

HOUSEKEEPING



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HOUSEKEEPING



- Note: PowerPoint and audio for the April "A Potpourri Of Title Issues And Exceptions" webinar is now available at www.stewarttexas.com
- For Escrow Officer Credit please email password and attendees names to ken.wrider@stewart.com for certificate (Please do this as soon as possible. Certificates will not be produced after the start of our next webinar)
- Attorneys e-mail bar card number to Ken Wrider for CLE credit
- Send to your training administrator if applicable
- We are now recording!

T-19 Update and Express Insurance (mineral coverage)

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May 21, 2009



Express Insurance



- Provides coverage for matters that are otherwise excluded or excepted from a title insurance policy
- Originally available pursuant to Procedural Rule P-39
- Now available by endorsements:
 - T-19, T-19.1 and T-17

T-19 Restrictions, Encroachments and Minerals



- Also known as the ALTA form 9
- Applies to Loan Policy only
- Premium: 5% of the Loan Policy premium (whether or not simultaneously issued) for residential property and 10% for non-residential property
- This endorsement to the Loan Policy provides coverage as to Restrictions, Encroachments, and Minerals.
- You may issue this endorsement on any type of land (i.e. residential and non-residential)

T-19 guidelines



1. Restrictions:

- Provides express insurance to cover any violations of the restrictions that would affect the lender's lien or its collateral. This includes matters such as: forfeiture provisions, rights of reverter, maintenance and/or assessment liens, easements, options or rights of first refusal.

T-19 guidelines



• 2. Encroachments:

- Gives coverage against loss or damage sustained by reason of:
 - Encroachment of existing improvements located on the land onto adjoining land or any encroachment onto the land of existing improvements located on adjoining land
 - Encroachment of existing improvements located on the land onto that portion of the Land subject to any easement excepted in Schedule B.
 - Encroachment of improvements over building setback lines.

Recent Claims in relation to coverage for Encroachments



- Possible improvements that are not visible on the surface, e.g. septic systems or other underground storage tanks
- Evidence may not be found in the official (real property) county records.

T-19 Mineral Coverage



Insures against loss or damage sustained by reason of:

4. Damage to improvements, including lawns, shrubbery, or trees, located on the Land on or after Date of Policy resulting from the future exercise of any right to use the surface of the Land for the extraction or development of minerals excepted from the description of the Land or excepted in Schedule B.

T-19/T-19.1



- The T-19 series endorsements insure against loss caused by damage to structures (existing or future) caused by exploration or production of minerals.
- If examination of the file determines the existence of severed mineral interests, the form allows this paragraph to be deleted: T-19 (4) and T-19.1 (3)

What rights does a mineral owner have?



- The main rights a mineral owner has is the right to explore for minerals and the right to produce and sell those minerals.
- These rights are superior to the rights of the surface owner.
- The mineral owner has the right to use as much of the surface as is reasonably necessary to exercise his mineral rights.

What is the appropriate search period for the title company?



- The search period varies by county.
- Since we have had production since 1866, in some areas, 1908 in others, 1920s and 30s in other and 1950s in still others, no hard and fast rule applies.
- **BUT, JUST BECAUSE YOU HAVEN'T HAD ANY PRODUCTION IN THE LAST 25 (OR BETTER YET 50) YEARS YOU STILL HAVE TO SEARCH FOR MINERALS**

- It has been Stewart's position that an exception excluding all minerals is not acceptable unless there are specific exceptions to recorded documents shown on Schedule B.
- Performing a 25 year search and if nothing is found, thereafter relying on a general mineral exception, does not comply with Stewart's underwriting guidelines.
- The title search must be back far enough to ascertain any severance of the minerals.



What is the appropriate search period for the title company?

- If you have ever had minerals in your county, or if anyone ever thought you had minerals in your county, there have been mineral severances.
- Since the estates when severed become permanent ownership, those severed minerals exist for ever.



Why are outstanding minerals such a big deal?

- But, we are creating a claim waiting to happen if we insure fee simple on Sch. A, don't limit the legal description and don't show the mineral deeds on Sch. B.
- We have then insured fee simple title to the minerals and if they have been severed, the insured has suffered a compensable loss.



Do search/Do care



- On the other hand, we can't just except to all oil, gas or other mineral that may be produced from the land UNLESS we show the deeds conveying the minerals.
- **P-5 prohibits general exceptions without the consent of the insureds.**
- Thus we have to search and care

Surface Estate Only



- If you are insuring only the surface estate, we really don't need to do much to avoid claims.
- Simply show "Surface Estate Only..." in item 3 of Sch. A, **and** in the legal description and take exception to the deeds where the minerals are severed in Sch. B. We don't need to show all of the leases, assignments, royalties or further conveyances of the minerals.

Excepting to Minerals



- All conveyances and reservations of mineral interests should be listed as exceptions on Schedule B.
- All mineral leases should be listed as exceptions on Schedule B, unless a lease has expressly expired by its terms, or if the term is based on continued production, a valid affidavit on non-production is recorded.

T-19 guidelines - Minerals



- Verify that (1) there are no outstanding minerals (other than royalty interests); or (2) surface rights have been waived by the mineral owners and mineral lessees.
- If the land is single family residential, you may provide the mineral coverage without change, unless you know of mineral development in the immediate area.
- If the land is used for commercial or agricultural purposes, and surface rights have not been waived, please call our underwriting personnel.

Lender's unwillingness to accept T-19 with Deletion of Mineral Coverage



- Many lenders and some owners are reluctant to have their coverage limited by removal of this language.
- What are we to do?
- Fortunately, for both residential and small rural tracts, we have some help.

T-19 Coverage when there are outstanding mineral interests



- Urban tracts: many cities have drilling ordinances and many subdivisions have restrictions prohibit drilling oil or gas wells within residential subdivisions. Such drilling ordinances or restrictions will allow us to issue the T-19 series intact.
- Rural tracts: since most of these properties are outside of the city limits and are unrestricted, we have to look elsewhere for help. Fortunately, the Texas Rail Road Commission has provided a valuable aid:

Spacing Rules for Oil Wells



- **RULE §3.37 Statewide Spacing Rule**(a) Distance requirements.
- (1) No well for oil, gas, or geothermal resource shall hereafter be drilled nearer than 1,200 feet to any well completed in or drilling to the same horizon on the same tract or farm, and **no well shall be drilled nearer than 467 feet to any property line,** lease line, or subdivision line; provided the commission, in order to prevent waste or to prevent the confiscation of property, may grant exceptions to permit drilling within shorter distances than prescribed in this paragraph when the commission shall determine that such exceptions are necessary either to prevent waste or to prevent the confiscation of property.

T-19/T-19.1



- $467' \times 467' = 218089 \text{ sq ft} / 43560 \text{ sq ft} = 5.007 \text{ ac.}$
- So, unless you have some indication (like a well shown on a survey) that the RRC has given special permission, it is safe to issue the intact T-19 series whenever the subject tract is less than 5 acres.

Recent Developments

New Endorsements
New Rules



Withdrawn TDI Bulletin 168



- On April 10, 2008, TDI issued a bulletin that raised issue with exceptions that generally exclude the mineral estate from coverage under the policy.
- The bulletin went further to (erroneously) suggest that a special exception required a specific reference to a recorded instrument and that: "any decrease in the estate description from the purchase contract to Schedule A of the commitment constitutes a prohibited general exception."
- As a result of the backlash, the TDI withdrew its bulletin...

What happened next?



- In order to address the insidious issues regarding mineral estates and title insurance
 - Three hearings/meetings held by Commissioner after requested by STG
 - Numerous meetings with TLTA and Texas State Bar
 - At the last hearing, all stakeholders (save one) agreed (including OPIC)
 - Including a \$50 premium for the endorsement(s)
 - Currently waiting for commissioner's order
 - New Title Insurance Bill (HB 4338) will, among other things, validate joint rate/rule hearing.

Procedural Rule P-5



- With the knowledge of the Insured, it shall be permissible for the Company to insert such special exceptions(s) as shall develop from the examination of the title under consideration. Such special exception(s) shall in all cases specifically describe the particular item(s) excepted to, and shall not be in general terms.

Proposed Revisions to P-5



- b. A special exception, which specifically describes the particular items(s) excepted to, consists of a statement of a matter, whether recorded or unrecorded, pertaining to the Land to be insured, if the Company deems the matter to be uninsurable based on the Company's determination of insurability of that particular land, including examination of the title evidence defined in Procedural Rule P-1.z. The following specific exception pertaining to mineral rights also is allowed, although other specific exceptions pertaining to such rights may also be used: "Any lease, grant, exception or reservation of minerals or mineral rights appearing in the Public Records." Special exceptions may be inserted in Schedule B of a title insurance policy.

Proposed additions to P-5 (continued)



- c. Paragraph a. of the Procedural Rule does not prohibit or restrict a Company from determining the insurability of title to real property and any other matter that the Company considers to be insurable under any insuring form. If the Company does not consider a risk relating to the Land to be insurable, the Company may limit the estate to be insured in Schedule A of the title insurance forms issued to insure the Land.

Proposed additions to P-5 (continued)



- d. Notwithstanding the preceding paragraphs, a Company may not except to or exclude from a policy of title insurance, issued on or after the effective date of this paragraph, easements recorded in the Public Records at date of policy and not otherwise included within the specific exception set forth in paragraph b., without setting out the volumes and page numbers, or the Public Records equivalent, where such easements are recorded.

Proposed Changes to Forms



- Addition to first page of commitment (Texas Title Insurance Information):
 - The Policy is not an abstract of title nor does a Company have an obligation to determine the ownership of any mineral interest.
 - ---MINERALS AND MINERAL RIGHTS may not be covered by the Policy. The Company may be unwilling to insure title unless there is an exclusion or an exception as to Minerals and Mineral Rights in the Policy.

Proposed Procedural Rule P- 5.1



P-5.1. Exception or Exclusion Regarding Minerals

As used by this rule, minerals means coal, lignite, oil, gas and other minerals in, under and that may be produced from the Land, together with all rights, privileges, and immunities relating thereto. The Policy is not an abstract of title nor does a Company have an obligation to determine the ownership of any mineral interest.

- A. A Company may insert into a Policy or any other title insuring form an exception or an exclusion for minerals as provided below:
1. On Schedule A, Item 2:
 "Subject to, and the Company does not insure title to, and excepts from the description of the Land, coal, lignite, oil, gas and other minerals in, under and that may be produced from the Land, together with all rights, privileges, and immunities relating thereto," and/or
 2. On Schedule B:
 "All leases, grants, exceptions or reservations of coal, lignite, oil, gas and other minerals, together with all rights, privileges, and immunities relating thereto, appearing in the Public Records whether listed in Schedule B or not. There may be leases, grants, exceptions or reservations of mineral interest that are not listed."
- B. When the language described in either A.1 or A.2 above is inserted, the Company **must** issue one or more of the applicable endorsements as provided in Procedural Rule P-50.1.

T-19.2 Minerals and Surface Damage Endorsement (T-19.2)



Attached to Policy No. _____

Issued By:

_____ TITLE INSURANCE COMPANY

Herein called the Company

The Company insures the insured against loss which the insured shall sustain by reason of damage to improvements (excluding lawns, shrubbery, or trees) located on the Land on or after Date of Policy resulting from the future exercise of any right existing at Date of Policy to use the surface of the Land for the extraction or development of coal, lignite, oil, gas or other minerals excepted or excluded on Schedule A, Item 2 or excepted in Schedule B. This endorsement does not insure against loss resulting from subsidence.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]

_____ TITLE INSURANCE COMPANY

By: _____
Authorized Signatory

T-19.3
Minerals and Surface Damage Endorsement (T-19.3)

Attached to Policy No. _____
 Issued By:
 _____ TITLE INSURANCE COMPANY
 Herein called the Company

The Company insures the insured against loss which the insured shall sustain by reason of damage to permanent buildings located on the Land on or after Date of Policy resulting from the future exercise of any right existing at Date of Policy to use the surface of the Land for the extraction or development of coal, lignite, oil, gas or other minerals excepted or excluded on Schedule A, Item 2 or excepted in Schedule B. This endorsement does not insure against loss resulting from subsidence.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

[Witness clause optional]
 _____ TITLE INSURANCE COMPANY

By: _____
 Authorized Signatory



**Proposed Revised Procedural
 Rule P-50**

P-50. Restrictions, Encroachments, Minerals Endorsement (T-19) and, Restrictions, Encroachments, Minerals Endorsement – Owner Policy (T-19.1)

Any insured matter covered in the Restrictions, Encroachments, Minerals Endorsement T-19 or T-19.1 may be insured only by the use of these endorsements, except that coverage regarding minerals may be insured by the use of the T-19.2 or T-19.3 endorsements as provided in P-50.1.

A. A Company may issue its Restrictions, Encroachments, Minerals Endorsement (T-19) to a Loan Policy (T-2), if its underwriting requirements are met. The Company shall delete any insuring provision if it does not consider that risk acceptable.

B. A Company may issue its Restrictions, Encroachments, Minerals Endorsement – Owner Policy (T-19.1) to an Owner's Policy (T-1) on land which is not residential real property, if its underwriting requirements are met. The Company shall delete any insuring provision if it does not consider that risk acceptable.



**Proposed Procedural Rule
 P-50.1**

- **P-50.1 Minerals and Surface Damage Endorsement (T-19.2), and Minerals and Surface Damage Endorsement (T-19.3)**
- The T-19.2 and T-19.3 Endorsements are required or available only when Minerals and Surface Damage coverage is not provided to the insured by issuance of a T-19 or T-19.1 Endorsement, as provided in P-50.
- Any insured matter covered in the Minerals and Surface Damage Endorsement T-19.2 or T-19.3 may be insured only by the use of these endorsements, except that coverage regarding minerals may be insured by the use of the T-19 or T-19.1 endorsements as provided in P-50.



Proposed Procedural Rule P-50.1 (continued)



- A. When the policy includes an exclusion or an exception regarding minerals as provided in Procedural Rule P-5.1:
1. As to real property of one acre or less improved or intended to be improved for one-to-four family residential use, the Company **must** issue its Minerals and Surface Damage Endorsement (T-19.2) to an Owner's or Loan policy.
 2. As to real property improved or intended to be improved for office, industrial, retail, mixed use retail/residential, or multifamily purposes, the Company **must** issue its Minerals and Surface Damage Endorsement (T-19.2) to an Owner's or Loan policy.
 3. As to other real property, the Company **must** issue its Minerals and Surface Damage Endorsement (T-19.3) to an Owner's or Loan Policy .
 4. As to an Owner's or Loan Policy covering multiple parcels of real property that consist of a combination of real property described in paragraphs 1,2, and 3, the Company **must** issue for each parcel the applicable Minerals and Surface Damage Endorsement (T-19.2 or T-19.3) to an Owner's or Loan Policy.

Proposed revisions to Rate Rule R-29



R-29. Premium for Restrictions, Encroachments, Minerals Endorsement (T-19) and Restrictions, Encroachments, Minerals Endorsement – Owner Policy (T-19.1)

- A. When the Restrictions, Encroachments, Minerals Endorsement (T-19) is issued on residential real property in accordance with Rule P-50, the premium shall be 5% of the Basic Rate for a single issue policy provided that the minimum premium shall be not less than **\$50.00.** (now \$25)
- B. When the Restrictions, Encroachments, Minerals Endorsement (T-19) is issued on land which is not residential real property, in accordance with Rule P-50, the premium shall be 10% of the Basic Rate for a single issue policy provided that the minimum premium shall be not less than **\$50.00.** (now \$25)
- C. When the Restrictions, Encroachments, Minerals Endorsement - Owner Policy (T-19.1) is issued in accordance with Rule P-50, the premium shall be:
 1. 15% of the Basic Rate for a single issue policy or
 2. 10% of the Basic Rate for a single issue policy if an amendment of the exception to area and boundaries is also purchased in accordance with Rate Rule R-16.
 In either event, the minimum premium shall be not less than **\$50.00.**

Proposed Rate Rule R-29.1



R-29.1 Premium for Minerals and Surface Damage Endorsement (T-19.2), and Minerals and Surface Damage Endorsement (T-19.3)

- A. When the Minerals and Surface Damage Endorsement (T-19.2) is issued in accordance with Rule P-50.1 the premium shall be \$50.00.
- B. When the Minerals and Surface Damage Endorsement (T-19.3) is issued in accordance with Rule P-50.1 the premium shall be \$50.00.

What do we do now?



- If any mineral interests are found, while searching forward or backward, then:
 - list that specific exception on Schedule B;
 - Show the general (promulgated) exception on Schedule B
 - Issue appropriate endorsement (T-19.2 or T-19.3)

What do we do now?



- If no mineral documents are found and experience in the county indicates that minerals have been excepted in the past:
 - Show the general (promulgated) exception on Schedule B
 - Issue appropriate endorsement (T-19.2 or T-19.3)

THANK YOU!



- For Escrow Officer Credit please email password and attendees names to ken.wrider@stewart.com for certificate (Please do this as soon as possible. Certificates will not be produced after the start of our next webinar)
- Attorneys email bar card number to Ken Wrider for CLE credit
- Next Texas TIPS Online June 18, 2009, "TDI Update by John Rothermel
- Questions/Comments? Email fred.schraub@stewart.com
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