

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]

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: 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]

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":

- A. "Abstract plant"** A title plant meeting the requirements of Section 59A-12-13 NMSA 1978.
- B. "Actual 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 a corporation, partnership, joint venture, limited liability 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 funds"**
 - (1)** For purposes of the title insurance article of the New Mexico Insurance Code only (Chapter 59A, Article 30 NMSA 1978), 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, 3-1-16]

13.14.1.8 DEFINITIONS "B":

A. "Basic premium rate (schedule)" The premium rates set from time to time by the 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, 3-1-16]

13.14.1.9 DEFINITIONS "C": "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, 3-1-16]

13.14.1.10 DEFINITIONS “D”: [Reserved]

13.14.1.11 DEFINITIONS “E”:

A. “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. “Escrow account” means an account established pursuant to Section 58-28-4 or 59A-12-22 NMSA 1978.

C. “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 Subsection B of 13.14.4.8 NMAC.

D. “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. 3-1-16]

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]

13.14.1.14 DEFINITIONS “H”: [Reserved]

13.14.1.15 DEFINITIONS “I” **“Interim title insurance binder”** See Binder.

[6-16-86...4-1-94; 13.14.1.15 NMAC - Rn, 13 NMAC 14.1.15, 5-15-00; A, 3-1-16]

13.14.1.16 DEFINITIONS “J”: [Reserved]

13.14.1.17 DEFINITIONS “K”: [Reserved]

13.14.1.18 DEFINITIONS “L”:

A. “Leasehold policy” A leasehold owner’s policy or a leasehold loan policy.

B. “Leasehold loan policy” NM form 2, loan policy and NM form 21, leasehold loan endorsement.

C. “Leasehold owner’s policy” NM form 1, owner’s policy and NM form 20, leasehold owner’s endorsement.

D. “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. “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, 3-1-16]

13.14.1.19 DEFINITIONS “M”:

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, 3-1-16]

13.14.1.20 DEFINITIONS “N”: [Reserved]

13.14.1.21 DEFINITIONS “O”:

A. “One to four family residential 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 owner policy premium” See basic premium rate.
[6-16-86...4-1-94; 13.14.1.21 NMAC - Rn, 13 NMAC 14.1.21, 5-15-00; A, 3-1-16]

13.14.1.22 DEFINITIONS “P”

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, 3-1-16]

13.14.1.23 DEFINITIONS “Q”: [Reserved]

13.14.1.24 DEFINITIONS “R”: **“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; 3-1-16]

13.14.1.25 DEFINITIONS “S”:

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, 3-1-16]

13.14.1.26 DEFINITIONS “T”: **“Title plant”** See abstract plant.

[6-16-86...4-1-94; 13.14.1.26 NMAC - Rn, 13 NMAC 14.1.26, 5-15-00; A, 3-1-16]

13.14.1.27 DEFINITIONS “U”: **“Unusual 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, 3-1-16]

13.14.1.28 DEFINITIONS “V”: **“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, 3-1-16]

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 Section 59A-30-3 NMSA 1978 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]

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 3-1-16.