

3TITLE 13 INSURANCE
CHAPTER 14 TITLE INSURANCE
PART 5 COMMITMENTS OR BINDERS

13.14.5.1 ISSUING AGENCY: Office of Superintendent of Insurance, Title Insurance Bureau.
[4-1-96; 13.14.5.1 NMAC - Rn & A, 13 NMAC 14.5.1, 5-15-00; A, 7-31-14]

13.14.5.2 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; 13.14.5.2 NMAC - Rn, 13 NMAC 14.5.2, 5-15-00]

13.14.5.3 STATUTORY AUTHORITY: NMSA 1978 Section 59A-30-4.
[6-16-86, 4-1-96; 13.14.5.3 NMAC - Rn, 13 NMAC 14.5.3, 5-15-00]

13.14.5.4 DURATION: Permanent.
[4-1-96; 13.14.5.4 NMAC - Rn, 13 NMAC 14.5.4, 5-15-00]

13.14.5.5 EFFECTIVE DATE: June 16, 1986, unless a later date is cited at the end of a section.
[6-16-86...11-1-96; 13.14.5.5 NMAC - Rn & A, 13 NMAC 14.5.5, 5-15-00]

13.14.5.6 OBJECTIVE: The purpose of this rule is to establish requirements for commitments and binders issued for title insurance.
[11-1-9; 13.14.5.6 NMAC - Rn & A, 13 NMAC 14.5.6, 5-15-00]

13.14.5.7 DEFINITIONS: See 13.14.1 NMAC.
[11-1-96; 13.14.5.7 NMAC - Rn, 13 NMAC 14.5.7, 5-15-00]

13.14.5.8 ISSUANCE UPON REQUEST AND RECEIPT OF BONA FIDE ORDER:

A. Upon receipt of a bona fide order for any type of title insurance policy or policies to be issued pursuant to 13.14.6 NMAC, an insurer or title insurance agent must deliver to the proposed insured, its authorized agent, other person in a fiduciary relationship with the proposed insured, or the proposed insured's attorney, and if none of the aforementioned persons are available after using the insurer's or title insurance agent's best efforts, then to the person designated by the person opening the order for insurance, a commitment showing the exceptions which will appear in the proposed policy as of the date of the commitment and requirements to be met to insure the title in accordance with the order for insurance. Such commitment shall be delivered as soon as practicable, using the insurer's or title insurance agent's best efforts, allowing reasonably sufficient time for review prior to the completion of closing of the transaction. No commitment may be issued except upon receipt by the insurer or title insurance agent of a bona fide order for title insurance as set out above.

B. The term "binder" is defined in Subsection B of 13.14.1.8 NMAC as "a commitment for title insurance" and the use of the terms "binder" and "commitment" shall refer to the same thing. The term "commitment" includes the NM form 6.1 plain language commitment. This regulation shall not apply if the bona fide order is placed after the transaction has been closed. A commitment or binder shall not be issued for the purpose of determining the state of the title of property subject to or to be subject in the future to a foreclosure action, quiet title suit or other litigation.

C. When a commitment or binder for one to four family residential property is required to be produced and delivered in accordance with this regulation it shall be delivered with a notice to purchaser/insured NM form 35, 13.14.18.48 NMAC, as the cover page. However, the purchaser(s) need not be identified nor sign the notice until closing. The notice, when required, shall be signed by purchaser(s) at or before the time of closing and retained in the closing file. The notice to purchaser/insured is not required if, prior to the delivery of the commitment or binder, the proposed insured(s) sign a contract for sale of the insured land that includes substantially identical language to that included in NM form 35 and that is completed by checking all appropriate blanks.

D. When requested by a proposed insured lender the following language may be added to a title commitment "note: according to the public records, there have been no deeds conveying the property in this commitment within a period of (six to twenty-four) months prior to the date of this commitment, except as follows:"

E. When a to-be-determined title commitment is issued, an additional requirement to the commitment must be added 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.”
[6-16-86...4-3-95; 13.14.5.8 NMAC - Rn, 13 NMAC 14.5.8, 5-15-00; A, 9-1-07; A, 8-17-09; A, 3-1-16]

13.14.5.9 STANDARD EXCEPTIONS IN SCHEDULE B:

A. All commitments issued on New Mexico property will contain each of the following numbered exceptions verbatim and in the same order stated herein.

- (1) Rights or claims of parties in possession not shown by the public records.
- (2) Easements, or claims of easements, not shown by the public records.
- (3) Encroachments, overlaps, conflicts in boundary lines, shortages in area, or other matter which would be disclosed by an accurate survey and inspection of the premises.
- (4) Any lien, claim or right to a lien, for services, labor or materiel heretofore or hereafter furnished, imposed by law and not shown by the public records.
- (5) Community property, survivorship, or homestead rights, if any, of any spouse of the insured (or vestee in a leasehold or loan policy).
- (6) Water rights, claims or title to water.
- (7) Taxes for the year _____, and thereafter. (See 13.14.5.12 NMAC)
- (8) Defects, liens, encumbrances, adverse claims or other matters, if any, created first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this commitment.

B. Additionally, each commitment may contain the following statement when said commitment is used to commit for both an owner’s policy and a loan policy or a loan policy only: “Exceptions numbered _____ will not appear in the loan policy but will appear in the owner’s policy, if any.” If the commitment is for a construction policy or a loan policy containing a two-year (2) claims made limitation, the following statement must be added: “The construction loan policy or a loan policy containing a two-year (2) claims made limitation will contain an exception limiting its coverage to two (2) years duration pursuant to 13.14.7.18 NMAC.”

C. Each commitment shall contain the following statement: Standard exceptions 1, 2, 3, and or 4, may be deleted from any policy upon compliance with all provisions of the applicable rules, upon payment of all additional premiums required by the applicable rules, upon receipt of the required documents and upon compliance with the company’s underwriting standards for each such deletion. Standard exception 5 may be deleted from the policy if the named insured in the case of an owner’s policy, or the vestee, in the case of a leasehold or loan policy, is a corporation, a partnership, or other artificial entity, or a person holding title as trustee. Except for the issuance of a U.S. policy form (NM form 7 or NM form 34), any policy to be issued pursuant to this commitment will be endorsed or modified in schedule B by the company to waive its right to demand arbitration pursuant to the conditions and stipulations of the policy at no cost or charge to the insured. The endorsement or the language added to schedule B of the policy shall read: “In compliance with Subsection D of 13.14.18.10 NMAC, the company hereby waives its right to demand arbitration pursuant to the title insurance arbitration rules of the American land title association. Nothing herein prohibits the arbitration of all arbitrable matters when agreed to by both the company and the insured.”

[6-16-86, 3-1-90, 6-1-97, 6-1-98; 13.14.5.9 NMAC - Rn, 13 NMAC 14.5.9, 5-15-00; A, 8-29-03; A, 7-1-05; A, 8-17-09; A, 9-15-09; A, 09-15-10; A, 10-1-12; A, 7-31-14; A, 3-1-16]

13.14.5.10 ADDITIONAL TAX EXCEPTION: In those areas of New Mexico where there are taxes or assessments which may be a lien by law but are not filed for record with the county clerk's office by local custom or practice, and upon approval of the insurer, the following additional tax exception may be added to policies, binders or commitments: “Any possible taxes or assessments which may be a lien by law but have not been filed for record in the office of the county clerk of _____ county.”

[6-16-86; 13.14.5.10 NMAC - Rn, 13 NMAC 14.5.10, 5-15-00]

13.14.5.11 DURATION OF COMMITMENT: A commitment shall be valid for a period of six (6) months but may be extended or renewed by endorsement for up to three (3) additional six (6) month periods when the pending order for title insurance remains bona fide and the additional premiums specified in Subsection A of 13.14.9.19 NMAC are paid. Whenever a commitment is requested by an insured under a mortgagee policy on property it has taken by foreclosure or deed in lieu of foreclosure, or by a state or federal agency or insurer who has insured or guaranteed a loan on said property, the commitment may be initially endorsed to be valid for no more than two (2) years upon payment of the required premiums for both issuance and extensions.

[2-5-87; 13.14.5.11 NMAC - Rn, 13 NMAC 14.5.11, 5-15-00]

13.14.5.12 TAXES - STANDARD EXCEPTION 7: Allowable modifications of standard exception 7. No change is required in the printed policy forms. These amendments to standard exception 7 may be made by substituting the authorized changes as appropriate. Each insurer, in the exercise of this option, shall provide its agent(s) written authority to so amend standard exception 7.

A. Standard exception 7 in 13.14.5.9 NMAC may be modified in commitments and policies so as to except to taxes for the second half of an ad valorem tax year. Such amendment shall not be made unless all taxes assessed or assessable through and including the first half of the ad valorem tax year have been paid or are being paid out of funds which are under the control of the issuing agent or underwriter in an escrow account established for a closing occurring concurrently with such issuance.

B. Standard exception 7 may also be amended in policies, at the option of the insurer, to read: "Taxes for the year _____, and thereafter, not yet due or payable."

C. If the ad valorem taxes for the first half of a year have been paid, and taxes for the second half are not yet delinquent, standard exception 7 may be amended, at the option of the insurer, by changing the period to a comma, and adding the phrase: "not yet delinquent."

[4-1-96; 13.14.5.12 NMAC - Rn, 13 NMAC 14.5.12, 5-15-00; A, 3-1-16]

13.14.5.13 PRO FORMA POLICIES: For purposes of this rule, a "pro forma policy" is a sample of an owner or loan policy prepared prior to payment for issuance and delivery of the policy, with completed schedules A and B and endorsements, showing the proposed insured, the exceptions that are proposed to be placed in the final policy to be issued, and the name of the title insurance company and title insurance agent. A pro forma policy may be issued only if (a) the land is not one to four family residential property; (b) the proposed amount of insurance is \$500,000.00 or more; (c) each page of the completed schedules A and B and all endorsements conspicuously state "This is a pro forma policy furnished to or on behalf of the party proposed to be insured for discussion only. It does not reflect the present status of title and is not a commitment to insure the estate or interest as shown herein, nor does it evidence the willingness of the company to provide any coverage shown herein. Any such commitment must be an express written undertaking issued on the appropriate forms of the company." and (d) the title agent receives a written request for the pro forma policy from a proposed insured. A pro forma policy shall not be issued or used in lieu of a title insurance commitment.

[13.14.5.13 NMAC - N, 3-1-16]

HISTORY OF 13.14.5 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 and renumbered, reformatted and replaced as 13 NMAC 14.5, Commitments or Binders, effective 11-01-1996.

13 NMAC 14.5, Commitments or Binders, (filed 10-2-96) was renumbered, reformatted, amended and replaced as 13.14.5 NMAC, Commitments or Binders, effective 5-15-2000, amended effective 7-31-14.

13.14.5 NMAC, Commitments or Binders, effective 7-13-14, amended effective 3-1-16.