

TITLE 13 INSURANCE
CHAPTER 14 TITLE INSURANCE
PART 7 LOAN, LEASEHOLD LOAN, AND CONSTRUCTION LOAN POLICIES

13.14.7.1 ISSUING AGENCY: Office of Superintendent of Insurance, Title Insurance Bureau.
[4-1-96; 13.14.7.1 NMAC - Rn & A, 13 NMAC 14.7.1, 5-15-00; A, 7-31-14]

13.14.7.2 SCOPE: This rule applies to all title insurers and all title insurance agents conducting title insurance business in New Mexico.
[4-1-96, 11-1-96; 13.14.7.2 NMAC - Rn, 13 NMAC 14.7.2, 5-15-00]

13.14.7.3 STATUTORY AUTHORITY: NMSA 1978 Section 59A-30-4.
[6-16-86, 4-1-96; 13.14.7.3 NMAC - Rn, 13 NMAC 14.7.3, 5-15-00; A, 3-1-16]

13.14.7.4 DURATION: Permanent.
[4-1-96; 13.14.7.4 NMAC - Rn, 13 NMAC 14.7.4, 5-15-00]

13.14.7.5 EFFECTIVE DATE: June 16, 1986, unless a later date is cited at the end of a section.
[6-16-86...11-1-96; 13.14.7.5 NMAC - Rn & A, 13 NMAC 14.7.5, 5-15-00]

13.14.7.6 OBJECTIVE: The purpose of this rule is to establish requirements for title insurance policy provisions.
[11-1-96; 13.14.7.6 NMAC - Rn & A, 13 NMAC 14.7.6, 5-15-00]

13.14.7.7 DEFINITIONS: See 13.14.1 NMAC.
[11-1-96; 13.14.7.7 NMAC - Rn, 13 NMAC 14.7.7, 5-15-00]

13.14.7.8 LOAN POLICIES:

A. All loan policies shall be issued for the face amount of the loan or loans insured. When the land covered in the policy represents only part of the security of the loan or loans, the policy shall be written in the amount of the value of such land or the amount of the loan or loans insured, whichever is the lesser. When requested by the insured, a loan policy may be issued in an amount equal to the original principal amount of the indebtedness plus legal interest (capitalized or otherwise) not to exceed twenty percent (20%) of the said principal amount.

B. All loan policies may insure liens on multiple tracts in the same manner as owner's policies. Whenever any agent or insurer is issuing any policy of title insurance in conjunction with a closing of a transfer of title to property to a new owner or owners, the agent or insurer shall furnish the new owner or owners with a NM form 9, notice of availability of owner's title insurance, containing all of the required information available at that time and shall request said owner or owners to sign said form and indicate whether or not they desire an owner's policy. Said agent or insurer shall maintain copies of said forms with copies of the loan policy for at least two (2) years whenever an owner's policy is declined by the owner(s).

C. A short form residential loan policy, NM form 63, shall be considered a loan policy and shall be subject to the applicable rules and rates relating to loan policies, except as expressly provided in the short form residential loan policy, or in rules expressly referring to the short form residential loan policy. An insurer may, in its discretion, issue the short form residential loan policy upon request of the proposed insured if the real property encumbered by the lien of the insured mortgage is one to four family residential property. An insurer may not issue the short form residential loan policy if the loan secured by the lien of the insured mortgage is a construction loan or on a leasehold interest. All standard exceptions that are included in a standard loan policy, are deemed omitted in schedule B of the short form residential loan policy and premiums for deletion of the standard exceptions applicable to a standard loan policy shall apply. Any standard exceptions that are included in a standard loan policy may be added as exceptions in the schedule B addendum to the short form residential loan policy if required by these rules or if the insurer does not consider the risk acceptable to provide coverages for such omitted standard exceptions. Any of the schedule B affirmative insurance provisions may be removed from or modified in schedule B if the insurer does not consider the risk acceptable by including an exception on the schedule B addendum to the short form residential loan policy. Each insurer shall establish written instructions and underwriting standards for the issuance of the short form residential loan policy.

[6-16-86; 13.14.7.8 NMAC - Rn, 13 NMAC 14.7.8, 5-15-00; A, 7-1-04; A, 09-15-10; A, 10-1-12]

13.14.7.9 LEASEHOLD LOAN POLICIES: Unless otherwise specifically stated, a leasehold loan policy shall contain the same standard exceptions, be subject to the same premium rates and be subject to deletion of the same standard exceptions in the same manner as a standard loan policy. A leasehold loan endorsement shall be attached to a loan policy to create a leasehold loan policy.

[6-16-86; 13.14.7.9 NMAC - Rn, 13 NMAC 14.7.9, 5-15-00; A, 3-1-02]

13.14.7.10 STANDARD EXCEPTIONS: All loan policies insuring New Mexico property shall contain in schedule B the standard exceptions listed in 13.14.5.9 NMAC and numbered 1 through 8 inclusively except as otherwise provided by these regulations. Said standard exceptions may be preprinted in schedule B and, when specifically authorized, may be deleted by crossing out the words as specifically indicated in the regulations immediately following, or by notation in schedule B or endorsement stating, "exceptions numbered ____ are hereby deleted" or "exception numbered 3 is hereby amended to read, 'shortages in area.'" Standard exception numbered 5 shall refer to "spouse of the vestee" in all loan policies.

[6-16-86, 2-6-87; 13.14.7.10 NMAC - Rn, 13 NMAC 14.7.10, 5-15-00; A, 10-1-12; A, 3-1-16]

13.14.7.11 PARTIES IN POSSESSION - STANDARD EXCEPTION 1: The standard exception numbered 1 in 13.14.5.9 NMAC may be deleted from a loan policy when the company or agent has been furnished satisfactory proof that there are no parties in possession of the property being insured other than those claiming rights or possession in the property through matters of public record. Each insurer shall establish underwriting standards concerning the necessary proof to be furnished to it or its agents.

[6-16-86; 13.14.7.11 NMAC - Rn, 13 NMAC 14.7.11, 5-15-00; A, 10-1-12]

13.14.7.12 UNRECORDED EASEMENTS - STANDARD EXCEPTION 2: The standard exception numbered 2 in 13.14.5.9 NMAC may be deleted in its entirety from a loan policy when the insurer or its agent has been furnished a survey of the property being insured which it determines to be satisfactory to determine that there are not easements or claims of easements affecting the insured property other than those shown by the public records. In addition to the survey, the insurer may require as part of its underwriting standards an inspection of the property or other documentation that it may determine is necessary.

[6-16-86; 13.14.7.12 NMAC - Rn, 13 NMAC 14.7.12, 5-15-00; A, 10-1-12]

13.14.7.13 SURVEY COVERAGE - STANDARD EXCEPTION 3: The standard exception numbered 3 in 13.14.5.9 NMAC may be deleted from a loan policy in either of two ways. In both instances, the insurer or its agent must be furnished with a recent survey of the insured property meeting the insurer's underwriting standards prior to the deletion being made. If the insurer considers the additional risk acceptable, the entire language of this standard exception may be deleted from the policy, thereby insuring the surveyor's computation of area. If the insurer does not consider the shortage-in-area risk acceptable but considers the remaining additional hazard insurable, the words "encroachments, overlaps, conflicts in boundary lines" and the words "or other matters which would be disclosed by an accurate survey and inspection of the premises" may be deleted, leaving the exception to read, "shortages in area." There are no other circumstances under which this standard exception may be deleted from the policy or otherwise modified.

[6-16-86, 3-1-88; 13.14.7.13 NMAC - Rn, 13 NMAC 14.7.13, 5-15-00; A, 10-1-12]

13.14.7.14 MECHANICS' AND MATERIALMEN'S LIEN COVERAGE - STANDARD EXCEPTION 4:

A. The standard exception numbered 4 in 13.14.5.9 NMAC may be deleted in its entirety from a loan policy under the two circumstances described in Subsections B and C below.

B. If the insurer's underwriting requirements for evidence of priority have been met, the exception may be deleted from any loan policy upon payment of the additional premium required in Subsection E of 13.14.9.40 NMAC. If the mortgage or deed of trust being insured secures a loan being made for construction purposes, a NM form 83 construction loan endorsement, a NM form 83.1 construction loan direct payment endorsement, or a NM form 83.2 construction loan insured's direct payment endorsement may be issued with the loan policy and a NM form 84 disbursement endorsement may be issued thereafter.

C. If the insurer's underwriting requirements for evidence of priority have not been met but the insurer's underwriting requirements of the risk incurred by reason of the lack of priority have been met, the

exception may be deleted from any loan policy upon receipt of the additional extra-hazard risk premium specified in Subsection E of 13.14.9.40 NMAC. If the mortgage or deed of trust being insured secures a loan being made for construction purposes a NM form 83 construction loan endorsement, a NM form 83.1 construction loan direct payment endorsement, or a NM form 83.2 construction loan insured's direct payment endorsement may be issued with the loan policy and a NM form 84 disbursement endorsement may be issued thereafter.

D. Each insurer shall establish written underwriting requirements concerning minimum evidence of priority and requirements of the risk incurred by reason of the lack of priority.

[6-16-86, 2-6-87; 13.14.7.14 NMAC - Rn, 13 NMAC 14.7.14, 5-15-00; A, 10-1-12; A, 7-31-14; A, 3-1-16]

13.14.7.15 SPOUSAL RIGHTS - STANDARD EXCEPTION 5: The standard exception numbered 5 in 13.14.5.9 NMAC may be deleted in its entirety from a loan policy if the vestee named in such policy is a corporation, partnership or other artificial entity, or a person holding title as trustee. The exception may be deleted under other circumstances when the insurer or its agent has complied with the written underwriting standards established by the insurer for such deletion.

[6-16-86; 13.14.7.15 NMAC - Rn, 13 NMAC 14.7.15, 5-15-00; A, 10-1-12]

13.14.7.16 [RESERVED]

[4-3-95; 13.14.7.16 NMAC - Rn, 13 NMAC 14.7.16, 5-15-00; Repealed, 9-15-09]

13.14.7.17 ADDITIONAL "A" ENDORSEMENTS TO CONSTRUCTION LOAN POLICY: When a construction loan policy has been issued and an "A" endorsement has been attached thereto at the time of its issue, upon a date down of the title having been made to the date thereof and upon a subsequent disbursement of the loan insured, an additional endorsement "A" may be issued by the insuring company changing the effective date of the construction loan policy to the date of the most recent disbursement and down date upon payment of the additional charge as provided in Subsection D of 13.14.9.40 NMAC. In no event shall any endorsement "A" be used to extend the term of the construction loan policy beyond its expiration date. If the date down of the title made in connection with the issuance of such additional endorsement "A" reveals any change in the condition of title or if the insured requires that the amount of the aggregate disbursements to the date of the endorsement "A" be shown, such matters must be shown by separate endorsement issued contemporaneously with such additional endorsement "A". No endorsement "A" may be issued after August 14, 2018.

[6-16-86; 13.14.7.17 NMAC - Rn, 13 NMAC 14.7.17, 5-15-00; A, 10-1-12; A, 7-31-14; A, 3-1-16]

13.14.7.18 LOAN POLICIES INSURING CONSTRUCTION LOAN:

A. Construction loan policies (NM form 3) may not be issued after August 14, 2014.

B. Upon written request of the insured, acceptance of the risk by the title insurer and receipt of the additional premium required by Subsection B of 13.14.9.40 NMAC, a construction loan policy issued prior to August 15, 2014 or a standard loan policy with a two-year claims made limitation may be extended by issuance of no more than four extension endorsements of six months each. In no event may the coverage provided by a construction loan policy or a standard loan policy with a two-year claims made limitation, if extended to its maximum, exceed four years from the date of issue unless it is converted to a loan policy by payment of the full premium due for said loan policy without credit for any premium paid for the construction loan policy or a standard loan policy with a two-year claims made limitation.

[6-16-86, 2-16-87; 13.14.7.18 NMAC - Rn, 13 NMAC 14.7.18, 5-15-00; A, 10-1-12; A, 7-31-14; A, 3-1-16]

13.14.7.19 CONSTRUCTION LOAN MORTGAGE - PENDING DISBURSEMENT CLAUSE

A. When a lender is issued a loan policy insuring the lien of a construction loan mortgage, the insurer may require a specific pending disbursement clause. Such clause may be in the form directed by the insurer or it may be in the following form: "Pending disbursement of the full proceeds of the loan secured by the mortgage or deed of trust set forth under schedule A hereof, this policy insures only to the extent of the amount actually disbursed but increases as each disbursement is made, in good faith, and without knowledge of any defect in, or objections to, the title, up to the face amount of the policy. Prior to each disbursement of the proceeds of the loan, the title must be continued down to such time for possible liens or objections intervening between the date hereof and the date of such disbursement."

B. At the time of each disbursement, with respect to an insured construction loan, a NM form 22, pending disbursement down date endorsement, may be issued by the insuring company, showing any changes in title to the security property and stating the total amount of the proceeds of the construction loan advanced by the lender

at the date the endorsement is issued. The insurer or its agent shall collect the endorsement premium required by 13.14.10.18 NMAC within fifteen days of issuing the endorsement.
[6-16-86, 3-1-88; 13.14.7.19 NMAC - Rn, 13 NMAC 14.7.19, 5-15-00; A, 10-1-12; Repealed, 7-31-14; N, 3-1-16]

13.14.7.20 ISSUANCE OF REPLACEMENT MORTGAGEE'S POLICY:

A. When an authorized insurer is placed in permanent or temporary receivership for purpose of liquidation with a finding of insolvency by a court of competent jurisdiction (insolvent insurer), a replacement policy of title insurance can be purchased by an insured covered by a mortgagee's policy issued pursuant to 13.14.7.20 NMAC.

B. The insured shall surrender the existing policy of said insolvent insurer to the company when placing the order for a replacement policy. A copy of the existing policy obtained from the issuing agent can be surrendered in lieu of the existing original policy. If a copy of the existing policy is obtained from the original agency that issued it, an additional charge can be made to the insured in an amount that is reasonable considering the nature and extent of the services rendered. The date of policy for the replacement policy shall be the same date of policy as the existing policy.

C. No replacement policy shall be issued without exceptions to coverage for defects, liens, encumbrances, adverse claims or for other matters known to exist by the insured on the date of issuance of the replacement policy, including but not limited to claims known by any owner or other insured and claims reported under existing policies or claims that have been made against the receiver for the insolvent insurer or agent(s) who represented the insolvent insurer. All replacement policies shall contain the following exception on schedule B: Defects, liens, encumbrances, adverse claims or other matters not known to the issuing agent and/or insurer at the issue date of this replacement policy, but known to any owner or other insured claimant and not disclosed in writing to the agent and/or insurer by the insured claimant prior to the date the insured claimant became insured under this policy.

D. A replacement policy may be issued on a lien covered by an existing mortgage policy but not on a lien to take up, renew, or extend or satisfy the existing lien. The replacement policy amount for a mortgagee policy shall be the amount of the current unpaid balance of the indebtedness. Agents and/or insurers must issue a replacement policy when request therefore is made by an insured that has satisfied the requirements of this regulation.

E. No search or examination of title or evidence thereof is required of the agent or insurer issuing a replacement policy pursuant to this regulation. However, agents and insurers may conduct a search and examination at no additional expense to the insured other than as set forth in 13.14.9.26 NMAC.

F. All replacement policies shall be marked as such by adding the words "Replacement Policy; NO SEARCH REQUIRED," prior to the policy number on the cover page of the policy and on the top center of all other pages not considered a policy cover or jacket. Subsequent to the words "Replacement Policy; NO SEARCH REQUIRED," the date the replacement policy was issued shall be indicated after the word "Issued" is typed. No other regulations affording credits, discounts, reduction in premium shall apply to replacement policies other than stated herein and in 13.14.9.10.7 NMAC.

[6-15-91; 13.14.7.20 NMAC - Rn, 13 NMAC 14.7.20, 5-15-00; A, 3-1-16]

13.14.7.21 [RESERVED]

[4-1-93; 13.14.7.21 NMAC - Rn, 13 NMAC 14.7.21, 5-15-00; Repealed, 7-1-05]

13.14.7.22 FORECLOSURE TITLE INSURANCE POLICY: A foreclosure title insurance policy (NM form 41) and, if desired, a down date endorsement (NM form 42) may be issued upon receipt of a bona fide order from an attorney, trustee, mortgagee or their agent in anticipation of the filing of an action to judicially foreclose a mortgage, deed of trust or other lien or security instrument encumbering title to real property in New Mexico, or to non-judicially foreclose a deed of trust. No binder shall be issued in connection with said policy. The amount of coverage shall be equal to the amount of the unpaid principal indebtedness due under the lien or note secured by the security instrument to be foreclosed. The policy shall be furnished solely for the purpose of facilitating the filing of the action referred to in schedule A of the policy. The promulgation of this form shall not preclude, nor affect, the issuance of a title search and report by an agent.

[4-3-95; 13.14.7.22 NMAC - Rn, 13 NMAC 14.7.22, 5-15-00; A, 7-1-04; A, 09-15-10; A, 3-1-16]

13.14.7.23 ALTA RESIDENTIAL LIMITED COVERAGE JUNIOR LOAN POLICY: Upon request, a title agent or insurer may issue an ALTA Residential Limited Coverage Junior Loan Policy (NM form 45) if all of

the conditions required by this section exist. Use of the limited search policy is optional and no agency and/or insurer need issue this form even if requested and the transaction meets all the requirements of these rules.

- A.** The real property to be insured under the policy is one to four family residential as defined in subsection A of 13.14.1.21 NMAC;
- B.** The real property is located within a county recorded subdivision as defined in subsection B of 13.14.6.20 NMAC;
- C.** The agent or insurer has a complete copy of all schedules of an owner's policy issued in favor of the person(s) shown as vestee(s) in the proposed policy;
- D.** The loan to be made by lender is less than or equal to \$75,000.00 and is a junior equity line of credit or second mortgage; and
- E.** The policy is issued in conformance with the underwriting standards issued by the title insurance company.

[6-1-97; 13.14.7.23 NMAC - Rn, 13 NMAC 14.7.23, 5-15-00]

13.14.7.24 [RESERVED]

[13.14.7.24 NMAC - N, 7-1-04; Repealed, 9-15-09]

13.14.7.25 [RESERVED]

[13.14.7.25 NMAC - N, 7-1-04; A, 7-1-05; Repealed, 9-15-09]

13.14.7.26 CLOSING PROTECTION LETTERS: The closing protection letter - single transaction (NM form 81) and the closing protection letter multiple transactions (NM form 81.1) may be issued with the approval of the underwriter, in addition to issuance of any policy. Unless specifically requested by a party and approved by the underwriter, the closing protection letter- single transaction (NM form 81) shall be issued. Each insurer shall establish written instructions and underwriting standards preceding the use of these forms.

[13.14.7.26 NMAC - N, 09-15-10; A, 10-1-12; A, 3-1-16]

13.14.7.27 RESIDENTIAL LIMITED COVERAGE MORTGAGE MODIFICATION POLICY:

- A.** Upon payment of the premium provided for in 13.14.9.42 NMAC, a residential limited coverage mortgage modification policy as described in NM form 90 may be issued.
- B.** This policy shall only be issued on properties that are defined as "one to four family residential property."
- C.** In order to issue a residential limited coverage modification policy, proof of the previous policy shall be in the possession of the company issuing the policy prior to the commencement of the title search for said policy. Proof, as used in this context, shall mean a copy of the previous policy, which shall include the following information: issuing company/underwriter, policy number, date of issue, policy amount, legal description of insured property, name of insured, as well as complete copies of schedules A and B (and C, if applicable), and any attached endorsements.

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

HISTORY OF 13.14.7 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 14.7, Loan, Leasehold Loan, and Construction Loan Policies, effective 11-01-1996.

13 NMAC 14.7, Loan, Leasehold Loan, and Construction Loan Policies (filed 10-2-96), was renumbered reformatted, amended and replaced by 13.14.7 NMAC, Loan, Leasehold Loan, and Construction Loan Policies, effective 5-15-2000, amended effective 7-31-14.

13 NMAC 14.7, Loan, Leasehold Loan, and Construction Loan Policies effective 7-31-14, amended effective 3-1-16.