



CAPITAL

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New Minerals Coverage Available in Texas Title Insurance Policies

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Title insurance protects those who own or hold a mortgage on property against losses that occur when the owner or mortgagee discovers that someone else has a claim to the insured property. Title insurance is issued only after a title search, or a close examination, of all public records that impact the title of the property being purchased or mortgaged. Defects in title are corrected prior to the closing of the purchase of the property or the loan secured by the property. Title insurance is issued to the owner or mortgagee to protect against defects that might have been missed during the title examination and errors in the public record. Title insurance will explicitly exclude from coverage specific items having to do with easements, minerals, liens and other matters that may affect good title to the property.

A Texas title insurance policy does not currently include a standard exception or exclusion from coverage for mineral interests. If a title policy insures the fee simple ownership of property with no exception for mineral interests, the policy insures the minerals. In parts of Texas where oil and gas ownership impacts many properties (for example, East Texas), title companies have often included in their policies a blanket exception from coverage for any mineral interests. With the upsurge of mineral activity and the new finds of producing gas fields in the counties of Texas that are part of the Barnett Shale, this practice has become more common place.

During 2008, the Texas Commissioner of Insurance explored the use of exceptions for minerals by the title insurance industry. The Commissioner determined that, dependent upon the type of transaction, location of transaction, historical custom, and the abstract services used by title agents, title insurance companies handled the coverage and exclusion from coverage for minerals in different ways, but that the use of the blanket minerals exception was becoming more predominant. Many suggested that a general minerals exception was not permissible under Texas title insurance policy regulations and it was expected that the Commissioner would explicitly prohibit the use of the blanket minerals exception on Texas title policies. Instead, effective November 1, 2009, the Commissioner will adopt amendments to the Basic Manual for Rules, Rates and Forms for writing title insurance policies in the state of Texas that will allow the use of a general exception for minerals. These new amendments will also clarify and standardize rules and forms that regulate the writing of title insurance for mineral interests and ensure consistency throughout the state and across all types of Texas real estate transactions.

The amended Texas Title Insurance Information page that accompanies any title policy written in Texas will clarify that the title policy is not an abstract of title and that the title insurance company is not obligated to determine the ownership of minerals. Policyholders will be told through this information page that mineral interests may not be covered by the Policy and that while the title insurance companies may refuse to issue a policy unless it includes an exclusion or exception as to mineral rights, endorsements may be available for purchase that will provide coverage related to certain risks involving minerals. The information page will clearly state that if the insurer issues the policy with an exclusion or exception to the minerals, "neither the policy nor the optional endorsements, will ensure that the purchaser has title to the mineral rights related to the surface estate."

The new amendments will authorize a title insurer to include in a policy or other title insuring form a prescribed exception or exclusion of minerals from the coverage of the policy. Pursuant to a new procedural rule P-5.1, the title company may include in the description of the insured property an exception that makes clear the policy does not insure title to minerals. Likewise, the company may include on schedule B of the policy an exception from coverage for leases, grants, exceptions, or reservations of minerals. When the title company includes either of these prescribed exceptions from coverage on either an owner or mortgagee

policy, the insurer must then issue one of two new Minerals and Surface Damage Endorsements upon the request of the policyholder and payment of the requisite premium. The new Minerals and Surface Damage Endorsement issued on form T-19.2 is applicable to real property of one acre or less that is improved or intended to be improved for one to four family residential use or to real property that is improved or intended to be improved for office, industrial, retail, mixed use retail/residential, or multi-family purposes. This endorsement insures against loss sustained by reason of damage to improvements located on the land on or after the date of the policy resulting from the future exercise of any right to use the surface of the land for the extraction or development of minerals. Loss occasioned by subsistence is excluded, as is loss to lawns, shrubbery, or trees.

As to real property that does not qualify for the form T-19.2 endorsement described above, the new form T-19.3 Minerals and Surface Damage Endorsement must be issued when either of the above described P-5.1 exceptions or exclusions is included on the policy and an owner or mortgagee requests the endorsement and pays the necessary premium. This endorsement insures against loss (again excluding loss occasioned by subsistence) sustained by reason of damage to permanent buildings located on the land on or after the date of the policy that results from the future exercise of any right to use the surface of the land for the extraction or development of minerals.

A new rate rule, R-29, establishes a \$50 premium for the issuance of the new Minerals and Surface Damage endorsement, whether using form T-19.2 or T-19.3.

A title insurer may also sell a Restrictions, Encroachments, Minerals Endorsement. This endorsement is available to an owner policy on a T-19.1 form and to a mortgagee policy on a T-19 form. Currently, the coverage under this endorsement is broader on the mortgagee policy as it applies to minerals. Effective November 1, 2009, the coverage as to minerals on both the T-19 and the T-19.1 form is the same. This endorsement insures against loss occurring to improvements, including lawns, shrubbery, or trees, that results from the future right of a party to use the surface of the insured land for the extraction or development of minerals excepted from the description of the property on Schedule A of the policy or excepted to in Schedule B of the policy. The new rate rule will raise the minimum premium for the issuance of this endorsement from \$25 to \$50. On a residential policy, the premium for the form T-19.1 endorsement will be 10% of the basic rate for a single issue policy or 5% of such basic rate if another endorsement, the survey amendment, is purchased. For non-residential property, the premium for a Form T-19 endorsement will be 15% of the basic rate for a single issue policy or 10% of the basic rate if the survey amendment is purchased.

There is some controversy over the November 1, 2009 amendments. The title insurance industry welcomes the changes as they make available a uniform approach to insuring minerals. Some property owners object to the changes because they feel the coverage should be provided at no additional cost to the consumer. In some instances, these property owners also advocate for a decrease in all title policy costs. Overall, it appears that the changes will offer clarity to title insurance coverage for minerals in the state of Texas and the amendments will allow, in at least some instances, broader coverage at a minimal cost. ■