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(Title Bulletin No.155)

April 30, 1991

Bulletin No. 155

TO: ALL TITLE INSURANCE COMPANIES LICENSED TO DO BUSINESS IN THE STATE OF TEXAS, DIRECT OPERATIONS AND AGENTS THEREOF

RE: Application of Procedural [Rule P-35](#)

Various parties have requested an interpretation of P-35 in view of recent amendments to the [HUD-1 Settlement Statement](#). The amendments are:

- Certification of Buyer, Seller and Settlement Agent in an FHA Insured Loan Transaction

HUD/FHA requires that its approved mortgagees put settlement agents on notice of borrower obligations regarding downpayment. If the settlement agent acquires "actual knowledge" that the borrower has not satisfied such requirements, the closing is to be stopped and the lender contacted for further instructions. All parties including the settlement agent are required to execute certifications regarding these instructions;

- Initial Escrow Account Statement HUD/FHA requires that an "initial escrow account statement" disclosing the establishment and maintenance of reserve or escrow accounts for taxes and insurance be added to the HUD-1 Settlement Statement. Whether the settlement agent prepares the form directly or relies on information provided by the lender some liability for accuracy may be incurred.

Both HUD requirements involve a form of certification or affirmation of facts by the settlement agent in apparent conflict with the P-35 prohibition against "any form of verbal or written guaranty, affirmation, indemnification, or certification of any fact, insurance coverage or conclusion of law" other than as provided in P-35.

Procedural Rule P-35 was enacted to prevent the imposition of extraordinary liability on title agent or escrow officers due to specialized closing instructions. The rule is not intended to prohibit title agents or escrow officers from following the terms of and acknowledging receipt of standard closing instructions, provided that no certification or guaranty is included or implied in the acknowledgment of receipt. The rule applies to all real estate transactions, including commercial transactions, residential transactions, and instructions from lenders or attorneys.

However, the HUD-1 Settlement Statement is a standard closing document, with standard instructions for its use. Use of the HUD-1 Settlement Statement is authorized by the Board, as stated in Section II of the Basic Manual following the Board promulgated settlement statements. The authorization extends to the form as "amended from time to time".

Because of such prior approval for use of the HUD-1 Settlement Statement, as amended from time to time, the new HUD-1 requirements cited above are deemed not to be prohibited by P-35.

Although use of the HUD-1 Settlement Statement containing the above amendments is permitted, the title agent or escrow officer should consider obtaining a waiver and/or indemnity from the buyer and seller acknowledging that the title company will be held without liability for any information shown in the Initial Escrow Account Statement since the information was provided by third parties. The title company may also obtain a statement from any parties to a transaction that any acknowledgment of receipt of closing instructions does not imply a certification or guaranty of fact, insurance coverage or conclusion of law.

/S/ Fabian S. Gomez, III
Fabian S. Gomez, III
Title Insurance Manager
Casualty Division 012-7
/sa

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For further information, contact: Title@tdi.state.tx.us

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333 Guadalupe, Austin 78701 - P.O. Box 149104, Austin 78714-9104
(512) 463-6169 - 800-578-4677 - Consumer Helpline 800-252-3439

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