established, as follows:

Extending from the Canada de los Comanches to a little distance below the tower of Jose Baca, deceased, expressed in the original Spanish(desde la Canada de los Comanches hasta el torreon del difunto Jose Baca; con una poca diferencia habajito), And bounded on the north, as stated in the original Spanish, by 'la misma Canada de los Comanches,' (translated into English, the same Canada de los Comanches');

On the south as stated in the original Spanish, by una mojonera.....de piedras y lodo, con una Santa Cruz de Palo de cabina en el corazon, poquito abajode dicho torreno de Jose Baca, (as translated into English a monument of stone and mud with a holy cross made of cedar placed in the heart, a very little below the said tower of Jose Baca);

On the east, as stated in the original Spanish, by el pie de la loma (translated into English, the foot of the hill) meaning the first hill east of Ojo Caliente; and on the west as stated in the original Spanish, by el pie de las otras lomas de la otra banda del rio (translated into English, the foot of the other hills on the other side of the river) the same being the first hills west of the said river, And that the Survey shall be made in accordance with this decree, and according to the act of Congress, approved March 3rd., 1891, under which this court assumes Jurisdictionin the premises.

It is further ordered, adjudged and decreed by the court, that this decree of approval and confirmation shall be construed only as a release on the part of the United States to all lands within the exterior boundaries thereof.

That this decree of approval and confirmation shall not be so construed, as to confer and right or title in the grantees, to any gold, silver or quicksilver mines, or the minerals of the same within the exterior boundaries thereof;

That this decree of approval and confirmationshall not be construed as to effect or conclude the private rights of persons as between themselves to any lands,rights, titles or privileges, within the exteriorboundaries thereof;

That this decree of approval and confirmation shall not be construed so as to affect the title or right to any lands heretofore disposed of by the United States, within the exterior boundaries thereof; and it is so ordered.

Santa Fe, New Mexico

April 25, 1894 (Signed) Joseph R. Reed

Chief Justice.

And Whereas, there has been deposited in the General Land Office of the United States a return with the descriptive notes and plat of the survey of said claim, confirmed as aforesaid and duly authenticated by the signature of the United States surveyor General for the Territory of New Mexico, which said survey and field notes thereof were duly approved by the Court of Private Land Claims on the thirtieth day of March one thousand eight hundred and [illegible], and are in words and figures as follows, to-wit; Beginning at the point where the mound of stone and mud with the

Real Property Institute
December 3, 2015

Spencer Reid
Land Grants

TAB 4

SF 2 SHORT FORM WARRANTY DEED (JOINT TENANTS) (NMSF-1813) (REV.9/93) - NEW MEXICO STATUTORY FORM

TAOS COUNTY
ELAINE S. MONTANO, CLERK
000380408
Book 705 Page 201
1 of 14
06/16/2012 09:14:54 A
BY DIANAD

WARRANTY DEED (Joint Tenant)

RAMONCITA TAFOYA a single person, whose address is 1421 A MARTINEZ LANE ESPANOLA, NEW MEXICO 87532, for consideration paid, grant to THE HEIRS OF THE ORIGINAL SETTLERS OF LA MERCED DEL PUEBLO DE OJO CALIENTE (OJO CALIENTE GRANT) whose address is P.O. BOX 94 OJO CALIENTE NEW MEXICO 87549

and THE OJO CALIENTE GRANT BOARD OF TRUSTEES, WHICH ARE COMPRISED OF HEIRS SELECTED ACCORDING TO THE BY-LAWS OF THE OJO CALIENTE GRANT whose address is P.O. BOX 94 OJO CALIENTE NEW MEXICO 87549

as joint tenants the following described real estate in TAOS County, New Mexico:

SEE EXHIBIT "A" U. S. PATENT #77 ATTACHED HERETO AND MADE A PART HEREOF

SEE EXHIBIT "B" U. S. SURVEYOR GENERAL PLAT MAP ATTACHED HERETO AND MADE A PART HEREOF

SAID TRACT OR PARCEL OF LAND CONTAINS 547.98 ACRES MORE OR LESS WHICH IS A PORTION OF THE 2244.98 ACRES KNOWN AS THE PLAT OF THE "OJO CALIENTE GRANT" FILLED WITH U.S. SURVEYOR GENERALS OFFICE, SANTA FE, NEW MEXICO DATED JAN 28, 1895. WITH ALL IMPROVEMENTS AND RIGHTS APPURTENANT THERTO IN TAOS COUNTY NEW MEXICO.

TAB 4

with warranty covenants.

Witness My hand and seal this 21st day of July 2012

Ramoncita Tafoya (Seal) _____ (Seal)

_____ (Seal) _____ (Seal)

ACKNOWLEDGEMENT FOR NATURAL PERSONS

STATE OF NEW MEXICO)
) ss.
COUNTY OF Rio Arriba)

This instrument was acknowledged before me on July 21, 2012

by Ramoncita Tafoya

My commission expires: 12-12-15
(Seal)

OFFICIAL SEAL
BERNADETTE ARAGON
Notary Public
State of New Mexico
My Comm. Expires 12-12-15

Bernadette Aragon
NOTARY PUBLIC

FOR RECORDER'S USE ONLY

ACKNOWLEDGEMENT FOR CORPORATION

STATE OF NEW MEXICO)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____, 20____,

by _____ (NAME OF OFFICER)

_____ (TITLE OF OFFICER) of _____ (CORPORATION ACKNOWLEDGEMENT)

a _____ (STATE OF INCORPORATION) corporation, on behalf of said corporation.

My commission expires:
(Seal)

_____ NOTARY PUBLIC

EXHIBIT 4

VALLIANT E... 99

© COPYRIGHT WARNING: REPRODUCTION OF THIS FORM PRIOR TO ... USE BY A LICENSEE OF THE FORMS COMPANY, INC.

TAOS COUNTY
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06/16/2012 09:14:48 AM
BY DIANAD

RECORDING REQUESTED BY)
AND WHEN RECORED MAIL TO)
)
)
)
)
)

RECORDER'S USE

DECLARATION OF ASSIGNEES UPDATE OF PATENT

PATENT NUMBER #77

KNOW ALL MEN BY THESE PRESENTS:

THAT Joe N. BACA

AND MELVIN M. BACA DO SEVERALLY CERTIFY AND DECLARE THAT

WE (WE/I) BRING UP THIS LAND PATENT IN OUR (OUR/MY) NAME(S).

(1) THE CHARACTER OF SAID PROPERTY SO SOUGHT TO BE PATENTED, AND LEGALLY DESCRIBED AND REFERENCED UNDER PATENT NUMBER LISTED ABOVE IS:

SEE EXHIBIT "A" U. S. PATENT # 77
ATTACHED TO AND MADE A PART HEREOF

SEE EXHIBIT "B" U. S. SURVEYOR GENERAL'S PLAT MAP
ATTACHED HERE TO AND MADE A PART HEREOF

SAID TRACT OR PARCEL OF LAND CONTAINS 547.98 ACRES MORE OR LESS WHICH IS A PORTION OF PATENT #77 WHICH CONTAINS 2244.98 ACRES IN THE STATE OF NEW MEXICO COUNTY OF TAOS WITH ALL RIGHTS APPURTENANT THERE TO.

(2) NOTICE OF PRE-EMPTIVE RIGHT. PURSUANT TO THE DECLARATION OF INDEPENDENCE [1776], THE TREATY OF PEACE WITH GREAT BRITIAN. (8STAT. 80) KNOW AS THE TREATY OF PAIRS [1793, AN ACT OR CONGRESS [3STAT. 566, APRIL 24, 1824] THE TREATY OF GUADALUPE HIDALGO (ART. 8 AND ART 9) KNOW AS THE TREATY OF PEACE (1848). THE GADSEN TREATY AND 43 USC SECTIONS 57, 59 AND 83; THE RECIPIENT HEREOF IS MANDATED BY ART. VI SECTION I. 2. AND 3; ART IV SECTIONS 1 CL. 1 & 2; SECTION 2 CL. 1 8t 2; SECTION 4; THE 4TH, 7TH, 9TH, AND 10TH AMENDMENT [U S CONSTITUTION, 1781-91J TO ACKNOWLEDGE ASSIGNEE'S UPDATE OF PATENT PROSECUTED BY AUTHORITY OF ART. III SECTION 2CL. 1 & 2 AND ENFORCED BY ORIGINAL / EXCLUSIVE JURISDICTION THERUNDER AND IT IS THE ONLY WAY A PERFECT TITLE CAN BE HAD IN OUR NAME, WILCOX VS JACKSON, 13 PET. (U. S.) 498, 101. ED. 264; ALL QUESTIONS OF FACT DECIDED BY THE GENERAL LAND OFFICE ARE BINDING EVERYWHERE. AND INJUNCTIONS AND MANDAMUS PROCEEDINGS WILL NOT LIE AGAINST IT, LITCHFIELD VS THE REGISTER, 9 WALL. (U.S.) 575, 19 L. ED. 681.
THIS DOCUMENT IS INSTRUCTED TO BE ATTACHED TO ALL DEEDS AND / OR CONVEYANCES IN THE NAMES) OF THE ABOVE PARTY (IES) AS REQUIRING RECORDING OF THIS DOCUMENT, IN A MANNER KNOWN AS **NUNC PRO TUNC** [AS IT SHOULD HAVE BEEN DONE IN THE BEGINNING], BY ORDER OF UNITED STATES SUPREME LAW MANDATE AS ENDORSED BY CASE HISTORY CITED.

(3) NOTICE AND EFFECT OF A LAND PATENT. A GRANT OF LAND IS A PUBLIC LAW STANDING ON THE STATUTE BOOKS OF THE _____(YOUR STATE),AND IS NOTICE TO EVERY SUBSEQUENT PURCHASER UNDER ANY CONFLICTING SALE MADE AFTERWARD; WINEMAN VS. GASTRELL,54 FED 819,4 CCA596,2 US APP 581. A PATENT ALONE PASSES TITLE TO THE GRANTEE: WILCOX VS JACKSON, 13 PET (US) 498, 10. L. ED. 264. WHEN THE UNITED STATES HAS PARTED WITH TITLE BY A PATENT LEGALLY ISSUED,AND UPON SURVEYS LEGALLY MADE BY ITSELF AND APPROVED BY THE PROPER DEPARTMENT,THE TITLE SO GRANTED CANNOT BE IMPAIRED BY ANY SUBSEQUENT SURVEY MADE BY THE GOVERNMENT FOR ITS OWN PURPOSES; CAGE VS. DANKS,13,LA.ANN.128 IN THE CASE OF EJECTMENT,WHERE THE QUESTION IS WHO HAS THE LEGAL TITLE. TILE PATENT OF THE GOVERNMENT IS UNASSAILABLE, SANFORD vs SANFORD,139 US 642. THE TRANSFER OF LEGAL TITLE (PATENT) TO PUBLIC DOMAIN GIVES THE TRANSFEREE THE RIGHT TO POSSESS AND ENJOY THE LAND TRANSFERRED GIBSON vs CHOUTEAU, 80 US 92. A PATENT FOR LAND IS THE HIGHEST EVIDENCE OF TITLE AND IS CONCLUSIVE AS EVIDENCE AGAINST THE GOVERNMENT AND ALL CLAIMING UNDER JUNIOR PATENTS OR TITLES,UNITED STATES VS. STONE, 2 US 525. ESTOPPEL HAS BEEN MAINTAINED AS AGAINST A MUNICIPAL CORPORATION (COUNTY). BEADLE vs. SMYSER, 209 US 393,UNTIL IT ISSUES,THE FEE IS IN THE GOVERNMENT,WHICH BY THE PATENT PASSES TO THE GRANTEE,AND HE IS ENTITLED TO ENFORCE POSSESSION IN EJECTMENT,BAGNELL vs. BRODERICK 13 PETER (US) 436. STATE STATUTES THAT GIVE LESSER AUTHORITATIVE OWNERSHIP OF TITLE THAN THE PATENT CAN NOT EVEN BE BROUGHT INTO FEDERAL COURT,LANGDON vs SHERWOOD, 124 U.S. 74,80. THE POWER OF CONGRESS TO DISPOSE OF ITS LAND CANNOT BE INTERED WITH,OR ITS EXCERCISE EMBARRASSED BY ANY STATE LEGISLATION: NOR CAN SUCH LEGISLATION DEPRIVE THE GRANTEES OF THE UNITED STATES OF THE POSSESSION AND ENJOYMENT OF THE PROPERTY GRANTED BY REASON OF ANY DELAY IN THE TRANSFER OF THE TITLE AFTER THE INITIATION OF PROCEEDINGS FOR ITS ACQUISITION. [GIBSON VS CHOUTEAU. 13 WAL. (U.S.) 92,93

(4) LAND TITLE AND TRANSFER THE EXISTING SYSTEM OF LAND TRANSFER IS A LONG AND TEDIOUS PROCESS INVOLVING THE OBSERVANCE FO MANY FORMALITIES AND TECHNICALITIES,A FAILURE TO OBSERVE ANY ONE OF WHICH MAY DEFEAT THE TITLE. EVEN WHERE THESE HAVE BEEN MOST CAREFULLY COMPLIED WITH. AND WHERE THE TITLE HAS BEEN TRACED TO ITS SOURCE. THE PURCHASER MUST BE AT HIS PERIL, THERE ALWAYS BEIGN IN SPITE OF THE UTMOST CARE AND EXPENDITURE-THE POSSIBILITY THAT HIS TITLE MAY TURN OUT BAD: YEAKLE, TORRENCE SYSTEM. 209. PATENTS ARE ISSUED (AND THEORETICALLY PASSED) BETWEEN SOVEREIGNS LEADING FIGHTER VS COUNTY OF GREGORY, 230 N. W2d 114, 116.

THE PATENT IS PRIMA FACIE CONCLUSIVE EVIDENCE OF TITLE, MARSH vs BROOKS, 49 U.S. 223,233.

AN ESTATE IN INHERITANCE WITHOUT CONDITION.BELONGING TO THE OWNER AND ALIENABLE BY HIM, TRANSMISSIBLE TO HIS HEIRS ABSOLUTELY AND SIMPLY,IS AN ABSOLUTE ESTATE IN PERPETUITY AND THE LARGEST POSSIBLE ESTATE A MAN CAN HAVE. BEING IN FACT ALLODIAL IN ITS NATURE, STANTON vs SULLIVAN, 63 R.I. 216 7 A. 696. THE ORIGINAL MEANING OF A PERPETUITY IS AN INALIENABLE, INDESTRUCTIBLE INTEREST. BOUVIER'S LAW DICTIONARY, VOLUME III P. 2570. (1914).

IF THIS LAND PATENT IS NOT CHALLENGED. AS STATED ABOVE, WITHIN 60 DAYS IT THEN BECOMES OUR/MY PROPERTY,AS NO ONE ELSE HAS FOLLOWED THE PROPER STEPS TO GET LEGAL TITLE, THE FINAL CERTIFICATE OR RECEIPT ACKNOWLEDGING THE PAYMENT IN FULL BY A HOMESTEADER OR PREEMPTOR IS NOT LEGAL EFFECT A CONVEYANCE OF LAND. U.S vs STEENERSON. 50 FED 504,1CCA 552,4 U.S. APP. 332.

A LAND PATENT IS A CONCLUSIVE EVIDENCE THAT THE PATENT HAS COMPLIED WITH THE ACT OF CONGRESS AS CONCERNS IMPROVEMENTS ON THE LAND, ETC JANKINS vs GIBSON.3 LAANN 203.

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ELAINE S. MONTANO, CLERK
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BY DIANAD

(5) LAW ON RIGHTS, PRIVILEGES, AND IMMUNITIES; TRANFER BY PATENTEE. . . . . "TITLE AND RIGHTS OF BONA FIDE PURCHASER FROM PATENTEE. . . . . WILL BE PROTECTED". UNITED STATE VS DEBELL 227 F 760 (C8 SD 1915), UNITED STATES VS BEAMON, 242 F 876, (CA8 COLO. 1917); STATE VS HEWITT LAND CO., 74 WASH 573, 134 P474. FROM 43 USC & 15 N 44. AS AN ASSIGNEE, WHETHER HE BE THE FIRST, SECOND OR THIRD PARTY TO WHOM TITLE IS CONVEYED SHALL LOSE NONE OF THE ORIGINAL RIGHTS, PRIVILEGES OR IMMUNITIES OF THE ORIGIAL GRANTEE OF LAND PATENT. "NO STATE SNALL IMPAIR THE OBLIGATIONS OF CONTRACTS". UNITED STATES CONSTITUTION ARTICLE 1 SECTION 10.

(6) EQUAL RIGHTS: PRIVILEGES AND IMMUNITIES ARE FURTHER PROTECTED UNDER THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION,

NO STATE SHALL DENY TO ANY PERSON WITHIN IN JURISDICTION THE EQUAL PROTECTION OF THE LAW"

IN CASE OF EJECTMENT, WHERE THE QUESTION IS WHO HAS THE LEGAL TITLE THE PATENT OF THE GOVERNMENT IS UNASSAIABLE. SANFORD VS SANFORD, 139 U. S. 642, 35 L ED 290 IN FEDERAL COURT THE PATENT IS HELD TO BE THE FOUNDATION OF TITLE AT LAW. FENN VS HOLMES, 21 HOWARD 481.

IMMUNITY FROM COLLATERAL ATTACK: COLLINS VS BARTLETT, 44 CAL 371; WEBER VS PERE MARQUETTE BOOM CO. 62 MICH 626, 30N. W. 469; SURGET VS DOE: 24 MISS 118; PITTSMONT COPPER CO. VS VANINA, 71 MONT. 44, 227 PAC 45; GREEN VS BAKER 47 NEB 934 66 NW 1032.

(7) DISCLAIMER ASSIGNEE'S SEIZEN IN DEED, AND LAWFUL ENTRY IS INCLUSIVE OF SPECIFICALLY THAT CERTAIN LEGALLY DESCRIBED PORTION OF THE ORIGINAL LAND GRANT OR PATENT NO. 77 AND NOT THE WHOLE THEREOF, INCLUDING HEREDITAMENT TENEMENTS, PRE-EMPTION RIGHTS APPURTENANT THERETO. THE RECORDING OF THIS INSTRUMENT SHALL NOT BE CONSTURED TO DENY OR INFRINGE UPON ANY OTHER HEIR RIGHT TO CLAIM THEIR ALLOTED PROPERTY THROUGH HEIRSHIP AS OUTLINED IN THE MERCED DEL PUBLO Del OJO CALIENTE (OJO CALIENTE GRANT) BY-LAWS (ART. 5, SECTION 1 SUBSECTION B) THEIR CLAIM TO ANY REMAINING ARABLE PORTION THEREOF OR THEIR PREPETUAL RIGHT TO THE COMMUNAL PORTION THEREOF. ANY CHALLENGES TO THE VALIDITY OF THIS DECLARATION & NOTICE ARE SUBJECT TO THE LIMITATIONS REFERENCED HEREIN. ADDITIONALLY; A COMMON COURTESY OF SIXTY (60) DAYS IS STIPULATED FOR ANY CHALLENGES HERETO OTHERWISE. LACHES / ESTOPPEL SHALL FOREVER BAR THE SAME AGAINST ALLODIAL FREEHOLD ESTATE; ASSESSMENT LIEN TREORY TO THE CONTRARY (ORS 275. 130). INCLUDED.

THE FOLLOWING DOCUMENTS ARE ATTACHED TO THIS DECLARTION, CERTIFIED COPY OF ORIGINAL LAND GRANT OR PATENT, LEGAL DESCRIPTION OF PORTION OF SAID GRANTOR PATENT

x Jose A Baca

x Melissa M. Baca

TAOS COUNTY
ELAINE S. MONTANO, CLERK
000380405
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08/16/2012 09:14:48 AM
BY DIANAD

ACKNOWLEDGMENT:

EXCUTED THIS 9th day of JULY 2012

STATE OF NEW MEXICO COUNTY OF RIO ARRIBA

MY commission expires: 4-4-15

OFFICIAL SEAL
ART PRUETT
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires 4-4-15

Art Pruett
NOTARY PUBLIC SIGNATURE

NOTES

NOTES

Foreclosure Defense

By Donald A. Walcott

I. The basic residential loan.

- A. Promissory Note.
- B. Mortgage or Deed of Trust.
- C. Who am I dealing with?

II. Recent New Mexico law regarding foreclosure.

- A. *BONY v. Romero*, 2014-NMSC-007.
- B. Foreclosure in New Mexico after *BONY v. Romero*.
- C. Other legal requirements specific to foreclosure in New Mexico.

III. Options available to homeowners in foreclosure, in default or heading towards default.

- A. General considerations.
- B. Defenses.
- C. Loan Modification.
- D. Deed-in-Lieu.
- E. Short Sale.
- F. Cash for keys *in rem* judgment.
- G. Bankruptcy.

IV. Counterclaims.

V. Conclusion.

I. The basic residential loan.

A. Promissory Note.

A promissory note is a promise to pay a sum of money on certain repayment terms – usually periodic payments for a period of time to pay the amount of the note and interest at an agreed upon interest rate. A promissory note is a negotiable instrument, governed by UCC Article Three. NMSA 1978, § 55-3-104.

B. Mortgage or Deed of Trust.

A mortgage or deed of trust is a security instrument that is governed by UCC Article Nine, as well as New Mexico statutory law regarding mortgages and deeds of trust. A mortgage or deed of trust secures the right to repayment of the promissory note with real property as collateral. A mortgage or deed of trust may be recorded in the County Records, pursuant to the New Mexico Recording Act, giving constructive notice of the Lender's interest to "all the world." NMSA 1978, § 14-9-2.

The remedies in a mortgage for non-payment of the promissory note include judicial foreclosure. The remedies in a deed of trust for non-payment of the promissory note include judicial and non-judicial foreclosure. However, it is debatable whether a non-judicial foreclosure could be pursued in a residential foreclosure, consistent with the New Mexico Home Loan Protection Act ("HLPA"). HLPA states, in pertinent part:

> **A creditor or a creditor's assignee of a home loan that has the legal right to foreclose shall, in a foreclosure, use the judicial foreclosure procedures provided by law**. In such a proceeding, the Borrower may assert the nonexistence of a default and any other claim or defense to acceleration and foreclosure, including any based on a violation of the Home Loan Protection Act, though no such claim or defense shall be deemed a compulsory counterclaim.

NMSA 1978, § 58-21A-6(E)(emphasis added). In practice, non-judicial foreclosures are unheard

of in New Mexico. This is despite the fact that for several years the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac") have required deeds of trust as their standard form of security instrument for a residential loan.

C. Who am I dealing with?

Standard forms for residential mortgage identify a "Lender" in the promissory note and mortgage or deed of trust. Nearly all home loans are originated by a party who will not continue to be the "Lender" under the promissory note. The Lender normally originates the loan and sells it on the secondary market to Fannie Mae, Freddie Mac, or some other securitized trust. The standard form residential mortgage identifies Mortgage Electronic Registration Systems, Inc. ("MERS") as the "mortgagee," but "solely as nominee" for the Lender.

Once the loan has been originated, the Borrower receives invoices. The invoices, and all further communications regarding the loan are from a "Servicer." The original Lender often assigns servicing rights to a separate entity. The Servicer is not the party to whom the debt is owed. The party to whom the debt is owed is called the "Investor." Fannie Mae and Freddie Mac, which are Government Sponsored Entities ("GSE") are the most common Investors. When a private real estate mortgage investment conduit ("REMIC") has a loan among its assets, the REMIC acts through an institutional Trustee. The Trustee may be considered the Investor. Fannie Mae, Freddie Mac, and private Investors all use Servicers to interface with Borrowers. By agreement, the Servicer is generally paid a very small percentage of the income stream from mortgage payments, as well has fees it incurs and passes on to the Borrower, such as late fees, appraisal fees and inspection fees.

It is confusing to most Borrowers that the entity they deal with regarding their loan is not the actual Lender, nor the party that is actually owed money. For all intents and purposes, the Servicer appears to be the Lender. However, since 2009, Borrowers have had a right to written notice from

a new creditor "not later than 30 days after the date on which a mortgage loan is sold or otherwise transferred or assigned to a third party," under the Truth in Lending Act ("TILA"). 15 USC § 1641(g). Failure to disclose this information can result in civil liability. 15 USC § 1640(a). Nevertheless, it seems that most people are unaware of who owns their loan, and many believe that the Servicer is their Lender. This confusion is often compounded by the fact that the Servicer is sometimes the originator of the loan – the "Lender" in the original documents.

Generally, Servicers are the entities that initiate foreclosures, and who prosecute foreclosures in court. Servicers generally pursue foreclosures as if they are the Lender. However, Servicers only have the authority to pursue a foreclosure pursuant to authority granted to them by the Investor.

When you are attempting to negotiate with a Lender in the context of a residential mortgage, it may be important to find out who the investor is. Some options for modifications, such as those provided by the Home Affordable Modification Program ("HAMP"), may be available, depending on who the Investor is.

II. Recent New Mexico law regarding foreclosure.

A. *BONY v. Romero*, 2014-NMSC-007.

On February 13, 2014, the New Mexico Supreme Court issued an opinion in *Bank of New York ("BONY") v. Romero* that has clarified New Mexico law regarding standing and the standard of proof necessary to foreclose.

The NMSC held that a foreclosing entity must demonstrate standing to foreclose **at the time it filed suit**. *Id.*, at ¶ 17. Standing to foreclose needs to be demonstrated by showing "timely ownership of the note and mortgage." *Id.* "Ownership" of the note requires an entity to show that is a "holder in due course of" or a "person entitled to enforce" the note, as defined in Article Three of the UCC, NMSA 1978, §§ 55-3-101, *et seq.*

Endorsements on a promissory note can be made to a specific person or entity, or they can be "in blank," which may entitle the person in possession of the original note to enforce the note. The NMSC clarified what is necessary for a party to prove they are entitled to enforce a promissory note that has a blank indorsement:

> Possession of an unindorsed note made payable to a third party does not establish the right of enforcement, just as finding a lost check made payable to a particular party does not allow the finder to cash it. See NMSA 1978, § 55-3-109 cmt. 1 (1992) ("An instrument that is payable to an identified person cannot be negotiated without the indorsement of the identified person."). The Bank's possession of the Romeros' unindorsed note made payable to Equity One does not establish the Bank's entitlement to enforcement.

Id., at ¶ 23.

> The second type of "person entitled to enforce" a note under the UCC is a third party in possession who demonstrates that it was given the rights of a holder. See § 55-3-301 (" 'Person entitled to enforce' an instrument means . . . a nonholder in possession of the instrument who has the rights of a holder."). This provision requires a nonholder to prove both possession and the transfer of such rights. See NMSA 1978, § 55-3-203(a)-(b) (1992) (defining what constitutes a transfer and vesting in a transferee only those rights held by the transferor). **A claimed transferee must establish its right to enforce the note.** See § 55-3-203 cmt. 2 ("[An] instrument [unindorsed upon transfer], by its terms, is not payable to the transferee and the transferee must account for possession of the unindorsed instrument by proving the transaction through which the transferee acquired it.").

Id., at ¶ 29 (emphasis added).

The NMSC also ruled that, in the *Romero* case, testimony from an employee of the servicing company regarding his review of servicing records was inadmissible to prove the right of *BONY* to foreclose. The District Court had allowed the testimony under the business records exception. *Id.*, at ¶ 30. The employee "had no personal knowledge to support his testimony that transfer of the Romeros' note to the Bank of New York" was "prior to the filing of the foreclosure complaint . . .

because Flannigan did not yet work for the Bank of New York." *Id.*, at ¶ 31, *citing* Rule 11-602 NMRA. Additionally, an affidavit submitted by another employee was inadmissible because she also lacked personal knowledge about the transfer of the promissory note. *Id.*

These are important rulings that have affected many foreclosure cases in New Mexico. Prior to *Romero*, most foreclosing entities supported their Motions for Summary Judgment by an affidavit of an employee of the servicing company. The affidavits followed a certain format, making statements like, "[Entity] is the holder in due course of the promissory note," based on the employee's review of business records that were not attached to the affidavit. If summary judgment was not successful, the only witness called to testify at trial, typically, would be an employee of the Servicer who would testify about documents, with their only knowledge being their review of documents, and without any other personal knowledge. In other words, "from my review of the file, we have the right to foreclose." The NMSC clarified that "the business records exception allows the records themselves to be admissible but not simply statements about the purported contents of the records." *Id.*, at ¶ 33. "Neither Flannigan's testimony nor Kelley's affidavit can substantiate the existence of documents evidencing a transfer if those documents are not entered into evidence." *Id.*

Romero establishes that: (1) the burden of proof to show standing is on the foreclosing entity; (2) the foreclosing entity must prove a right to enforce the promissory note as of the date of filing the complaint; (3) the right to enforce the promissory note must be proven by admissible evidence; and (4) conclusory testimony from employees of a Servicer regarding what their records say, is not admissible evidence of the transfer of a promissory note.

Finally, the Court held that the assignment of mortgage to the foreclosing entity did not constitute evidence of the transfer of the promissory note. *Id.*, at ¶ 35. In this case, as in so many, the assignment was purportedly signed by an officer of MERS "as nominee" for the Lender. The

Court held that MERS "could assign the mortgage but lacked any authority to assign the Romeros' note." *Id.* The Court noted that the assignment was executed three months after the Complaint was filed. However, the Court did not go further in analyzing the propriety of the assignment of mortgage, nor the role that MERS may or may not play in assigning the mortgage. Because there was no evidence supporting a transfer of the promissory note to BONY, those issues did not have to be decided.

B. Foreclosure in New Mexico after *BONY v. Romero*.

There have been a bunch of appeals following *BONY v. Romero*. Most of these appeals were Borrowers appealing district court decisions, claiming the decisions should be reversed because of *Romero*. Of those appeals, only a few of them have added anything significant to this area of law.

On May 1, 2014, the New Mexico Court of Appeals issued and opinion in *Deutsche Bank National Trust Company v. Beneficial New Mexico*, 2014-NMCA-90. Deutsche Bank filed a Complaint for Foreclosure with a promissory note attached that was not made in favor of Deutsche Bank and did not have an indorsement of any kind on it. At trial, Deutsche Bank produced a promissory note with an indorsement in blank. Deutsche Bank claimed to have had possession of the original note with the indorsement since before the filing of the Complaint, but the indorsement itself did not have a date on it, and no evidence was presented to establish when the indorsement was placed on the instrument. *Id.*, at ¶ 10. Based on *Romero* and holdings from other jurisdictions, the NMCA held that Deutsche Bank had the burden of proving the date that the promissory note was indorsed. ¶¶ 12. The NMCA held that Deutsche Bank did not meet its burden of proof. *Id.*, at ¶¶ 13, 15. The case was remanded with instructions to vacate the judgment of foreclosure. *Id.*, at ¶ 18. The case was taken up by the New Mexico Supreme Court, and oral arguments have been heard, but no decision has been made as of the date of this writing.

On July 22, 2014, the New Mexico Court of Appeals issued a decision in *Bank of New York v. Lopes*, 2014-NMCA-097. In *Lopes*, like *DBNTC v. Beneficial*, a Complaint for Foreclosure was filed with a promissory note attached that did not contain an indorsement and was not made to BONY. *Id.*, at ¶ 1. BONY later presented a promissory note indorsed in blank, and claimed it had possession of the indorsed note prior to filing the Complaint. *Id.*, at ¶ 2. The district court granted summary judgment. The NMCA held that BONY did not establish standing at the time the Complaint was filed, and therefore lacked standing to file suit for foreclosure. *Id.*, at ¶¶ 12, 13.

C. Other legal requirements specific to foreclosure in New Mexico.

Rule 1-009(I) NMRA states in pertinent part: "When any instrument of writing upon which the action or defense is founded is referred to in the pleadings, the original or a copy thereof shall be served with the pleading, if within the power or control of the party wishing to use the same." Any complaint for foreclosure should have attached to it a promissory note, properly indorsed, the mortgage or deed of trust, and any assignment of the mortgage or deed of trust.

Rule 1-055(E) NMRA states in pertinent part: "No judgment by default shall be entered . . . against a party in any case based upon a negotiable instrument, unless the original negotiable instrument is filed with the court and merged with the judgment . . . ." This requirement has been seldom adhered to by foreclosing entities and seldom enforced by district courts in my experience. However, there is at least one title company that requires the original promissory note to be filed with the Court to insure a sale of a property repossessed through a default judgment for foreclosure. In the First Judicial District, the deposit of the original note can be accomplished by submitting a notice of filing of the original note with the court, then delivering the note to the presiding judge, who puts the note into the Court Registry, and enters an order stating that the note has been put into the Court Registry.

In the First Judicial District, LR 1-309 states as follows: "A final judgment, based upon a written instrument, shall be accompanied by said instrument, which shall be filed as an exhibit in the case at the time the judgment is entered and shall be appropriately marked as having been merged into the judgment and returned to the party filing the same as in the case of other exhibits." This rule applies whether there is a default judgment or not.

In standard form mortgages and deeds of trust, Borrowers have a right to reinstate their loan prior to a foreclosure sale, judgment for foreclosure, or "such other period as Applicable Law might specify for the termination of the Borrower's right to reinstate." Pursuant to HLPA, NMSA 1978, § 58-21A-6(B), "the Borrower . . . may, at any time prior to the time title is transferred by means of foreclosure by judicial proceeding and sale or otherwise, cure the default and reinstate the home loan." Violation of HLPA can result in an action by the Attorney General, or a civil action in which the remedies for violations can be "statutory damages equal to two times the finance charge paid under the loan and forfeiture of remaining interest under the loan" and attorneys' fees. § 58-21A-9(A).

III. Options available to homeowners in foreclosure, in default or heading towards default.

The worst-case scenario for someone facing foreclosure is a judgment for foreclosure and a deficiency judgment. The judgment for foreclosure will be accompanied by an order directing the County Sheriff to assist the successful bidder at a foreclosure sale in taking possession of the premises. Thus, the most immediate consequence is that the homeowner is no longer a homeowner, and they have to find somewhere else to live. In addition to losing title and possession of the home, the former homeowner will suffer a substantial hit to their credit rating. And a deficiency judgment will also haunt the former homeowner, who may have to file for bankruptcy protection to avoid collection of the personal judgment against them.

Most often, something short of a judgment for foreclosure and deficiency judgment can be obtained for a Borrower. To the extent possible, something short of a judgment for foreclosure should be obtained for a Borrower to avoid the long-term affects on the Borrower's credit.

A. General considerations.

There are several stages at which someone might consult you about their home mortgage loan. Ideally, a Borrower will seek assistance before they are in default. However, some Borrowers don't seek assistance until there's a default judgment against them.

For some Borrowers, staying in their home is their main goal. For others, they just want out of a bad loan with the least amount of damage to their credit. In some cases, a loan modification should have been approved and implemented for the Borrower, and they want/need to hold the Servicer to the loan modification deal.

There are different things that can be accomplished, depending on the goals of the client. It is important to find out what your client's goals are from the beginning of representation. The client's goals in foreclosure cases often change, or have to be changed depending on what resolution is possible.

B. Defenses.

The party foreclosing needs to establish its standing to foreclose as of the date of the filing of the Complaint. In some cases, an indorsement on a promissory note may be suspect because the indorsement does not appear to be authentic nor made by someone with authority to do so. The issue of the authenticity of the indorsement should be raised as an affirmative defense. NMSA 1978, § 55-3-308(a)(1992). Challenges to the validity of Assignments of Mortgage can be raised, but have not generally been effective, despite *dicta* in *BONY v. Romero* that a right to enforce the mortgage must be proven as of the time of the Complaint.

C. Loan Modification.

Lenders and Servicers are often able to offer loan modifications to Borrowers that can help the Borrowers achieve an affordable monthly payment and avoid foreclosure. Obviously, if your client wants to stay in their home, this is the first avenue to pursue.

In February 2009, pursuant to authority granted to the Secretary of the Treasury in the Troubled Asset Relief Program ("TARP"), that was part of the Emergency Economic Stabilization Act, the Secretary of the Treasury set aside $50 billion of TARP funds to induce Lenders to refinance mortgages on more favorable terms to allow Borrowers to stay in their homes. All lending institutions and Servicers who received TARP funds were required to enter into Servicer Participation Agreements ("SPAs") with the Department of the Treasury. Servicers were provided guidelines and financial incentives for providing loan modifications pursuant to the Home Affordable Modification Program ("HAMP").

The way a modification works is by calculations known as the "waterfall" method. Many homeowners have loans that have higher than current market interest rates. Lowering the interest rate can greatly reduce the monthly payment. In some cases, the interest is lowered to 2% for a few years, then increased by 1% per year until it reaches the current market interest rate, at which point it stays at that rate for the rest of the loan. Another tool available to reduce payments is extending the term of the loan, sometimes to as much as 40 years.

Loan modifications are reported to credit bureaus and do have an affect on the Borrower's credit. The impact is much less severe than a judgment for foreclosure, and the continuation of payments on a mortgage loan contributes to repairing credit over time.

D. Deed-in-Lieu.

Sometimes the Borrower does not care to stay in the property. In some cases, the property

is under water, and a modification would simply tie the Borrower to the property for the indefinite future. Rather than stay in the property, a much better option to simply allowing a foreclosure is to complete a Deed-in-Lieu. A Deed-in-Lieu can allow the Borrower to discharge the debt obligation in exchange for deeding over the property to the Lender. Sometimes this can be negotiated with some amount of money passing one way or the other, depending on the litigation positions of the parties.

A Deed-in-Lieu has a negative impact on a person's credit, but not nearly the impact of a judgment for foreclosure. A Deed-in-Lieu can also result in a taxable forgiveness of debt, especially if the property is not the primary residence of the Borrower. Always have your client consult with an accountant regarding whether the Deed-in-Lieu will be a taxable event.

E. Short Sale.

Lenders sometimes prefer a Short Sale to a Deed-in-Lieu because they might rather have money than property. A Short Sale occurs when the Borrower receives an offer for the property that is less than the amount necessary to pay off the mortgage loan. The Short Sale is an agreement that the Lender will accept a certain sum and discharge the remaining debt. Make sure that there is a written agreement wherein the Lender discharges the remainder of the debt.

Typically, Lenders require a property to have been listed for some period of time at market value prior to allowing a Short Sale. Like a Deed-in-Lieu, a Short Sale can result in a taxable event for the Borrower.

F. Cash for keys *in rem* judgment.

Often, a foreclosing entity is willing to discharge the debt and seek only a judgment *in rem*. Sometimes, to resolve counterclaims and defenses (or even potential counterclaims and defenses), the foreclosing entity is willing to provide some payment to the Borrower as well. This option is

especially available early in a case when the Borrower can allow the foreclosing entity to save some time and attorneys' fees by stipulating to a judgment. Obviously, this resolves the problem the Borrower has with the Lender, but the Borrower will have a very negative report on their credit.

G. Bankruptcy.

A bankruptcy filing sometimes only forestalls the inevitable. However, in some circumstances, a Borrower is in trouble on many fronts, and referring them to a bankruptcy attorney is the best option. At a minimum, the bankruptcy allows the Borrower to discharge personal liability for the loan, even if the foreclosure proceeds to a judgment.

IV. Counterclaims.

Generally, counterclaims in foreclosure cases arise due to some kind of bad faith by the Lender in negotiating an alternative to foreclosure. If a borrower were to file a complaint against a national banking organization, it is likely the claim would have to be filed in Federal Court, or would be removed to Federal Court. However, as a counterclaim, removal is not an option, and the Borrower may fare better with counterclaims and the possibility of a jury trial in State District Court. Anecdotally, it appears that national banks do not want to defend claims before State Court juries.

Sometimes, a counterclaim may also be available regarding phony documentation. This is becoming less and less common, but in the 2009-2011 time frame, robo-signing was rampant. There were many cases where a person's name – famously "Linda Green" – was used as an authorized officer of some corporation, but there were many clearly different signatures for this person, putting into question who actually signed the document and whether they had authority to sign it. The actual Linda Green ultimately admitted she didn't have authority to sign documents that purported to have her signature.

There was definitely a period of time when documentation was not kept responsibly by

Lenders and Servicers. That is less and less the case. However, there are still loans generated in the 2004-2007 time frame that are going into foreclosure. What happens if the Lender/Servicer can't produce adequate documentation to foreclose? Sometimes they actually lose their ability to foreclose. So far, I haven't seen a case where the Lender admits to losing the original note and attempt to enforce their rights pursuant to NMSA 1978, § 55-309, which likely requires posting a bond as "adequate protection" of the Borrower.

Claims for fraud, Unfair Practices Act violations, breach of contract and breach of the covenant of good faith and fair dealing can be available for conduct of Lenders/Servicers during negotiations for a loan modification or other resolution short of foreclosure. Unfortunately, Lenders/Servicers have often been inexplicably terrible at processing and following through on promises to process loan modifications, deeds-in-lieu and short sales. In some cases, a counterclaim and a jury demand can help resolve the dispute. In many cases, a loan modification can still be accomplished despite the filing of the foreclosure complaint. In many cases, the Lenders/Servicers are even willing to do what they can to repair credit reporting.

In March 2012, the Attorney Generals of nearly every state (including New Mexico) settled claims against the five major Servicers (Bank of America, Wells Fargo, Citibank, JP Morgan Chase and GMAC). The New Mexico Attorney General's Office still enforces the terms of this settlement, so if you have a potential violation of the terms of the settlement, you can seek assistance from the NMAG's Office. The Department of Treasury and Consumer Financial Protection Bureau have also filed many lawsuits and obtained many settlements from large financial institutions related to their conduct in loan modifications. The AG settlement and Federal settlements have sometimes resulted in money being paid to borrowers, and in other cases options for borrowers to obtain loan modifications, and even principal reduction on their loans.

V. Conclusion.

Anything is preferable to a judgment for foreclosure. The person being foreclosed upon loses their home and has long-lasting damage to their credit. The homes that are foreclosed sometimes end up being sold for less than market value, which hurts the market values of all homes in that area. The damage to credit of foreclosed upon parties also causes harm to our economy. And foreclosures can be one of the more traumatic events in a person's life.

Certainly, defending people in foreclosures does not appear to be desirable work for attorneys. For one thing, people in foreclosure usually don't have money to pay an attorney. People in foreclosure are often experiencing a lot of other economic hardships. People in foreclosure are often having a hard time. People in foreclosure often resort to believing conspiracy theories about banks, and develop unreasonable expectations about their case. It is very stressful to represent someone when the consequence of losing is a judgment of foreclosure. However, if you can get past all of these negatives, there is usually something that can be done to avoid the worst result and salvage something that benefits the individual client and our community generally. I encourage everyone to consider helping out someone in defending a foreclosure, to help a person in need and our community in general.

NOTES

NOTES

ABQ Man Accused of Rental Scam

Stephen Jay Bonner

By ABQnews Staff

PUBLISHED: Thursday, August 2, 2012 at 7:57 am

Stephen Jay Bonner, 43, was arrested Wednesday for allegedly entering homes that were vacant and in the process of foreclosure, then renting the houses as if they were his own, according to an Albuquerque Police Department news advisory.

APD detectives and agents of the U.S. Secret Service conducted a joint operation in which a resident of one of the properties used an undercover officer to make a fraudulent rent payment to Bonner, according to APD Officer Robert Gibbs.

The undercover officer observed the transaction, and Bonner was taken into custody without incident by uniformed officers from the Northwest Area Command in a traffic stop, the advisory said.

Bonner allegedly admitted breaking into houses on three different occasions and committed fraud in the rental scam, according to Gibbs.

He was booked into the Metropolitan Detention Center early today and was being held on a $20,000 cash or surety bond, facing three counts of residential burglary and one count of fraud over $2,500 and under $20,000, according to online MDC records.

Wednesday, January 28, 2004

Attorney Admits He Bilked IRS

By Scott Sandlin
Journal Staff Writer

Attorney Matthew E. Cohen created warehouses in Costa Rica out of whole cloth, netting millions of dollars in tax benefits for himself and others for the time it worked.

Cohen, also a certified public accountant, benefited from the scheme for roughly eight years, according to guilty pleas he entered Tuesday to three felony counts in U.S. District Judge William "Chip" Johnson's courtroom.

Cohen could end up spending half that— roughly four years— in a federal penitentiary and leave owing millions in back taxes, penalties and restitution in both criminal and civil cases, according to the U.S. Attorney's Office.

Cohen, 51, admitted filing a false federal tax return for himself in 2000, claiming he owed no tax when he actually owed $174,353 on taxable income of $474,174.

He also admitted filing a return for dentist Ruben J. Martinez in 1998 that showed Martinez with a net operating loss of $600,702, and was due a refund of $188,659 for tax years 1994 through 1996 when there was no loss.

But the central charge in the criminal information prepared by Assistant U.S. Attorney Jonathon Gerson is conspiracy to defraud the Internal Revenue Service.

The conspiracy involved recruiting taxpayers in a scheme to eliminate or grossly reduce both state and federal tax liability by reporting inflated expenses and made-up losses.

The conspiracy made use of post office boxes in Costa Rica, which impeded the IRS' ability to assess taxes, according to Cohen's plea. Participants used power of attorney forms to authorize IRS refund checks to be sent to the "apartados," or post office boxes in the Central American country.

The conspiracy was in full flower by October 1993, when Cohen provided Albuquerque attorney Chris S. Key with a false Form 1040 for the tax year 1992, according to the plea.

The plea agreement calls for Cohen to cooperate by providing information of other participants in the fraud and to surrender his professional licenses within 90 days.

Cohen has "agreed to give truthful testimony against other people involved in the same criminal acts," said Jacquelyn Robins, Cohen's attorney.

Robins said her client no longer lives in New Mexico.

The agreement permits Cohen to be sentenced under federal sentencing guidelines for 1993, more liberal than subsequent years, and to request his time to be served at a minimum security facility.

The guidelines enhance his basic sentence because he was a tax preparer and because the scheme involved sophisticated means. However, Cohen does get good points for "acceptance of responsibility"— taking a plea— and having no criminal history, Gerson said.

The net result is likely to be somewhere between 41 and 51 months in prison, but based on his cooperation, the government may ask for a lesser sentence, Gerson said.

The plea specifies a loss to the government at $2.5 million to $5 million and involves at least five unnamed clients besides Martinez and Key.

Martinez and Key entered pre-indictment guilty pleas to willfully filing false tax returns and are awaiting sentencing.

Cohen first heard of the tax-fraud scheme during a 1990 visit to Costa Rica but didn't act on it at the time, according to the factual basis for the plea filed in court Tuesday.

In 1993, Key approached him about a $55,025 tax bill, which Cohen told him he could reduce "but it would cost a lot of money to figure out how."

Cohen suggested the filing scheme "that would allow them to eliminate the liability without risking an audit. Key agreed to participate."

Key's fraudulent 1992 tax return listed his address as being in Costa Rica, even though he'd never been there. Cohen continued to file false returns for Key through 2000.

In 1997, Cohen recruited Martinez, claiming he'd sustained losses on a sham dental-implant business in Costa Rica. Martinez had never been there, either.

Cohen also prepared false returns for other clients.

For instance, an individual identified only as "Client 3" owes $637,676 in additional tax for fraudulent returns each year from 1994 through 2001, according to a chart attached to the plea agreement.

Besides any restitution ordered in the criminal case, Cohen can be assessed up to 70 percent of the loss in civil penalties by the IRS, plus interest, Gerson said.

Cohen also faces two civil lawsuits filed by individuals for whom he prepared tax returns.

"The conduct of Cohen and others in this tax-fraud scheme is reprehensible," said U.S. Attorney David Iglesias. "This multi-million dollar crime unfairly burdens every hard-working, taxpaying American."

The investigation will continue until all the responsible parties have been identified and punished, he said.

U.S. Department of Justice

United States Attorney
District of New Mexico

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For Immediate Release

FORMER PROSECUTOR CHRIS KEY AND ALBUQUERQUE DENTIST RUBEN MARTINEZ SENTENCED FOR TAX FRAUD

Prominent New Mexico attorney Chris S. Key and Albuquerque dentist Ruben J. Martinez were sentenced today, May 5, 2004, for their part in a continuing international tax fraud case. Each pleaded guilty last year to filing false tax returns that made use of phony offshore tax shelters. United States District Judge William P. Johnson sentenced Key to three years of probation and 300 hours of community service, and full cooperation with the IRS in payment of back taxes, interest and penalties. He must also notify every bar to which he has been admitted to practice law of the fact that he is now a convicted felon which could result in his disbarment.

Martinez was sentenced to two years probation and will be required to provide 300 hours of community service. He is also required to provide full cooperation to the IRS in payment of penalties and interest. He must also present himself before the Dental Board for possible sanctions which may include the loss of his dental license.

According to a government sentencing letter filed with the Court, Key filed false income tax returns every year between 1994 and 2000, defrauding the IRS of a total of $425,463 in taxes. In his false returns, Key claimed large losses from a warehouse operation in Costa Rica, Central America, even though there was no such warehouse. Key, a former Rhodes Scholar and former Special Prosecutor for the State of New Mexico, now faces possible disbarment or other sanctions from the State Bar.

Martinez filed false returns every year between 1994 and 1999, defrauding the IRS of a total of $599,305. The Martinez returns claimed losses on a dental supply company, also located in Costa Rica, called Compania Ruma Dental. Martinez too faces disciplinary action from the New Mexico dental licensing board.

Key and Martinez sought reduced sentences by cooperating with the government against the international network that supported the filing of their false returns. On January 27, 2004, Albuquerque tax attorney and CPA Matthew E. Cohen admitted to his role in the tax fraud scheme, and pleaded guilty to conspiracy, tax evasion and assisting in the preparation of false tax returns. In its sentencing letter on behalf of Key and Martinez, the government cited the cooperation of the two men as a critical factor in obtaining the Cohen guilty plea.

United States Attorney David C. Iglesias said: "It's tragic that these two men, who were capable of contributing so much to society, chose to throw everything away because of simple greed. Key and Martinez are highly skilled professionals who were favored by fortune with great

accomplishments and substantial legitimate incomes. They will live the rest of their lives as felons because they cheated on their taxes. Tax fraud places an unfair burden on all law abiding citizens. I am committed to the continuation of this case to identify and punish all persons who participated in these frauds."

The case was investigated by the Internal Revenue Service and the New Mexico Department of Taxation and Revenue, and was prosecuted by Assistant U.S. Attorney Jonathon Gerson.

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IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	CRIMINAL NO. 07-615 (S) JEC
	)	
vs.	)	Count One: Conspiracy (18 U.S.C. § 371);
TOBY MARTINEZ,	)	Counts Two through Ten: Frauds
RAUL PARRA,	)	and Swindles (Mail Fraud) (18
MANNY ARAGON,	)	U.S.C. §§ 1341 and 1346);
SANDRA MARTINEZ,	)	Counts Eleven through Twenty
a/k/a "Sandra Mata," and	)	Three: Money Laundering (18 U.S.C.
MICHAEL MURPHY,	)	§ 1956);
	)	Counts Twenty Four through Twenty
Defendants.	)	Eight: Laundering of Monetary
	)	Instruments (18 U.S.C. § 1957);
	)	Forfeiture (18 U.S.C. § 981(a)(1)(C)
	)	and 28 U.S.C. § 2461(c));
	)	Forfeiture (18 U.S.C. § 982).

FIRST SUPERSEDING INDICTMENT

THE GRAND JURY CHARGES:

INTRODUCTION

1. New Mexico law provides for the establishment of a Metropolitan Court in Bernalillo County (the "Metro Court"). At all times relevant to this Indictment, the Metro Court had a court administrator (the "Administrator") who supervised all matters relating to administration. In or about the year 1995, the Judges of the Metro Court appointed **TOBY MARTINEZ** as the Administrator. **TOBY MARTINEZ** served as the Administrator until in or about June 2003.

2. During the New Mexico Legislative Session of 1997, the Judges of the Metro Court and **TOBY MARTINEZ**, in his capacity as Administrator, sought the passage of legislation for the construction of a new Metro Court building. The legislation was not passed.

3. The Judges of the Metro Court and **TOBY MARTINEZ** in his capacity as Administrator sought the passage of similar legislation during the Regular Legislative Session of 1998. The legislation was passed by the State House of Representatives and by the State Senate, but was vetoed by Governor Gary Johnson. A modified version of the bill was passed during a Special Legislative Session later that year, and was signed by the Governor. The bill as passed by the Legislature and signed by the Governor provided for the issuance by the New Mexico Finance Authority of up to $46,500,000.00 in revenue bonds for the purpose of acquiring real property for and designing and constructing a new court building for the Metro Court.

4. The President Pro Tem of the New Mexico State Senate during the 1997 and 1998 Legislative Sessions was **MANNY ARAGON**. **MANNY ARAGON** remained a member of the New Mexico State Senate until in or about the year 2004.

5. On or about March 17,1999, the Judges of the Metro Court hired a firm called Design Collaborative Southwest ("DCSW") to provide architectural services in connection with construction of the new building. The senior partner in charge of the Metro Court project for DCSW was MARC SCHIFF. DCSW contracted with KEN SCHULTZ, a former mayor of the City of Albuquerque, as a lobbyist during this time period.

6. On or about January 15, 2002, and again on or about July 11, 2002, **TOBY MARTINEZ** caused the Metro Court to issue successive purchase orders for professional assistance and legislative services from lobbyist KEN SCHULTZ. Each of the two successive purchase orders was in the amount of $19,046.25. Because the services to be provided were for less than $20,000.00 per purchase order, they were excluded from review under state procurement rules.

7. In or about June 2002, the Judges of the Metro Court entered into a construction management contract with Public Private Projects, Inc. ("PPPI"), to act as the Court's representative and to oversee the construction project. The sole proprietor of PPPI was **MICHAEL MURPHY**.

8. On or about October 15, 2002, the Judges of the Metro Court hired Integrated Control Systems, Inc. ("ICS"), to install audio-visual equipment and communications wiring in the new building (the "A/V Contract"). ICS hired a firm called Datcom, Inc., as a subcontractor. The sole proprietor of Datcom was MANUEL GUARA.

9. On or about July 30, 2003, **SANDRA MARTINEZ** a/k/a "Sandra Mata" (hereinafter "**SANDRA MARTINEZ**") incorporated a company called Smart Solutions, Inc., listing herself as president and describing the company as providing information software consulting. **SANDRA MARTINEZ** is the wife of **TOBY MARTINEZ**. The principal address of Smart Solutions, Inc., was the same as that of the marital home of **SANDRA MARTINEZ** and **TOBY MARTINEZ**.

10. The final cost of purchasing real property for and design and construction of the new Metro Court building and associated construction projects such as the Metro Court garage (hereinafter collectively the "Metro Court Construction Project") was approximately $83,138,505.00. The construction of the new Metro Court building was completed in or about January 2004.

11. During the Metro Court Construction Project, the defendant **RAUL PARRA** was a partner in an engineering firm called P2RS. While the defendant **RAUL PARRA** and his firm, P2RS, were subcontractors to DCSW in connection with DCSW's contract for architectural services and design, they were not contractors or subcontractors in connection with the A/V Contract described in Paragraph 8, above.

COUNT ONE

1. Paragraphs 1 through 11 of the Introduction, above, are hereby incorporated by reference as if realleged and recited in full.

2. In or about and between the year 1999 and January 2006, both dates being approximate and inclusive, in the State and District of New Mexico, in Bernalillo and Santa Fe Counties, and elsewhere, the defendants **TOBY MARTINEZ**, **RAUL PARRA, MANNY ARAGON, SANDRA MARTINEZ** and **MICHAEL MURPHY**, with others known and unknown to the Grand Jury, did knowingly and unlawfully combine, conspire, confederate and agree together and with each other to commit certain offenses against the United States, as follows:

(a) To cause to be mailed and to be delivered or received from the United States Postal Service, or any private or commercial interstate carrier, any document, matter or thing in furtherance of a scheme and artifice to defraud the State of New Mexico and the People of the State of New Mexico of money and property, and to obtain money and property by means of false and fraudulent pretenses, in violation of Title 18, United States Code, Section 1341;

(b) To cause to be mailed and to be delivered or received from the United States Postal Service, or any private or commercial interstate carrier, any document, matter or thing in furtherance of a scheme and artifice to defraud the State of New Mexico and the People of the State of New Mexico of their right to have their business and their affairs conducted honestly and impartially, free from corruption, fraud, dishonesty, and improper and undue influence, in violation of Title 18, United States Code,

Sections 1341 and 1346; and

(c) Knowing that the property involved in a financial transaction represented the proceeds of some form of unlawful activity, to conduct and attempt to conduct such a financial transaction (1) with the intent to promote the carrying on of specified unlawful activity, and (2) knowing that the transaction was designed in whole or in part to conceal and disguise the nature, the location, the source, the ownership and the control of the proceeds of specified unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(1).

MANNER AND MEANS

3. It was a part of the conspiracy that the defendants **TOBY MARTINEZ**, **RAUL PARRA, MANNY ARAGON, SANDRA MARTINEZ** and **MICHAEL MURPHY**, and others known and unknown to the Grand Jury would, by deceit, craft, trickery and dishonest means, seek to profit from the Metro Court Construction Project, in that the defendants would submit and approve for payment false invoices and excessive requests for payment for work on its design and construction.

4. It was a further part of the conspiracy that the defendants would subvert the Metro Court procurement process by knowingly and intentionally making inflated contract and contract modification proposals, and by causing such inflated contracts and contract modifications to be approved.

5. It was a further part of the conspiracy that the defendants would seek appropriations and supplemental appropriations from the legislature of the State of New Mexico for the purpose, in whole or in part, of making state funds available to pay the false and fraudulent invoices, excessive requests for payment, and inflated contracts

and contract modifications.

6. It was a further part of the conspiracy that the defendants would utilize the contract for architectural services and design awarded to DCSW, and the A/V Contract awarded to ICS, as vehicles for profiting from the construction of the new Metro Court.

The DCSW Contract

7. The defendants and others known and unknown to the Grand Jury would utilize the contract for architectural services and design awarded to DCSW to profit from the Metro Court Construction Project by, among other means, the following:

8. MARC SCHIFF, the DCSW partner in charge of implementation of the contract, would submit to the Metro Court Administrator's Office false invoices and excessive requests for payment to DCSW.

9. The defendant **TOBY MARTINEZ** and others would authorize the payment of the DCSW false invoices, and would cause them to be submitted, via United States Postal Service and other means, for payment by the State of New Mexico.

10. The defendants would cause the Financial Control Division of the New Mexico Department of Finance and Administration in Santa Fe, New Mexico, to issue checks drawn upon public funds in payment of the false DCSW invoices, and to send such checks, via United States Postal Service and other means, to the Accounting Department of the Bernalillo County Metropolitan Court in Albuquerque, New Mexico.

11. MARC SCHIFF would make cash payments to KEN SCHULTZ from the proceeds of the false DCSW invoices.

12. KEN SCHULTZ would keep some of the cash proceeds of the false DCSW invoices for himself and convey the rest to the defendant **TOBY MARTINEZ**.

13. KEN SCHULTZ would also make cash payments to the defendant **TOBY**

MARTINEZ from the proceeds of SCHULTZ's contract for professional services with the Metro Court.

14. MARC SCHIFF would make cash payments to the defendant **MANNY ARAGON** from the proceeds of the false DCSW invoices.

15. The proceeds of fraud from DCSW's contract received by the defendant **MANNY ARAGON** would not be compensation for legitimate services rendered, but would constitute the share of the defendant **MANNY ARAGON** in the proceeds of jointly undertaken criminal activity.

The A/V Contract

16. The defendants and others known and unknown to the Grand Jury would utilize the A/V Contract to profit from the Metro Court Construction Project by, among other means, the following:

17. The defendants **TOBY MARTINEZ, RAUL PARRA, MANNY ARAGON, MICHAEL MURPHY** and others known and unknown to the Grand Jury would subvert the Metro Court's procurement process by including millions of dollars of fraud in contract proposals, contract modifications and change orders for the installation of audio-visual equipment and communications wiring in the new building (the "A/V Contract").

18. The defendant **RAUL PARRA** would recruit a subcontractor for the purpose of installation of audio-visual equipment and communications wiring in the new Metro Court building, namely, MANUEL GUARA and his company, Datcom, Inc.

19. The defendant **RAUL PARRA** would recruit ICS as the general contractor on the A/V Contract, at least in part because ICS was exempt from competitive bidding requirements as a company certified by the State of New Mexico for participation in

public construction projects.

20. MANUEL GUARA would submit inflated bids to ICS on the A/V Contract and on modifications to the A/V Contract, and make inflated requests for payment in invoices that he submitted to ICS, as directed by defendant **RAUL PARRA**..

21. ICS would incorporate the invoices submitted by MANUEL GUARA into its own invoices, which would be submitted to the Administrative Office of the Metro Court and authorized for payment by the defendants **TOBY MARTINEZ, MICHAEL MURPHY**, and others.

22. ICS, as the general contractor on the A/V Contract, would pay Datcom from the proceeds of payments received from the State of New Mexico.

23. After paying the legitimate bills of his own subcontractors on the A/V Contract, MANUEL GUARA would transfer to the defendant **RAUL PARRA**, and to bank accounts controlled by the defendant **RAUL PARRA**, the proceeds of the fraudulent Datcom billings that **PARRA** had directed GUARA to submit to ICS.

24. The defendant **RAUL PARRA** would keep some of these proceeds for himself, and would transfer the remainder of the proceeds to the defendants **TOBY MARTINEZ, MANNY ARAGON** and **SANDRA MARTINEZ.**

25. The defendant **RAUL PARRA**, who was neither a contractor nor a subcontractor on the A/V Contract, would retain approximately $773,000.00 in fraudulent proceeds of excessive requests for payment that were transferred to him by MANUEL GUARA.

Money Laundering

26. It was a further part of the conspiracy that the defendants would conduct financial transactions with the proceeds of payments by the State of New Mexico, in

order to promote the carrying on of the underlying criminal activity, that is, Frauds and Swindles (Mail Fraud).

27. It was a further part of the conspiracy that the defendants would conduct financial transactions with the proceeds of payments by the State of New Mexico, in order to conceal and disguise the nature, the location, the source, the ownership and the control of the proceeds of their jointly undertaken criminal activity.

28. The defendants and others known and unknown to the Grand Jury would conduct financial transactions with the proceeds of payments by the State of New Mexico by, among other means, the following:

29. The defendant **RAUL PARRA** would open a bank account in the name of "Parra & Gagnon Consulting" that would be used as a vehicle to conceal and disguise proceeds received from MANUEL GUARA.

30. The defendant **SANDRA MARTINEZ** would open a bank account in the name "Smart Solutions" that would be used as a vehicle to conceal and disguise proceeds received from the defendant **RAUL PARRA**.

31. MANUEL GUARA would transfer proceeds of excessive requests for payment to the defendant **RAUL PARRA** and to "Parra & Gagnon Consulting."

32. The defendant **RAUL PARRA** would transfer proceeds of excessive requests for payment received from MANUEL GUARA to "Smart Solutions."

33. The defendant **RAUL PARRA** would transfer proceeds of excessive requests for payment to **MANNY ARAGON**, "**MANNY ARAGON** Attorney at Law" and "Law Offices of **MANNY ARAGON**."

34. The proceeds of fraud on the A/V Contract received by the defendant **MANNY ARAGON** would not be compensation for legitimate services rendered, but

would constitute the share of the defendant **MANNY ARAGON** in the proceeds of jointly undertaken criminal activity.

The Central Role of Martinez and Aragon

35. It was a further part of the conspiracy that the defendants **TOBY MARTINEZ** and **MANNY ARAGON** would control and seek to control the actions of their co-conspirators through their real and apparent authority over the expenditure of public funds.

36. The defendants **TOBY MARTINEZ** and **MANNY ARAGON** would control and seek to control the actions of their co-conspirators by, among other means, the following:

37. The defendant **TOBY MARTINEZ**, as Administrator, would exercise and appear to exercise authority over the selection of contractors and subcontractors on the Metro Court Construction Project.

38. The defendant **TOBY MARTINEZ** (and, after June 2003, the defendant **MICHAEL MURPHY** as sole proprietor of construction manager PPPI) would exercise and appear to exercise authority over change orders and the approval for payment of invoices submitted to the Metro Court.

39. The defendant **MANNY ARAGON** would exercise and appear to exercise influence over the availability of public funds for the Metro Court Construction Project.

40. The defendant **MANNY ARAGON** would exercise and appear to exercise influence over the selection of contractors and subcontractors on other publicly funded construction projects and other public works.

41. Out of total capital expenditures of approximately $83,138,505.00 for the Metro Court Construction Project, the defendants **TOBY MARTINEZ, RAUL PARRA,**

MANNY ARAGON, SANDRA MARTINEZ and **MICHAEL MURPHY**, and others known and unknown to the Grand Jury, would defraud the State of New Mexico of approximately $4,200,000.00.

42. The defendants **TOBY MARTINEZ** and **SANDRA MARTINEZ** would receive approximately $2,050,000.00 from the proceeds of the fraud.

43. The defendant **MANNY ARAGON** would receive approximately $700,000.00 from the proceeds of the fraud.

The Continuation of the Conspiracy

44. As noted above, the defendant **TOBY MARTINEZ** served as Administrator of the Metro Court until in or about June 2003. After that date, the conspirators sought to continue their criminal association and to commit additional offenses within the scope of their conspiracy.

45. It was a part of the conspiracy that the defendant **RAUL PARRA** would recommend to another government entity, namely, the Department of Transportation of the State of New Mexico ("DOT"), that DOT should hire the defendant **TOBY MARTINEZ** as manager of a project to develop land owned by DOT.

46. It was a part of the conspiracy that the defendant **MANNY ARAGON** would recommend to DOT that it should hire the defendant **TOBY MARTINEZ** as manager of a project to develop land owned by DOT.

47. It was a part of the conspiracy that the defendant **TOBY MARTINEZ**, after being hired by DOT as project manager, would tell the sole bidder on a development project that the bidder should hire the defendant **RAUL PARRA** as a consultant to put together a construction team.

48. It was a part of the conspiracy that the defendant **RAUL PARRA** would tell the sole bidder on the DOT development project that he (**PARRA**) expected to receive a percentage of the total cost of the project for his consulting services, and that he (**PARRA**) would be sharing this money with other people.

49. It was a further part of the conspiracy that the defendants **TOBY MARTINEZ, RAUL PARRA, MANNY ARAGON, SANDRA MARTINEZ, MICHAEL MURPHY**, and others known and unknown to the Grand Jury, would attempt to keep secret the existence of the conspiracy.

50. In furtherance of the conspiracy, and to effect the objects thereof, in the State and District of New Mexico, the defendants committed, among other overt acts, the following

OVERT ACTS

Overt Acts Pertaining to DCSW

51. On or about May 26, 2000, the defendant **TOBY MARTINEZ** approved payment of an invoice submitted by MARC SCHIFF on behalf of DCSW to the Bernalillo County Metropolitan Court Administrator's Office in the amount of $14,814.00.

52. On or about May 30, 2000, the defendant **TOBY MARTINEZ** caused a payment voucher reflecting the invoice described in Paragraph 51, above, to be delivered via the United States Postal Service to the Financial Control Division of the New Mexico Department of Finance and Administration in Santa Fe, New Mexico.

53. On or about January 2, 2001, the defendant **TOBY MARTINEZ** approved payment of an invoice submitted by MARC SCHIFF on behalf of DCSW to the Bernalillo County Metropolitan Court Administrator's Office in the amount of $12,508.00.

54. On or about January 12, 2001, the defendant **TOBY MARTINEZ** caused a

payment voucher reflecting the invoice described in Paragraph 53, above, to be delivered via the United States Postal Service to the Financial Control Division of the New Mexico Department of Finance and Administration in Santa Fe, New Mexico.

55. On or about January 24, 2002, the defendant **TOBY MARTINEZ** approved payment of an invoice submitted by MARC SCHIFF on behalf of DCSW to the Bernalillo County Metropolitan Court Administrator's Office in the amount of $10,211.00.

56. On or about January 31, 2002, the defendant **TOBY MARTINEZ** caused a payment voucher reflecting the invoice described in Paragraph 55, above, to be delivered to the Financial Control Division of the New Mexico Department of Finance and Administration in Santa Fe, New Mexico.

57. On or about February 5, 2002, the defendant **TOBY MARTINEZ** received a cash payment of approximately $375.00 from the proceeds of KEN SCHULTZ's contract for professional services with the Metro Court.

58. On or about June 10, 2002, the defendant **TOBY MARTINEZ** approved payment of invoices submitted by MARC SCHIFF on behalf of DCSW to the Bernalillo County Metropolitan Court Administrator's Office in the amounts of $31,743.00, $26,453.00, and $19,311.00.

59. On or about June 12, 2002, the defendant **TOBY MARTINEZ** caused a payment voucher reflecting the invoices described in Paragraph 58, above, to be delivered via the United States Postal Service to the Financial Control Division of the New Mexico Department of Finance and Administration in Santa Fe, New Mexico.

60. On or about February 14, 2003, the defendant **TOBY MARTINEZ** received a cash payment of approximately $225.00 from the proceeds of KEN SCHULTZ's contract for professional services with the Metro Court.

Overt Acts Pertaining to the A/V Contract

61. On or about January 30, 2002, the defendant **MANNY ARAGON** made a capital outlay request to the Senate of the State of New Mexico for $3,600,000.00 for audio-visual and data-processing equipment and infrastructure for video arraignments for the Metro Court.

62. On or about November 27, 2002, MANUEL GUARA submitted a scope of work proposal for a Metro Court sound system to ICS. GUARA proposed a total project fee of $2,724,156.00.

63. On or about April 28, 2003, the defendant **TOBY MARTINEZ** approved a change order submitted by ICS in the amount of $1,223,209.46.

64. On or about June 1, 2003, the defendant **TOBY MARTINEZ** approved payment of an invoice submitted by ICS to the Bernalillo County Metropolitan Court Administrator's Office in the amount of $605,993.04.

65. On or about June 13, 2003, the defendant **TOBY MARTINEZ** approved a change order submitted by ICS in the amount of $782,782.84.

66. Also on or about June 13, 2003, the defendant **TOBY MARTINEZ** approved a change order submitted by ICS in the amount of $355,574.75.

67. On or about October 30, 2003, the defendant **MICHAEL MURPHY** approved payment of an invoice submitted by ICS to the Bernalillo County Metropolitan Court Administrator's Office in the amount of $675,470.99.

68. On or about December 5, 2003, the defendant **MICHAEL MURPHY** approved a certificate for payment submitted by ICS to the Bernalillo County Metropolitan Court Administrator's Office in the amount of $553,791.11.

69. On or about December 12, 2003, the defendant **MICHAEL MURPHY** caused

a check, drawn upon the account of SMART SOLUTIONS in the amount of $20,000.00, to be delivered to another person.

70. On or about December 19, 2003, the defendant **MICHAEL MURPHY** received a check, in the amount of $18,000.00, from the person referenced in Paragraph 69, above.

71. On or about each of the following dates, MANUEL GUARA deposited and caused to be deposited checks, drawn upon the bank account of ICS and payable to Datcom, Inc., in the amounts listed below.

a. February 5, 2003, in the amount of $150,000.00.

b. March 18, 2003, in the amount of $176,207.80.

c. May 29, 2003, in the amount of $236,680.55.

d. July 7, 2003, in the amount of $333,280.55.

e. July 25, 2003, in the amount of $442,647.01.

f. August 28, 2003, in the amount of $383,660.00

g. October 8, 2003, in the amount of $600,000.00.

h. November 4, 2003, two checks totaling $244,018.77.

i. November 18, 2003, in the amount of $699,501.53.

j. December 10, 2003, in the amount of $569,000.00.

k. January 27, 2004, in the amount of $419,269.00.

l. April 9, 2004, in the amount of $486,745.07.

m. August 16, 2004, in the amount of $14,340.24.

n. September 8, 2004, in the amount of $9,261.15.

Overt Acts Pertaining to Money Laundering

72. On or about December 5, 2001, the defendant **MANNY ARAGON** met MARC SCHIFF, KEN SCHULTZ, the defendant **TOBY MARTINEZ** and the defendant

RAUL PARRA at a restaurant in Albuquerque, New Mexico.

73. On or about each of the following dates, the defendant **RAUL PARRA** received funds from the bank account of Datcom, Inc. totaling approximately $3,578,253.26, via checks in the amounts and with the payees listed below.

	Date	Amount	Payee
a.	02/07/03	$142,000.00	**RAUL PARRA**
b.	06/13/03	$30,000.00	**RAUL PARRA**
c.	07/18/03	$50,000.00	**RAUL PARRA**
d.	08/28/03	$522,000.00	Parra & Gagnon Consulting
e.	09/29/03	$368,500.00	**RAUL PARRA**
f.	10/28/03	$282,000.00	**RAUL PARRA**
g.	11/24/03	$500,000.00	**RAUL PARRA**
h.	01/05/04	$850,000.00	**RAUL PARRA**
i.	04/14/04	$633,753.26	**RAUL PARRA**
j.	12/22/03	$200,000.00	**RAUL PARRA**

74. On or about March 5, 2004, MANUEL GUARA signed over to the defendant **RAUL PARRA**, and the defendant **RAUL PARRA** received, three checks drawn upon the bank account of ICS, in the amounts of $36,120.00, $45,120.00, and $500.00.

75. On or about each of the following dates, the defendant **MANNY ARAGON** caused the Law Offices of Manny Aragon to issue invoices to the defendant **RAUL PARRA** in the amounts listed below.

a. January 1, 2003, in the amount of $100,000.00.

b. June 30, 2003, in the amount of $38,500.00.

c. December 15, 2004, in the amount of $200,000.00.

76. On or about August 26, 2003, the defendant **SANDRA MARTINEZ** opened a bank account in the name of "Smart Solutions, Inc."

77. On or about August 27, 2003, the defendant **RAUL PARRA** opened a bank account in the name of "Parra & Gagnon Consulting."

78. On or about each of the following dates, the defendant **RAUL PARRA** transferred funds via checks drawn upon his own personal account at Bank of America in the following amounts and to the following payees.

	Date	Amount	Payee
a.	02/06/03	$22,000.00	**MANNY ARAGON**
b.	04/14/03	$7,500.00	**MANNY ARAGON**
c.	06/17/03	$16,500.00	**MANNY ARAGON**
d.	09/30/03	$241,000.00	Smart Solutions
e.	09/30/03	$38,500.00	**MANNY ARAGON** Law Office
f.	10/29/03	$182,000.00	Smart Solutions
g.	10/29/03	$29,000.00	**MANNY ARAGON** Law Offices
h.	11/30/03	$245,000.00	Smart Solutions
i.	11/30/03	$41,000.00	**MANNY ARAGON** Attorney at Law
j.	12/27/03	$45,500.00	**MANNY ARAGON** Attorney at Law
k.	12/31/03	$194,000.00	Smart Solutions
l.	03/01/04	$50,000.00	**ARAGON** Law Offices
m.	03/04/04	$210,000.00	Smart Solutions
n.	04/06/04	$5,000.00	**TOBY MARTINEZ**
o.	04/07/04	$150,000.00	Smart Solutions
p.	04/07/04	$50,000.00	**Aragon** Law Offices
q.	06/21/04	$82,728.00	Smart Solutions

79. On or about each of the following dates, the defendant **RAUL PARRA** transferred funds via checks drawn upon the account of Parra & Gagnon Consulting at First State Bank in the following amounts and to the following payees.

	Date	Amount	Payee
a.	08/28/03	$150,000.00	Smart Solutions
b.	08/28/03	$100,000.00	Law Office of **MANNY ARAGON**

80. On or about each of the following dates, the defendant **RAUL PARRA** transferred funds via checks drawn upon his account at Dain Rauscher in the following amounts and to the following payees.

	Date	Amount	Payee
a.	06/24/04	$50,000.00	**Aragon** Law Offices
b.	08/02/04	$5,000.00	**Toby Martinez**
c.	08/02/04	$10,000.00	Smart Solutions
d.	09/02/04	$5,000.00	**Toby Martinez**
e.	09/06/04	$50,000.00	Smart Solutions
f.	10/19/04	$5,000.00	**Toby Martinez**
g.	11/30/04	$5,000.00	**Toby Martinez**
h.	11/30/04	$5,000.00	**Toby Martinez**
i.	12/16/04	$200,000.00	Smart Solutions
j.	12/29/04	$345,949.00	Smart Solutions
k.	12/31/04	$200,000.00	**Aragon** Law Offices

81. On or about each of the following dates, the defendant **SANDRA MARTINEZ** signed checks drawn upon the Smart Solutions bank account, in the amounts and to the payees specified below.

	Date	Amount	Payee
a.	09/24/03	$43,195.50	Sandra Mata
b.	12/12/03	$20,000.00	Robinett Consulting
c.	12/30/03	$55,850.00	**Sandra Martinez**
d.	12/30/03	$16,755.00	**Sandra Martinez**
e.	09/09/04	$6,000.00	**Sandra Martinez**
f.	12/30/04	$105,650.20	**Sandra Martinez**
g.	02/18/05	$103,815.00	Pershing, LLC

82. On or about December 12, 2003, the defendant **MICHAEL MURPHY** caused a check, drawn upon the account of SMART SOLUTIONS in the amount of $20,000.00, to be delivered to another person.

All in violation of Title 18, United States Code, Section 371.

COUNTS TWO THROUGH TEN

1. Paragraphs 1 through 11 of the Introduction of this Indictment, and Paragraphs 3 through 44 of Count One, above, are hereby incorporated by reference as if realleged and recited in full.

2. In or about and between the years 1999 and 2006, both dates being approximate and inclusive, in the State and District of New Mexico, in Bernalillo and Santa Fe Counties, and elsewhere, the defendants **TOBY MARTINEZ, RAUL PARRA, MICHAEL MURPHY,** and others known and unknown to the United States Attorney, devised a scheme and artifice to defraud and for obtaining money and property under false and fraudulent pretenses, and to defraud the State of New Mexico and the People

of the State of New Mexico of their right to have their business and their affairs, and particularly the transaction of the official business of the Bernalillo County Metropolitan Court, conducted honestly and impartially, by knowingly submitting and approving for payment false invoices, excessive requests for payment, and inflated contracts and contract modifications to the State of New Mexico in connection with the design and construction of the Bernalillo County Metropolitan Court house.

3. For the purpose of executing such scheme and artifice, on or about the dates listed below, the defendants **TOBY MARTINEZ, RAUL PARRA, MANNY ARAGON, MICHAEL MURPHY** and others caused the following documents to be mailed, delivered and received from the United States Postal Service.

Count	Defendants	Date	Description
2	**TOBY MARTINEZ MANNY ARAGON**	05/31/02	Payment voucher and DCSW invoice
3	**TOBY MARTINEZ MANNY ARAGON**	06/03/02	DFA check for $33,219.00 payable to DCSW
4	**TOBY MARTINEZ MANNY ARAGON**	06/12/02	Payment voucher and DCSW invoices
5	**TOBY MARTINEZ MANNY ARAGON**	06/13/02	DFA check for $77,507.00 payable to DCSW
6	**TOBY MARTINEZ RAUL PARRA MANNY ARAGON**	06/13/03	DFA check for $605,933.04 payable to ICS
7	**TOBY MARTINEZ RAUL PARRA MANNY ARAGON**	07/18/03	DFA check for $983,508.89 payable to ICS
8	**TOBY MARTINEZ RAUL PARRA MANNY ARAGON**	08/15/03	DFA check for $625,526.48 payable to ICS
9	**TOBY MARTINEZ RAUL PARRA MANNY ARAGON**	10/03/03	DFA check for $739,802.33 payable to ICS

Count	Defendants	Date	Description
10	**TOBY MARTINEZ** **RAUL PARRA** **MANNY ARAGON** **MICHAEL MURPHY**	11/21/03	DFA check for $675,470.99 payable to ICS

In violation of violation of Title 18, United States Code, Sections 1341 and 1346.

COUNTS ELEVEN THROUGH TWENTY THREE

On or about each of the dates listed below, in the State and District of New Mexico, the defendants **RAUL PARRA, SANDRA MARTINEZ** and **MICHAEL MURPHY** did knowingly conduct and attempt to conduct financial transactions affecting interstate and foreign commerce, to wit: transfer and receive funds via check as described below, which transactions involved the proceeds of specified unlawful activity, namely, Frauds and Swindles (Mail Fraud), (1) with the intent to promote the carrying on of specified unlawful activity, namely, Frauds and Swindles (Mail Fraud), and (2) knowing that the transaction was designed in whole or in part to conceal and disguise the nature, the location, the source, the ownership and the control of the proceeds of specified unlawful activity and, while conducting and attempting to conduct such financial transactions, knew that the property involved in the financial transactions represented the proceeds of some form of unlawful activity.

Count	Defendants	Date	Description
11	**RAUL PARRA**	08/28/03	Transfer of $150,000.00 to SMART SOLUTIONS
12	**RAUL PARRA**	08/28/03	Transfer of $100,000.00 to Law Office of **MANNY ARAGON**
13	**SANDRA MARTINEZ**	09/24/03	Transfer of $43,195.50 from SMART SOLUTIONS to self
14	**RAUL PARRA**	11/30/03	Transfer of $41,000.00 to **MANNY ARAGON** Attorney at Law

Count	Defendants	Date	Description
15	**RAUL PARRA**	11/30/03	Transfer of $245,000.00 to SMART SOLUTIONS
16	**SANDRA MARTINEZ MICHAEL MURPHY**	12/12/03	Transfer of $20,000.00 to ROBINETT CONSULTING
17	**RAUL PARRA**	12/27/03	Transfer of $45,500.00 to **MANNY ARAGON** – Attorney at Law
18	**SANDRA MARTINEZ**	12/30/03	Transfer of $55,850.00 from SMART SOLUTIONS to self
19	**SANDRA MARTINEZ**	12/30/03	Transfer of $16,755.00 from SMART SOLUTIONS to self
20	**RAUL PARRA**	12/31/03	Transfer of $194,000.00 to SMART SOLUTIONS
21	**SANDRA MARTINEZ**	09/09/04	Transfer of $6,000.00 from SMART SOLUTIONS to self
22	**SANDRA MARTINEZ**	12/30/04	Transfer of $105,650.20 from SMART SOLUTIONS to self
23	**SANDRA MARTINEZ**	02/18/05	Transfer of $103,815.00 from SMART SOLUTIONS to Pershing, LLC

All in violation of Title 18, United States Code, Section 1956(a)(1)(A)(i) and (B)(i).

COUNTS TWENTY FOUR THROUGH TWENTY EIGHT

On or about the dates specified below, in the State and District of New Mexico, the defendant **MANNY ARAGON** did knowingly engage and attempt to engage in monetary transactions by through or to a financial institution, affecting interstate or foreign commerce, in criminally derived property of a value greater than $10,000, that is, transfers of funds, such property having been derived from a specified unlawful activity, namely, Frauds and Swindles (Mail Fraud).

Count	Date	Description
24	03/15/04	Transfer of $50,000.00 via check to Pershing, LLC
25	03/15/04	Transfer of $186,352.00 via check to Pershing, LLC
26	04/28/04	Transfer of $70,000.00 via check to Pershing, LLC
27	05/24/04	Transfer of $25,688.06 via check to Bank of the Southwest
28	07/08/04	Transfer of $70,000.00 via check to Pershing, LLC

In violation of Title 18, United States Codes, Sections 1957 and 2.

FORFEITURES – TOBY MARTINEZ

Upon conviction of one or more of the offenses alleged in Counts One through Nine of this Indictment, the defendant **TOBY MARTINEZ** shall forfeit to the United States pursuant to Title 18, United States Code, Sections 981(a)(1)(C), 1956(c)(7)(A) and 1961(1), and pursuant to Title 28, United Stated Code, Section 2461(c), any property constituting or derived from proceeds obtained directly or indirectly as a result of the said violations, including but not limited to the following assets, representing the amount of proceeds obtained as a result of the offenses, namely, Conspiracy to commit Frauds and Swindles (Mail Fraud) and Money Laundering in violation of Title 18, United States Code, Section 371, and Frauds and Swindles (Mail Fraud) in violation of Title 18, United States Code, Sections 1341 and 1346, as set out above.

(a) $600,000.00 in mail fraud proceeds invested in:
Solid Gold Hotel and Resort, Inc.
and Passenger Vessel "Solid Gold"
Vessel No. 999735
8156 Kimbrook Drive
Germantown, Tennessee

(b) Smart Solutions Defined Benefit Plan dtd 12/30/03
Account No. 07Q-001377
Financial Network Investment Corporation
El Segundo, California
Clearing through Pershing LLC, a BNY Securities Group Company

(c) A 2005 Lexus RX-330 V6 Wagon
New Mexico License KID3302
VIN JTJHA31U050080911

(d) All that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments and easements, located at 8905 Dakota Ridge Road SW, Albuquerque, New Mexico 87121, more particularly described as Lot 24, Block 1, Second Amended Plat for Desert Pine Subdivision Unit 4 containing 0.0965 acres, Parcel ID # 1 009 056 390 371 11924

(e) All United States currency, funds or other monetary instruments credited to account number 8091323410 in the name of Toby Martinez at the Bank of Albuquerque

(f) All United States currency, funds or other monetary instruments credited to account number 0000905993 in the names of Tobias C. Martinez and Sandra P. Martinez at the U.S. New Mexico Federal Credit Union

(g) All United States currency, funds or other monetary instruments credited to account number 0000330221 in the names of Tobias C. Martinez and Sandra P. Martinez at the U.S. New Mexico Federal Credit Union

(h) All United States currency, funds or other monetary instruments credited to account number 0000402750 in the names of Tobias C. Martinez and Sandra P. Martinez at the U.S. New Mexico Federal Credit Union

If any of the above-described forfeitable property, as a result of any act or omission of the defendant(s):

(1) cannot be located upon the exercise of due diligence;

(2) has been transferred or sold to, or deposited with, a third party;

(3) has been placed beyond the jurisdiction of the court;

(4) has been substantially diminished in value; or

(5) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p) as incorporated by 18 U.S.C. § 982(b), to seek forfeiture of any other property of said defendant(s) up to the value of the forfeitable property described above, including but not limited to the following:

(i) All that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments and easements, located at 1808 Childers Drive NE, Albuquerque, New Mexico 87112, more particularly described as Parcel ID # 1 020 059 198 027 3 05 25 1000, with legal description 016 136 SNOW HEIGHTS ADDN

(j) A 2003 Mercedes-Benz "E" class four-door sedan, model E-320, New Mexico license number KID-2330, vehicle identification number WDBUF65J13A256102

FORFEITURES – SANDRA MARTINEZ

Upon conviction of one or more of the offenses alleged in Counts One, Thirteen, Eighteen, Nineteen, Twenty Two, Twenty Three or Twenty Four of this Indictment, the defendant **SANDRA MARTINEZ** shall forfeit to the United States pursuant to Title 18, United States Code, Sections 982, any property involved in the said violations, and, pursuant to Title 18, United States Code, Sections 981(a)(1)(C), 1956(c)(7)(A) and 1961(1), and Title 28, United Stated Code, Section 2461(c), any property constituting or derived from proceeds obtained directly or indirectly as a result of the said violations, including but not limited to the following asset, representing the amount of proceeds obtained as a result of the offenses, namely, Conspiracy to commit Frauds and Swindles (Mail Fraud) and Money Laundering in violation of Title 18, United States Code, Section 371, and Money Laundering in violation of Title 18, United States Code, Section 1956, as set out above.

(a) Financial Network Investment Corporation
Scholars Edge 529 Plan
Account No. 01100587962

(b) All that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments and easements, located at 8905 Dakota Ridge Road SW, Albuquerque, New Mexico 87121, more particularly described as Lot 24, Block 1, Second Amended Plat for Desert Pine Subdivision Unit 4 containing 0.0965 acres, Parcel ID # 1 009 056 390 371 11924

(c) All United States currency, funds or other monetary instruments credited to account number 8091323410 in the name of Toby Martinez at the Bank of Albuquerque

(d) All United States currency, funds or other monetary instruments credited to account number 0000905993 in the names of Tobias C. Martinez and Sandra P. Martinez at the U.S. New Mexico Federal Credit Union

(e) All United States currency, funds or other monetary instruments credited to account number 0000330221 in the names of Tobias C. Martinez and Sandra P. Martinez at the U.S. New Mexico Federal Credit Union

(f) All United States currency, funds or other monetary instruments credited to account number 0000402750 in the names of Tobias C. Martinez and Sandra P. Martinez at the U.S. New Mexico Federal Credit Union

If any of the above-described forfeitable property, as a result of any act or omission of the defendant(s):

(1) cannot be located upon the exercise of due diligence;

(2) has been transferred or sold to, or deposited with, a third party;

(3) has been placed beyond the jurisdiction of the court;

(4) has been substantially diminished in value; or

(5) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p) as incorporated by 18 U.S.C. § 982(b), to seek forfeiture of any other property of said defendant(s) up to the

value of the forfeitable property described above, including but not limited to the following:

(g) All that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments and easements, located at 1808 Childers Drive NE, Albuquerque, New Mexico 87112, more particularly described as Parcel ID # 1 020 059 198 027 3 05 25 1000, with legal description 016 136 SNOW HEIGHTS ADDN

FORFEITURES – MANNY ARAGON

Upon conviction of one or more of the offenses alleged in Counts One through Nine and Twenty Five through Twenty Nine of this Indictment, the defendant **MANNY ARAGON** shall forfeit to the United States pursuant to Title 18, United States Code, Sections 982, any property involved in the said violations, or, pursuant to Title 18, United States Code, Sections 981(a)(1)(C), 1956(c)(7)(A) and 1961(1), and Title 28, United Stated Code, Section 2461(c), any property constituting or derived from proceeds obtained directly or indirectly as a result of the said violations, including but not limited to the following asset, representing the amount of proceeds obtained as a result of the offenses, namely, Conspiracy to commit Frauds and Swindles (Mail Fraud) and Money Laundering in violation of Title 18, United States Code, Section 371, Frauds and Swindles (Mail Fraud) in violation of Title 18, United States Code, Sections 1341 and 1346, and Money Laundering in violation of Title 18, United States Code, Section 1957, as set out above.

(a) Account No. 07Q-001369
Financial Network Investment Corporation
El Segundo, California
Clearing through Pershing LLC, a BNY Securities Group Company

If any of the above-described forfeitable property, as a result of any act or omission of the defendant(s):

(1) cannot be located upon the exercise of due diligence;

(2) has been transferred or sold to, or deposited with, a third party;

(3) has been placed beyond the jurisdiction of the court;

(4) has been substantially diminished in value; or

(5) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p) as incorporated by 18 U.S.C. § 982(b), to seek forfeiture of any other property of said defendant(s) up to the value of the forfeitable property described above.

A TRUE BILL:

/S/
FOREPERSON OF THE GRAND JURY

LARRY GOMEZ
Acting United States Attorney
08/23/07 1:24pm

2009 Director's Community Leadership Awards

Albuquerque

Judy Wagner
Wagner Valuation and Financial Forensics

The Albuquerque Division has selected Judy Wagner to receive the Director's Community Leadership Award.

In October 2004, Judy Wagner was employed as the director of litigation and valuation services at Meyners + Company, LLC in Albuquerque, New Mexico. Ms. Wagner was appointed as receiver for P2RS Group Inc. by Judge Geraldine Rivera. The former partners of P2RS Group, Raul Parra and Harvey Peel, were involved in a lawsuit against one another over the assets of the company.

Upon taking control of P2RS Group, Ms. Wagner's duties and responsibilities included a review of the financial operations. During Ms. Wagner's thorough review of bank and investment account information, she became deeply concerned. Ms. Wagner discovered that Raul Parra was making large payments to New Mexico State Senator Manny Aragon and a company called Smart Solutions.

Smart Solutions was a company that Ms. Wagner didn't recognize, but that didn't stop her. She completed Internet searches with the Secretary of State's Office and determined that Sandra Martinez incorporated Smart Solutions. Ms. Wagner's curiosity paid off for the FBI and New Mexico taxpayers. Ms. Wagner soon learned that Sandra Martinez was the wife of Toby Martinez, the court administrator for the Metropolitan Court.

Ms. Wagner went to the U.S. Attorney's Office and the FBI with a five-inch binder of financial summary schedules, checks, e-mails, contracts, and other documents showing the connection between Parra, Aragon, Martinez, and Manuel Guara (another subcontractor), who Ms. Wagner suspected were sharing in illegal proceeds from the construction of the Metropolitan Court.

The FBI inherited an investigation that not only contained allegations, but proof of criminal activity between the co-conspirators. With the jump-start from Ms. Wagner, bank accounts were easily identified, obtained, and analyzed. The snapshot provided by Ms. Wagner gave a detailed picture of a public corruption scandal involving millions of dollars.

Ms. Wagner's assistance didn't stop there. The FBI began to look at other public projects completed by P2RS Group. Fortunately, Ms. Wagner volunteered her time and brought her outstanding forensic accounting abilities to bear and assisted the FBI in locating handwritten notes, checks, and financial documents indicating criminal activity on the construction of the Second Judicial District Courthouse and the Metropolitan Detention Center.

When the dust settled, eight individuals pled guilty in a $4.3 million scheme to steal money from the construction of the Metropolitan Court. They had stolen from the taxpayers of New Mexico. The formidable case that was brought against them was built upon the strong foundation of Ms. Wagner's efforts.

STATEMENT OF U.S. ATTORNEY GREG FOURATT
on the Sentencing of Marc Schiff

To the public, Marc Schiff held himself out to be a principal of the successful and thriving architectural firm Design Collaborative Southwest (DCSW). But with respect to his firm's work on the construction of the Bernalillo County Metro Court, he had a private side that was anything but legitimate. From 1999 through 2004, the secret of much of Schiff's success came from paying bribes and kickbacks to powerful public officials in exchange for state business.

The pay-to-play scheme was straightforward: in return for DCSW receiving the lucrative architecture design contract for the Metro Court, Schiff agreed to funnel hundreds of thousands of dollars generated from fraudulently bloated invoices back to former State Senate Majority Leader Manny Aragon and former Metro Court Administrator Toby Martinez. Using former Albuquerque Mayor Ken Schultz as a bagman, Schiff kicked back to Aragon and Martinez all or a portion of 43 separate checks that DCSW received from the State of New Mexico. The total fraud built into the architecture design contract – and, thus, the amount fleeced from the taxpayers of New Mexico – was approximately $918,000.00.

This case demonstrates the principle that public corruption rarely happens without the involvement of private citizens, for it is they who pay the bribes and kickbacks. Whether they engineer the idea themselves or simply accept a proposal from a corrupt public official, private citizens are indispensable participants in the enterprise of public corruption. In this case, to get the Metro Court work, Marc Schiff had to be willing to line the wallets of former Senator Aragon and former Administrator Martinez. It is a story line that is all too familiar and one of which the taxpayers of New Mexico have grown tired.

Fortunately for the citizens of New Mexico, however, Schiff made the right decision in early 2006 when he was approached by the FBI. He soon confessed and agreed to secretly record an incriminating conversation with former Mayor Schultz. In addition, Schiff soon pleaded guilty and agreed to testify against his confederates.

Today, Schiff received his measure of justice. He was sentenced to a term of imprisonment of 12 months and 1 day, three years of supervised release, and $678,015.38 in restitution to the New Mexico State Treasurer's Office. In imposing the sentence, Judge Conway weighed the breadth and severity of Schiff's wrongdoing and then factored in the quality and quantity of his assistance to the United States in the investigation and prosecution of his confederates. The sentence that Schiff received today, while appropriately stiff, represents an enormous reduction from the sentence he would have faced had he been convicted at trial.

The sentencing of Marc Schiff, at long last, brings to a close the district court proceedings in this historic case. This case is perhaps the most important result in a criminal case to issue from a federal courthouse in New Mexico in generations. The United States Attorney's Office, the New Mexico Attorney General's Office, and the FBI will continue to follow evidence of public corruption wherever it takes us. And, in doing so, we always will be guided by the principle that no public official nor any of his or her associates – no matter how powerful or connected or influential – is above the law.

Metro court architect sentenced to 366 days in prison

By **Heath Haussamen** | July 8, 2009

Marc Schiff, a former architect who played an integral role in the stealing of $4.3 million in taxpayer money during construction of the Bernalillo County Metropolitan Courthouse, was sentenced today to a year and a day in federal prison.

From the **Albuquerque Journal** (http://www.abqjournal.com/abqnews/abqnewseeker-mainmenu-39/13710-lawyers-for-marc-schiff-sought-probation.html):

> "Senior U.S. District Judge John Edwards Conway told Schiff, 'I assure you, I take no pleasure in this' but said Schiff's submission of false invoices made it impossible for him to sentence him to probation, as his attorney Joseph Riggs had argued Schiff should be. Riggs said the government had led Schiff to believe that his extensive cooperation, which included wearing a wire, would earn him a probated sentence like that received by former Albuquerque Mayor Ken Schultz."

The judge also ordered Schiff to pay $136,000 in restitution.

Schiff, once the president of one of the top architect firms in the state, had pleaded guilty to one felony count of conspiracy and one felony count of mail fraud. After admitting to submitting false invoices and then passing on the stolen money to other defendants, he **voluntarily gave up** (http://haussamen.blogspot.com/2007/07/metro-court-architect-voluntarily-gives.html) his architect license in 2007.

Schiff stated in his plea agreement that the scheme began when Schultz, his company's lobbyist, wanted a cash bonus for securing the architect contract. As additional contracts were awarded, Schultz wanted additional cash bonuses. At some point, Schiff stated, he learned that Schultz was giving some of the cash to former Senate President Manny Aragon and former Metro Court Administrator Toby Martinez.

"I continued to make cash payments to Schultz because I feared that DCSW would be removed from the contract or sued if payments stopped," Schiff stated in the agreement.

Schiff said Martinez instructed him to submit false invoices, and "the proceeds were then used to pay kickbacks to Aragon and Martinez." He said he personally gave some of the money to Aragon — two payments of $10,000 each — and was also present when Schultz passed Aragon an envelope containing $30,000 at an Albuquerque restaurant.

Eight have been convicted in the case, including Aragon, who was sentenced earlier this year to **5.5 years in federal prison** (http://haussamen.blogspot.com/2009/03/aragon-sentenced-to-55-years-in-prison.html), fined $750,000 and ordered to pay $649,000 in restitution. Also earlier this year, Martinez was sentenced to **67 months in prison** (http://haussamen.blogspot.com/2009/04/ringleader-in-metro-court-case-is.html) for his role as the ringleader of the group. Martinez was also ordered to pay more than $2.5 million in restitution.

Former New Mexico State Senator Released from Prison

Loaded on SEPT. 18, 2014 published in Prison Legal News September, 2014 (/news/issue/25/9/), page 37
Filed under: Home Detention (/search/?selected_facets=tags:Home%20Detention), Wackenhut/Geo Group (/search/?selected_facets=tags:Wackenhut/Geo%20Group), Government Misconduct (/search/?selected_facets=tags:Government%20Misconduct), Release and Reentry (/search/?selected_facets=tags:Release%20and%20Reentry). Location: New Mexico (/search/?selected_facets=locations:1504).

Former New Mexico State Senator Released from Prison

Manny Aragon, 66, a former New Mexico state Senate leader, was released from federal prison on December 5, 2013. Although most federal prisoners are sent to a halfway house to complete the remainder of their sentence, Aragon was released to home confinement at his house in Albuquerque.

"He's still subject to our rules and regulations and accountability monitoring," said Bureau of Prisons spokesman Chris Burke.

Aragon served three decades in the state legislature, rising to the position of Senate President Pro Tem, and was one of New Mexico's most powerful Democrats. However, his lengthy political career was eclipsed by the sordid details of his downfall: A scandal that involved skimming $4.4 million from a project to build the Bernalillo County Metropolitan Courthouse. Aragon, who admitted taking $600,000 from the courthouse project, was one of several defendants prosecuted in the scandal.

He pleaded guilty to federal conspiracy and fraud charges in 2008 and was sentenced to 67 months in prison, plus a $750,000 fine and $649,000 in restitution. He served around 4½ years before being released.

Aragon was also known for flip-flopping on the issue of prison privatization. Initially opposed to private prisons, he changed his mind after being hired as a consultant by Wackenhut Corrections (now the GEO Group) in 1998, while still serving in the state Senate. He later withdrew from his consulting job with Wackenhut after facing criticism for having a conflict of interest. [See: *PLN*, Aug. 2007, p.13; Dec. 1999, p.1].

In spite of his conviction, Aragon continues to receive his state pension of almost $2,300 per month, and reportedly used those funds to make restitution payments while incarcerated. New Mexico passed a law in 2012 that allows revocation of state pensions when public officials are convicted of felonies, but the law was not made retroactive.

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

In re:
DOUGLAS F. VAUGHAN,
Debtor.

No. 10-10763-s11

MEMORANDUM OPINION ON U.S. TRUSTEE'S MOTION TO APPOINT CHAPTER 11 TRUSTEE AND MOTION TO CONVERT CASE TO CHAPTER 7

This matter came before the Court on May 7, 2010 and May 12, 2010 for final hearing on the U.S. Trustee's Motion to Appoint Chapter 11 Trustee (doc 183) and Motion to Convert Case to Chapter 7 (doc 184) and the Debtor's objection to both motions (doc 237). The Note Holders Committee ("NHC") joined in both motions and expressed a preference for conversion. (Docs 215, 216). The Note Holders Committee for The Vaughan Company, Realtors case[1] ("VCR-NHC")(case no. 10-10759-s11) joined in both motions and also expressed a preference for conversion. (Docs 199, 200). BBVA Compass Bank filed a Response supporting the motions and stating a preference for conversion. (Doc 202). For the reasons set forth below, the Court finds that the Motion to Convert should be granted. This is a core proceeding concerning administration of the estate. 28 U.S.C. § 157(b)(2)(A).

The U.S. Trustee (sometimes "UST") appeared through its trial attorney Alice Nystel Page. The NHC appeared through its

[1]On February 22, 2010 both Douglas Vaughan and the Vaughan Company, Realtors filed Chapter 11 petitions. Douglas Vaughan owns 85% of the stock of Vaughan Company, Realtors. The U.S. Trustee appointed an official committee of Note Holders in each case.

attorney George Moore. The VCR-NHC appeared through its attorneys William Davis and Anne Goodman. Douglas F. Vaughan ("Debtor") was self-represented.

Before launching into a detailed statement of facts, the Court will set forth its overall reasoning as a guide to the reader. This Memorandum Opinion finds that Douglas Vaughan, a well-known, well-liked, and apparently very successful Albuquerque businessperson has been running a Ponzi scheme of considerable magnitude and sophistication for many years. That scheme reached its inevitable demise in early 2010. His operation of this scheme was done through deceit, misrepresentations, omissions and outright lies. As frequently happens in cases of this type the government regulators targeted him for investigation. He then filed a Chapter 11 bankruptcy to ward off his creditors, but refused to participate in the bankruptcy in a meaningful way. He asserted his Fifth Amendment privilege against self incrimination and thereby hindered the United States Trustee from performing its oversight duties under the Bankruptcy Code. Second, this Memorandum Opinion explains why the Court believes that the best interest of creditors requires an independent person to oversee the process in this case. Third, it cites examples of material omissions from the filings. Finally, it explains why conversion (thereby putting

the case into the hands of a chapter 7 trustee) is a better solution than the appointment of a chapter 11 trustee.

FINDINGS OF FACT

THE U.S. TRUSTEE'S CASE

The U.S. Trustee's first witness was Michael D'Angelo, a Certified Public Accountant and Certified Fraud Examiner. Mr. D'Angelo has a broad background in these areas including a Bachelor's Degree in accounting, four to five years of audit experience with KPMG, a Masters Degree in Business Administration, holding the position of chief financial officer in a private company for four years, and working in the Enforcement Division of the Securities and Exchange Commission ("SEC") since 1999. The Court approved Mr. D'Angelo as an expert

witness over the objection of the Debtor[2]. Mr. D'Angelo testified extensively regarding UST Exhibits 1 through 5.

Mr. D'Angelo began working on his investigation of the Debtor around January 1, 2010 and continued to devote 75% of his time to it until around March 15, 2010. During that time he reviewed records subpoenaed from Debtor and his businesses through Debtor's attorney and various banks. He examined general ledgers, work papers, emails, reports, financial reports, tax returns, quarterly balance sheets and profit and loss statements, a Private Placement Memorandum issued by Vaughan Capital[3], notes from communications with banks, and complete records for several checking accounts. He also had testimonial evidence from

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[2]The Debtor had two main objections to designation of the witness as an expert. First, a statement in a declaration given to the Debtor before Mr. D'Angelo's deposition to advise the Debtor what the subject matter of the deposition was going to be stated that there were between $72 million and $80 million of principal in outstanding promissory notes. Debtor's objection was that this wide gap between the numbers meant that the witness was incapable of being accurate. Mr. D'Angelo testified that the two numbers were provided by Debtor's attorney to him pursuant to a subpoena, and when questioned about the amounts the Debtor refused to answer on Fifth Amendment grounds. The second objection was that Mr. D'Angelo claimed there was a $250,000 loan from the Bank of Albuquerque to Vaughan Capital (another related company) which Debtor argued was never made. Mr. D'Angelo testified that he relied on bank documents that showed a wire transfer to Vaughan Capital as a "loan". The Court found that neither objection went to the witness' qualifications and overruled the objection.

[3]Vaughan Capital, LLC is a New Mexico Limited Liability Company formed on June 20, 2008. Its sole initial member was Phoenician Financial Services, LLC, which is wholly owned by Douglas Vaughan. See UST Exhibit 6, p. 1.

witnesses and access to bank records. The Court found Mr. D'Angelo to be intelligent, competent, diligent, thorough and completely credible.

UST Exhibit 1 is the balance sheet as of December 31, 2008 and income statement for the year ending that date of The Vaughan Company, Realtors (sometimes "Company"). The Company and Vaughan Capital, LLC were the primary vehicles through which the many investments were collected and distributed, with Mr. Vaughan guaranteeing most of those investments.

UST Exhibit 1 showed current assets[4] of $14,351,631, property, plant and equipment of $785,825 (net of depreciation), and "other assets" of $200,000. Among the current assets was an overdrawn bank account at Charter Bank in the amount of $1,415,536. The current assets, however, also included intercompany receivables from six related entities of $9,226,690 and a loan to Douglas Vaughan for $5,325,218; at this point, in retrospect, these assets were worth nothing. If adjusted to exclude the intercompany receivables and loan, current assets would be a negative $200,278.

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[4]"Current assets are cash or items that can be converted into cash within one year." Murphy v. Meritor Savings Bank (In re O'Day Corp.), 126 B.R. 370, 407 (Bankr. D. Mass. 1991).

Exhibit 1 also showed current liabilities[5] of $63,310,129[6], no long term liabilities, and negative equity (deficit) of $47,972,674. Part of the $47,972,674 deficit came from the 2008 year's $11,733,185 loss.

Exhibit 1's income statement showed total income of $6,228,836, of which only $11,147 was interest income. There were no other sources of investment income listed. There was a net loss from operations of the Company of $2,460,160. Therefore, the Company itself was not profitable or generating cash. In addition, there was an additional $9,273,326 of interest expense. The total net loss for the year was $11,733,485[7].

In summary, Exhibit 1 showed the Company had a dearth of working capital[8]. As of December 31, 2008, there was a serious

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[5]"[C]urrent liabilities are obligations which come due within one year." Oday Corp., 126 B.R. at 407.

[6]Among the current liabilities are $62,844,446 of "debentures." During the trial there was some testimony that some of the notes were for periods of two or three years. The evidence did not establish that all $62,844,446 of the "debentures" were due in one year, so the categorization as a current liability may not be entirely correct.

[7]Compared to the income statement, the balance sheet's current year loss differs by a negligible $300.

[8]"Working capital is that portion of a firm's assets that are in relatively liquid form-the current assets such as cash, accounts receivable and inventory. Net working capital is the

(continued...)

question whether Vaughan Company, Realtors could meet its obligations as they became due. It also showed that the Company was losing almost $1 million per month in 2008.

UST Exhibit 2 is the Vaughan Company Realtors balance sheet as of December 31, 2009 and income statement for the year ending that date. It showed current assets of $13,416,746, property, plant and equipment of $685,108 (net of depreciation), and "other assets" of $200,000 (unchanged from the previous year). Among the current assets was an overdrawn bank account at Charter Bank in the amount of $3,823,656. The current assets, however, also included intercompany receivables from six related entities of $11,449,416 and a Loan to Douglas Vaughan for $5,372,718; at this point, in retrospect, these assets were worth nothing. If adjusted to exclude the intercompany receivables and loan, current assets would be a negative $3,405,389.

UST Exhibit 2 also showed current liabilities of $63,310,129[9], no long term liabilities, and negative equity (deficit) of $61,340,220. Part of the $61,340,220 deficit came from the 2009 year's $13,367,546 loss.

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[8](...continued)
excess of current assets over current liabilities; it measures the ability of a firm to pay its debts as they mature." In re Lifschultz Fast Freight, 132 F.3d 339, 350 (7th Cir. 1997).

[9]Among the current liabilities are $74,391,523 of "debentures."

UST Exhibit 2's income statement showed total income of $4,812,716, of which only $2,569 was interest income; no other sources of investment income were listed. There was a net loss from operations of the company of $2,131,771. Therefore, the company itself was not profitable or generating cash. In addition, there was an additional $9,863,382 of interest expense. The total net loss for the year was $11,995,154[10].

In summary, Exhibit 2 shows a serious dearth of working capital. As of December 31, 2009, there was a serious question whether Vaughan Company, Realtors could meet its obligations as they became due. It also showed that the Company had been continuing to lose over $1 million per month.

Mr. D'Angelo summarized the important aspects of Exhibits 1 and 2 as follows. From December 2008 to December 2009 the promissory notes grew from $53 million to $74 million. The annual liability for interest payment on those notes went from $9.3 million in 2008 to $9.8 million in 2009 and he calculated that going forward interest requirements for 2010 would have been

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[10]This figure differs from the balance sheet's $13,367,546 loss by $1,372,392, which is significant. This discrepancy was not addressed at the hearings. However, the Balance Sheet from Exhibit 2 is marked "Vaughan Company Realtors" while the Income Statement is marked "The Vaughan Company Combined." See also footnote 12 (discussing fact that income tax return is a consolidated tax return). This unanswered question is not material to the Court's decision.

$12 million[11]. Taking its operations alone, Vaughan Company Realtors was losing money; it was obviously incapable of paying any interest on the promissory notes. The only way the Company could meet its interest obligations was from funds from new investors.

UST Exhibit 3 is the Vaughan Company Realtors balance sheet as of January 31, 2010 and income statement for the month ending that date. Its contents are similar to UST Exhibits 1 and 2 so will not be set out in detail. The company lost $1,171,790 in January, 2010. Charter Bank's overdraft grew to $5,044,953 and the Promissory note account grew by $173,328 to $74,564,851.

UST Exhibit 4 is the Vaughan Company Realtors consolidated[12] federal and state income tax returns for calendar year 2008. It shows total income of $8,362,559, total expenses of $21,675,882 (including an interest expense of $10,544,314) for a net loss of $13,313,323. Statement 2 attached to the federal return is a calculation of the net operating loss deduction. It shows that for every year from 1994 to 2007 Vaughan Company Realtors incurred the following net losses:

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[11]This figure is based on his calculated average weighted interest rate of just over 17%.

[12]Form 851 attached to the federal income tax form 1120 lists affiliated subsidiary corporations included on the return: Vaughan Commercial Properties, Vaughan Referral Company, Vaughan Property Management and Vaughan Company Business Opportunities. This explains why the tax reporting numbers are different from the financial statements for 2008, UST Exhibit 1.

YEAR	NET OPERATING LOSS
1994	$ (203,875)
1995	$ (403,866)
1996	$ (501,609)
1997	$ (626,768)
1998	$ (786,818)
1999	$ (1,010,229)
2000	$ (1,484,680)
2001	$ (2,072,591)
2002	$ (3,257,108)
2003	$ (3,543,753)
2004	$ (4,041,048)
2005	$ (5,595,285)
2006	$ (7,461,409)
2007	$ (9,913,893)

It demonstrates that losses increased each year from 1994 to 2007 as the business grew.

UST Exhibit 5, the only exhibit prepared by Mr. D'Angelo, is a diagram that graphically illustrates the cash flows for 2008 and 2009 from the Promissory Note investors to Vaughan Company Realtors ($29.4 million invested) and Vaughan Capital LLC investors to Vaughan Capital ($6.1 million invested) and the cash flows back from those entities to their respective investors (Vaughan Company Realtors returned $11.1 million of principal to investors; Vaughan Capital, LLC returned $310,000 of principal to investors). It also shows the cash flows back and forth between

Vaughan Company Realtors and Vaughan Capital LLC (Vaughan Capital LLC transferred $6.0 million[13] to Vaughan Company Realtors and Vaughan Company Realtors transferred $516,000 to Vaughan Capital LLC); the cash outflows from Vaughan Company Realtors and Vaughan Capital LLC to Douglas Vaughan ($877,000 from Vaughan Company Realtors and $83,000 from Vaughan Capital, LLC); the cash outflows from Vaughan Company Realtors to other Vaughan owned entities ($1.6 million); the cash outflows from Vaughan Company Realtors for operations of the company and interest payments on the promissory notes ($25.1 million); and the outflows from Vaughan Capital, LLC for "2 properties, a bank loan & other" ($91,000). All told, Vaughan Company Realtors ended up with a $3.8 million net cash outflow and Vaughan Capital, LLC ended up with a $132,000 cash inflow.

UST Exhibit 6 is a "Confidential Private Placement Memorandum" prepared by Vaughan Capital, LLC. The Memorandum states that 800 membership units will be offered at $12,500 per unit for an aggregate offering price of $10 million, with a minimum investment of $125,000 and a maximum of 24 investors. The cover sheet of the Memorandum states "Vaughan Capital, LLC, a

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[13]This is the money that was invested specifically to be used to 1) buy distressed properties in New Mexico, Arizona and Nevada, 2) buy discounted loan portfolios, and 3) make high interest rate loans to qualified buyers with adequate collateral ("bridge loans" and "mezzanine financing"). See UST Exhibit 6, p. 5 (Private Placement Memorandum of Vaughan Capital LLC).

New Mexico limited liability company (the '**Company**'), has been formed for the purpose of acquiring for investment purposes real property, mortgages, and to make commercial loans, commonly referred to as bridge loans or mezzanine financing." Article II on page 5 reiterates these purposes.

Article IV on page 6 describes how proceeds will be used and refers to Exhibit G. Exhibit G is a Pro Forma Cash Flow Statement for Vaughan Capital, LLC. Assumption 1 for the Cash Flow Statement is "Vaughan Capital will be adding assets (hard money loans, discounted mortgages, and real estate bought at a discount). It is assumed that each of these assets will comprise 33% of Vaughan Capital's assets." The five year cash flow projections show a negligible return in years one and two, but (assuming a full subscription of $10 million in units) profits of $1.4 million, $1.7 million, and $3.1 million in years three through five.

Exhibit B to the Memorandum is the Operating Agreement of Vaughan Capital, LLC. Article 1.5, "Business Plan" states:

> Company will engage in three (3) avenues of business or acquisition. (1) The Company will make hard money loans which will include bridge loans and/or provide mezzanine financing to commercial customers that are qualified for the loans, and in most cases collateralized by second mortgages on real property; (2) the Company will acquire real properties ...; and (3) the Company will attempt to buy portfolios of residential loans at deeply discounted prices ...

Mr. D'Angelo reviewed 100% of the transactions of Vaughan Capital, LLC through bank records. He concluded, and the Court so finds, that $6.1 million was invested in Vaughan Capital, LLC and $6.0 million went directly to Vaughan Company Realtors to meet its cash flow needs relating primarily to payment of investor's promissory notes. Vaughan Capital purchased two[14] houses and did not make any hard money loans or acquire any portfolios of residential loans. See also UST Exhibit 5.

The U.S. Trustee called several investors as witnesses: Donald W. Duke, Ricky D. Hewes, Philip H. Dugan, and Larry Turner. Their testimonies were all credible and consistent with each other. They generally established: they were all friends of acquaintances of Debtor who they believed was a successful businessperson; they all trusted Debtor; they were attracted by the comparatively high rates of return; they believed their promissory notes were secured by a deed of trust, although none knew what that was or asked to see further documents; none had received any literature about the promissory notes before investing or financial reports after investing; those that had invested in Vaughan Capital, LLC assumed their investments were secured by the distressed properties that were to be purchased

[14]Mr. Vaughan argued that three houses were purchased, but provided no details or documentation. Considering the use of the rest of the money, whether there were two or three houses is not really meaningful.

and were unaware that their investments could be loaned on an unsecured basis to related Vaughan companies; all had invested a substantial portion of their total net worth; all felt betrayed; and none of them trusted the Debtor to repay them.

UST Exhibit 27 is a UCC Financing Statement filed with the New Mexico Secretary of State on February 19, 2010. The secured party is Abbas J. Ansari. The Debtors are Vaughan Company Realtors and Douglas Vaughan. The collateral is a 53% interest in the limited liability company known as Oakwood Investment Group, LLC, a New Mexico Limited Liability Company. Documents attached show that a 15.5% interest in this LLC was pledged as collateral for a note dated November 5, 2004 and that another 37.5% interest was pledged as collateral for a note dated February 8, 2010. Debtor did not list any ownership interest in the Oakwood Investment Group, LLC on his schedule of assets. The Vaughan Company Realtors also did not list any ownership interest in this asset on its schedule of assets. Debtor did not disclose this transfer on his statement of financial affairs. Debtor did list Abbas J. Ansari as a creditor on his Schedule D but did not include Oakwood Investment Group, LLC in the description of collateral, and stated that the debt was incurred through 12/31/2009. At the hearing, Debtor argued that this transaction occurred over ten years ago but produced no evidence on the point. Therefore, the Court finds that the Debtor omitted either

or both an asset and a transfer from his statements and schedules. Also, due to the timing of the transfer (14 days prepetition), the Court does not find it credible that Debtor would simply forget it.

UST Exhibit 23 is a transcript of Debtor's section 341 meeting of creditors. Debtor invoked the Fifth Amendment privilege 121 times in response to almost every question asked. Specifically, he refused to answer questions about: whether the statements and schedules were true and complete, whether any amendments were needed, when various bank and stock accounts were closed, where the money went from those closed accounts, whether there were any transfers of amounts over $10,000, the identity of other members or partners in various entities listed on the schedule of assets, how the entities were valued, the purposes of these entities, whether these entities had assets or were operating, where the records were located for these entities, why related companies owed him money or from what period of time, whether he received salaries from any of his companies or whether the W-2's issued by those companies were accurate, whether Schedule D was correct, who Suzie Fairchild was[15], whether he owned or ever owned certain specific parcels of real estate or

[15]According to his Statement of Financial Affairs Suzie Fairchild was his girlfriend. Debtor gave her a Corvette convertible in July, 2009 for her birthday, and he transferred a house (allegedly with little or no equity) back to her in February, 2010.

ever transferred any of them to any entity he had formed, whether he had executed mortgages or for what purposes, whether he had made any transfers over $5,475 in the 90 days preceding the petition, how much Debtor gambled in Las Vegas[16] or at what casinos, what happened to shares of stock he listed as owning in a June 1, 2009 financial statement, whether he had received any rents from townhouses since the filing of the bankruptcy, or what plans he had to reorganize.

THE DEBTOR'S DEFENSE

The Debtor elicited the testimony of 3 investors: James R. Philp, Kurt Plouff and Fred Mossman. The United States Trustee also consented to Debtor's reading three affidavits of other investors into the record. Exhibits V1, V2 and V3. Their testimonies were marginally credible and consistent with each other. They generally established: they were all good friends of Debtor who they believed was a very successful businessperson; they all trusted Debtor to repay them despite the fact that he had voluntarily filed bankruptcy; they all expressed their preference that the Debtor remain in possession as a Chapter 11 debtor despite their obvious unfamiliarity with bankruptcy; they all testified that conversion to a Chapter 7 would guarantee that

[16]The Statement of Financial Affairs discloses gambling losses.

they would receive less on their claims[17] than if the Debtor would be allowed to proceed with his "plan"[18]; and they all testified that they had reviewed Debtor's plan with him and thought it looked plausible and reasonable, and was the best opportunity for them to get paid. None of them had seen Debtor's or the related companies' financial statements. None had heard the evidence produced by the United States Trustee in the case. Debtor's obvious purpose in calling these witnesses was to establish his character as a trustworthy individual and to establish that creditors with substantial claims wanted him to remain in control of the case.[19] While there is no question that

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[17]Debtor asked each investor witness how he (the witness) would fare on his claim if a conversion were ordered. This question demonstrates a fundamental ignorance of the Bankruptcy Code. There is no rule as such that a Chapter 7 estate pays less than a Chapter 11 reorganization. A creditor's chance of getting paid depends primarily on the financial condition of the debtor as it enters bankruptcy, not the chapter it elects to file under.

[18]The "plan" is discussed below.

[19]Debtor had a third purpose in eliciting their testimony, which was to rescue his reputation. Albuquerque media have continually reported on allegations of Debtor's improper dealings (including a Ponzi scheme), government searches of his office and home, etc. One item sensationally reported was that of a "secret room" in his home which contained a safe. On this issue he called Mr. Mossman, one of the major homebuilders in the Albuquerque area, who testified that such rooms are commonplace in luxury homes in Albuquerque. Mr. Mossman also testified that he had seen the secret room, and that it was in effect about three foot square, with much of the space taken up by a safe. One of the Court's staff appears to have most accurately characterized the secret room as "a linen closet with a lock on it".

each of the three witnesses testified completely honestly and sincerely, the Court puts little weight on any of these witnesses' testimony given their fundamental lack of familiarity with critical underlying facts.

After Debtor rested his case, the Court inquired whether he had intended to put on any evidence of a possible plan of repayment to creditors. Debtor responded that he was working on it and that it was substantially finished but not cosmetically proper, and it would be filed by the due date. The Court clarified that the "due date" he referenced was really only the deadline for exclusivity for filing a plan, and informed him that if he had a plan, now was the time to present it. Debtor was allowed to reopen his case to present his plan. The plan consists of a one page spreadsheet that is a four year projection of amounts he could repay creditors if he is allowed to remain a debtor-in-possession. Exhibit V6.

The plan has three fundamental assumptions. First, NAI Vaughan Management[20] will be renamed "Premier Asset Management" and somehow supply an undefined amount of operating capital on unknown terms for an unknown period of time. Second, "free and clear rentals"[21] will be borrowed against to supply an undefined

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[20]Debtor's schedules list NAI Vaughan Management, LLC as a 100% owned limited liability company worth $200,000.

[21]The plan does not show income from rentals and does not (continued...)

amount of operating capital on unknown terms for an unknown period of time. Third, Debtor will organize a new company and keep 50% of the stock and issue 50% of the stock to investors. The plan is silent as to the dollar amount of this stock offering.

Before the Court gets into the details of the plan, it has serious questions about the assumptions. Is NAI Vaughan Management being renamed to conceal the identity of its principals or its connection to the Debtor? How does the Debtor assume that he can exit bankruptcy with a $200,000 asset (NAI Vaughan Management) to use as his own by pledging it before[22] paying creditors? Are the rentals acquired by the new entity? How can Debtor issue stock in a new company when he is under an injunction[23] by the United States District Court to not offer or issue any security without a registration statement? Does Debtor assume that he can get a plan approved without disclosing his problems with the SEC? On what does Debtor base his assumption

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[21](...continued)
disclose where the rents go. Furthermore, Debtor's Schedule A does not list any rental properties free and clear of liens. In fact, none of them even have equity. See, e.g., UST Exhibit 18, Doc 94 (nine rentals on Fruit Street each worth $135,000 with $78,066,363 liens against them.)

[22]When asked by the Court during his presentation of the plan, Debtor admitted that the plan would probably not pay creditors in full during his lifetime.

[23]The injunction is UST Exhibit 24.

that any informed reasonable investor would invest money in a new company, 50% owned by a person that has run a business enterprise that was a textbook Ponzi scheme that has suffered mounting losses every year for at least 16 years? Why would any informed reasonable investor invest money in a new company, 50% of whose profits are forever pledged to pay off the creditors of the 50% owner of the company?

The plan itself contemplates two methods to pay creditors. First, the new company will be engaged in the sale of real estate. Second, Debtor will set up "ancillary companies" starting in year two to add profits to the undertaking.

Regarding the new company, the plan states that during the first year thirty real estate agents will come to work for Debtor and each will sell $3 million dollars of real estate[24]. The new company would receive 30% of the agents' commissions. After payments of commissions and overhead[25], the new entity would have $390,000 of net profit[26]. Fifty percent, or $195,000 would be

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[24]Debtor admits that he anticipates that the thirty best "superstar" real estate agents in the state will eagerly join his company. Debtor stated that the average house in Albuquerque sells for $250,000. His plan therefore anticipates that each real estate agent will sell one house per month.

[25]Debtor does not disclose if he receives compensation as part of the overhead, or in what amount, or for what duties.

[26]The plan has no provision for payment of income taxes, so the $390,000 figure is inflated. So, all numbers projected for all following years are also inflated. Any number therefore

(continued...)

paid to the creditors. The plan is silent on what happens to the other $195,000 but the Court presumes that it would be distributed to the stockholders of the new entity, $97,500 to the new investors and $97,500 to Debtor[27].

In the second year, the plan anticipates that twenty additional real estate agents will join the new company and they also will each sell $3 million of real estate and the resulting profit would be $600,000. In addition, Debtor will start up a title company that will profit $200,000, a mortgage company that will profit $150,000, and a commercial division that will profit $100,000. During year two Debtor will start organizing new investment LLC's to invest in special situations[28] such as "fix up

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[26](...continued)
should be assumed to be before tax.

[27]Assuming that there are $97 million of claims ($86 million of secured claims and $11 million of unsecured claims, as set forth on Debtor's Summary of Schedules, Doc 94, UST Exhibit 18) means that creditors would receive a dividend of 0.20% during the first year. Meanwhile, Debtor is concurrently presumably receiving a salary for running the new entity and receiving a profit of $97,500. The Court doubts that creditors would vote for this plan.

[28]Compare to UST Exhibit 6 (Private Placement Memorandum of Vaughan Capital LLC)(LLC to invest in foreclosed properties in Nevada, Arizona and New Mexico, buy discounted loan portfolios and supply hard money financing). Unique, unusual, exotic or even bizarre investment schemes are often the subject of Ponzi schemes. See, e.g., Cunningham v. Brown, 265 U.S. 1, 7 (1924) (scheme purporting to buy international postal coupons in foreign countries and sell them in other countries at 100 per cent profit, made possible by the excessive differences in the rates of exchange following the war. This is the case from which the
(continued...)

and flips", "discounted mortgages", etc. and this will profit $100,000. Therefore, the second year total profit for all activities would be $1.25 million and $625,000[29] would be paid to investors. Debtor would presumably receive salaries from all the entities and take home $312,500 of the profit of the new company.

Years three and four continue along the same lines, with the number of agents increasing to seventy, then one hundred, the new companies profits increasing to $840,000 then $1.2 million, and ancillary companies' profits increasing to $1 million then $1.65

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[28](...continued)
term "Ponzi scheme" arose. "The litigation grows out of the remarkable criminal financial career of Charles Ponzi."); Securities and Exchange Comm. v. J.T. Wallenbrock and Assoc., 313 F.3d 532, 535 (9th Cir. 2002)("Wallenbrock sold promissory notes ostensibly secured by the accounts receivable of Malaysian latex glove manufacturers."); United States v. Treadwell, 593 F.3d 990, 993 n. 2 (9th Cir. 2010):

> It has been reported that Albanian pyramid schemes netted a purported $1.2 billion after the fall of Communism in the 1980s, and that a Florida church in the 1990s amassed $500 million by promising that God would double the money of pious investors. Alex Altman, A Brief History Of: Ponzi Schemes, TIME, Jan. 8, 2009, at 13. Lest one think Ponzi schemes are too simple and obvious to bamboozle the financially savvy, an oil-drilling swindle in the 1970s duped top executives at Pepsico, Time, and General Electric, as well as the chairman of U.S. Trust, the president of First Boston Corp., and an author of several books on Wall Street finance. See Donald H. Dunn, Ponzi! The Boston Swindler xi-xii (1975). Most recently, the 2008 collapse of Bernard "Bernie" Madoff's grandiose Ponzi scheme resulted in over $50 billion in investor losses, a 150-year prison sentence for Madoff, and numerous investor lawsuits that predictably will take years for resolution.

[29]This would be a 0.64% return to creditors in year two.

million. The totals paid to creditors would be $920,000[30] in year three and $1.425[31] million in year four. Debtor would take home profits of $460,000 plus salaries in year three and profits of $712,500 plus salaries in year four. So, all told, after four years of this plan the creditors would have cumulatively received $3,165,000[32] and Debtor would have received $1,582,500.

Debtor testified at the hearing regarding his plan. He believes that the figures are conservative, achievable and reasonable. He claims that he has had such success in the past starting similar types of organizations. The Court finds these projections fanciful at best. They show a total disconnect from economic reality. A review of the plan suggests that Debtor is trying to rebuild the hugely unsuccessful empire he controlled before bankruptcy. If it were so easy to make the fantastic sums as set forth in this plan there would be no reason for the Debtor's and Debtor's companies to be massively insolvent and in Chapter 11. This plan is not feasible and it also violates the absolute priority rule (11 U.S.C. § 1129(b)(2)(B)(ii)). It is unconfirmable.

CONCLUSIONS OF LAW

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[30]This would be a 0.95% return to creditors in year three.

[31]This would be a 1.47% return to creditors in year four.

[32]This would be a total four year return of 3.26%.

The United States Trustee has moved to appoint a Chapter 11 Trustee or to convert this case to Chapter 7. These actions are governed by 11 U.S.C. § 1104 and § 1112. Section 1104, **Appointment of trustee or examiner**, provides, in part:

> (a) At any time after the commencement of the case but before confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of a trustee--
>
> (1) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case, or similar cause, but not including the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor;
>
> (2) if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate, without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor; or
>
> (3) if grounds exist to convert or dismiss the case under section 1112, but the court determines that the appointment of a trustee or an examiner is in the best interests of creditors and the estate.

Section 1112, **Conversion or dismissal**, provides, in part:

> ...
>
> (b) (1) Except as provided in paragraph (2) of this subsection, subsection (c) of this section, and section 1104(a)(3), on request of a party in interest, and after notice and a hearing, absent unusual circumstances specifically identified by the court that establish that the requested conversion or dismissal is not in the best interests of creditors and the estate, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, if the movant establishes cause.

(2) The relief provided in paragraph (1) shall not[33] be granted absent unusual circumstances specifically identified by the court that establish that such relief is not in the best interests of creditors and the estate, if the debtor or another party in interest objects and establishes that--
(A) there is a reasonable likelihood that a plan will be confirmed within the timeframes established in sections 1121(e) and 1129(e) of this title, or if such sections do not apply, within a reasonable period of time; and
(B) the grounds for granting such relief include an act or omission of the debtor other than under paragraph (4)(A)--
(I) for which there exists a reasonable justification for the act or omission; and
(ii) that will be cured within a reasonable period of time fixed by the court.
...
(4) For purposes of this subsection, the term 'cause' includes--
...
(H) failure timely to provide information or attend meetings reasonably requested by the United States trustee[.]

I. MOTION TO APPOINT TRUSTEE

The U.S. Trustee proved that Debtor was the principal in a Ponzi scheme. Ponzi schemes are fraudulent. Fraud, before or

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[33]Thus in the original. The "not" appears to be another of the drafting errors in the statute resulting from Congress' failure to proofread the statute before passing it. (Other examples are cited in In re Martin, 424 B.R. 496, 506-07 nn. 8 and 9 (Bankr. D. N.M. 2010)). Not disregarding the "not" leads to a logical but absurd interpretation of the statute; to wit, dismissal or conversion shall be granted where unusual circumstances establish that dismissal or conversion is not in the best interests of the creditors and the estate. 7 Collier on Bankruptcy ¶ 1112.05[2] (Alan N. Resnick and Henry J. Sommer, eds., 16th ed.). As the authors of Collier suggest, the most cogent approach to the statute is that taken by the court in In re Orbit Petroleum, Inc., 395 B.R. 145, 147 (Bankr. D. N.M., 2008), which simply reads the "not" out of the statute.

after the filing of a bankruptcy case, is a ground to appoint a trustee. Appointment would also be in the best interest of creditors. Therefore, the Court can grant the U.S. Trustee's Motion to Appoint a Trustee.

A. PONZI SCHEME

> A "Ponzi" scheme, as that term is generally used, refers to an investment scheme in which returns to investors are not financed through the success of the underlying business venture, but are taken from principal sums of newly attracted investments. Typically, investors are promised large returns for their investments. Initial investors are actually paid the promised returns, which attract additional investors.

Sender v. The Nancy Elizabeth R. Heggland Family Trust (In re Hedged-Investment Associates, Inc.), 48 F.3d 470, 471 n. 2 (10th Cir. 1995)(citing In re Independent Clearing House Co., 41 B.R. 985, 994 n. 12 (Bankr. D. Utah 1984)). See also McHale v. Huff (In re Huff), 109 B.R. 506, 512 (Bankr. S.D. Fla. 1989):

> A ponzi scheme is a scheme whereby a corporation operates and continues to operate at a loss. The corporation gives the appearance of being profitable by obtaining new investors and using those investments to pay for the high premiums promised to earlier investors. The effect of such a scheme is to put the corporation farther and farther into debt by incurring more and more liability and to give the corporation the false appearance of profitability in order to obtain new investors.

In order to prove that a Debtor engaged in a Ponzi scheme, the plaintiff must prove: "(1) deposits were made by investors; (2) the Debtor conducted little or no legitimate business operations as represented to investors; (3) the purported

business operations of the Debtor produced little or no profits or earnings; and (4) the source of payments to investors was from cash infused by new investors." Reiser v. Hayslip (In re Canyon Systems Corp.), 343 B.R. 615, 630 (Bankr. S.D. Ohio 2006). See also Floyd v. Dunson (In re Ramirez Rodriguez), 209 B.R. 424, 431 (Bankr. S.D. Tex. 1997)(same 4 part inquiry).

Under the two descriptions and one test listed above, Debtor was engaged in a Ponzi scheme. Debtor's business entities were not successful and did not generate cash. In fact, they lost money continuously and in increasing amounts from 1994 to date. The only way the businesses were able to continue in operation was from the infusion of funds from investors who were promised high rates of return on their investments. The funds invested were not utilized as represented; rather, they went to pay the high rates of returns to the prior investors. This is a textbook example of a Ponzi scheme. See Cuthill v. Greenmark, LLC (In re World Vision Entertainment, Inc.), 275 B.R. 641, 656-57 (Bankr. M.D. Fla. 2002)(Describing a "textbook" Ponzi scheme as follows:

> None of the debtor's investments ever produced any income or revenue. The debtor's primary source of funds was through the sale of its promissory notes. The debtor used funds invested by new investors to make interest and principal payments to earlier investors. Any remaining funds were used to pay general and administrative expenses such as officer salaries and rent, to make occasional investments in companies not expected to generate any substantial return, and to enrich the debtor's insiders.)

B. FRAUD

Ponzi schemes are fraudulent. Donell v. Kowell, 533 F.3d 762, 767 n. 2 (9th Cir.), cert. denied, 129 S.Ct. 640 (2008):

> A Ponzi scheme is a financial fraud that induces investment by promising extremely high, risk-free returns, usually in a short time period, from an allegedly legitimate business venture. "The fraud consists of funnelling proceeds received from new investors to previous investors in the guise of profits from the alleged business venture, thereby cultivating an illusion that a legitimate profit-making business opportunity exists and inducing further investment." In re United Energy Corp., 944 F.2d 589, 590 n. 1 (9th Cir. 1991).

See also World Vision Entertainment, 275 B.R. at 656 ("A Ponzi scheme is by definition fraudulent."); Ramirez Rodriguez, 209 B.R. at 430 ("A Ponzi scheme is a fraudulent investment arrangement whereby an entity makes payments to investors from monies obtained from later investors rather than from any 'profits' of the underlying business venture.")(Citation omitted.)

C. OTHER GROUNDS TO APPOINT A TRUSTEE

Grounds also exist under 11 U.S.C. § 1104(a)(2) to appoint a trustee. Debtor's refusal to testify at the first meeting of creditors suggests that appointment of a trustee would be in the best interest of the creditors. Tradex Corp. v. Morse (In re Tradex Corp.), 339 B.R. 823, 834 (D. Mass. 2006)(unwillingness to testify prevents the court and creditors from receiving information from the person entrusted to act as a fiduciary). Without a trustee to verify or reconstruct Debtor's assets and

transfers, funds otherwise available to creditors might remain undiscovered.

A failure to provide accurate schedules to the court has been deemed sufficient "cause" under § 1104(a)(1) to appoint a trustee. In re Plaza de Retiro, Inc., 417 B.R. 632, 641 (Bankr. D. N.M. 2009). As previously described, Debtor failed to schedule an asset (his interest in Oakwood Investment Group, LLC) and/or a transfer of a lien on that asset.

Additionally, the Tenth Circuit Court of Appeals has found that "a history of transactions with companies affiliated with the debtor company is sufficient cause for the appointment of a trustee where the best interests of the creditors require." Oklahoma Refining Co. v. Blaik (In re Oklahoma Refining Co.), 838 F.2d 1133, 1136 (10th Cir. 1988)(citing five bankruptcy court cases). In this case, the United States Trustee has demonstrated millions of dollars of intercompany transfers, most of which were 1) probably not made with sound business judgment, 2) against the interests of the creditors of and investors in the transferring companies, and 3) not disclosed to the investors[34]. See UST

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[34]For example, $6.0 million was transferred from Vaughan Capital, LLC to Vaughan Company Realtors. The Court seriously questions the Vaughan Capital, LLC manager's business judgment when it (an entity 100% owned and controlled by Debtor) transferred virtually all the money it received as invested funds in a private placement to Vaughan Company Realtors, a company owned 85% by Debtor. Debtor knew the financial condition of Vaughan Company Realtors. There was no evidence offered as to

(continued...)

Exhibit 5. While it is true that Debtor was probably only a net recipient of transfers from the various companies, his refusal to testify regarding details of the various companies and their interconnections suggests to the Court that a trustee should be appointed to see if there are any possible claims for the estate.

D. CONCLUSION ON MOTION TO APPOINT TRUSTEE

Debtor engaged in fraud. There are also other reasons to convert the case. Grounds exist under both 11 U.S.C. § 1104(a)(1) and (2) to appoint a trustee.

II. MOTION TO CONVERT

In In re Modanlo the Bankruptcy Court for the District of Maryland set forth the process for a court to decide a motion to convert under the current version of Bankruptcy Code 1112:

> The mechanics of determining whether a court should convert or dismiss a case under the post-BAPCPA version of 11 U.S.C. § 1112(b) appear to be as follows: First, the movant must demonstrate that cause exists by a preponderance of the evidence. At this point, if cause has been demonstrated, the court must ascertain whether unusual circumstances exist to prevent conversion or dismissal. If no such unusual circumstances exist, the court must convert or dismiss. The non-moving party is able to try to defeat a motion to convert or dismiss the bankruptcy case by showing that unusual circumstances exist to prevent dismissal or that factors specifically set out in § 1112(b)(2)(A) and (B)

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[34](...continued)
whether any formal documents were drawn to evidence these transfers, whether they were interest bearing, whether they were secured, or even if they were authorized. The investors that owned interests in Vaughan Capital, LLC who testified were all unaware of the transfers and unaware of any authority to make these transfers.

> exist (e.g., reasonable likelihood of timely confirmation, reasonable excuse for an omission by the debtor). If these exist, the opponent to the motion to convert or dismiss prevails, unless the court determines that the best interests of the estate are otherwise. And, the court must make this best interests assessment even if the opponent does not carry its burden or even make a defense. Thus, if cause has been demonstrated (and whether or not the motion is opposed), the court must ascertain whether the best interests of creditors and the estate are served by granting or denying the motion. In re Hook, 397 B.R. 544, 2008 WL 3906794, at *4 (10th Cir. BAP Aug. 26, 2008) ("[Section 1112(b)(1)] allows the court to deny the motion if doing so would be in furtherance of the best interests of the creditors or the estate.")(unpublished); In re Orbit Petroleum, Inc., 395 B.R. 145, 148-49 (Bankr. D. N.M., 2008) ("In this case, because a plan has been filed which purports to pay all creditors in full as of the effective date ... neither conversion nor dismissal is in the best interest of the creditors of the estate.").

In re Modanlo, 413 B.R. 262, 271 (Bankr. D. Md. 2009)(footnote omitted).

Debtor's refusal to testify[35] at the first meeting of creditors constitutes cause to convert as a "failure timely to provide information ... reasonably requested by the United States trustee." 11 U.S.C. § 1112(b)(4)(H). In closing argument, Debtor argued that his taking the Fifth Amendment should not be held against him because the United States Trustee could discover the information itself without much trouble. The Court doubts that the United States Trustee could discover the requested information. Debtor is in the unique position of having the information. That is not the issue, however. For one thing, the statute does not read "failure timely to provide information ... reasonably requested by the United States trustee unless the trustee can discover the information itself without much trouble." Secondly, for a chapter 11 debtor-in-possession, absolute transparency is required.

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[35]In McCormick v. Banc One Leasing Corp. (In re McCormick), the Court of Appeals for the Eleventh Circuit ruled that invoking the Fifth Amendment was not a sufficient ground, in itself, to deny confirmation of an individual Chapter 11 debtor's plan. McCormick, 49 F.3d 1524, 1527 (11th Cir. 1995). In that case, however, the Debtor invoked the Fifth Amendment in a separate adversary proceeding seeking to have a debt declared nondischargeable under section 523, reached a settlement with the creditor in the adversary proceeding, and then pursued confirmation of a plan without further invoking the Fifth Amendment privilege. Id. at 1526. The Court of Appeals vacated and remanded for a determination of whether debtor's failure to testify at a deposition in the adversary proceeding impeded the basic bankruptcy administration of his case. Id. at 1527. In Mr. Vaughan's case, he invoked the Fifth Amendment 121 times during the 341 meeting. There is no question this impeded the basic bankruptcy administration of his case.

> The American bankruptcy system is often described as having two primary objectives: first, ensuring the equitable and timely repayment of creditors with valid claims; and second, affording debtors a fresh start once they emerge from bankruptcy. In re Ortiz, No. 05-39982, 2006 WL 2946500, at *9 (Bankr. S.D. Tex. Oct. 13, 2006) (quoting In re T-H New Orleans Ltd. P'ship, 188 B.R. 799, 807 (E.D. La. 1995), aff'd, 116 F.3d 790 (5th Cir. 1997)). In order for these twin goals to be achieved-indeed, in order for the bankruptcy system to function-every entity involved in a bankruptcy proceeding must fully disclose all relevant facts. In re Coastal Plains, Inc., 179 F.3d 197, 208 (5th Cir. 1999) ("The duty of disclosure in a bankruptcy proceeding is a continuing one."); In re Ramirez, No. 03-47872, 2006 WL 3838176, at *3 (Bankr. S.D. Tex. Dec. 29, 2006) ("[T]he broad policy of the Bankruptcy Code ... favors transparency and disclosure whenever possible."); In re eToys, Inc. 331 B.R. 176, 187 (Bankr. D. Del. 2005) ("Disclosure 'goes to the heart of the integrity of the bankruptcy system.' ") (citing In re B.E.S. Concrete Products, Inc., 93 B.R. 228, 236 (Bankr. E.D. Cal. 1988)); In re Century Plaza Assoc., 154 B.R. 349, 352 (Bankr. S.D. Fla. 1992) ("Disclosure of fees is a fundamental concept in bankruptcy.").

Sanchez v. Ameriquest Mortgage Co. (In re Sanchez), 372 B.R. 289, 296-97 (Bankr. S.D. Tex. 2007). See also Plaza de Retiro, 417 B.R. at 641 (One of the most fundamental and crucial duties of a debtor-in-possession is to keep the Court and creditors informed about the nature, status and condition of the business undergoing reorganization.)(citing In re V. Savino Oil & Heating Co., Inc., 99 B.R. 518, 526 (Bankr. E.D. N.Y. 1989)). Therefore, the Court finds that Debtor's refusal to testify is "cause" to convert under 11 U.S.C. § 1112(b)(4)(H).

> Once "cause" has been demonstrated, the Court must convert or dismiss, unless the Court specifically identifies "unusual circumstances ... that establish that such relief is not in the best interest of

> creditors and the estate." 11 U.S.C. § 1112(b)(1). However, absent unusual circumstances, the Court must not convert or dismiss a case if (1) there is a reasonable likelihood that a plan will be confirmed within a reasonable time, (2) the "cause" for dismissal or conversion is something other than a continuing loss or diminution of the estate coupled with a lack of reasonable likelihood of rehabilitation; and (3) there is reasonable justification or excuse for a debtor's act or omission and the act or omission will be cured within a reasonable time. 11 U.S.C. § 1112(b)(2); 7 Collier on Bankruptcy ¶ 1112.04[1] (Alan N. Resnick and Henry J. Sommer, eds., 15th ed. rev.2008).

Orbit Petroleum, 395 B.R. at 148.

> The code does not define "unusual circumstances" within the meaning of 11 U.S.C. § 1112(b). See [In re] Gateway Access [Solutions, Inc.], 374 B.R. [556] at 560 [(Bankr. M.D. Pa. 2007)] (acknowledging that the statute does not define "unusual circumstances"); In re Fisher, No. 07-61338-11, 2008 WL 1775123, at *5 (Bankr. D. Mont. April 15, 2008)(" 'Although section 1112(b) does not define the phrase "unusual circumstances," it clearly contemplates conditions that are not common in most chapter 11 cases.' ")(quoting 7 Collier on Bankruptcy, ¶ 1112.04[3], p. 1112-26 (15th ed. rev.)). Nevertheless, "the import of section 1112(b) is that, if cause exists, the case should be converted or dismissed unless unusual facts or circumstances demonstrate that the purposes of chapter 11 would be better served by maintaining the case as a chapter 11 proceeding." 7 Collier on Bankruptcy ¶ 1112.04[3], p. 1112-26 (Alan N. Resnick and Henry J. Sommer, eds., 15th ed. rev. 2008).

Id. at 148-49.

In closing arguments, Debtor argued that the "unusual circumstances" language of Section 1112 means that if there is a good chance a plan will give creditors more money, then the Court should not convert or appoint a Chapter 11 Trustee. Debtor did not specifically argue that his plan constituted unusual

circumstances but he made no other argument, so the Court presumes that this was the intended argument. The simple filing of a plan is not an unusual circumstance in Chapter 11. In re Wahlie, 417 B.R. 8, 13 (Bankr. N.D. Ohio 2009). Compare Orbit Petroleum, 395 B.R. at 149:

> In this case, because a plan has been filed which purports to pay all creditors in full as of the effective date of the plan, neither conversion nor dismissal is in the best interest of the creditors and the estate. A plan which proposes to pay all creditors in full on the effective date is an unusual circumstance sufficient to deny conversion or dismissal even in the face of demonstrated cause. Creditors and the estate will be far better off if the plan is confirmed than if the case were dismissed or converted. By affording the Debtor an opportunity to confirm a plan that proposes to pay all creditors in full, the purposes of the bankruptcy code to encourage financial restructuring and facilitate payments to creditors is furthered.

(footnote omitted.)

As discussed above, the plan in this case cannot be confirmed. Even if it could, the plan does not actually make any meaningful payment to the creditors. In fact, the Court finds it highly unlikely that any plan could be confirmed. Debtor has shown no other "unusual circumstances." In summary, the Court does not find "unusual circumstances" in this case that establish that the requested conversion or dismissal is not in the best interests of creditors and the estate. Therefore under 11 U.S.C. § 1112(b)(1) the Court "shall" convert or dismiss the case unless § 1112(b)(2) applies.

The conditions set out in Section 1112(b)(2) are not present. There is no likelihood that a plan will be confirmed with a reasonable period of time. This takes Section 1112(b)(2)(A) out of the picture. Section 1112(b)(2)(B) requires both a reasonable justification for the act or omission and a cure of the act or omission within a reasonable period of time fixed by the court. Debtor did not offer any remedial measures to cure his failures to disclose information such that complete information would be available within a reasonable time.[36] And he certainly did not offer to revoke his assertion of his Fifth Amendment privilege. Thus the standard of Section 1112(b)(2)(B) is also not met. Therefore Section 1112(b)(2) does not prevent the Court from converting the case.

III DECISION TO CONVERT

As discussed above, there are grounds to either appoint a trustee or convert the case to Chapter 7. From the discussion above, it is clear that Debtor cannot remain a debtor-in-possession.

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[36]The pending SEC action is a civil proceeding, not a criminal proceeding. But should a federal criminal proceeding ensue (the possibility of which cannot be eliminated), it will be months if not years before Mr. Vaughan is beyond the stage where he need no longer invoke the Fifth Amendment privilege. This is simply too long a period for a personal chapter 11 reorganization to wait for disclosure and confirmation of a plan, so there is no point in the Court setting a deadline for Debtor to waive his Fifth Amendment privilege.

> Once the court determines that "cause" exists (and the Sections 1112(b) exceptions have not been established), Section 1112(b) offers a choice between converting the chapter 11 case to a case under chapter 7 or outright dismissal, "whichever is in the best interests of creditors and the estate," 11 U.S.C.A. § 1112(b) (West 2010). "Also, instead of either dismissal or conversion, the court may appoint a trustee or an examiner, if such appointment is in the best interests of creditors and the estate." Collier on Bankruptcy ¶ 1112.04[7], at 1112-39--1112-40.
>
> The Code does not define the phrase "best interests of creditors and the estate." Presumably, the parties will be the best judge of their own best interests, and if all of the parties agree on one course of action, the court should accommodate their desire. Id. at 1112-40 (footnote omitted).

In re Van Eck, 425 B.R. 54, 67 (Bankr. D. Conn. 2010).

In this case, all creditors that commented in writing (including the official committees of Noteholders in both cases and BBVA Compass Bank) are in favor of conversion. The U.S. Trustee prefers conversion.

Debtor himself is not a business entity. He was an employee of various companies he established. Those companies are mostly out of business. Debtor seems to have no ongoing business. There are no funds to support a reorganization plan. Debtor's only choice is to liquidate. This is more easily accomplished in Chapter 7 by a professional panel trustee. The Court will enter an Order converting the case to Chapter 7 and an Order denying the motion to appoint a Chapter 11 Trustee as moot.

Honorable James S. Starzynski
United States Bankruptcy Judge

Date Entered on Docket: May 20, 2010

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2015 Real Property Institute

"The Electronic Real Estate Transaction

William K. Wooten

Fidelity National Title Insurance Company

&

Edward J. Roibal

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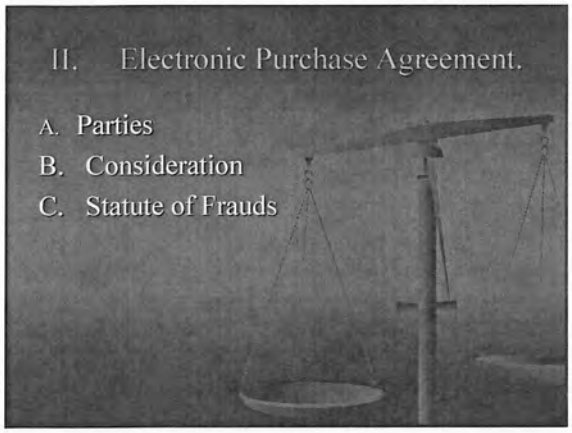
I. Online Real Estate Search Engines.

- A. Zillow
- B. Homefinder
- C. Tulia
- D. Redfin
- E. Realtor.com

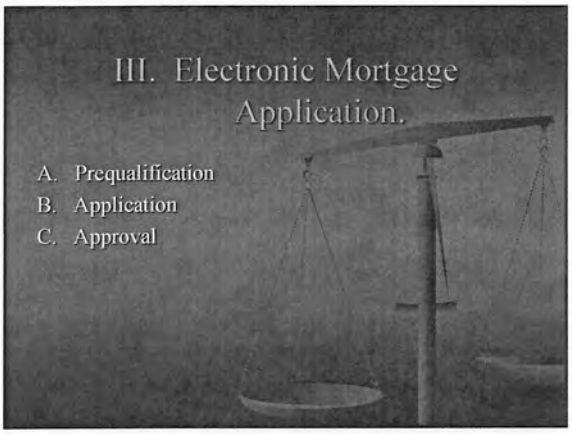
II. Electronic Purchase Agreement.

A. Parties
B. Consideration
C. Statute of Frauds



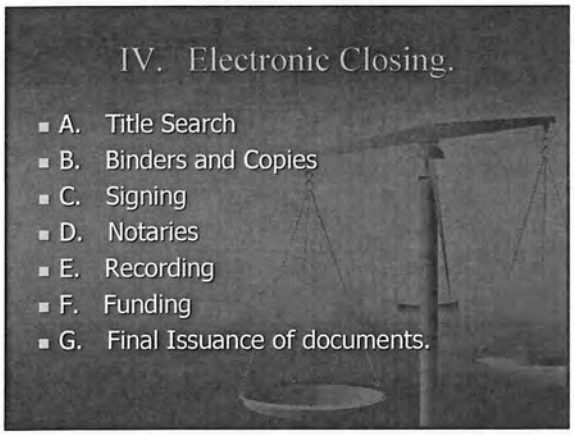
III. Electronic Mortgage Application.

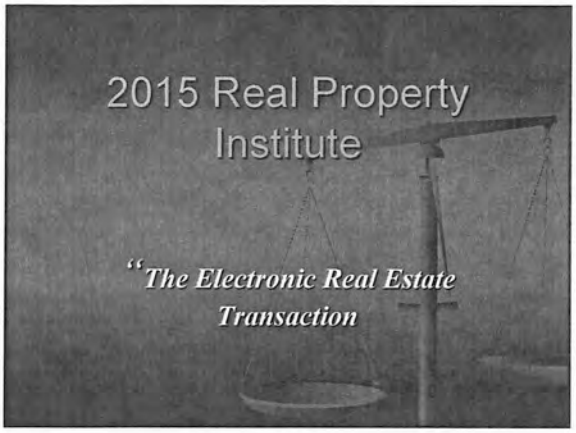
A. Prequalification
B. Application
C. Approval



IV. Electronic Closing.

- A. Title Search
- B. Binders and Copies
- C. Signing
- D. Notaries
- E. Recording
- F. Funding
- G. Final Issuance of documents.

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