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HOUSEKEEPING

- Note: PowerPoint and audio for the May "T-19 Update and Express Insurance" 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!

TDI UPDATE JUNE 2009

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What Hasn't Happened?

- What hasn't happened is more interesting currently than what has.
 - Sunset– no (special session)
 - OPIC sunset –no
 - Oil and gas results- no
 - Rules hearing results-no
 - Rate hearing results- no (more on that sore topic a bit later)

What Has Happened?

- Agent solvency legislation
- 3rd party charges pass along (pending governor's signature)
- Agent Release of Lien
- Escrow Officers in adjacent states (9-1-09)
- Market conduct companies licenses (9-1-09)

Sunset– No (Special Session)

- Beginning in the 1970s, the legislature decided that every state agency must be reviewed and its charter renewed every 12 yrs. Begins in the interim before it is due.
- Commission makes recommended changes; legislature may adopt all or some.
- They become a Christmas tree

Sunset– No (Special Session)

- This year the process began to work and the Senate bill remained unadorned and passed.
- House added dozens if not hundreds of last minute amendments. Senate refused to concur and the bill died.
- House had a 2 yr emergency extension for all agencies but it too died.

Sunset– No (Special Session)

- Then at the 11th hour, a special resolution passed the house continuing the life of every agency that receives any federal funds and then adjourned.
- The Senate refused to take up the bill and it adjourned.
- Leaving TDI, TXDOT and OPIC sunseted.

Sunset– No (Special Session)

- What does Sunset-ed mean?
 - If not reinstated in a special session (which the governor has said he will call ... just not when or what the subject will be)
 - 9-1-2009, TDI must undertake a process of winding down, reassigning employees and distributing its files. Must be accomplished by 9-1-2010 when the agency ceases and all of its regulations also cease.
 - Leaving Texas unregulated as regards insurance

What Would Unregulated Mean?

- Competitive Rates and procedures
 - Throw out the Manual
- No anti-trust protection
 - Maybe no TLTA
- Federal Regulation
- No local control
- All brought to you by the Texas Senate Republicans who favor small government and the House Democrats who loaded up the bill for their trial lawyer friends!

What About OPIC?

- OPIC was also sunseted.
- Windup process is the same.
- It is interesting to note that OPIC was created in the late 1980-early 1990's to correct a politically created insurance crisis on rates which no longer exists since all lines of insurance except title and credit life has competitive rates. So OPIC focuses on just those lines and mostly on title.
- Real move to abolish OPIC or move into TDI.
- Jury is still out on this one.

Oil And Gas Results- No

- As you will recall, in the spring of 2008, the commissioner issued his ill-thought through bulletin in response to the complaints of a small, but focal, number of Dallas area lawyers that title company's were cheating customers by not providing mineral coverage.
- After Stewart wrote the commissioner requesting the bulletin to be withdrawn and a hearing on the issue held, and TLTA then joined the request, the bulletin was withdrawn and negotiations commenced with the TDI and the Bar.

Oil And Gas Results- No


- A number of informal meetings were held with the TDI and the attorneys and an industry compromise was offered. A hearing was held where some of the lawyers objected. No ruling but a request to continue working on a compromise.
- More meetings; another hearing. No ruling.
- More meetings; another hearing. This time all present save one lawyer agreed. Still no ruling.

Oil And Gas Results - No

- STG did a review of over 1000 randomly selected policies with the result that less than 13% of all policies in Texas take a general exception for all minerals.
 - So, it appears that the entire controversy is a tempest in a teapot; brought about by outsiders' misunderstanding of the title insurance product.
- Will there be a ruling? Who knows?


Rules Hearing Results - No

- The rules hearing was held in late 2008. A large number of items were presented and debated.
- To date there has been no ruling issued.
- Of course some of the items would need a rate so, perhaps, the Commissioner is waiting on a rate recommendation before approving the forms?




Rate Hearing

- Some of you may have noticed that the entire world (US and Texas as well as other states and countries) are only slowly emerging from a major economic downturn... recession that has lasted now as long as 18 months.
- Underwriters nationally have lost \$100s of millions.
- Texas is off about 25% in premiums.



Rate Hearing p2

- We are preparing for the 2008 rate hearing to set rates effective , well who knows.
 - STG and Fidelity requested hearing as early in 2009 as possible (March).
 - TDI referred case to SOAH which couldn't have a hearing until first week of June.
 - SOAH has conducted pretrial meetings on several occasions
 - Last minute demand by OPIC for interrogatories



Rate Hearing p3

- OPIC demands 39 months of information about legal payments for marketing expenses for travel, meals and entertainment for producers.
- Only STG and Fidelity are targeted (since we are parties to the case). It requires a massive manpower allocation to review all of these expenses across the entire Texas enterprise so we object.
- SOAH hearing in May, puts off the hearing until September 15 to give us 2 months to answer discovery demand. All for information that it irrelevant and about legal activities.

Rate Hearing p4

- So, the rate relief sought by the industry in this nearly unprecedented recession will not take place earlier than 1-1-2010.
- Parties positions:
 - Industry: 10+% increase
 - TDI: no changes
 - OPIC: 15% decrease
- This is one broken, politically motivated mess of a rate system. Must be changed in the next legislature.

Agent Solvency Legislation

- Commissioner appointed an advisory commission to study agent solvency regulations and possible legislation.
- Group met with TDI staff several times and presented the commissioner with a report
 - Some matters staff could implement
 - Auditor's manual posted on line
 - Others needed legislative changes

Agent Solvency Legislation

- Commissioner asked STG legislative team, "get some agent solvency legislation passed".
 - We had been working on the ideas in the Advisory Report and took the draft legislation to Rep. Smithee with the understanding that the bill would not move until the Industry and TDI had come to an agreement. TLTA appointed a drafting committee that worked with TDI staff, Guaranty Association general counsel and TLTA staff to come to an agreement.
 - Some 10 drafts later, the bill passed the House and 5 drafts later passed the Senate and was sent to the Governor.

HB 4338 As Enrolled

- Depending on the size of the county in which the agent is licensed, minimum capitalization is required as determined by the commissioner. The following levels apply:
 - if the agent is to have its principal office in a county with a population in excess of 10,001 but less than 50,000: \$25,000
 - if the agent is to have its principal office in a county with a population in excess of 50,001 but less than 200,000: \$50,000
 - if the agent is to have its principal office in a county with a population in excess of 200,001 but less than 1,000,000: \$100,000
 - if the agent is to have its principal office in a county with a population in excess of 1,000,001: \$150,000
- If the agent is to have its principal office in a county of less than 10,000, the applicant is exempt from these standards.
- An agent licensed on September 1, 2009 has a minimum of 3 and a maximum of 10 years to reach the minimum capital structure depending on how long the agent has been licensed on that date on a sliding scale

- The breakdown of the 2007 Texas population by county as estimated by the Texas State Data Center, Institute for Demographic and Socioeconomic Research, UTSA, San Antonio is as follows:
 - Less than 10,000: 102
 - 10,000 to 50,000: 106
 - 50,000 to 200,000: 27
 - 200,000 to 1,000,000: 16
 - More than 1 million: 3

- For the purposes of this law, capitalization is composed of unencumbered assets, exclusive of title plants. Title plants are not included, even though they constitute a large portion of an agents assets because (i) there is no ready market for title plants especially in smaller areas and (ii) such plants are treated as expense item rather than increasing in value after their initial evaluation.
- Unencumbered assets means 1. cash or cash equivalents 2. assets that have no liens against them, 3. tangible assets that have value in excess of any encumbrances such as real estate, furniture, fixtures, equipment, computers and software and 4. investments such as mutual funds, certificates of deposit and stocks and bonds, letters of credit.
- Agent can use these assets or may make a deposit of the appropriate amount with TDI.

○ The bill also provides that the Title Insurance Guaranty Association has the right to set the guaranty fee at any amount rather than being capped at \$5.00.

○ The guaranty fee can be used to pay for administrative expenses of the estate of an impaired agent as well as any and all expenses of an audit or examination by the department or the association.


○ The commissioner is given the discretion to require the Guaranty Association to take action in the case of a failed agent to:

- Close real estate transactions
- Disburse escrow accounts
- Pay existing liens against real property
- Record documents
- Issue final title insurance policies


○ The bill changes the definition of an impaired title insurance company to one designated as impaired by the commissioner or:

- Placed by court of Texas or another state into supervision, conservatorship, rehabilitation or liquidation;
- Subject to a commissioner's order of supervision, conservatorship, rehabilitation or liquidation;
- Or is found by a court to be insolvent or otherwise unable to pay obligations as they become due.
- A person or entity that has been part of a failed agent may not be licensed again as an agent until he/it has repaid the cost of supervision, conservatorship, rehabilitation or liquidation.


○ All office or storage leases contain statutory language wherein the landlord is advised of the rights of the Guaranty Association and certain title insurance companies to have access to the title insurance files for a period of 60 days after the agent is declared impaired.




- As part of an attempt to gain early warning information that could reasonably call into question an agent's solvency, the underwriter(s) that appointed the agent may provide to or receive from the department such information.
 - No one but the underwriter(s) that appointed the agent may request or receive a copy of the information.
 - Each agent must on a quarterly basis provide the TDI with a copy of its federal withholding tax report to the IRS and proof of payment.
 - An agent with no employees must certify to the TDI that there has been no material change in the agent's financial condition.
 - Information is not admissible in a court action except by subpoena or disclosure under open records act.
 - The Commissioner may prescribe by rule the types of information that are privileged.




- Funds owed to a title insurance company or another agent or direct operation from a division of premium are held in trust for the party to who the money is owed. This provision will place these funds in a higher category of protection in an insolvency situation than they are currently.
 - The bill provides expressly that the funds do not have to be held in a separate account.



- In order to be licensed as a title insurance agent, the agent and its management personnel must provide evidence that they have successfully completed a professional training program within 1 year preceding the date of the application
- The commissioner shall adopt the professional training program by rule which shall cover
 - Basic principles and coverages
 - Recent and prospective changes to those principles and coverages
 - Applicable rules and laws
 - Proper conduct of title insurance business
 - Account principles and practices
 - Duties and responsibilities of a title insurance agent.
 - Professional education hours shall be counted against the individual's educational requirements
- Courses must be offered by the same groups, associations and educational facilities that are currently recognized by the TDI regulations (P-29.2)
- Existing agent management personnel who have been in the Texas Title Insurance business for more than 5 years are exempt from this provision.




- To provide for an increasingly secure search and examination of title to real property, all licensed abstract plants must have an inception date of January 1, 1979. Abstract plants that do not have such an inception date on the effective date of the bill have until January 1, 2014 to reach that inception date.
- Passed and sent to Governor.




HB 4359 By Smithee

- This bill is designed to curb abuses of market conduct examinations by private companies conducting the same examination of the same materials at the expense of the insurer in state after state.
- Such contract examiners must be licensed by the commissioner who can share prior reports with other states (which the examiners must furnish to him).
- Passed and sent to Governor.




**HB 3945 By Orr
Title Agent Release Of Lien Bill**

- Allowing title insurance agents to release liens as has been allowed of insurers for more than 15 yrs.
- Subsection (a), Section 12.017, Property Code, is amended by adding Subdivision (5-a) and amending Subdivision (6) .
- g Subsections (j) and (k) to read as follows:
- (b) This section applies only to a mortgage on:
 - (1) property consisting exclusively of a one-to-four-family residence, including a residential unit in a condominium regime; or
 - (2) property other than property described by Subdivision (1), if the original face amount of the indebtedness secured by the mortgage on the property is less than \$1.5 million.




- It is not a violation of this code for:
- (1) an examiner to conduct an examination of an insurer for the benefit of multiple states in a coordinated examination; and
- (2) the examiner to accept compensation from the states participating in the coordinated examination to reduce the examination costs to the insurer being examined.
- Passed and sent to governor.



HB 651 By Darby

- Section 841.252(a), Insurance Code, is amended to read as follows:
- (a) Unless first authorized by a vote of a domestic insurance company's board of directors or a committee of the board that has the duty to authorize the payments, the company may not pay any compensation or emolument in an amount that, when added to any compensation or emolument paid to the person by an affiliated domestic insurance company, exceeds \$150,000 [\$100,000] in any year to an individual, firm, or corporation, including an officer or director of the company.
- Passed effective 9-1-09.



HB 652 By Darby

- Deals with escrow officers who live across state line.
- Section 2652.051, Insurance Code, is amended by amending Subsection (c) and adding Subsection (d).
- The escrow officer may live any where in an adjoining state but must be a bona fide employee of a title insurance agent or direct operation with an office in this state.
- (d) Notwithstanding Sections 406.004 and 406.020, Government Code, a person qualified under this section as an escrow officer may hold a license and operate as a notary public under Chapter 406, Government Code.
- Passed effective 9-1-09.

**3rd Party Fees
HB 3073**

- Sec. 2501.008. THIRD-PARTY CHARGES. A title insurance company, title insurance agent, or direct operation may charge, separate from the title insurance premium, actual costs or a reasonable estimate of costs incurred in connection with a closing and settlement, including:
 - (1) a charge by a third party for an electronic filing fee; or
 - (2) a fee of a third party for the provision of an ad valorem tax report.

**3rd Party Fees
HB 3073**

- Overrides legislatively TDI staff's position that title companies must absorb all charges made by 3rd parties in connection with a closing.
 - Particularly:
 - Electronic filing of documents
 - Tax certificates

THANK YOU!

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- Attorneys email bar card number to Ken Wrider for CLE credit
- Next Texas TIPS Online July 16, 2009, "What Is A Guaranty Company Anyway?" by John Rothermel
- Questions/Comments? Email fred.schraub@stewart.com
- Visit www.stewarttexas.com for presentation materials within 5 business days of the webinar
